EXHIBIT BB 2.1

STATEMENT & ANNEXURES

OF

PETER STEPHEN VOLMINK

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214-0651
Email:
inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

INDEX: EXHIBIT BB 2.1

Description	File	Pages
Statement of Peter Stephen Volmink	(a)	0001 to 0067
Annexure "PV 1"	(a)	0068 to 0094
Annexure "PV 2"	(a)	0095 to 0125
Annexure "PV 3"	(a)	0126 to 0159
Annexure "PV 4"	(a)	0160 to 0165
Annexure "PV 5"	(a)	0166 to 0168
Annexure "PV 6"	(a)	0169 to 0371
Annexure "PV 7"	(b)	0372 to 0593
Annexure "PV 8"	(b)	0594 to 0838
Annexure "PV 9"	(c)	0839 to 0872
Annexure "PV 10"	(c)	0873 to 0889
Annexure "PV 11"	(c)	0890 to 0912
Annexure "PV 12"	(c)	0913 to 0915
Annexure "PV 13"	(c)	0916 to 0943

Description	File	Pages
Annexure “PV 14”	(c)	0944 to 0965
Annexure “PV 15”	(c)	0966 to 0973
Annexure “PV 16”	(c)	0974 to 0981
Annexure “PV 16(a)”	(c)	0982 to 0985
Annexure “PV 16(b)”	(c)	0986 to 0988
Annexure “PV 17”	(c)	0989 to 0990
Annexure “PV 18”	(c)	0991 to 0997
Annexure “PV 19”	(c)	0998 to 1006
Annexure “PV 20”	(c)	1007 to 1020
Annexure “PV 21”	(c)	1021 to 1036
Annexure “PV 22”	(c)	1037 to 1039
Annexure “PV 23”	(c)	1040 to 1049
Annexure “PV 24”	(c)	1050 to 1052
Annexure “PV 25”	(c)	1053 to 1064
Annexure “PV 26”	(c)	1065 to 1073
Annexure “PV 27”	(c)	1074 to 1084
Annexure “PV 28”	(c)	1085 to 1091
Annexure “PV 29”	(c)	1092 to 1095
Annexure “PV 30”	(c)	1096 to 1117
Annexure “PV 31”	(d)	1118 to 1172
Annexure “PV 32”	(d)	1173 to 1195
Annexure “PV 33”	(d)	1196 to 1221
Annexure “PV 34”	(d)	1222 to 1246
Annexure “PV 34(a)”	(d)	1247 to 1253
Annexure “PV 35”	(d)	1254 to 1258
Annexure “PV 36”	(d)	1259 to 1264

Description	File	Pages
Annexure “PV 37”	(d)	1265 to 1271
Annexure “PV 38”	(d)	1272 to 1281
Annexure “PV 39”	(d)	1282 to 1289
Annexure “PV 40”	(d)	1290 to 1297
Annexure “PV 41”	(d)	1298 to 1305
Annexure “PV 42”	(d)	1306 to 1313
Annexure “PV 43”	(d)	1314 to 1322
Annexure “PV 44”	(d)	1323 to 1340
Annexure “PV 45”	(d)	1341 to 1346
Annexure “PV 45(a)”	(d)	1347 to 1349
Annexure “PV 45(b)”	(d)	1350 to 1351
Annexure “PV 46”	(d)	1352 to 1355
Annexure “PV 47”	(d)	1356 to 1387
Annexure “PV 48”	(d)	1388 to 1396
Annexure “PV 49”	(d)	1397 to 1399

STATEMENT

I, the undersigned,

PETER STEPHEN VOLMINK

do hereby state that:

1. The facts contained in this statement are both true and correct, and within my personal knowledge, unless the context provides otherwise.

2. I have been requested by the Commission of Inquiry into Allegations of State capture, Corruption and Fraud in the Public Sector ("the Commission") to comment on Transnet's procurement procedures, including its delegations of authority (DOA) and the role of the governance function within Supply Chain Management (SCM).

3. I have also been requested by the Commission to provide a statement regarding certain transactions that took place in Transnet over the past number of years, including my own role in those transactions. The transactions in respect of which I have been asked to comment are:

   2.1 The Neotel network services contract;

   2.2 The confinement of the CCTV upgrade contract to Neotel ("CCTV1");

   2.3 The award of the IT data services contract to T Systems;

   2.4 The confinement of the 100 locomotives transaction to China South Rail (CSR);

   2.5 The confinement of various tenders to McKinsey Consulting ("the McKinsey contracts).

4. I have personal knowledge of the Neotel network services tender, the award of the IT data services contract to T Systems and certain McKinsey confinements, having been involved in an advisory capacity during one or more stages of the procurement process. I do not have personal knowledge of the CCTV1 confinement to Neotel or the confinement of the 100 locomotive transaction to CSR. I have, however, been asked to express a view on whether those confinements were compliant with Transnet's procurement processes.

5. This statement is divided into two parts. In Part 1, I deal with my role within Transnet, the functions and structure of SCM Governance, SCM Processes and Delegations of Authority and key changes to Transnet's SCM procedures from 2012 to date. I conclude Part 1 with a few observations and recommendations.

6. Part 2 deals with the transactions identified above.

INTRODUCTION

7. I hold the degrees BA LLB from the University of Cape Town and an LLM degree from Duke University (US). I am currently completing a PhD degree at Wits School of Law. My area of research pertains to the treatment of non-responsive bids in South African procurement law.

8. I completed my articles in 1989. Thereafter, I took up a position at the University of the Western Cape, where I ran the Street Law programme and later became the National Director of the programme. I also taught public law on a part time basis during this period.

9. I served pupillage during 1997 and subsequently became a member of the Cape Bar. During 2001 I joined the Asset Forfeiture Unit of the National Prosecuting Authority, where I worked as Deputy Director of Public Prosecution. I later became one of the Regional Heads of the AFU.

10. I joined Transnet in 2007 as General Manager: Legal at the Corporate Centre (also referred to as "Group"). During this time I developed a growing interest in procurement law. This interest led me to join the Supply Chain Management (SCM) unit, first as a legal specialist and later as Executive Manager: Governance. I still hold the position of Executive Manager.

11. I have been working in the SCM environment for approximately 10 years. Over the past 10 years, the Governance function has propagated one message consistently viz. that strict compliance with the applicable supply-chain rules and regulatory framework is critical to ensuring the integrity of a tender process.

PART 1

KEY ROLE, RESPONSIBILITY AND REPORTING LINES

12. In my position as Executive Manager, I report directly to the Chief Supply Chain Officer. When I joined SCM, that position was held by the late Karen van Vuuren. The position was later occupied by Mr. Garry Pita, and after him by Mr. Edward Thomas. Ms. Corli Janse van Rensburg currently occupies the position in an acting capacity.

13. The Zondo Commission's investigators have asked me to indicate whether I have ever been coerced, manipulated or blackmailed to ensure that qualified bidders were not awarded tenders. I can state categorically that I have never been coerced, manipulated or blackmailed to ensure that qualified suppliers were not awarded tenders or to perform any unlawful act.

14. I also state categorically that I have not participated in the commission of any unlawful act whilst in the employ of Transnet or knowingly aided or abetted the commission of an unlawful act.

15. All the advice given by myself in relation to the various transactions under investigation, all recommendations made and documentation signed was done in good faith and based on the information that was available to me at the time.

THE GOVERNANCE FUNCTION

16. The functions of Group Governance are broadly four-fold, namely: *Policies and procedures, transactional advice, training and development* and *compliance and monitoring*, as discussed in more detail herein below.

16.1. ***Policies and Procedures***. Group Governance must ensure that Transnet's SCM policies and procedures are aligned to the key constitutional principles of fairness, transparency, equity, competitiveness and cost-effectiveness, as enshrined in s 217(1) of the Constitution. SCM policies and procedures must also be aligned to the regulatory framework including primary legislation (such as the PFMA, PPPFA, CIDB Act), regulations, instruction notes and implementation guides issued by National Treasury (NT) and other statutory bodies from time to time.

16.1.1. The current version of the Supply Chain Policy took effect on 29 February 2016. A copy of the SCM Policy is attached as "**PV1**".The Policy contains the broad principles that should be observed in Transnet's SCM processes. These include fairness and transparency during bid processes, a commitment to social equity and value for money.

16.1.2. The Procurement Procedures Manual (PPM) sets out the detailed procedures that must be followed in the course of Transnet's procurement transactions. It covers key procurement mechanisms and procedures, bid evaluation, negotiation, as well as the adjudication and award of tenders. It also deals with matters such as amendments to contracts, blacklisting of suppliers, condonations etc. The current (2015) version of the PPM took effect on 1 June 2015.

16.1.3. Since the PPM was approved in 2015, there have been a number of regulatory changes in the SCM environment. These include various instruction notes that were issued by NT as well as the PPPFA regulations, 2017. To ensure compliance with the regulatory requirements, the Governance function issues directives to the SCM community as and when new regulatory requirements are issued by NT.

16.1.4. The 2015 PPM is currently undergoing an in-depth review in order to simply the document, whilst at the same time ensuring compliance to all regulatory requirements. A revised (2019) version of both the SCM Policy and the PPM will be issued in the near future.

16.1.5. The Governance function also issues tools and templates to the SCM function to ensure uniform application of standard procurement documents.

16.2. ***Transactional advice.*** Until recently, a rule of practice existed that key procurement documents (e.g. RFPs, confinements, condonations, variations to contract etc.) that required Group sign off (by the Chief Supply Chain Officer, or higher), had to be reviewed by Group Governance. The purpose of the review by Group Governance was to assess compliance with the regulatory framework. The

review was based on the assumption that the factual content of the documentation was true and correct. Governance did not have the capacity to establish the veracity of the statements contained in the documentation, independently.

16.2.1. The Governance staff was required to ensure that all documents received underwent a robust review for regulatory compliance. First, this entailed checking for compliance with legal requirements. A submission that did not comply with the regulatory framework would not be supported. Secondly, documentation had to be lucid and properly drafted. This often resulted in non-compliant transactions or poor-quality documentation being sent back to the Operating Divisions (ODs)/Specialist Units (SUs) for rework. This, in turn, became the cause of frustration and even resentment among officials, with the result that Governance came to be seen as a cause of delay within SCM. Consequently, the rule that Governance had to review documentation that required Group sign off, was not uniformly observed. Indeed, there were many transactions that required Group sign off that were not routed through the Governance function. For example, we heard that certain confinements were taken to the GCE for sign off, without Governance review. Indeed, the staff working within the Governance function, including myself, got the distinct impression that there was a growing tendency to avoid the Governance function.

16.2.2. Recently, the review of procurement documentation and transactional advice has been assigned to the Governance representatives at OD/SU level. It is now the primary responsibility of the OD Governance function to ensure that procurement documentation meets the required standard before they are submitted for sign off, with Group Governance performing an advisory role, as needed. The function of Group Governance will take

on a more strategic role, to include a stronger focus on training and development, assessment of procurement risks and face-to-face engagements at OD level, aimed at problem solving.

16.3. ***Training and development.*** The Governance function is required to conduct training to SCM staff throughout Transnet. This includes annual training on the PPM as well as training for Acquisition Council (AC) members. Due to severe capacity constraints experienced at the Group Governance level over the last few years, this function has not received the desired level of attention. However, focused training events will take place after the new PPM is approved.

16.4. ***Compliance and monitoring***. Historically, the Governance function compiled monthly reports based on information received from ODs in order to track compliance with Transnet's procurement requirements. The reports covered aspects such as the number of confinements, contract variations, use of emergency processes etc. These reports were discussed at monthly meetings of the CPOs (the iSCM Council), areas of concern were highlighted and CPOs would be requested to provide remedial measures, where necessary.

17. Other functions include the management of a procurement ombud function within Transnet. Unsuccessful tenderers are allowed to lodge their complaints regarding tender processes with the Ombud's office. The complaints are usually referred to external attorneys who are required to review the complaints and make recommendations based on their findings. The AC secretariat function at the corporate centre also reports into the Governance function.

18. The Governance function works closely with other assurance providers within Transnet, including the risk and compliance function, the legal department, internal audit and the

High-Value Tender team (HVT). The HVT team is appointed from a firm of auditors to oversee compliance in tenders above a certain threshold (>R100m).

STRUCTURE OF THE GOVERNANCE FUNCTION

19. The Governance structure at Group level is headed up by an Executive Manager (myself), two senior managers, 3 managers and 2 contract employees, as depicted in the organogram below.

20. The ODs/SUs have their own SCM Governance function, which report to the CPOs. The size of the Governance function varies from OD to OD.

21. I wish to highlight two concerns with the manner in which the Governance function is structured currently. First, most of the staff employed in the Governance function at OD level are relatively junior and consequently lack the experience and confidence to resist pressure from above, particularly from senior managers and executives. Secondly, the reporting lines of the Governance function at OD level is problematic and needs to change. Currently, OD Governance reports to the CPOs. Yet, Governance is supposed to provide

an independent, assurance function. As such, they should ideally be placed outside of the SCM function and integrated with other assurance functions.

THE DELEGATION OF AUTHORITY FRAMEWORK

22. Transnet's Delegation of Authority (DOA) Framework sets out the powers delegated to various bodies or officials (e.g. EXCO, Acquisition Councils, Group Chief Executive, Group Chief Financial Officer etc.) to perform specified tasks in relation to various areas of operation (e.g. financial, treasury, human resources, procurement etc.) In the main, Transnet's procurement DOAs are structured around 3 key stages in the procurement process. The three stages are depicted in the diagram below.

22.1. The first stage is approval to approach the market. An RFP may only be issued to the market with the approval of a delegated official/body. The official/body with DOA is required to confirm that sufficient funds are available, and to approve the procurement strategy as well as the RFP.

22.2. The second stage is tender adjudication, referred to as "process approval". During this stage, the body with delegation of authority approves the award of tender, subject to the person with DOA for signing the contract confirming that there is still a need for the goods and services. This stage is reached once the process of tender evaluation has been completed. During this stage, the relevant body with DOA must be satisfied that tender processes were followed correctly before approving the award the tender. For transactions not exceeding R700m, this function is performed by a Divisional Acquisition Council (more commonly referred

to in the public sector as a "Bid Adjudication Committee"). For higher value transactions, the powers of bid adjudication have been delegated to the Procurement Committee or EXCO, depending on the value.

22.3. The third stage is contract award. After the adjudication process has been completed, a person/body with DOA is required to issue a letter of intent (LOI) and/or conclude a contract with the successful tenderer.

22.4. DOAs are assigned to different officials/bodies within Transnet, depending on the value threshold of the transaction.

23. The DOA Framework also covers other procurement processes, such as the use of emergency processes, confinements, blacklisting etc.

24. Historically, the Board of Transnet (including sub-committees of the Board) did not have any DOA for procurement-related activities. Such responsibilities were introduced during 2011, when a sub-committee of the Board (the Board Acquisition and Disposals Committee "BADC") and the Board exercised powers to approve the approach to market and to conclude contracts for certain high-value transactions (exceeding R500m).[1] The BADC and the Board also exercised powers to appoint consultants and to approve confinements.[2] During 2013, these powers included bid adjudication (referred to as "process approval").[3]

25. Under the current (2019) DOA Framework, the Board of Transnet does not exercise any delegation to award tenders. As indicated above, these responsibilities were delegated to the DACs, the Procurement Committee or EXCO, depending on value. However, the Board has established a sub-committee (the Finance and Investment Committee "FIC")

[1] Paras 5.4.2 and 5.5 of the 2011 DOA Framework.
[2] Paras 5.4.1 and 5.4.3 of the 2011 DOA Framework.
[3] Para 5.4.6 of the 2013 DOA Framework.

that will perform an oversight role in respect of all high-value procurement transactions. Overall accountability still remains with the Board.

THE PROCUREMENT PROCESS

26. In terms of section 51(1)(*a*)(*iii*) of the PFMA, Transnet's accounting authority must ensure that the organization has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective. The PPM (read with the SCM policy and related documentation) establishes Transnet's procurement system, as contemplated in s 51(1)(*a*)(*iii*).

27. These documents undergo periodic review in order to simply the process and create greater efficiencies, align Transnet's processes to the most recent legislative requirements and to further socio-economic objectives.

28. Broadly speaking, Transnet's procurement system is structured around 4 guiding principles:

(a) The importance of fairness, equity, transparency, competitiveness and cost-effectiveness, as prescribed by s 217(1) of the Constitution and the PFMA;

(b) Legislative requirements that are applicable to Transnet as a Schedule 2 entity;

(c) Applicable governmental policies;

(d) Any other provisions that the Accounting Authority might regard as "appropriate".

29. Not all SCM regulatory requirements apply to Transnet as a major public entity. For instance, Treasury's SCM regulation 16A applies to public entities listed in Schedule 3A and 3C to the PFMA and not to Schedule 2 entities. Transnet's accounting authority has some discretion to design a procurement system which it deems to be appropriate, subject to the prescripts which are imposed by the applicable regulatory framework.

The Procurement Cycle

30. The PPM has been designed around 9 steps that constitute the procurement cycle. The PPM provides detailed rules to guide the procurement function through each step of the cycle. Annexure "**PV 2**" depicts the procurement cycle and provides a more detailed description of the procurement process.

31. The first two steps (Demand planning & management and the development of a procurement strategy) deal with the pre-tender stage. During these stages, business requirements are assessed and processed to validate the demand, and to ascertain the scope and costs of the requirement. At this stage in the process, a market analysis must be conducted, key procurement objectives (such as empowerment, functionality and pricing) must be identified and the most appropriate procurement mechanism must be chosen. The objective is to arrive at a clear view of what must be procured, by when, and how this is to be done.

32. The third step involves the preparation of the RFP document. This deals with time frames, validity periods, evaluation criteria and approvals required to issue the RFP. Step 4 deals with the advertisement of bids on the e-tender portal, as well as the receipt and opening of bids.

33. Step 5 deals with the allocation of scores during the bid evaluation process. Step 6 deals with the process of shortlisting bidders and post-tender negotiation. Step 7 deals with bid adjudication. During this stage, the relevant Acquisition Council must decide whether to approve the recommendation of the award to the preferred bidder or to send the matter back for re-evaluation.

34. During step 8 the person with delegated authority concludes a contract with the successful bidder. Step 9 entails the process of contract management and close out.

The Bid Evaluation Process

35. Transnet's bid evaluation process follows the typical 2-stage process used in the public sector, as prescribed by National Treasury. The bid evaluation process is depicted in "**PV 2**".

36. The two stages in the process are the threshold stage and the price and preference stage.

37. However, bids are first filtered through a preliminary stage in the process in which bids are assessed for responsiveness. Bids are regarded as administratively responsive if all mandatory documents were provided by the closing date and time of the bid. Bids are regarded as substantively responsiveness if all prequalification criteria were met (e.g. technical or B-BBEE criteria). Only bids that meet the test for responsiveness (both administrative and substantive) progress to the threshold stage.

38. Bids that pass the prequalification stage progress to stage 1 i.e. the threshold stage referred to above. Bids are first assessed to determine whether they meet the threshold for local production and content, usually expressed as a percentage of bid price. This only applies in respect of so-called "designated sectors" i.e. sectors that have been designated for local production.[4] At this point in the process, bids are evaluated to determine whether they meet the prescribed minimum percentage for local content.

39. Only those bids that meet the local content threshold are further assessed to determine whether they meet the minimum percentage set for functionality. This involves a process of scoring bids against various functionality criteria, such as technical compliance, previous experience, quality etc. Bids that pass the minimum percentage set for functionality progress to stage 2. The stage 1 thresholds apply in an absolute sense i.e. a bidder either meets the thresholds and passes or does not meet the threshold and is disqualified from the process.

40. During stage 2, bids are assessed for price and preference.[5] The elements of price and preference are used to compare bidders against each other. Bidders are allocated points out of 100 for price and preference and the bid must be awarded to the bidder who scores the highest points overall.

41. The points for price are determined by using a pre-determined formula, in which the lowest-priced bid scores the maximum number of points (80 or 90 points as the case may be). All

[4] The Department of Trade and Industry has designated various sectors for local production and content e.g. buses, office furniture, rail rolling stock, electrical cables etc. In cases involving local content, bidders must meet the minimum prescribed percentage for local content in order to be considered further. This is expressed as a percentage of bid price. For example, in respect of rail rolling stock, bidders must indicate that a minimum of 55% of the bid price for diesel locomotives will be spent on local production.

[5] Where the value of the tender is expected to be between R30 000,00 and R50m, 80 points are allocated to price and 20 to B-BBEE. For tenders above R50m, 90 points are allocated to price and 10 to B-BBEE.

other bids score fewer points, depending on the amount by which their price exceeds that of the lowest-priced bid.

42. The points for preference are allocated based on the bidders' B-BBEE scorecard. Bidders with B-BBEE recognition level 1 are allocated the maximum number of points (20 or 10 as the case might be) with fewer points allocated to bidders with lower B-BBEE levels, based on a pre-determined scale.

43. The points for price are then added to the points for preference to determine the bidder with the highest number of points. In terms of s 2(1)(*f*) of the PPPFA, the tender must be awarded to the bidder with the highest number of points, unless objective criteria justify the award of the tender to a bidder other than the highest-scoring bidder.

44. Furthermore, a tender may only be awarded to a bidder whose price is market-related. If the price of the top-ranked bidder is not market-related, the organ of state may negotiate a market-related price with the bidder. If the top-ranked bidder does not agree to a market-related price Transnet may negotiate a market-related price with the second and third-ranked bidders or cancel the tender.[6]

AREAS OF CONCERN

45. I wish to highlight a few areas of concern (problem areas) which have arisen over the past number of years, and which the PPM has sought to address :

45.1. *Applicability.* The PPM makes it clear that procurement rules apply to all acquisitions across Transnet, *regardless of* value.[7] This provision was first inserted into the 2012 version and has been repeated ever since. This insertion was

[6] Regulations 6(9) and 7(9) of the PPPFA regulations, 2017.
[7] See the opening paragraph of Chapter 3 of the PPM (2015): Scope and Exclusions (page 20).

significant. As already indicated, since 2011, both the Board and the Board Acquisition and Disposal Committee (BADC) assumed responsibility for procurement transactions of very high value. During 2012, the BADC and the Board were given tender approval authority of up to R2b and >R2b, respectively. By 2016 these approval authorities had increased to R3b and >R3b, respectively. The SCM Governance function wanted to ensure that the members of the BADC and the Board understood that the procurement rules contained in the regulatory framework and the PPM were applicable to them as well. Hence the provision was inserted that the PPM applied to all transactions, irrespective of value.

45.2. *One-person Acquisition Councils.* During 2013, the DOA granted authority to certain individuals to give process approval for high-value transactions.[8] This was apparently introduced to address the gap in the approval authority between the Acquisition Councils (ACs)(R450m) and the BADC (R1b).

45.3. However, the Governance function was concerned about this development, as it effectively granted authority to individuals to act as an acquisition council. During 2011, the Governance function made proposals for the establishment of a high-value AC (referred to colloquially as a "super DAC") to perform this function. However, these proposals were never accepted. The use of one-person DACs became institutionalized since 2013. However, this practice will be discontinued if certain amendments to the 2019 DOAs are accepted by the Board.

45.3.1. The Governance function was opposed to the establishment of so-called one-person ACs, because the adjudication of tenders is usually a complex exercise, involving a multi-disciplinary team such as finance, legal,

[8] In terms of the 2013 DOA, the ACs exercised process approval up to R450m. The CSCO exercised process approval up to R525m, the CFO up to R750m and the GCE up to R1b. The BADC exercised process approval up to R2b and the Board above R2b.

governance, compliance, tax and business etc. It is virtually impossible for any single person to possess all this expertise. Furthermore, NT has prescribed a 3-committee system, comprising a Bid Specification Committee (BSC), a Bid Evaluation Committee (BEC) and a Bid Adjudication Committee (BAC) to oversee procurement events from start to finish.[9] It is the function of a BAC to approve the award of tenders. Once the BAC has approved a procurement award, a recommendation will be made to the individual with DOA to issue an LOI and conclude a contract with the winning bidder. From the perspective of SCM Governance, the establishment of so-called one person DACs is contrary to best practice in the SCM environment. It also created significant risk for the individuals involved, since they could be held accountable for any improper adjudication.

45.3.2. In order to mitigate the risk created by one-person DACs, the PPM prescribed that all transactions first had to serve before the main OD DAC, the OD CE, and the heads of Group iSCM, Group Risk and Group Legal.[10] Only once all these structures were satisfied with the award of the tender would it serve before the one-person DAC for final approval.

45.4. *Confinements.* The procurement mechanism that applies by default within Transnet is the open-tender process. Confinements are a deviation from this rule and as such are to be approached with great circumspection. The PPM warns that a misuse of the confinement process would have the effect of undermining competition and entrenching monopolies within Transnet.[11] Confinements were

[9] See NT regulation 16A6.2 read with NT Code of Conduct for Bid Adjudication Committees, dated 24 March 2006.
[10] PPM 6.4(d) of the PPM 2015 page 46. See also the note to PPM 6.4(d) of the 2013 PPM page 40.
[11] PPM 15.1.1 (2013 version).

thus limited strictly to the following instances: (a) genuine urgency; (b) limited supplier source; (c) standardization and (d) goods or services that are highly specialized and largely identical to those previously procured from the supplier.

45.4.1. It is not the principle of restricted bidding, but rather it's potential for abuse that creates a problem. Hence, confinements operate best in an environment with a strong compliance culture and where the potential for abuse is low.

45.4.2. During 2012, the Board expressed it unhappiness with the widespread use of confinements within Transnet and at first sought to remove confinement from the PPM altogether. However, the Board later agreed to retain confinements in the PPM, but instructed management to remove it from the chapter dealing with main procurement mechanisms and to deal with it under the heading "special cases". This was intended to convey the message that confinements were not to be regarded as one of the main procurement mechanisms in Transnet.

45.4.3. Furthermore, the Board removed the power to confine from the ODs and vested the power in the GCE or higher, depending on value.

45.4.4. The use of urgency as a ground for confinement was also curtailed. Before 2012, a genuine urgency could be used as a ground for confinement, even if the urgency arose as a result of bad planning e.g. if fuel had not been procured as a consequence of bad planning, a confinement process could still be triggered because the fuel had to be procured urgently. However, the individual responsible for creating the urgency had to be disciplined. But in 2012, the Board removed this exception and decided that if the

urgency arose as a result of bad planning, a confinement would not be justified under any circumstances

45.4.5. Today, the practice of confinement is governed by NT instruction 3 of 2016/17, in terms of which Transnet is only allowed to approve a deviation from the open bidding process based on emergencies and sole source procurement. All other deviations from the open bidding process require prior approval from NT.

45.5. *Contract variation.* During 2011, NT issued an instruction note which dealt, *inter alia*, with contract variation within SCM.[12] The instruction prescribed that contracts could not be varied by more than 20% or R20m for construction-related works or services and 15% or R15m for non-construction works or services. Although the instruction was not applicable to schedule 2 entities,[13] the Governance function recommended to the iSCM Council at the time that Transnet apply a limit of 20% on contract variations. However, the Council did not agree with the recommendation as it felt that the limitation would impede operational efficiency. A rule was introduced that allowed an AC to approve a variation of up to 40% of the original contract value. Motivations for variations above 40% could be approved by a higher level authority.[14]

45.5.1. Contract variations are now governed by NT instruction 3 of 2016/17 in terms of which Transnet can only approve a contract variation of 20% or R20m for construction-related works or services and 15% or R15m for non-construction works or services.

[12] See para 3.9.3 of NT Instruction on "Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management", 2011.
[13] It applied to entities listed in schedule 3A and 3C to the PFMA.
[14] See para 22.5.7 of the 2013 PPM.

45.6. *Use of emergency procurement procedures.* By their very nature, emergencies require immediate remedial action. As such, normal tender processes cannot be followed to address an emergency. However, the PPM stipulates that the concept of an "emergency" must be applied restrictively and should not be used as an excuse for bad planning. Emergency procedures apply only in cases where there is an imminent risk of human injury or death; suffering or death of livestock; serious business disruption that could not reasonably have been foreseen; interruption of essential services; serious damage to property or financial loss or serious environmental degradation.[15]

45.7. *Preferential procurement and supplier development.* Transnet, like all other organs of state, strives to use its procurement transactions to advance the interests of various designated groups, including black persons in general, back women, black youth, persons living with disabilities, people living in rural areas, QSEs and EMEs etc. The use of procurement as a policy tool is common practice throughout the developing world, and South Africa is no exception. The fact that the ideals of empowerment are sometimes grotesquely manipulated and abused to advance the interests of a few self-serving individuals should not detract from its value as a tool in reshaping our society. If exercised subject to the constraints imposed by the Constitution and the rule of law, procurement as a policy tool could be employed quite effectively to achieve a greater level of equality in our society.

45.7.1. Prior to December 2012, Transnet was not bound by the PPPFA[16] and thus had considerable latitude to develop its own policies aimed at promoting

---

[15] Para 15.2 of the PPM (2015).

[16] Section 1 of the PPPFA defined an "organ of state" to which the Act applied as -

(a) a national or provincial department as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999);
(b) a municipality as contemplated in the Constitution;
(c) a constitutional institution defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999);
(d) Parliament;
(e) a provincial legislature;

empowerment and economic transformation. Broadly speaking, Transnet's initiatives fell into two categories: preferential procurement and supplier development. These aspects are dealt with in paras 48 *ff*, but a brief summary will suffice at this point.

45.8. *Preferential procurement.* When the PPPFA and its regulations (2011) took effect in December 2012, Transnet had to align its preferential procurement policies strictly to the Act and the regulations. This meant applying 80 points for price and 20 points for preference for transactions less than a million rand and 90 points for price and 10 for preference for transactions greater than a million rand. The preference points were based on a bidder's B-BBEE scorecard.

45.8.1. However, before December 2012, Transnet's internal policies allowed it to split the 20 or 10 points between various B-BBEE indicators viz the B-BBEE scorecard, B-BBEE Further Recognition Criteria (FRC) current and B-BBEE FRC future.[17] This system was designed to conduct a holistic assessment of a bidder's B-BBEE performance and future aspirations, as opposed to basing B-BBEE performance on the B-BBEE scorecard only.

45.8.2. Other measures included setting minimum B-BBEE thresholds as pre-qualification criteria and the use of set-asides in limited instances.[18] The

---

(f) any other institution or category of institutions included in the definition of "organ of state" in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which this Act applies.

In 2011, the Minister of Finance issued a notice as contemplated in s2(1)(*f*) to include major public entities listed in Schedule 2 to the PFMA, but exempted Schedule 2 entities from certain of the regulations for a period of one year. The regulations from which Schedule 2 entities were exempted were regulations 2(2); 3 to 8; 10; 11(1) to (9); 11 (11) to (13) and 12 – 13.

[17] FRC current measured the extent to which a bidder's current black ownership, management control and employment equity exceeded certain minimum thresholds. FRC future measured the extent to which bidders committed to improving their B-BBEE status over the contract period in these areas, including preferential procurement and enterprise development.

[18] See Chapter 10 of the 2012 PPM.

PPM required that these measures be applied in a manner which would not materially undermine the constitutional principles of fairness, competitiveness etc.

45.9. *Supplier Development.* SD was usually assessed as a minimum threshold or as a prequalification criterion. When used as a minimum threshold, bidders were allocated points based on their tender offer to meet various SD criteria such as industrialization, technology transfer, job creation/preservation, skills development, small business development and rural development. Bidders who met a prescribed minimum threshold were assessed further for functionality. The final points out of 100 were assessed on price, preference and SD.[19]

45.10. When used as a prequalification criterion, bidders would qualify for further consideration, based solely on their undertaking to spend a minimum percentage of contract value on SD e.g. 20%.

45.10.1. The question that was debated within Transnet at the time was whether it could continue to apply SD after the 2011 regulations took effect in December 2012. Transnet sought the advice of external attorneys and senior counsel at the time. Whilst the attorneys expressed doubt that the use of SD was compatible with the PPPFA framework, senior counsel expressed the view that it was compatible. Transnet aligned its approach with the view of senior counsel. The opinion of Adv Vas Soni (SC) dated 12 March 2013 and the concerns raised by the attorneys, are attached as annexures "**PV 3**" and "**PV 4**", respectively.

[19] See Chapter 12 of the 2012 PPM.

45.10.2. The 2017 regulations have introduced the use of certain prequalification criteria to advance designated groups. In terms of regulation 4(1), organs of state may advertise a tender with the condition that only the following bidders may respond: Bidders with a minimum B-BBEE status level of contributor; QSEs or EMEs in general; bidders who are prepared to subcontract a minimum of 30% to EMEs or QSEs owned by certain designated groups.[20] In terms of reg. 9(1) organs of state must apply subcontracting as a prequalification to advance designated groups to all contracts in excess of R30m, if feasible to do so.

45.10.3. Transnet sought the advice of senior counsel on whether it was permissible to use SD as a prequalification criterion, in addition to the prequalification criteria listed in regs 4(1) and 9(1). Transnet was advised that it was not permissible to use SD as a prequalification criterion. As a result, SD no longer features in Transnet's evaluation methodology. Although SD no longer features in the evaluation methodology, Transnet would like to request bidders to submit their SD proposal with their tender submission. The SD proposal would not be scored, but the proposal could be incorporated into the contract with the successful bidder.

45.11. *Amendments to evaluation criteria.* It is a trite principle of public procurement that an evaluation process must be strictly aligned with the evaluation methodology set out in the RFP and that evaluators may not depart from the evaluation criteria.[21]

[20] The designated groups include black persons in general, black women, black youth, black people with disabilities etc.
[21] PPM 18.4.

45.11.1. Although the PPM does allow for amendments to be made to any bid condition after the closing date of a tender, the provision must be understood in its proper context.[22] The provision makes it clear that in the event of a material amendment to the bid condition to which other potential bidders could respond, the RFP must be cancelled and re-issued in order to give such bidders an opportunity to respond. The reference in the PPM to changes made after the closing date must be understood as a reference to immaterial changes that have no bearing on the substance of the tender or the fairness of the tender process as a whole. Typically, this would include minor changes or corrections to a tender document. However, this provision does not permit a departure from evaluation criteria stated in a tender document.

45.12. *Risk factors*. The Governance function was concerned about the opportunistic use of "risk" factors during the process of bid evaluation or adjudication in order to overlook deserving, but unwanted bidders. A clause was thus inserted that the concept of a "material risk" must be interpreted restrictively and be limited to instances where Transnet would be severely prejudiced by the award of business to a particular bidder.[23] Once a bidder has passed a functionality threshold, then technical shortcomings in the bidder's technical offer cannot be used to disqualify the bidder based on a "risk assessment", as this would be seen as "double-dipping". All technical risks be should be taken into account when functionality criteria are inserted into the RFP and evaluated.

[22] PPM 17.4.1.
[23] PPM 20.3

CHANGES TO THE PPM 2012 – 2015

46. This section deals mainly with the evolution of Transnet's methodology for the evaluation of empowerment and SD during the period 2012 – 2015. This aspect is depicted in the presentation annexed as "**PV 2**". However, please refer to annexure "**PV 5**" for a summary of all major changes to the PPM from 2012 – 2015.

47. Copies of the 2012, 2013 and 2015 versions of the PPM are attached as "**PV 6**", "**PV 7**" and "**PV 8**", respectively. The 2012 version applied to all procurement events initiated on or after 1 October 2012. The 2013 version applied to all procurement events initiated on or after 1 October 2013 and the 2015 version to events initiated on or after 1 June 2015.

PPM 2012

48. The 2012 PPM took effect on 1 October 2012.

49. The 2012 PPM was written during the period of Transnet's exemption from the PPPFA and its regulations. The evaluation process followed the two-stage approach described above. However, as already indicated, Transnet developed further measures to promote transformation and economic development.

50. *Stage 1.* During stage 1, bidders who passed the initial test for responsiveness were first evaluated for compliance with the minimum threshold set for local content (LC).

51. Those who passed the LC threshold were then evaluated against the minimum threshold set for the SD/B-BBEE threshold. At this point in the process SD and B-BBEE were used as prequalification criteria i.e. bidders had to score a minimum number of points for SD and B-BBEE (combined) in order to progress further. Points were allocated to bidders based on their compliance with various SD criteria. The SD points were added to a bidder's

B-BBEE points based on the B-BBEE scorecard. Bidders who passed a pre-determined threshold e.g. 40% were then evaluated for functionality. [24]

52. *Stage 2.* Bidders who passed stage 1 were allocated points out of 100 for: price (eg 60 points); SD (eg 20 points) and preference, based on scorecard (eg 10 points) and FRC current and future (eg 10 points).

53. Points for price were based on a different formula to that prescribed by PPPFA. I indicated above that the PPPFA formula used lowest price as the benchmark. The bidder who offered the lowest price was allocated the full number of points for price, with more expensive bidders being allocated fewer points. However, the BADC was concerned that this approach opened the door to "low-balling" i.e. the practice whereby bidders offer unrealistically low prices in order to win the bid, and then motivate for price increases after the award of contract.

54. The BADC adopted a different formula, using the average price as the bench mark. Bidders whose price was equal to or lower than the average price were allocated the full number of points for price. Bidders who were more expensive than the average price were allocated fewer available points.[25]

55. Points were also allocated to SD and B-BBEE. During stage 1, SD and B-BBEE were used as prequalification criteria i.e. bidders were eliminated if minimum scores were not met. However, during stage 2, SD and B-BBEE served as differentiators i.e. to differentiate between bidders who met the minimum threshold, based on their SD and B-BBEE performance.

[24] See para 18.4 of the 2012 PPM for a description of the process for scoring the SD and Preference threshold.
[25] Refer to para 18.5.1(*b*)(*ii*)of the 2012 PPM for a description on how price was evaluated.

56. During stage 2, the score for SD did not involve a new evaluation of SD. The points awarded to SD during stage 1 were simply weighted eg if a bidder scored 25/50 points for SD during stage 1, that same score would be multiplied by the weighted score for SD during stage 2 e.g. 20 points. The bidder's points for SD would thus be 25/50 x 20 = 10 points.

57. Points were then allocated based on the B-BBEE scorecard e.g. out of 10 points. However, Transnet's methodology allowed for further points (bonus points) to be allocated based on a bidder's current and future anticipated B-BBEE performance. Transnet recognized that a bidder's actual B-BBEE status at the time of the evaluation of the bid might differ from the status reflected in the B-BBEE scorecard – it might have improved or deteriorated. Points for Further Recognition Criteria (FRC) (current) were thus allocated based on the extent to which a bidder's *current* black ownership, management control and employment equity exceeded certain minimum targets set by Transnet. This was done on a sliding scale e.g. if a bidder's % of black ownership was between 26 – 30% the bidder would be allocated 1 point, if between 31 – 40%, 2 points, and so on.[26]

58. Points for FRC (future) were based on the extent to which a bidder committed to improving their B-BBEE status over the contract period in the areas of black ownership, management control, employment equity, preferential procurement and enterprise development. A similar sliding scale was developed for FRC (future).[27] The contract with the winning bidder contained a penalty clause which imposed a penalty should the bidder fail to meet its commitments in respect of FRC (future).

59. The above-mentioned methodology was Transnet's main evaluation methodology during 2012. This was referred to as "*method 1*". Transnet also adopted an alternative

[26]See pages 62 – 69 of the 2012 PPM for the point allocation for FRC (current).
[27] See pages 65 – 69 for the point allocation for FRC (future).

methodology (*method 2*) in which quality/functionality was included in the points out of 100 during stage 2. Method 2 was used where quality was of critical importance.

60. The 2012 PPM also allowed for the use of minimum B-BBEE prequalification criteria[28] and "set asides"[29] as additional measures to promote empowerment.

PPM 2013

61. Transnet's exemption from the PPPFA expired on 7 December 2012. This meant that Transnet's procurement procedures had to align to the PPPFA. The 2013 PPM was written to ensure alignment to the PPPFA.

62. The threshold for LC during phase 1 remained unchanged. Bidders were first evaluated for compliance with the LC threshold.

63. Bidders who met the LC threshold were then evaluated for compliance with an SD threshold. As indicated above, senior counsel advised at the time that the use of SD as a threshold was not incompatible with the PPPFA regulations, 2011.[30] SD was used either as a prequalification or a threshold.

64. Bidders who met the SD threshold were then evaluated for compliance with the functionality threshold.

65. During phase 2, bidders were evaluated in terms of the price/preference point allocation as prescribed by the PPPFA regulations, 2011. As per the regulations, bidders were allocated points for B-BBEE based on the scorecard only. Points were no longer allocated based on FRC. Furthermore, SD and functionality no longer featured during phase 2.

---

[28] Para 10.2.4 of the 2012 PPM.
[29] Para 10.2.5 of the 2012 PPM.
[30] See opinion from Adv Vas Soni dated 12 March 2013.

66. Furthermore, points for price were aligned to the formula for price as contained in the PPPFA.

67. Bidders were also required to provide a B-BBEE improvement plan. Although this plan did not form part of the scoring methodology, the contract with the winning bidder incorporated the B-BBEE improvement plan as a condition of contract.

PPM 2015

68. The 2015 PPM also sought to align Transnet's procurement processes to the PPPFA regulations, 2011. Transnet sought to apply various strategies to promote empowerment, which included:[31]

- The allocation of 10 or 20 preference points;
- The submission of a B-BBEE improvement plan;
- Encouraging bidders to form JVs with black-owned entities;
- Promoting procurement from EMEs or QSEs, where possible;
- Not awarding points for B-BBEE if a bidder intends to sub-contract more than 25% of contract value to any other entity with a lower B-BBBE status level;
- Requiring winning bidders to take steps to ensure that black professionals and managers were involved in the execution of the contract.

69. Under the 2015 PPM, SD was used mainly as "objective criteria" or as prequalification criteria. Exceptionally, SD could still be used as a threshold.

70. The use of SD as an objective criterion involved the reservation of a right to award the bid to a bidder other than the highest-ranked bidder, based on a superior SD offer received from the second-ranked bidder. However, the price difference between the top-ranked and second-ranked bidder had to be within a margin of tolerance of 10% - 20%.

[31] Para 4.3.2 (a) of the PPM 2015.

71. Where SD was used as a prequalification criterion SD, would not be scored as a minimum threshold. Instead, bidders would be asked to provide a commitment that the monetary value of all SD initiatives would not be less than a stipulated minimum e.g. 20% of contract value.

72. SD was also incorporated as a material term of contract, with penalties for breach.

Transnet's current evaluation methodology based on PPPFA regulations, 2017.

73. Transnet's current evaluation methodology is based on the PPPFA regulations, 2017. In order to advance certain designated groups, Transnet may use the following prequalification criteria as a condition of tender:

(a) Minimum B-BBEE levels;

(b) EMEs or QSEs;

(c) Subcontracting a minimum of 30% to certain designated groups.[32]

74. If the value of the contract is in excess of R30m, the sub-contracting condition is set as a mandatory requirement, if feasible.[33]

75. Based on advice received from senior counsel Transnet no longer incorporates SD as a threshold, prequalification or objective criteria.[34] However, Transnet is in discussion with National Treasury to incorporate SD as a term of contract with the successful bidder.

76. Transnet currently follows the 2-stage evaluation methodology prescribed by National Treasury. During stage 1, bidders are evaluated for compliance with the LC threshold

[32] Regulation 4(1) of the PPPFA regulations, 2017.
[33] Regulation 9 of the PPPFA regulations, 2017.
[34] Opinion received from Adv Terry Motau SC dated March 2018.

(where applicable), and the functionality threshold. Bidders who pass the threshold stage are awarded points out of a 100, based on price and preference.

77. The tender is awarded to the bidder scoring the highest number of points, unless objective criteria justify the award to a lower-ranked bidder.

OBSERVATIONS AND RECOMMENDATIONS

78. I wish to make a few observations and recommendations, based on my years of experience in SCM Governance within Transnet.

78.1. *SCM should have representation at EXCO level.* Currently, SCM reports to the Group Chief Finance Officer (GCFO), who represents the function at EXCO level. The difficulty with this model is that SCM is but one of many responsibilities given to the GCFO. Given the importance of the SCM function within SOCs, the function should be represented by an executive whose primary focus is the overall management of the SCM function. This will help to ensure that SCM becomes one of the core strategic priorities of the organization.

78.2. *Focus on the top.* The primary challenge to good governance within SCM emanates from people at the top end of the organization ie the Exco and Board. The bulk of the R8.2 billion on irregular expenditure that Transnet recently incurred is directly attributable to decisions made by executives and board members. Also, all the transactions that lie at the heart of the state capture allegations at Transnet were decided by EXCO and/or board members. It seems as if a parallel universe exists within Transnet. On the one hand there is a highly-ordered system with clear

controls and procurement rules in place. However, these seem to be applied more readily to relatively lower-value transactions. On the other hand there appears to be alternative system, where decisions are made with less regard to applicable procurement rules. This alternative system seems to apply to high-value transactions within the Board or EXCO's delegation.

78.2.1. It is of utmost importance that officials at the level of EXCO and the Board receive in- depth training on SCM processes. They should also be required to undergo a proper evaluation and should only be permitted to exercise procurement delegation once they have demonstrated the necessary level of understanding of the applicable rules.

78.3. *Address the "bullying" culture.* SCM officials are often bullied by senior executives into complying with their wishes. Officials often comply for fear of losing their employment. Officials who decide to follow correct procurement procedures are sometimes charged with insubordination when this goes against the wishes of the executives.

78.3.1. SCM officials need to be empowered to resist bullying. Some kind of regulatory instrument should be issued (in the form of legislation or an Instruction Note) which would make it a criminal or dismissible offence to intimidate SCM officials into complying with instructions that are in conflict with procurement rules.

78.4. *Fix the regulatory framework.* The regulatory framework is fragmented and on the whole, poorly drafted. Regulatory provisions are scattered over a myriad pieces of legislation, regulations, instruction notes, guidelines and standards. This gives rise to confusion and competing interpretation, especially when different regulatory

instruments are in conflict with each other. A fundamental overhaul of the regulatory system is required. The long-awaited Procurement Bill will provide a good opportunity for this. The Bill was anticipated since 2015 and its passage through the legislative process must now be expedited.

78.5. *Transparency.* There needs to be much greater transparency on how procurement awards are made in the SOCs. Access to information legislation has had some benefit, but it is cumbersome and expensive to enforce. The public must be provide with access to the meetings of BECs and BACs. There is already some provision for this in NT's instruction notes, but to the best of my knowledge this provision has never been invoked, certainly not within Transnet.

78.6. *Independent review of procurement decisions.* An independent body must be created with powers to review the procurement awards. The current practice of appointing firms of auditors to review procurement transactions has not been very effective within Transnet. Instead, an independent body with legislative powers must be established to perform this function.

78.7. *Assessment of competencies and continuous training and development.* Full time, dedicated capacity is required to ensure that SCM staff have the required competencies to perform their functions. Furthermore, the function must be properly resourced and a clear staff-retention strategy must be put in place to ensure that critical skills are retained.

PART 2:

SPECIFIC TRANSACTIONS

79. I now turn to discuss specific transactions.

THE NEOTEL NETWORK SERVICE CONTRACT

80. During June 2013, Transnet issued an RFP for network services. As Executive Manager: SCM Governance, I was consulted on various process-related concerns that arose during the evaluation and award of the network services RFP. During this time, I was approached by, *inter alia*, the evaluation and the High Value Tender (HVT) teams to provide advice on key issues that arose during the process. I also advised on certain aspects of the security upgrade (CCTV) contracts involving Neotel.

The tender evaluation

81. During tender evaluations, two concerns arose that gave rise to much debate within Transnet. The first related to a conflict of interest involving T Systems South Africa (Pty) Ltd and Detecon International GmbH (Detecon). The second concern related to the issue of rounding off of T System's score for functionality.

82. The conflict of interest issue can be summarized as follows:

    82.1. T Systems International GmbH was the majority shareholder in T Systems South Africa (Pty) Ltd. It was also the sole shareholder of Detecon. During June 2012 Transnet issued an RFP for a service provider to conduct a comprehensive due diligence exercise on its network assets and to develop a network sourcing strategy. The RFP contained a clause advising bidders that "*should they be successful with regards to this RFO for Due Diligence (Phase 1), they will then be*

excluded from tendering, partnering and/or advising bidders for the main network services tender (Phase 2)".[35] Detecon was awarded the due diligence tender.

82.2. However, the Letter of Intent ("LOI") that was issued to Detecon went further than the terms of the RFP, and stated that "*the service provider and/or its affiliates agrees to be being excluded from tendering for the main networks services tender (phase 2) as referred to in the RFP*".[36] The question that arose was whether T Systems SA was an "affiliate" of Detecon by virtue of their common parent, T Systems International and if so, whether it should be disqualified from the bidding process.

82.3. The HVT team maintained that T Systems was an affiliate of Detecon and had to be disqualified. A copy of the report compiled by the HVT team is attached as "**PV 9**"

82.4. Two risks had to be taken into consideration in addressing this issue. On the one hand, if T Systems was disqualified on the basis of being an "affiliate", it might have been able to challenge the decision on one or more of the following grounds, *inter alia*:

83.4.1 The terms of the LOI were invalid to the extent that they purported to incorporate obligations that were not contemplated in the RFP. As stated, there was concern that whilst the due diligence RFP prohibited only the successful bidder from participating in phase 2, the LOI went further than the terms of the RFP to also disqualify "affiliates".

[35] Clause 2.3.3 of the Due Diligence RFP.
[36] Clause 1.5 of the Due Diligence LOI.

83.4.2 The disqualification of "affiliates" was not repeated in the network services RFP to which T Systems responded. In other words, the RFP to which T Systems responded, did not contain a similar disqualification.

83.4.3 An obligation contained in the LOI between Transnet and Detecon was not enforceable as against a third party such as T Systems, who was not a party to the LOI.

83.4.4 The term "affiliate was ambiguous". It was not defined in the LOI, or in the applicable legislative framework.[37]

82.5. The Governance function was concerned that a decision to disqualify a bidder based on an ambiguous and undefined term, that was not incorporated into the network services RFP but incorporated in an agreement to which T Systems was not a party, was questionable. For these reasons, the Governance function did not support the disqualification of T Systems.

82.6. The Governance function has always maintained that the grounds for disqualification of bidders must be set out in the RFP in a clear and unambiguous manner. It is unfair to "ambush" bidders with grounds for disqualification that were not contained in the RFP to which they responded.

82.7. On the other hand, Transnet had to mitigate against the risk that T Systems could have gained information from Detecon regarding its due diligence exercise, irrespective of whether they could be regarded as "affiliates". In order to mitigate the risk, Transnet required T Systems to state under oath in the form of an affidavit

[37] The Companies Act 21 of 2008 makes reference to "related" parties. Section 2(1)(c) state that a juristic person is related to another juristic person if -

(i) Either of them directly or indirectly controls the other, otr the business of the other, as determined in accordance with subsection (2);

(ii) Either is a subsidiary of the other; or

(iii) A person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with subsection (2).

that they had not gained any information from Detecon. The affidavit further stated that should it later be discovered that T Systems did in fact gain information from Detecon, T Systems agreed that Transnet was entitled to take the necessary remedial steps against it.

83. The rounding-off issue can be summarized as follows:

83.1. T Systems missed the functionality threshold of 70% by a fraction. T Systems scored 69.93%. Reg. 11(4) of the PPPFA regulations 2011 stated that points must be rounded off to the nearest two decimal places. A copy of the 2011 PPPFA regulations is attached as "**PV 10**". In this instance, rounding off to the nearest two decimals would have meant that T Systems still failed the functionality threshold.

83.2. The Implementation Guide to the PPPFA regulations repeated the principle that points were to be rounded off to the nearest two decimal places. The problem that arose was that para 13.1.3 of Guide dealt with the principle of rounding off in the context of the price and preference stage only, and not the functionality stage. The Implementation Guide was silent on whether the principle of rounding off applied at all during the functionality stage, and if so, whether points had to be round off to the nearest two decimal places or the nearest whole number. A copy of the Implementation Guide is attached as "**PV 11**".

83.3. Governance opposed the idea of rounding off T System's scores.

83.4. Transnet sought the advice of National Treasury on the matter. Treasury advised that the manner in which points were to be rounded off should ideally be explained in the RFP. Treasury added that if at the time of evaluation, the evaluation committee had to deal with decimals that were not anticipated at the bid planning stage (and thus not dealt with in the RFP), it could either round off to the nearest

whole number or round off to the nearest two decimal points. A copy of an email received from National Treasury is attached as "PV 12". Based on the advice received from National Treasury, Transnet took a decision to round off to the nearest whole number, with the result that T Systems met the threshold for functionality.

83.5. Thereafter, a technical due diligence was carried out on all 3 bidders. Two bidders received a green rating i.e. they scored above 70 points out of 100. T Systems received an amber rating, having received 64.65% based on reference checks. A copy of the technical due diligence report is attached as "**PV 13**". It is not clear from the report whether the cross-functional evaluation team (CFET) regarded T Systems as a risk, based on the amber rating.

Award of the tender to Neotel

84. Neotel, Dimension Data and T Systems were the only bidders that passed the functionality threshold and were thus considered for commercial evaluation. It would appear from a copy of the Tender Evaluation and Recommendation (TEAR) Report, attached as "**PV 14**", that the bidders priced in different ways which made it difficult to conduct a "like-for-like" comparison. After a series of clarification sessions were held with the bidders and best and final offers were received, the final ranking of the bidders based on price and preference was as follows:

Bidders Name	**Price**	**Points**
Neotel	R1 363 407 228.40	90
Dimension Data	R1 584 967 883.26	75.37
T Systems	R1 736 894 366.39	65.35

85. It also appears that after price negotiations had been completed and final revised pricing had been submitted, T Systems offered to reduce its price by a further R248m. However, the evaluation team did not take this offer into account as the date for submitting revised pricing had passed. Had this offer been taken into account, T Systems would have been placed 2nd and Dimension Data 3rd.

86. A memorandum was then prepared and presented to the acting GCE, Sharla Pillay, who approved the award. A copy of the signed memorandum is attached as "**PV 15**".

Decision to overturn the award of the tender to Neotel

87. On 20 November 2013, the GCE, Mr Brian Molefe wrote a memo in reply to correspondence received from Anoj Singh, Mantsika Matooane and Garry Pita, in which he informed them of his decision to rescind the award to Neotel and to award the tender to T Systems instead. A copy of this memo is attached as "**PV 16**".

88. As appears from "**PV 16**", Mr. Molefe based his decision on the fact that the Board, (which was effectively the Acquisition Council in this instance), had sub-delegated the authority to approve the procurement process to him as the GCE.

89. He argued that in terms of the PPM, an AC had to consider a range of matters when approving the award of tender, including any risks posed by the bidder. He expressed the view that Neotel posed a number of risks. The details pertaining to the risks appear from "**PV 16**" and it is not necessary to repeat them in any detail here, save to say that they related to factors such as "alienation of state assets", "concentration risks", complaints from a B-BBEE partner, an information security incident that had occurred and problems with the functioning of CCTV cameras in ports.

90. In my view, the GCE's reasoning was flawed in a number of respects. He lacked the authority to take the decision; The decision itself was taken in a procedurally unfair manner and irrelevant considerations were taken into account when the decision was made. I elaborate on these aspects below:

90.1. First, the powers vested in the GCE by the Board to award business to Neotel had already been exercised by the Acting GCE, Sharla Pillay and could therefore not be exercised again.

90.2. Although the definition of "delegation of authority" in the 2013 PPM (attached as "**PV 7**") suggests that the bearer of authority has the right to rescind a decision taken by a sub-delegate,[38] this did not afford the GCE the power to rescind the decision made by the Acting GCE in this instance. In this regard, I agree with the view expressed in the legal opinion obtained by the external auditors, that the Board did not delegate the approval authority to Mr Brian Molefe personally, but rather to *the holder of the post*. Thus when Sharla Pillay exercised her powers as the holder of the post, she discharged the sub-delegation that was entrusted to the GCE by the Board. This was not a power that was sub-delegated from Mr Molefe to Ms Pillay and as such he could not rescind the decision. A copy of the sub-delegation from the Board to the GCE is attached as "**PV 16 (a)**" and the sub-delegation from Mr. Molefe to Ms. Pillay is attached as "**PV 16 (b)**".

90.3. Secondly, even if it could be argued that he had the power to rescind the decision (which is doubtful), the decision itself was taken in a procedurally unfair manner. The GCE could not decide to disqualify Neotel based on risk factors, without

[38] Chapter 2 of the PPM defines "Delegation of Authority" as "*The extent of authority required in order to implement certain actions by or on behalf of the company, including any sub-delegation of authority where permitted. This includes the power to retrospectively authorize, condone or rescind a decision already taken by a sub-delegate*". (emphasis added).

affording Neotel a proper opportunity to address those issues. This was made clear in a handwritten note to Mr. Eddie Thomas, the Acting GCSCO at the time. A copy of the draft letter of regret to Neotel containing my handwritten note is attached as "**PV 17**". Neotel had not been informed about the GCE's proposed decision to rescind the award, nor was it afforded an opportunity to make representations regarding the decision.

90.4. Thirdly, management, including the technical experts, were of the view that the perceived risks had been mitigated and that these risks posed no obstacle to the award to Neotel. Management prepared a comprehensive memorandum in which it dealt with the GCE's concerns.[39] A copy of the undated memo entitled "*A response to the Risks Raised by the Transnet Group Executive (GCE) Relating to Neotel (Pty) Ltd in his letter dated 20 November 2014*", is attached as "**PV 18**". The GCE's decision to base the revocation of the award to Neotel on risks that were adequately mitigated, suggests that irrelevant factors were taken into account when the decision was made.

90.5. Whilst the PPM makes allowance for material risks to be considered during adjudication stage, it states that "the concept of material risk must be interpreted restrictively and be limited to instances where Transnet would be severely prejudiced by the award of business to a particular bidder".[40]

90.6. Fourthly, the PPM states that an AC cannot substitute its own decision for that of the evaluation team. Where it disagrees with the submission from the evaluation team it must refer the matter back for reconsideration. Should a dispute remain unresolved after the AC has referred the matter back, the matter must be referred

[39] See memo entitled "Annexure A – Response to the Risks Raised by the Transnet Group Chief Executive (GCE) Relating to Neotel (Pty) Ltd in his letter dated 20 November 2014" undated.
[40] PPM 20.3.

to the entity's CEO for a final decision.[41] The GCE understood this provision to mean that he, as final arbiter, was entitled to make the final decision on the matter.[42] But this was based on a misreading of the provision. The intention behind the provision was that an impasse between an AC and CFET had to be referred to a higher authority for resolution. But in this instance, the AC in question was the GCE himself, having been sub-delegated by the Board to perform this function. The GCE could not act both as AC and the final arbiter of a dispute. The proper course of conduct would have been for the GCE to refer the matter to a higher authority, such as the ADC or the Board, to resolve the dispute.

90.7. Fifthly, it was inappropriate to take into account T System's offer to reduce the price by a further R248m. As indicated above, the evaluation team decided not to take this further reduction into account, as the date for submitting revised pricing had passed. The decision by the GCE to take this further reduction into account, afforded T Systems an opportunity to improve its pricing after BAFOs had closed. This gave T Systems an unfair advantage over other the other bidders. It allowed T Systems to be ranked second in place of Dimension Data.

Consultation with senior counsel

91. There was general consternation within the Governance, Legal, Procurement and IT departments about the GCE's decision. Indeed, the correctness of this decision was questioned by all these departments. A decision was then made to seek the opinion of senior counsel on the matter. During December 2014, a consultation was held with Adv Gilbert Marcus SC to obtain his view on the legality of the decision taken by the GCE. Adv Marcus was unable to provide a written opinion at the time, but provided us with oral advice. He advised that the extraneous factors had been taken into account in making the

[41] PPM 20.5.
[42] See para 6 of annexure **"PV 16"**.

award to T Systems. He also advised that the process was procedurally unfair and not in accordance with s 217 of the Constitution. He further advised that Transnet should review its decision to award the tender to T Systems and proceed with the award to Neotel.

92. In the interim, Neotel appeared to have accepted its fate with the data services tender. The existing contract with Neotel was extended by a further 12 months. The relevant correspondence from Neotel is attached as "**PV 19**".

93. However, notwithstanding the apparent resolution of the matter with Neotel, I requested the head of legal, Ndiphiwe Silinga, to obtain the written opinion from Adv Marcus. However, Mr. Silinga informed me that he had been requested by Anoj Singh not to obtain the written opinion.

94. I then requested Mr Silinga to ask our attorney, Mr Leslie Mkhabela, to provide us with a written summary of the advice provided by counsel. To the best of my recollection, such a summary was provided. However, as at the date of preparing this memo I was unable to obtain a copy of the summary.

External audit finding

95. During April 2014, Transnet's external auditors raised a concern that T Systems should have been disqualified due to the conflict of interest with Detecon. They also obtained a legal opinion which supported their view that T Systems had to be disqualified due to the conflict of interest issue as well as the rounding-off issue. A copy of the legal opinion is attached as "**PV 20**". The legal opinion also questioned the GCE's authority to revoke the award to Neotel as concerns. The legal opinion stated that the factors which the GCE took into consideration when he revoked the award to Neotel undermined the fairness and transparency of the tender process.

96. Group Legal sought the opinion of Mkhabela Huntley attorneys (MHA) on the correctness of the views expressed in the legal opinion regarding the conflict of interest issue. A copy of the advice received from MHA is attached as "**PV 21**". MHA disagreed that T Systems had to be disqualified on grounds of conflict of interest. They reasoned that parties to a contract (such as the LOI between Transnet and Detecon) could bestow rights or privileges on a third party who was not a party to the contract (*stipulatio alteri*) but could not impose obligations on such third party without his or her consent.

97. However, MHA also stated that the affidavit that Transnet obtained from Detecon did not fully mitigate the risk that information could have been shared between T Systems and Detecon, but that the value of the affidavit lay in Transnet's judgment. If it remained dissatisfied with T System's statement it could reconsider the tender award.

The GCE's decision to revoke T System's position as preferred bidder.

98. Upon receipt of the external auditors' report, the GCE decide to revoke T System's status as the preferred bidder. A letter was drafted to T Systems informing it of the GCE's proposed decision and which invited its representations. A copy of the GCE's letter to T Systems is attached as "**PV 22**".

99. T Systems provided a detailed response in which it denied that it was an "affiliate" of Detecon, that it had gained any information from Detecon or that a conflict of interest existed which prevented it from participating in the tender. A copy of T Systems response is attached as "**PV 23**".

100. Notwithstanding the representations received from T Systems, the GCE took a final decision to revoke its status as preferred bidder. As appears from Annexure "**PV 24**", T Systems indicated to the GCE that it accepted the decision.

101. The award of tender was then made to Neotel. It is a five year contract, due to expire in November 2019.

102. The above-mentioned sequence of events were set out in a memorandum that management prepared for Mr. Garry Pita and Mr. Anoj Singh to submit to the BADC. The purpose of the memo was to inform the BADC of the status of the network services RFP. An unsigned copy of this memo is attached as "**PV 25**". I was not able to establish whether this memo ever served before the BADC.

CONFINEMENT OF THE CCTV SECURITY UPGRADE CONTRACT TO NEOTEL

103. The confinement of the contract for the CCTV upgrade contract to Neotel, was submitted by Mr Tau Morwe, Chief Executive of TNPA and approved by the GCE on 21 May 2014. A copy of the approved confinement memorandum is attached "**PV 26**". I do not recall that the Governance function was asked to review the confinement at the time, nor am I able to find any record of a Governance review prior to sign off.

104. The memo provides a motivation for confining the procurement of CCTV cameras to Neotel and for awarding business via the current Neotel MSA for the installation of the CCTV and security solution. The grounds for confinement that were relied on were stated as (a) urgency and (b) compatibility with existing products and services. I was asked by

the Commission's investigators to provide my comments on the grounds for confinement. In my view ground (a) was unsound and ground (b) was sound.

104.1. *Urgency*. The main difficulty with the use of urgency as a ground for confinement in this instance was that the urgency was not unforeseen. The ground for confinement as stated in PPM 15.1.2 (a) is that confinements will only be considered "where a genuine unforeseeable urgency has arisen. Such urgency should not be attributable to a lack of proper planning. In such cases appropriate action must be taken against the individual(s) responsible for the bad planning". The rule was designed to ensure that self-created urgencies are not used as a justification for deviating from normal bidding processes.

104.2. As already indicated in Part 1, during the period 2012/13, the Board was firmly of the view that where urgency arose as a result of bad planning, the "urgency" could not be used as a basis for confinement, but the individual responsible had to be disciplined.

104.3. All the factors cited in the memo as justification for the use of urgency, were entirely foreseeable viz. that TNPA could be non-compliant with International Ship and Port Facility Security (ISPS) Codes, that insurance claims could be denied and that certain PFMA reportable items had to be remediated. The memo indicates that some of the cameras were defective since April 2013.[43] The person(s) responsible for this state of affairs had to be sanctioned, but since the urgency itself was self-imposed, it could not serve as a ground for confinement.

[43] Para 5.4 of "**PV 26**".

104.4. *Compatibility with existing products or services.* This ground for confinement may be justifiable. In terms of the Neotel MSA that was in existence at the time, Neotel was the sole provider of network services as well as the acquisition of all network equipment. The installation of fibre that was linked to the CCTV solution was done by Neotel. Furthermore, the memo highlights the integration difficulties that arose from the fact that separate service providers were responsible for the cameras and the network. There appears to be justification for using Neotel to provide the CCTV solution.

104.5. However, the information contained in the memorandum does not contain a clear justification for acquiring the CCTV equipment specifically from NICE. Neotel recommended NICE equipment as NICE was willing to guarantee SLAs if their equipment was used.[44] But the memo also indicates that the existing equipment (obtained from NICE) had reached the end of their useful life, was not upgradeable and couldn't support HD thermal cameras. Also there was a 64% failure rate of the installed cameras.[45] Whilst the motivation to confine the procurement of CCTV equipment and services to Neotel may have been justifiable, there was inadequate motivation to specify that the equipment had to be obtained from NICE.

104.6. Sometime after the award of the tender to Neotel, it was discovered that Neotel was not registered as a security service provider with the Private Security Industry Regulator. This affected the legality of the award to Neotel. A memorandum setting out management's concerns regarding the award to Neotel is attached as "**PV 27**".

[44] Para 14 of the memo.
[45] Para 5.2 – 5.4 of the memo.

T-Systems

105. During January 2010, Transnet entered into an agreement with T Systems for the provision of IT data services. Group Strategic Sourcing prepared a document setting out the various extensions to the IT data services contract between Transnet and T Systems. This document is attached as annexure "**PV 28**" hereto. As is apparent from "**PV 28**", several variations to the contract took place between 2010 when the contract was concluded and 2019. The first variation extended the contract from 1 January 2015 until 31 December 2016. A copy of the memorandum approving this extension is attached as "**PV 29**". In total, 5 contract variations extension took place 2010 and 2019.

106. The Governance function was involved in reviewing various addenda to the T Systems contract. Governance was also involved in advising the Board to reverse its decision not to award the IT data services contract to Gijima and to award it to T Systems instead.

107. During November 2015, Transnet issued an RFP to the open market for the supply of IT data services. After a protracted process, a recommendation was made to the Board to award the tender to Gijima. However, during February 2017, the Board of Transnet took a decision not to award the IT data services contract to Gijima based on various risk factors. Gijima lodged a complaint with the Transnet Procurement Ombudsman. Because the complaint related to a decision taken by the Board, Transnet referred the matter to NT for investigation.[46] NT concluded that the award had to be made to Gijima, as the highest-scoring bidder.

108. Governance agreed with the conclusion reached by NT, but disagreed with its reasoning. NT was of the view that risk could not qualify as an objective criterion in terms

[46] This was in terms of para 3.3 of SCM Instruction 3 of 2016/17 on Preventing and Combatting Abuse in the Supply chain Management System.

of s 2(1)(*f*) of the PPPFA. Governance was of the view that in appropriate cases, and subject to certain safeguards being met, risk could be considered as an objective criterion. However, factors that were already considered during the evaluation of the bid (such as functionality criteria) could not be revisited under the guise of "objective criteria". This view was subsequently confirmed in an opinion obtained from senior counsel.

109. Nevertheless, Governance was of the view that the decision taken by the Board to overlook Gijima and to award the tender to T Systems was fundamentally flawed. Governance prepared a detailed memorandum setting out its reasoning. A copy of this memorandum is attached as "**PV 30**".

110. Governance recommended that:

110.1. Transnet abide by the ruling taken by NT.

110.2. T Systems be invited to make representations on Transnet's proposed decision to abide the ruling of NT;

110.3. Transnet proceed to make the award to Gijima, after following a judicial process to set aside its award to the tender to T Systems.

111. A legal opinion was obtained from senior counsel, which opinion confirmed the view that the award to T Systems was invalid. A copy of the opinion from Advs Sibeko (SC) and Ford is attached as "**PV 31**".

112. After much deliberation, the Board eventually took a resolution to set aside its earlier award to T Systems. Transnet approached the High Court for an order declaring its decision to T Systems to be invalid and a direction that the tender be awarded to Gijima. T Systems initially opposed the application and brought a counter application. Gijima opposed the counter-application. Eventually, both T Systems and Gijima indicated that they would abide the decision of the court. On 12 December 2018, the Johannesburg High

Court granted the order as prayed for by Transnet. A copy of the judgment is attached as "**PV 32**".

ACQUISITION OF THE 100 LOCOMOTIVES

113. During October 2013, Mr Brian Molefe made a submission to the BADC to approve the confinement of 100 Class 19E locomotives to Mitsui African Rail Solutions (MARS). A copy of this submission is annexed as "**PV 33**". This submission was made while the 1064 locomotive transaction was underway and was apparently motivated by delays in the 1064 loco transaction. The submission also included a request to approve an extension of the existing class 43 diesel locomotives contract with General Electric South African Technologies (GESAT) to include a further 60 locomotives. I could find no evidence that the Governance function was requested to review this confinement prior to submission.

114. The main justification for the confinement was based on urgency. It was stated that the delay in the acquisition of the 1064 locomotives had put General Freight Business (GFB) volumes at risk. The acquisition of the 100 locomotives would free up 125 locomotives for use on GFB. Further motivation for the confinement to MARS described in glowing terms that:

114.1. The MARS locomotives are known, meet requirements and prototyping is not required;[47]

114.2. Confinement to MARS was required for purposes of standardization. MARS facilities were available for immediate production, lead times would be kept to a minimum and there would be significant savings;[48]

[47] As per para 70 (c)(ii) a new supplier would necessitate a new design, design review and prototyping which would take 15 months before production could commence.

[48] As per para 70 (b) during 2009 TFR entered into an agreement with MARS for 110 new class 19E locomotives for the coal export line and took delivery of the last loco in August 2012. MARS was also in the process of delivering class 15E locos for the ore export line with the last loco due in September 2013.

114.3. Mitsui models were operating optimally and exceeded their design parameters;

114.4. Crew (drivers) were already trained on Mitsui models;

114.5. There would be considerable socio-economic benefits, including job retention and job creation arising from more stringent SD requirements;

114.6. It was not in the best interests of Transnet to solicit further offers.

115. I have no knowledge about what transpired at the meeting of the BADC where the Mitsui confinement was discussed. However, 3 months later another request for confinement was submitted to the Transnet Board. This second confinement was written in largely identical terms to the Mitsui confinement. However, the second confinement motivated for the award to be made to China South Rail (CSR) instead of Mitsui. A copy of the second confinement memo is attached as "**PV 34**".

116. I have the following observations regarding the confinement to CSR:

116.1. This confinement also invoked "urgency" as a ground for confinement. Yet, 3 months had elapsed since the Mitsui confinement (also based on urgency) was submitted without any steps having been taken to procure the locomotives. This calls into question the claims of urgency;

116.2. The submission misquotes the PPM in regard to the use of urgency as a ground of confinement.[49] It quotes the PPM as stating "*where a genuine unforeseeable urgency has arisen. Such urgency should not be attributable to a lack of proper planning. <u>However, where a genuine urgency has been created by the lack of proper planning, urgency can still be relied upon as a ground for Confinement. In</u>*

[49] Para 67 of "**PV 34**".

such cases appropriate action must be taken against the individual(s) responsible for the bad planning."

116.3. The 2013 PPM does not contain the underlined words as quoted above. Those words appear in the 2012 version of the PPM, but not the 2013 version. As stated in Part 1 above, during 2013, the Board adopted a "hardline" approach and decided that urgency would under no circumstances be used as a ground for confinement if it was attributable to bad planning. This rule applied regardless of whether the urgency was regarded as "genuine" or not. This meant that if there was an element of bad planning that created the allegedly urgent need to confine the award to CSR, the confinement was unjustified.

116.4. Certain grounds for confinement as contained in the CSR memo were identical to the Mitsui memo. These included that the diesel locos were known, met technical requirements, prototyping, set up costs were not required and facilities were available for immediate production. Assuming that these facts regarding CSR were true, the submission raises a number of issues: why was the confinement not made to CSR in the first instance and why did it take 3 months to realize that CSR had the same attributes as Mitsui in relation to prototyping, set up costs etc? At very least, this suggests an element of bad planning.

116.5. Furthermore, the CSR memo now refuted the very qualities that motivated the confinement to MARS 3 months earlier. The CSR memo stated that MARS had not done well during the 95 electric loco and 1064 loco processes and that SD was not a key factor when MARS was awarded the previous contracts.[50] The memo further stated that continuing with MARS would pose "unnecessary risk" to Transnet.[51] CSR on the other hand had "*excelled from a technical capability and*

[50] Para 70 (c)(ii) of the CSR confinement memo.
[51] Para 70 (c)(ii) of the CSR confinement memo.

capacity perspective, supplier development, commercial and transformational perspective".[52] Yet, the MARS confinement memo spoke in highly favourable terms about the various SD objectives that the MARS confinement would achieve, including 186 jobs that were to be retained and 400 jobs that were to be created,[53] SD thresholds of between 60% - 65% would be set, local content objectives would be achieved, and the transaction would achieve government's socio-economic policies, including the NDP, CSDP etc.[54]

116.6. The CSR memo suggests that MARS had not performed well during the recent tenders for the 95 and 1046 locomotive transactions and that awarding the 100 locomotive to MARS would create a risk to the organization.[55] Yet the MARS memo states that the class 19E locos manufactured by MARS were "performing well and have proven to be both efficient and reliable", that "no prototyping or testing is required" and that "it is not in the best interest of Transnet to solicit other offers for the 19E locomotives".[56] This about-turn is inexplicable.

116.7. The CSR memo further mentions certain 'reputational risks" for Transnet, if it were to award the confinement to MARS. This reputational risk was not further explained, except that it related to "speculation in the media around Mitsui's local partners and their political affiliations".[57] The memo states that "Transnet would never entertain awards based on political prowess of any business partners to an OEM but the risk does not need to be taken into account from a reputational

[52] Para 62(d) of the CSR confinement memo.
[53] See para 72(a) and (b) of the Mitsui memo. The Mitsui memo later stated (at para 12(d) on page 23) that approximately 2900 indirect and direct jobs would be preserved which included 186 direct jobs at the TE facility and 1076 (1st, 2nd and 3rd tier) at MARS with further jobs retained in downstream enterprises. Significantly, these claims were not repeated in the CSR confinement memo (see para 12 on page 22 of the CSR memo).
[54] Page 22 of the MARS confinement memo.
[55] Para 70(c)(ii) of the CSR confinement memo.
[56] Para 71 of the MARS confinement memo.
[57] Para 70(c)(ii) of the CSR confinement memo.

perspective".[58] The question that arises is why these concerns regarding reputational risk were not realized when contracts were previously awarded to MARS, or even 3 months earlier, when the MARS confinement was submitted to the BADC.

116.8. The about-turn on the part of management was inexplicable and the reasons for the change from MARS to CSR do not make sense.

116.9. At best, the reasons put forward for confining to CSR suggested bad planning.

117. During June 2014, Garry Pita asked me to assist him with drafting a memo to National Treasury to request exemption for CSR from local content requirements. I made track changes to the memo. The memo containing my track changes is attached as "**PV 34(a)**". The memo stated that TFR had engaged CSR regarding an expedited delivery schedule for the 100 class 21 E locomotives. CSR proposed that the 100 locomotives be manufactured in China, as this would ensure delivery during 2014/15. I was unable to determine whether this communication was sent to National Treasury, and if so, whether a response was received.

MCKINSEY CONFINEMENTS

118. During the period 2012 – 2015, Transnet awarded at least 8 contracts to McKinsey Consulting ("McKinsey") for various consultancy work. The contracts were awarded by way of a confined tender process.[59] A summary of the contracts in question is attached as "**PV 35**". In brief, the contracts are as follows:

[58] Ibid.

[59] A "confinement" process is a form of closed tendering, in that the tendering process is restricted to one or a few bidders. It is a deviation from the open bidding process.

125.1 The provision of advisory services in respect of the 1064 locomotive transaction ("the 1064 confinement"). The confinement memo in respect of the 1064 confinement is attached as "**PV 36**".

125.2 The award of contract to support MDS for Procurement and capital Excellence and Productivity ("SWAT 1"). The confinement memo in respect of SWAT 1 is attached as "**PV 37**".

125.3 The award of contract for Capital Optimization and Implementation Support to a consortium of McKinsey and Regiments ("SWAT 2"). The confinement memo in respect of SWAT 2 is attached as "**PV 38**".

125.4 The award of contract for professional services to increase the coal line with a breakthrough of 2 million tons per week ("the coal contract"). The confinement memo in respect of the coal contract is attached as "**PV 39**".

125.5 The award of contract for renegotiating the Kumba Iron Ore contract ("the iron ore contract"). The confinement memo in respect of the iron ore contract is attached as "**PV 40**".

125.6 The manganese execution support contract ("the Manganese contract"). The confinement memo in respect of the manganese contract is attached as "**PV 41**".

125.7 The award of contract for NMPP Acceleration – de-risking the way forward ("The NMPP contract"). The confinement memo in respect of the NMPP contract is attached as "**PV 42**".

125.8 The award of contract for professional services to support Transnet in increasing General Freight Business with a breakthrough to reach planned volume targets for FY 2015/16 and 2016/17 ("the GFB contract"). The confinement memo in respect of the GFB contract is attached as "**PV 43**".

119. The combined value of the contracts as at the date of award was about R 1.6b. However, some of contracts were subsequently amended to increase the scope of work and value to about R2.1b.

120. In this statement, I focus mainly on whether the *grounds* for confinement were met and whether the *process* of confinement was properly followed.

Entrenching monopolies

121. As indicated in Part 1, the PPM makes provision for "confinements" under limited circumstances. However, the PPM cautions that because the practice of confinement is a departure from an open tender process, it must be treated with "great circumspection".[60] This means that the persons who have delegation of authority to approve confinements must consider the matter carefully, weigh up competing interests and exercise good judgment. The PPM also warns that *"[t]he misuse of confinements has the potential to entrench monopolies and as such is at odds with the imperatives of the New Growth Path. The NGP seeks to encourage open competition and the introduction of new entrants into the market, particularly those from previously disadvantaged communities"*.[61]

122. Transnet's procurement procedures therefore required its delegated authorities to be vigilant against the creation of monopolies. At face value, the award of key contracts to one consulting firm to the value of R1.6b over a two year period (leaving aside other business that was previously awarded) created a monopolistic situation.

123. There is some evidence on file that in 2012, during the award of business to McKinsey for "Swat 1", concerns were raised about Transnet's over-reliance on McKinsey. The

[60] PPM 15.1.1.
[61] PPM 15.1.1.

submission to split the award for the appointment of the capital and procurement "Swat" teams between McKinsey and Deloitte stated that *"[i]n the spirit of ensuring no over reliance on any one set of consultants it is suggested that the advisory services be split between Deloitte Consulting and McKinsey"*.[62] Furthermore, the former GCE also raised concerns about the volume of work being awarded to McKinsey. A submission to TAC for the non-award of business to McKinsey following an open tender process contains the following paragraph: *"During the post tender negotiations (PTN) the GCE raised a concern that Transnet has been awarding business excessively to McKinsey & Company and as a result this will expose Transnet to insurmountable risks should any unsavoury circumstances occur. A decision was then taken to award a portion of the business to Deloitte Consulting"*.[63] A copy of this submission is attached as "**PV 44**".

124. Despite the concerns regarding a potentially monopolistic situation, all contracts awarded to McKinsey followed a confined tender process.

<u>The grounds for confinement</u>

125. The applicable grounds of confinement during the period 2012 – 2015 were stated as follows:

> *" (a) Where a genuine unforeseeable urgency has arisen. Such urgency should not be attributable to a lack of proper planning. In such cases appropriate action must be taken against the individual(s) responsible for the bad planning.*
>
> *(b) The goods/services are obtainable from one/limited number of suppliers. For instance, patented/proprietary goods or OEM spares and components. Operating divisions are however required to provide evidence that there are no new entrants to the market who could also be approached.*

[62] Para 15 of the memo for the appointment of Swat teams to assist with the roll out of capital, dated 22 August 2012.
[63] Para 8 of the submission to TAC to non-award the tender for Swat 1 following an open tender process, dated 15 October 2012.

(c) *For reasons of standardization or compatibility with existing goods and services. A case must be made that deviation from existing standardized goods or services will cause major operational disruption. If not, confinements based on "standardization" will not be considered; or*

(d) *When the goods or services being procured are highly specialized and largely identical to those previously executed by that supplier and it is not in the interest of the public or the organization to solicit other offers, as it would result in wasted money and/or time for Transnet. When this particular ground is intended to be used as a ground for confinement, it is important to note that all pre-requisites must be satisfied: The goods or services must be highly specialized, almost identical to previous work done and approaching the market again would result in wasted money and time".*[64]

126. The confinement memos rely mainly on two grounds viz ground (a) "urgency" and ground (d) i.e. "the services are highly specialized and largely identical to work previously performed".

127. Where "urgency" was invoked as a ground for confinement, the case for urgency was based on revenue-related risks (EBIDTA at risk) or the need to deliver on MDS. The memos further stated that if the mitigation plans were not put in place immediately, the 2014/15 corporate plan, capital plan and funding pre-requisites would not be met, which would place the entire MDS at risk. [65]

128. However, as already indicated in Part 1 above, the PPM makes it clear that confinements will only be considered where "a genuine <u>unforeseeable</u> urgency has

[64] Para 15.1.2 of the PPM, 2013, annexed as "**PV 7**".

[65] See for example para 28 of the Confinement memo for the Coal Contract ("**PV 39**") and para 24 of the Confinement memo for the Manganese Contract ("**PV 41**").

arisen".[66] Furthermore, the urgency "should not be attributable to a lack of proper planning".[67] The PPM thus contemplates that the situation that gave rise to the urgency should not be anticipated and should therefore have been genuinely unexpected. The submissions do not explain why the revenue risk was unforeseeable. In the absence of a clear and satisfactory explanation, it is difficult to see how declines in revenue would have been "unforeseeable". It is recommended that, if necessary, evidence be obtained from financial experts to determine whether Transnet's revenue risks were indeed unforeseeable.

129. The second basis on which the confinements were justified was that the services were highly specialized and largely identical to work previously performed (That is ground (d)).

130. All the confinement memos justified the confinements to McKinsey on the grounds that approaching the market for the required services would result in wasted time and money. It was stated that a new service provider would have to acquaint itself with Transnet's pricing strategies, capital programme and overall MDS, whereas McKinsey already had that knowledge. For example, the confinement to McKinsey to renegotiate the Kumba iron ore contract stated that *"[t]he models used are highly complex and due to the work done on the capital SWAT process in re-cutting the portfolio, extensive knowledge has been gained in understanding the sustaining capital requirements"*.[68] It was also claimed that McKinsey had a proprietary iron ore demand and supply model that Transnet had previously used to determine its pricing structure, that McKinsey provided work relating to iron ore tariffs before and that McKinsey also had "a proven toolkit of negotiation best practices". [69]

---

[66] PPM 15.1.2 (a) of the PPM, 2013.
[67] Ibid.
[68] Para 21 of the confinement memo for renegotiating the Kumba iron ore contract (**"PV 40"**). See also para 26 of the NMPP confinement memo (**"PV 42"**).
[69] Para 19.5 of the confinement memo for renegotiating the Kumba iron ore contract (**"PV 38"**).

131. However, the PPM also requires that when reliance is placed on ground (d) as a basis for confinement, proper consideration must be given to the public interest as well as Transnet's interests. In other words, it was not sufficient for Transnet's officials to consider the fact that the services being procured were related to work that McKinsey had previously performed, that McKinsey and/or Regiments had developed certain proprietary tools,[70] or that time and money could be saved by not going out on tender. The overwhelming public interest in open and fair competition and the avoidance of monopolistic situations were compelling reasons to decide that it was not in the public interest to proceed by way of a confined tender. For the same reasons it was also not in Transnet's best interests to proceed with the confinement.

Payment before tender award

132. It appears from various email exchanges on file that during July 2014, SCM staff expressed a concern that they were instructed to make payments to McKinsey, even though the tender processes had not been concluded. In this regard, see email exchanges annexed as "**PV 45**".

133. Although the approvals to confine had been obtained during March – April 2014, by July 2014 the bid evaluation process was still underway and no contracts were placed with McKinsey.

134. The PPM (2013), annexed as "**PV 7**", stated clearly that "*no employee shall anticipate the approval of acceptance of bids. Therefore, no employee may enter into contracts verbally or in writing or place orders before the prescribed adjudication process has been*

[70] The confinement memos claim that McKinsey had developed proprietary tools and models to determine iron ore, manganese and coal demand and supply.

performed and authority has been duly granted by a Manager with the appropriate DoA".[71] The PPM also stated that once approval to confine was obtained, bids "will close at the relevant AC"[72]. The reference to bids closing at the relevant AC meant that after an approval to confine was obtained the following further steps had to be taken: an RFP had to be issued to the bidder(s), the bidder's response had to be received by the AC secretariat, bids had to be properly evaluated and the contract subsequently awarded by the person with DOA. The fact that an approval to confine was obtained, did not mean that there was no need to follow a tender process. It should be borne in mind that a confined tender process is still a *tender* process and remains subject to the normal tender controls described above.

135. However, on 9 April 2014, i.e. well before the RFPs were issued or contracts had been concluded, the then GCFO wrote to both McKinsey and Regiments, requesting them to "*mobilise a McKinsey led consortium to have initial discussions with our teams*". McKinsey was further advised that in the unlikely event that contracts were not concluded, McKinsey would be reimbursed for all costs incurred. A copy of the letter is attached as "**PV 45 (a)**". Despite the reference to McKinsey having "discussions" with Transnet's teams, it would appear that McKinsey commenced work before the tender process was concluded.

136. There appears to have been a misconception amongst senior officials at Transnet, that an approval to confine amounted to permission to engage bidders to commence work as soon as the confinement memo was approved. In light of the provisions in the PPM referred to above that were applicable at the time, this was clearly incorrect. The prevailing misconception caused SCM Governance to issue a directive at the time, to provide further clarity on the matter. The directive instructed end-users not to engage suppliers to provide services before the confined tender process had run its course and a contract had been

[71] PPM 21.1 (2013) ("**PV 7**").
[72] Ibid para 15.1.3 (b).

awarded.[73] A copy of the directive is attached as "**PV 46**". A similar provision is contained in the current (2015) version of the PPM, attached as "**PV 8**".

137. It was most irregular to engage McKinsey to commence work even before the tender process had been concluded. It creates the impression that the confinements to McKinsey amounted to little more than an "*ex post facto*" exercise to justify the award of business that had already occurred.

Parceling of transactions

138. Over a period of 4 days (31 March 2014 to 3 April 2014), the previous GCE approved 4 confinements, with a combined value of R619m. The transactions were:

138.1. the coal contract (31 March 2014): R130m;

138.2. the iron ore contract (1 April 2014): R239m;

138.3. the manganese contract (3 April 2014): R150m;

138.4. the NMPP contract (3 April 2014): R100m.

139. Although each of the transactions, viewed separately, fell within the DoA for confinement given to the GCE (up to R250m) the combined value of the transactions fell within the DoA of the BADC at the time (up to but not exceeding R1b).[74] A copy of the DOA which was applicable to these transactions is attached as "**PV47**".

140. Given the fact that the transactions related to the same or similar services and were awarded to one firm within a few days of each other, Transnet effectively awarded one

[73] PPM Directive 04/2014 "Communication With Suppliers Before Obtaining Internal Approval to Embark on a Confinement Process as well as the Evaluation and Adjudication of Such Bids" dated 20 May 2014. See also PPM (2015) 15.1.3.
[74] See para 5.4.3 of the Transnet Delegation of Authority Framework, 2013.

"package" of projects to McKinsey valued at R619m that ought to have been taken to the ADC for confinement approval.

141. The applicable version of the PPM warned against the practice of "parceling". Under the heading "Prohibited Practices" PPM 14.2.3 states the following: "*When the full scope of work is known at a point in time, requirements may not be deliberately split into parts or items of lesser value in order to keep the transaction value within a particular Delegation of Authority level or to keep it below the threshold of an AC or a person with higher Delegation of Authority. This is considered to be parceling and will be regarded in a serious light as it amounts to non-compliance with procurement procedures.*"

142. On the face of it, the splitting of the transactions amounted to a breach of the rules against parceling.

"Confidential" confinements

143. Because of the potential for abuse of the confinement process, the PPM introduced multiple levels of review and control to serve as safeguards. First, the end-user department and the Operating Division's (OD) Chief Procurement Officer (CPO), had to submit the request for confinement to the OD's Divisional Acquisition Council (DAC) and the OD's CEO for prior written support. If the request for confinement was poorly motivated, the submission would be sent back for re-motivation. The submission would be sent to Group for sign off only if it was supported at OD level.

144. At Group level, the submission had to be reviewed by the Group Chief Supply Chain Officer (GCSCO) and the Group Chief Finance Officer (CFO). The practice at Group was that confinements were first sent to SCM Governance for review before they were signed off by the GCSCO and the GCFO.

145. If the GCSCO and the GCFO supported the confinement, it would be submitted to the Group Chief Executive (GCE), the BADC or the Board itself for final approval, depending on the value of the transaction. The process for the approval of confinements is more fully described in paragraph 15.1.5 of the PPM (2013), annexed hereto as "**PV 7**".[75]

146. These levels of review were introduced as safeguards to ensure that confinement submissions were subjected to a robust review before they were submitted to the GCE or higher for sign off. These safeguards served to protect the integrity of the confinement process and provided assurance to the ultimate approval authority that the confinement memo was properly considered before being sent to him or her for sign off.

147. However, for reasons of "confidentiality" some of the McKinsey confinements (such as the manganese, NMPP and iron ore transactions) did not follow the normal review and sign-off process. This meant that the confinements were taken to the GCE for sign off with little or no input from reviewing bodies.

148. The 2013 PPM stated that "*in instances where a confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority*".[76] This was based on a provision in the 2013 DOA framework that allowed for confidential confinements.

149. There are a number of concerns with the manner in which "confidentiality" was invoked in McKinsey confinements. First, as already stated, multiple layers of review were by-passed as a result of invoking the confidentiality provision.

[75] The 2013 version of the PPM applied to the McKinsey confinements.
[76] Paragraph 15.1.4 (c) of the 2013 PPM.

150. Secondly, the confinement memos contain very little, if anything, that explains why the submissions were confidential. Most of the submissions painted a picture of declining volumes and revenues in Transnet which placed EBIDTA at risk. It was further stated that McKinsey was ideally placed to implement the various projects. But, there seems to have been no reason why the confinements ought not to have followed the normal review process.

151. Thirdly, in addition to invoking confidentiality as a reason not to route the confinement memos through the normal sign-off process, the submissions erroneously invoked confidentiality as a reason for the confinement itself.[77] The PPM only recognizes 4 grounds for confinement. Confidentiality is not one of them. Confidentiality may only be invoked as a reason not to route the confinement via the usual signatories, but not as a ground for confinement.

152. Fourthly, in certain instances the confinement memos made no claims to confidentiality, yet even then, the confinement was not routed via the normal process for sign off.[78]

The Gap Analysis

153. National Treasury Instruction 1 of 2013/2014 (effective 1 January 2014) would have been applicable to some of the McKinsey contracts.[79] A copy of the Instruction is attached as "**PV 48**". Paragraph 4.1 of the Instruction requires that a consultant may only be

[77] See for example para 25 of the confinement memo for Manganese support, para 27 of the NMPP confinement memo and para 22 of the Iron Ore confinement memo.
[78] For example, in the case of the GFB confinement that was awarded to Regiments Capital (with McKinsey as a sub-contractor), no claims of confidentiality were made, yet it was not sent for review by usual signatories. It was compiled by the then CE: TFR, recommended by the GCFO and GCE and approved by the ADC. But there is no indication that it was routed via the relevant AC or that it was considered by the GCSCO or SCM Governance.
[79] The Instruction was applicable to the coal, iron ore, manganese, NMPP and GFB confinements, as these were concluded after 1 January 2014.

appointed after a business case and a gap analysis has been done to confirm that Transnet does not have the requisite skills or resources in its full time employ to perform the work. This is a mandatory requirement that must be complied with in the appointment of consultants. There is no evidence in the available documentation to suggest that the requisite business case and gap analysis were conducted.

154. The failure to comply with mandatory requirements in the appointment process affects the validity of the appointment of McKinsey.

The Remuneration Model

155. The McKinsey contracts made provision for both a fixed-fee component as well as a "contingent-fee" component. On the face of it, this appears not to have been aligned to the National Treasury's SCM Instruction on Cost Containment, in that the SCM Instruction did not make any provision for a contingency fee. However, during May 2014 Transnet sought clarity from National Treasury regarding the use of contingency fees as a basis for remunerating consultants. The Accountant General responded on 25 June 2014, in which he advised that cost containment instructions regarding the use of consultants "*merely provide the tariffs that PFMA compliant institutions may pay consultants and these tariffs are not related to additional revenue or earnings, if any, that entities may realize or benefit from their appointment*". A copy of the letter from the Accountant-General is attached as "**PV 49**". The response received from the AG suggested that the remuneration of consultants was not limited to the tariffs prescribed by NT, but that consultants could also earn "additional revenue".

CONCLUSION

156. To the best of my knowledge and belief, the contents hereof provide an accurate account of events. In preparing this statement, I conducted a search of my emails and available records pertaining to the matters under discussion. My statement is based on my perusal of the available emails and records. However, I do not have a ready recollection of all the engagements and discussions pertaining to the matters that I have been asked to comment on, some of which date back 7 years. Accordingly, I wish to reserve the right to amend, supplement or correct any statement contained herein, to the extent that this may be necessary, based on my further perusal of the available records or should further information come to light.

Peter Stephen Volmink

Date: 23 April 2019

ANNEXURE PV 1

COMMISSION OF INQUIRY INTO STATE CAPTURE

TRANSNET

Transnet Group

Supply Chain Policy

Policy Reference Number	TG/iSCM I5/1P
Version Number	5.0
Effective Date	01 April 2016
Review Date	01 April 2021
Policy Owner	Group Chief Supply Chain Officer
Signature	
Policy Sponsor	Group Chief Financial Officer
Signature	
Date Approved	29 February 2016

© Transnet SOC Ltd, March 2016

Stakeholders

	Name	Designation	Approval Signature	Date	E-Mail	Contact Number
Compulsory Stakeholder Involvement						
Subject Matter Expert	Peter Volmink	Executive Manager: Governance		14/3/16	Peter.Volmink@transnet.net	011 308 2527
Risk Management	Eddie Lindeque	General Manager		14/03/16	Eddie.Lindeque@transnet.net	011 308 2472
Group Compliance	Indira Reddy	General Manager		06 04 16	Indira.Reddy@transnet.net	011 308 3590
Group Legal Services	Stanley Mamaregane	General Manager		17/3/2016	Stanley.Mamaregane@transnet.net	011 308 4245
Other Stakeholder Involvement						
Human Resources (incl. Labour consultation)	~~Sue Albertyn~~ INBAM PILLAY	General Manager: Employee Relations P.P	Pillay	15/03/16	Sue.albertyn@transnet.net inbam.pillay@transnet.net	011 308 2330
EIMS	Disebo Moephuli	Acting Group Executive: EIMS	Moephuli	11/04/2016	Disebo.Moephuli@transnet.net	011 308 2600

© Transnet SOC Ltd, March 2016

PSV-0070

Internal Audit	**Mmathabo Sukati**	**Chief Audit Executive**		26/09/2016	**Mmathabo.Sukati@transnet.net**	**011 308 3626**

Recommended by Policy Owner and Policy Sponsor:

I hereby acknowledge that a search has been conducted and that the Policy is not duplicated or in conflict with any other Transnet Policies.

	Name	Designation	Approval Signature	Date	E-Mail	Contact Number
Policy Owner	Edward Thomas	Acting Group Chief Supply Chain Officer		11/3/16	Edward.Thomas@transnet.net	011 308 1282
Policy Sponsor	Garry Pita	Group Chief Financial Officer		18/4/16	Garry.Pita@transnet.net	011 308 2250

Final Approval:

Acquisitions and Disposals Committee

Date Approved: 29 February 2016

© Transnet SOC Ltd, March 2016

PSV-0071

Summary of Version Control

Version Number	Effective Date	Summary of Changes
5	01 April 2016	Alignment to latest approved Company Policy Framework and policy template.
		Inserted definition of: • Front End Loading (paragraph 4.6); • Large Enterprise (paragraph 4.7); • Project Lifecycle Process (paragraph 4.9); and • Qualifying Small Enterprises (paragraph 4.10).
		Paragraph 10: Transformation and Empowerment - Included the options of using the following as prequalification criteria: • minimum B-BBEE thresholds; and/or • a required commitment by bidders to increase their B-BBEE score over the duration of the contract.
		Paragraph 11: Policy Framework for Socio-Economic Development – • Consolidated and restructured policy statements in a manner that facilitates understanding of the complete policy framework; and • Updated references to latest versions of Government policies such as the Black Industrialists Policy, IPAP, NGP and NDP.
		Paragraph 19.1: Related Information and Reference (Internal Documents) - Inserted Contract Management Policy.
		Paragraph 19.2: Related Information and Reference (External Documents) - Inserted the Black Industrialists Policy.
		Paragraph 19.3: Related Information and Reference (Regulatory Requirements) - Added specific reference to: • The Constitution of the Republic of South Africa, Act 108 of 1996; • The Companies Act, 71 of 2008;
		Inserted paragraph 22 on upholding the principles of the Transnet Culture Charter.
		Inserted paragraph 23 on Policy Review to take place every 5 years or as circumstances required based on Company Policy Framework.
		Updated Appendix A.

© Transnet SOC Ltd, March 2016

TABLE OF CONTENTS

1	Preamble	6
2	Background	6
3	Purpose	6
4	Definitions	7
5	Scope	8
6	Procurement Principles	8
7	Policy Statements	8
8	Policy Implementation	18
9	Roles and Responsibilities	20
10	Related Information and Reference	21
11	Policy Review, Compliance Monitoring and Evaluation	23
12	Financial Implications	24
13	Exclusions	24
14	Request to Deviate from policy	25
15	Non-compliance	25
16	Appendix A: Evaluation Methodology	26

© Transnet SOC Ltd, March 2016

PREAMBLE

1. This document ("The Policy") establishes the policy framework within which the acquisition of all goods, services and works are to be procured within Transnet. Care has been taken to ensure that it is consistent with Transnet's vision, corporate strategy, other Transnet policies and pertinent national legislation.

BACKGROUND

2. According to Section 217 of the South African Constitution Act No 108 of 1996, as amended (the Constitution),

   (1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

   (2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for;

   (a) categories of preference in the allocation of contracts; and

   (b) the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination;

   (3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

   Transnet shall apply section 217 of the Constitution by contracting for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

   Transnet shall align all its procurement activities in an integrated manner with national developmental goals, relevant legislation that enforces those goals and relevant governmental supply chain management approaches that are cost-effective. Transnet shall also implement a preferential procurement system in line with the Constitution and the Preferential Procurement Policy Framework Act No. 5 of 2000 ("PPPFA").

PURPOSE

3. The aim of this Policy is to ensure that Transnet fulfils its mandate and obtains value for money in the procurement of goods and services while redressing the economic imbalances that have been caused by unfair discrimination in the past. Additionally, Transnet must enhance the overall effectiveness of the procurement system and thus carry out its procurement processes as competitively and cost-effectively as possible while meeting its commercial, regulatory and socio-economic goals.

© Transnet SOC Ltd, March 2016

Implementation of the policy must therefore result in the following outcomes:

- a reliable supply of goods and services of the right quality and price that Transnet requires to fulfil its mandate, and
- transformation, empowerment and economic development in South Africa.

DEFINITIONS

4. For ease of reference, the following words used in the policy are defined below:

4.1. **"Acquisition Council" (AC)** The Main Acquisition Council of an Operating Division, Specialist Unit or Business. Unless specifically stated otherwise "AC" also includes Secondary Acquisition Councils operating under the auspices of the ACs and which caters for transactions falling below the minimum threshold of the main AC.

4.2. **"B-BBEE"** Broad-Based Black Economic Empowerment.

4.3. **"Bid"** A written offer in a prescribed form in response to an invitation by Transnet for the provision of Services, works or Goods, through price quotations, advertised open bids, approved lists, confinements or proposals.

4.4. **"Bidder"** Any person/Enterprise which has submitted a Bid to Transnet.

4.5. **"EME"** Exempted Micro Enterprise as defined in the B-BBEE Codes of Good Practice issued in terms of the B-BBEE Act No. 53 of 2003, as amended.

4.6. **"Front End Loading" (FEL)** This terminology is commonly used in the context of the Project Lifecycle Process where a capital project is still in the conceptual or planning phase prior to execution and construction of the project.

4.7. **"Large Enterprise"** Large Enterprise as defined in the B-BBEE Codes of Good Practice issued in terms of the B-BBEE Act No. 53 of 2003, as amended.

4.8. **"Local Content" (LC)** The portion of the Bid price or quotation which is not included in the Imported Content, provided that local manufacture does take place.

4.9. **"Project Lifecycle Process" (PLP)** An industry developed methodology for the development of large capital projects.

4.10. **"QSE"** Qualifying Small Enterprise as defined in the B-BBEE Codes of Good Practice issued in terms of the B-BBEE Act No. 53 of 2003, as amended.

4.11. **"Supplier Development"** The Supplier Development (SD) Programme is an initiative of the Department of Public Enterprises (DPE) supported by Transnet. The aim of SD is to increase the competitiveness, capability and capacity of the South African supply base where there are comparative advantages and potential for local or regional supply. This can be achieved through skills transfer, as well as building new capability and capacity in the South African supply base. In addition, SD has

© Transnet SOC Ltd, March 2016

its roots grounded firmly around the transformation of South Africa and the empowerment of previously disadvantaged individuals and enterprises.

SCOPE

5. The Policy is applicable to all procurement activities at Transnet. The Policy will apply to Transnet and all its Operating Divisions and Specialist Units. The Policy is intended to cover all Transnet subsidiaries, affiliates or joint ventures where Transnet has a controlling interest. The principles outlined in the Policy are applicable to all procurement transactions, regardless of their nature or value.

PROCUREMENT PRINCIPLES

6. All Transnet's procurement activities shall be implemented in line with the following best practice principles:

- Fairness and Transparency:
  - equal treatment of bidders
  - openness and accountability
  - ethical conduct

- Social Equity:
  - Broad-Based Black Economic Empowerment ("B-BBEE") and preferential procurement
  - localisation

- Value for money:
  - competitiveness
  - cost effectiveness

POLICY STATEMENTS

Capital Procurement / Infrastructure

7. Transnet's planned capital expenditure forms the bulk of Transnet's procurement spend. As a result, Transnet shall ensure that its capital expenditure results in the creation of enterprise development opportunities as well as long term and sustainable job opportunities.

   7.1. Expansion, operation and maintenance of Transnet's ports, rail and pipelines infrastructure presents a major opportunity for job creation. The provision of infrastructure also serves to enhance efficiency across the economy, laying the basis for stepped-up growth and employment creation in every industry. It can also significantly advance social equity goals and address inequalities in the society.

   7.2. Transnet has adopted the Project Lifecycle Process ("PLP") as the standard methodology for the development and execution / implementation of all its capital projects. The various phases of the PLP are detailed below:

© Transnet SOC Ltd, March 2016

Policy Statement

7.3. Where necessary an Engineering, Procurement and Construction Management ("EPCM") service provider will be appointed at FEL-1. It is not always required that the same EPCM service provider be utilised over the entire lifecycle of the PLP. However, the same service provider is generally utilised for FEL-2 to FEL-4 in order

to minimise the risk to Transnet. Management must determine whether the same EPCM service provider is required for all FEL phases e.g where there is a need for an integrated approach or whether different service providers may be utilised for each phase and must demonstrate the reason for the chosen approach. The selection of an EPCM service provider must follow an open, competitive process. Furthermore, there must be a strong emphasis on creating opportunities for EMEs and QSEs through the creation of Joint Ventures (JVs) and/or sub-contracting to accelerate transformation and empowerment.

7.4. Transnet shall ensure that procurement of construction related works, goods or services for expansion of its ports, rail and pipelines infrastructure happens in a manner that creates sustainable jobs for South Africans. Procurement of operation and maintenance services of the infrastructure shall be done in a manner that supports sustainable job creation particularly among the previously disadvantaged members of the South African society.

Transnet as a Public Entity

8. South Africa is a unique type of mixed economy given its history of apartheid where the majority of citizens were deliberately excluded from meaningful economic participation. As a result, Government has adopted the concept of a "developmental state", which means that it can implement mechanisms in the economy to influence economic activity in a direction that ensures sustainable transformation, empowerment and supplier development.

As a State Owned Company ("SOC"), Transnet is required to carry out the statutory duties, responsibilities and liabilities imposed on its Board of Directors by the Companies Act, 71 of 2008 (as amended). This legislative obligation is further augmented by those obligations contained in the Public Finance Management Act, 1 of 1999, as amended by Act 29 of 1999 ("PFMA"). Transnet is also guided by the principles of the King Code of Corporate Practices and Conduct contained in the King Report on Corporate Governance for South Africa 2009 (King III Report).

Policy Statement

8.1. As a major public entity, Transnet has a key role to play in the Government's development agenda. Transnet commits itself to the prescripts of Section 217 of the Constitution and shall undertake all its procurement activities in a manner that protects and advances persons, or categories of persons disadvantaged by unfair discrimination, whilst at the same time undertaking procurement in a manner that is fair, equitable, transparent, competitive and cost-effective.

Value for Money

9. Value for money is the cornerstone of an effective public procurement system. It is therefore imperative that Transnet ensures that the goods, works and services that it procures are fit for purpose and are competitively priced, based on Total Cost of Ownership.

© Transnet SOC Ltd, March 2016

Policy Statement

9.1. Transnet shall promote open competitive bidding as its default procurement mechanism as this is the best means of obtaining value for money. All Transnet procurement shall be done in a way that ensures that Transnet obtains quality goods, works and services at competitive prices. Where possible, Transnet will look for opportunities to leverage economies of scale in its procurement activities e.g. by concluding transversal contracts for the entire Transnet Group.

Transformation and Empowerment

10. In order to achieve transformation and empowerment, Government developed the B-BBEE Policy and the Black Economic Empowerment Strategy.

10.1. The Black Economic Empowerment Strategy is underpinned by four key principles:

- it is broad-based;
- it is an inclusive process;
- it is associated with good governance; and
- it is part of the country's growth strategy.

10.2. Government uses a number of instruments to achieve Black Economic Empowerment, including a 'balanced scorecard' to measure progress made in achieving B-BBEE objectives by enterprises and sectors with the objective of enhancing long-term economic sustainability. The scorecard allows government departments, state-owned enterprises, and other public agencies, to align their own procurement practices.

Policy Statement

10.3. Transnet recognises the importance of using procurement as a tool to promote transformation particularly with regard to the promotion of Black-Owned companies, Black Women-Owned companies, etc.

10.4. In evaluating and awarding bids for procurement of goods and services, Transnet shall award preference points to all EMEs based on either a sworn affidavit or a certificate issued by CIPC and to those QSEs that are greater than 51% black owned based on a sworn affidavit. Transnet shall award preference points based on the B-BBEE scorecard for QSEs that are less than 50% black owned and Large Enterprises which measures performance in the following areas:

2007 Codes of Good Practice	2013 Amended Codes of Good Practice
Ownership	Ownership
Management Control	Management Control
Skills Development	Skills Development
Employment Equity	Enterprise & Supplier Development

© Transnet SOC Ltd, March 2016

Preferential Procurement	Socio-economic Development
Enterprise Development	
Socio-economic Development	

10.5. In bidding for Transnet bids, all suppliers shall be required to submit sufficient proof of B-BBEE compliance as prescribed by the B-BBEE Act and applicable Codes of Good Practice as well as the regulations issued in terms of the PPPFA.

10.6. Furthermore, Transnet will encourage bidding entities to form Joint Ventures (JVs) with black-owned/black women-owned or to sub-contract a minimum percentage of a contract to black-owned/black women-companies.

10.7. Transnet shall also set B-BBEE targets in consultation with its shareholder in order to monitor and evaluate its performance towards achievement of B-BBEE objectives. The targets will be based on the applicable/relevant Sector Charter Codes. Transnet will endeavour to do business with Empowering Suppliers as defined in the revised Codes of Good Practice.

10.8. Transnet will request preferred bidders to submit a B-BBEE improvement plan as part of their bid submission as to how they will improve their B-BBEE status over the contract period. Transnet shall ensure that empowerment targets are monitored and evaluated throughout the contract and failure to meet these contractual obligations will lead to termination of the contract at Transnet's sole discretion.

10.9. Enterprise and Supplier development is a key strategic enabler to unlocking opportunities for small enterprises through support contributing to their operational, financial stability and growth. Transnet shall conduct market analysis in order to identify opportunities for Enterprise and Supplier Development that will transform business and enable Black Owned Companies to participate in the main stream economy.

10.10. On a case by case basis, Transnet will set minimum B-BBEE thresholds as pre-qualification criteria to participation in its bidding process in instances where it is considered that the application of the normal preference point system will not bring about the required transformation.

10.11. Where deemed appropriate, Transnet may also include pre-qualifying criteria that stipulate that bidders are required to provide a commitment to increase their B-BBEE score over the duration of the contract.

Policy Framework for Socio-Economic Development

11. The Government developed a number of economic developmental policies that form the basis for addressing unemployment, poverty, inequality as well as stimulation of economic growth. The implementation of the following policies (amongst others) will enable the

© Transnet SOC Ltd, March 2016

restructuring of the South African economy to achieve sustainable economic growth and transformation:

11.1. Despite significant development strides made in the past 20 years in many areas of the South African economy, South Africa still remains one of the most unequal economies in the world. Deep inequalities are associated with joblessness, social inequalities and the legacy of apartheid geography. In sum, the economy has not yet yielded sufficient benefit for many South Africans. The National Development Plan ("NDP") is a policy framework geared towards the improvement of South Africa's economic growth and prospects. It aims to fulfil its objectives of reducing poverty and inequality in South Africa by 2030. The main economic objectives of the NDP are: job creation, a more equitable distribution of wealth and improving education. The NDP also recognises the importance of improving the economy for the purposes of both sustainability and inclusiveness. The NDP objectives are being incorporated into the existing activities of organs of state to ensure consistency and coherence in its implementation.

11.2. The National Industrial Policy Framework ("NIPF") articulates South Africa's overarching approach to industrial development. The NIPF highlights the need to promote a broader-based industrialisation path characterised by deeper levels of participation in the mainstream industrial economy by historically disadvantaged economic citizens.

11.3. The Industrial Policy Action Plan ("IPAP") is the mechanism used to implement the NIPF. The re-industrialisation trajectory is implemented through successive IPAP iterations that respond to changes in global and domestic economic opportunities and dynamics. The IPAP guides South Africa's industrial development path towards sectors and capabilities, which will provide sustained inclusive growth and increase participation of marginalised citizens and regions.

11.4. The New Growth Path ("NGP") sets out the government's plan to foster growth, create employment and equity by reducing the dependencies of South African industries on imports, and promoting the development of skills and capabilities that are in short supply within the country. It identifies strategies that will enable South Africa to grow in a more equitable and inclusive manner and promotes the development of new industry to attain South Africa's developmental agenda. The NGP knits together the IPAP as well as policies and programmes in rural development, agriculture, science and technology, education and skills development, labour, mining and beneficiation, tourism, social development and other areas. The NGP identifies six priority areas for job creation: infrastructure development, agriculture, mining, manufacturing, the "green" economy and tourism. It proposes both sector interventions and a package of macro-economic and microeconomic policies designed to ensure that the economy becomes more competitive and more employment friendly. Government has set a target of creating 5 million jobs by 2020 through the NGP.

11.5. The Black Industrialists Policy ("BIP") is a key part of Government's broad industrialisation initiatives to expand the industrial base and encourage entrepreneurism in the economy. It calls for bolder policy interventions on the part

© Transnet SOC Ltd, March 2016

of the state to expand the industrial base of the country and grow the economy through dedicated support to black industrialists, as highlighted in the latest iteration of the IPAP. This policy proposes focused efforts to facilitate the inclusion and participation of Black Industrialists in manufacturing activities. State-Owned Companies such as Transnet provide the means of Government delivery across strategic sectors of the economy and can be anchors of the Black Industrialists Policy through procurement and supplier development mechanisms.

11.6. The Competitive Supplier Development Programme ("CSDP") is an initiative of the Department of Public Enterprises ("DPE"), the aims of which are indicated below:

11.7. The CSDP contributes toward competitiveness by leveraging SOC procurement spend to develop a local supplier base indirectly by placing influence on the supplying company or OEM (international and/or national) to develop downstream South African suppliers. The CSDP focuses on long term supply network development and win-win partnerships with suppliers to achieve best value for money over the product life-cycle rather than lowest initial cost. The primary measures of the CSDP are:

- the development by SOCs of supplier development plans which identify items for which local supply could be expanded or developed or improved;
- the use of planning, specification and sourcing by SOCs as instruments to achieve the objectives in the supplier development plans and to create a conducive environment for the development of local supply networks; and
- mobilising and providing support to the supplier industries targeted in the supplier development plans to assist them to develop the capacity and capability to respond competitively to the SOC demand.

11.8. The Preferential Procurement Regulations, 2011 issued in terms of the PPPFA require that an organ of state must, in the case of designated sectors, advertise such bids with a specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content be considered. In the case of non-designated sectors,

© Transnet SOC Ltd, March 2016

organs of state have the discretion to include minimum local content as a bid condition. As a result, public procurement can be leveraged to target specific manufacturing sectors for targeted development.

11.9. Procurement within SOCs needs to address the following considerations:

- Long term and sustainable procurement planning is critical in achieving developmental objectives and optimal procurement size as well as opportunities for domestic localisation and competitive supplier development. This will create the potential to stimulate markets for sustainability in economies of scale.
- Alignment with key objectives such as industrial policy imperatives and B-BBEE.
- Alignment between industrial financing and public procurement.

Policy Statement

11.10. Transnet commits to developing its procurement procedures and mechanisms within the framework of the law in order to promote Governmental policy objectives.

11.11. Unemployment, poverty and inequality: Transnet is fully committed to the objectives of improving growth and employment conditions in South Africa and must be a major contributor to job creation. Transnet's procurement shall focus consistently on areas that have the potential for creating employment on a large scale in order to contribute substantially to the national employment creation effort.

11.12. Rural/Regional Development: Part of Transnet's infrastructural network passes through rural areas of the country. This presents an opportunity for Transnet to procure goods and services in those areas. Procuring from rural suppliers will stimulate this relatively undeveloped sector of our economy, resulting in further employment creation. Furthermore, there are also opportunities to procure goods and services required in a particular region from suppliers of that particular region. Organs of state are required to support and promote local to site purchases by looking beyond the conventional criteria methods for the selection of suppliers. Transnet shall look for opportunities to procure goods, works and services in rural/regional areas with the aim of creating employment. Where applicable, Transnet will ensure that if the goods, works or services cannot be procured directly from suppliers in a particular region, these suppliers will still benefit from sub-contracting requirements or downstream supply to the main suppliers.

11.13. Localisation, Industrialisation & Economic Growth: Based on the guidance from the relevant policy framework and in line with the PPPFA, Transnet shall specify bidding conditions that will ensure that the objectives of localisation and industrialisation are achieved. In terms of the Preferential Procurement Regulations, 2011, issued in terms of the PPPFA, Transnet shall also apply a stipulated minimum threshold for local production and content in designated and non-designated sectors to eliminate the practice of "import fronting". In such instances, only suppliers providing domestically produced goods and services will be considered.

© Transnet SOC Ltd, March 2016

Transnet's procurement shall be conducted in a manner that is inclusive (through increased participation of EMEs as well as QSEs and black-owned firms in general) and builds industry capacity around its build programmes. Transnet shall identify programmatic/strategic procurement and develop long-term procurement and local content plans. Bid requirements shall include local procurement and supplier development which will also address the transformation agenda and aim to achieve industrialisation and localisation objectives.

11.14. Supplier Development: In line with the supplier development requirements placed on SOCs by the DPE, Transnet has developed and will implement a supplier development plan in order to ensure local supply of goods and services.

The supplier development plan will aim to:

- increase procurement from black-owned firms;
- contribute to economic growth through employment creation, rural development and skills development (preferential procurement);
- provide achievable SD targets backed by an analysis of commodities with potential SD opportunities
- develop technologies locally and create sustainability;
- develop local small and medium industries in order to enable them to supply Transnet with high-quality, globally-competitive goods and services (enterprise development);
- improve the quality, efficiency and cost-effectiveness of services provided by Transnet, as a result of it obtaining more competitive goods and services from local suppliers;
- improve the competitiveness of Transnet as a result of procurement savings from engaging innovative, responsive and more competitive suppliers;
- establish collaborative relationships with public and private entities to ensure sustainable supplier development/domestic procurement opportunities;
- utilise the SD strategic approach to focus on OEM/Multinational suppliers in order to influence them to engage lower tier black suppliers; and
- ensure that an effective monitoring, evaluation and reporting system is in place to maximise SD value.

11.15. Transnet shall put in place a pre-bid process in relation to strategic procurements with the following elements:

- A detailed breakdown of demand, identifying, *inter alia*, areas of repeat procurement and opportunities for standardisation.
- A detailed supply analysis which identifies existing domestic supply capacity and transformation/empowerment opportunities.
- A gap analysis which identifies areas for domestic procurement based on both existing capacity and capacity that can be built through active supplier development.
- Inclusion up-front in the bid of domestic procurement requirements and transformation/empowerment.

© Transnet SOC Ltd, March 2016

Sustainable Procurement

12. Sustainable Procurement is about:

- Improving environmental performance building a green industrial base in South Africa by increasing investment in the green economy, enhancing renewable energy procurement, the development of bio-fuels, clean coal initiatives, promoting energy efficiency across the economy, waste recycling, reducing carbon emissions through improved public transport and a shift in moving freight from road to rail;
- Cost savings including recognition of non-tangible benefits and costs;
- Promoting respect for human rights;
- Social economy considerations including job creation, empowerment, poverty reduction and transfer of skills;
- Robust action against corruption;
- sustainable 'green' procurement in enabling organizations to maintain profitability while taking on the responsibility for the environment and looking after its consumers while complying with government regulations;
- Value Chain Integration as an essential element for a best-in-class procurement organization as it embraces sustainable 'green' practices; and
- Transparent formalized measurement and metrics of sustainability across the entire supply chain that focuses on product and process innovation emphasizing reduction of the overall total cost of ownership (TCO) in order to have sustainability leadership focus on maintaining strong supplier partnerships.

Elements of Sustainable Procurement:

Environmental Considerations/ Green Economy	Social Considerations	Economic Considerations
• Recycle; • Reuse; • Refurbishment; • Efficient energy consumption; • Reduced noise levels; and • Water conservation.	• Human rights protection; • Zero tolerance of corruption; • Anti-child labour; • Empowerment; and • Good governance, accountability and transparency.	• Cost effective (savings); • Job creation; and • Local supplier development;

Policy Statement

12.1. Transnet will source goods/works/services in a manner that promotes environmental, social and economic sustainability. Where applicable, these environmental, social and economic considerations will be included in the bid requirements of a particular procurement process.

12.2. Where feasible, Transnet shall, in bid documents, promote subcontracting and Joint Ventures with EMEs and/or QSEs and with B-BBEE enterprises where the B-BBEE or EMEs/QSEs will be unable to fulfil all bid requirements itself due to the size or nature of the requirement.

12.3. Transnet's contribution to environmental considerations/green economy objectives shall be achieved through the concept of green procurement which is the purchase

© Transnet SOC Ltd, March 2016

of environmentally friendly products and services. By setting environmental requirements in its bid document and contract templates, Transnet will ensure that it achieves this policy objective.

POLICY IMPLEMENTATION

Implementation Strategy

Transnet's Supply Chain Management Unit shall develop a strategy for the implementation of the policy using a holistic approach in the organization to address the economic, social, and environmental elements of every procurement decision and results in outcomes that positively benefits the rest of the company and creates the framework for sustainability.

Systems

13. Transnet's supply chain system for procurement of goods and services and the disposal of assets must be fair, equitable, transparent, competitive and cost-effective. The system must have the minimum of the supply chain management system aspects reflected below prescribed by government customised to Transnet's procurement environment:

Source: Supply Chain Management: A guide for Accounting Officers and Accounting Authorities, Treasury

Transnet's framework/system includes the following aspects:

- Demand management and Planning;
- Acquisition management;
- Logistics management;
- Disposal management;
- Risk management;
- Regular assessment of supply chain performance; and
- Contract management.

In addition, Transnet will introduce e-procurement tools in line with national and international best practice and make use of best of breed systems to ensure efficient and

© Transnet SOC Ltd, March 2016

effective supply chain processes are in place. Transnet has already implemented National Treasury's eTender Publication Portal which automates the advertising and publishing of bids. Transnet's desired end state in this regard is end to end automation of the procurement process.

13.1. **Demand Management and Planning**

Business must have a clear understanding of the possible sourcing and supplier development initiatives that a transaction could offer by understanding at the onset what is required. iSCM must integrate with business users early to fully understand the potential opportunities that may exist. The identification of sourcing and SD opportunities occurs too late during the sourcing process and needs to be addressed from the outset of the planning phase. SD needs to be incorporated into the "business as usual activities" as opposed to being viewed in isolation as this decreases the value that can be derived from the available opportunities.

13.2. **Acquisition Management**

The system in place must provide for:

- Bidding procedures;
- The establishment, composition and functioning of bid specification, bid evaluation and bid adjudication committees;
- Selection of bid committee members;
- Adjudication of bids through a bid adjudication committee; and
- Approval of bid evaluation and/or bid adjudication committee recommendations.

13.3. **Logistics management**

Transnet will ensure that Inventory is re-ordered promptly, at an appropriate level, to ensure availability when required. Material items will be appropriately defined and set-up with correct specifications. Transnet will implement appropriate controls to ensure that Inventory is appropriately safeguarded and secured.

13.4. **Disposal management**

Transnet will ensure fairness and diligence in the conduct and accounting of all scrap disposal business practices that are adopted and will ensure that all processes are supported by duly documented, approved and accessible policies and procedures.

13.5. **Risk management**

Transnet has adopted the Enterprise Risk Management (ERM) methodology in managing risk within iSCM. iSCM will ensure continuous identification, assessment, mitigation and management of risks on a regular basis in order to deliver on its mandate.

13.6. **Regular assessment of supply chain performance**

Refer to paragraphs 23, 24 and 25 below on Compliance Monitoring and Evaluation.

13.7. **Contract Management**

©Transnet SOC Ltd, March 2016

Contract Management principles are dealt with comprehensively in the Contract Management Policy.

Policy Implementation Procedures

14. The Transnet Procurement Procedures Manual shall be regularly reviewed in order to ensure alignment with this policy.

Evaluation methodology

15. The standard evaluation methodology that is followed within Transnet is depicted in Appendix A.

Skill Capacity of the Supply Chain Management Team

16. Transnet shall ensure that the current staff and newly recruited staff are well qualified and trained to ensure successful implementation of the Policy.

ROLES AND RESPONSIBILITIES

17. The roles and responsibilities for this policy is as follows:

Accountable	: Group Executives and Chief Executive Officers
Responsible	: General Managers and Senior Managers
Informed	: All Employees involved in Supply Chain activities
Supports	: All departments involved/interacting with Supply Chain
Monitors & maintains	: Group Integrated Supply Chain Management
Policy Owner	: Group Chief Supply Chain Officer
Policy Sponsor	: Group Chief Financial Officer

18. The roles and responsibilities of all the structures hereunder are defined only from the perspective of Supply Chain Management.

18.1. **Acquisitions and Disposals Committee (ADC)**

The Transnet Board comprises of Board members appointed from time to time by the Minister of Public Enterprises. For the acquisition and disposal of Transnet assets, the Board has delegated powers to the ADC. The Committee must have and maintain:

(i) An appropriate Supply Chain Management system, which is fair, equitable, transparent, competitive and cost-effective; and
(ii) Effective, efficient and transparent systems of financial and risk management and internal control.

The ADC may delegate powers and duties or instruct specific officials in Transnet to perform any of the duties assigned to it.

18.2. **Group Chief Financial Officer (GCFO), Group Chief Supply Chain Officer (GCSCO) and Chief Procurement Officer (CPO)**

© Transnet SOC Ltd, March 2016

The GCFO/OD CFO, GCSCO and OD CPO shall ensure that an effective internal monitoring system is in place and implemented in order to determine that the outlined processes are being adhered to and the expected deliverables are being achieved.

The GCFO and GCSCO must report to the ADC at prescribed reporting times on the following aspects among others:

- Total procurement spend as well as procurement strategies;
- Performance relating to B-BBEE targets;
- Performance in relation to the SD Programme including the NGP;
- Process disputes and information regarding deviation of processes followed; and
- Any other pertinent information required on bids, procurement policies and procedures.

18.3. iSCM Council

iSCM Council members shall ensure that the Policy is implemented uniformly across all Transnet Divisions.

18.4. Acquisition Councils

Acquisition Council members shall ensure that procurement processes are aligned to the Policy across the various Transnet Divisions.

18.5. Specific Officers' Roles and Responsibilities

Specific officers' roles and responsibilities shall be aligned with Transnet's effective Delegation of Authority Framework.

RELATED INFORMATION AND REFERENCE

19. This policy should be read in conjunction with the following supporting guidelines:

19.1. Internal Documents:

- Code of Ethics
- Declaration of Interest and Related Party Disclosures Policy
- Declaration of Interest and Related Party Disclosures Policy for Directors
- Gifts and Hospitality Policy
- Delegation of Authority Framework
- Broad Based Black Economic Empowerment Policy
- Group Compliance Policy
- Counterparty Risk Management Policy
- Procurement Procedures Manual
- The Public Finance Management Act Policy
- Contract Management Policy

© Transnet SOC Ltd, March 2016

19.2. **External Documents**

Applicable government policies including:

- The New Growth Path
- The National Development Plan
- Local Procurement Accord
- Industrial Policy Action Plan
- The Black Industrialists Policy

19.3. **Regulatory Requirements:**

Transnet recognises the importance of complying with all applicable regulatory requirements as reflected in the Transnet regulatory universe. Transnet's procurement activities are guided by various pieces of legislation and regulations. Transnet shall ensure full compliance with all legislation that is pertinent to its functions, in particular relevant procurement legislation. Specific reference is made to:

- The Constitution of the Republic of South Africa, Act 108 of 1996;
- The Companies Act, 71 of 2008;
- The Preferential Procurement Policy Framework Act No. 5 of 2000;
- The Public Finance Management Act No. 1 of 1999;
- The Promotion of Administrative Justice Act No. 3 of 2000;
- The Broad-Based Black Economic Empowerment Act No. 53 of 2003 and the applicable Code of Good Practice; and
- The Construction Industry Development Board Act No. 38 of 2000.

Ethics & Transnet's Culture Charter

20. Transnet's Code of Ethics sets ethical standards for business practice and individual business conduct. It assists all Transnet stakeholders with their ethical deliberations and decisions. The objective of the Code of Ethics as it relates specifically to the Supply Chain environment is to set the standard by which all employees (including employees employed on fixed term contracts and temporary employees) and non-executive directors are expected to act when engaging in any supply chain related activities. This will earn Transnet the reputation of being:

a) transparent and fair in all dealings and disclosures;

b) politically unbiased;

c) committed to providing quality products and services;

d) proud of its integrity and credibility;

e) consistent in honouring its social, legal and moral obligations;

f) responsible and accountable; and

g) reliable and aware of the need to foster loyalty and long enduring relationships with all its stakeholders.

© Transnet SOC Ltd, March 2016

21. All Transnet employees should uphold the following key values:

a) treat people with respect and dignity;

b) act with integrity and professionalism at all times;

c) be fair and honest;

d) be committed and dedicated to high quality performance;

e) be customer orientated;

f) respect and maintain the confidentiality of sensitive information gained through association with Transnet;

g) maintain accurate, honest and complete records in appropriate detail;

h) protect Transnet's assets;

i) trust each other and be professional in conduct both within and outside the work environment such that the conduct will not reflect negatively upon Transnet's image and reputation;

j) refrain from using a position of authority and / or facilities provided by Transnet to further their own interests or that of friends and relatives;

k) desist from allowing personal interests to influence business decisions or tasks and disclose any actual or potential conflict of interest;

l) honour the content and spirit of all business transactions and do not abuse or harm Transnet's reputation or assets or interests;

m) be honest and transparent in all actions and promote a corporate image of integrity, honesty and stringent business ethics;

n) maintain an attitude of zero tolerance toward any form of bribery, corruption and inducements;

o) utilise Transnet's assets for work purposes and not for personal benefit; and

p) not expose Transnet's assets to loss, damage, misuse or theft.

22. All Supply Chain activities are also to be conducted in a manner that gives effect to the principles in Transnet's Culture Charter:

a) Having a safety mindset;

b) Being business focussed;

c) Delivering on promises;

d) Treating each other with dignity and respect;

e) Having good communication;

f) Recognition and reward for good work; and

g) Empowerment of people to perform in their jobs.

© Transnet SOC Ltd, March 2016

POLICY REVIEW, COMPLIANCE MONITORING AND EVALUATION

23. Policy Review: This Policy will be reviewed every five (5) years or as circumstances warrant it and a report submitted to the relevant governance structure.

24. Monitoring involves the systematic, regular collection and analysis of information to identify and possibly measure changes over a period of time. Monitoring is a management function that guides behaviour in the intended direction and to check performance against pre-determined plans. Monitoring involves watching the progress of a project against time, resources and performance schedules during the execution of the project and identifying lagging areas requiring timely attention and action. Monitoring involves the collection of data about what is happening.

25. Evaluation involves the analysis of the effectiveness and direction of an activity and involves making a judgement about progress and impact. Evaluation is about why things are happening. It looks at the long term effects of a project.

25.1. There are five criteria for evaluation:

(i) **Relevance** (Did the project solve the problem that was identified?)
(ii) **Efficiency** (Do the benefits of the project outweigh its costs?)
(iii) **Effectiveness** (Did the project achieve its intended objectives and outcomes?)
(iv) **Impact** (Has the project made any difference in the lives of intended beneficiaries?)
(v) **Sustainability** (Will the project continue to give benefits long after the initial investment without having to invest more money into it?)

25.2. Monitoring and evaluation are done in order to:

- Assess results to find out if and how objectives are being met and resulting in desired changes;
- Improve management and process planning;
- Promote learning;
- Ensure accountability; and
- Inform policy analysis and development.

Policy Statement

26. Treasury Regulation 29.2.2 directs that:

> "The shareholder's compact must document the mandated key procedures for quarterly reporting to the Executive Authority in order to facilitate effective performance monitoring, evaluation and corrective action."

26.1. To this end, Transnet shall establish a monitoring and evaluation system in order to ensure overall performance monitoring and evaluation of the use of procurement as an economic transformation and developmental tool.

26.2. Development of the monitoring and evaluation system shall involve undertaking of a situational analysis of the supplier landscape in order to establish a baseline,

© Transnet SOC Ltd, March 2016

development of performance indicators, identification of data sources and setting of performance targets on the basis of the baseline.

FINANCIAL IMPLICATIONS

27. Continuous training will be implemented in line with procurement planning and budgeting processes in order to ensure proper implementation of the Supply Chain Policy and Procedures. Sufficient budget will be made available for this purpose.

EXCLUSIONS

28. There are no exclusions to this policy.

REQUEST TO DEVIATE FROM THE POLICY

29. In cases where material and compelling circumstances merit deviation(s) from particular provision(s) of this policy, written submissions shall be sent to Group Chief Executive, who shall have full authority to grant such request, in whole or in part, or to refuse same.

NON-COMPLIANCE

30. Breaches of this Policy will be seen in a very serious light. Employees who do not conform to the Policy or Principles and Standards may be subject to disciplinary action in terms of the applicable Transnet disciplinary processes and procedures.

© Transnet SOC Ltd, March 2016

APPENDIX A: EVALUATION METHODOLOGY

* Indicative stipulated minimum threshold as prescribed by National Treasury (if applicable). If the sector is not designated localisation must be incorporated into SD

** Indicative threshold , not prescribed (if applicable)

© Transnet SOC Ltd, March 2016

ANNEXURE PV 2

COMMISSION OF INQUIRY INTO STATE CAPTURE

The Evolution of Transnet's Procurement Processes

2012 – 2019

PSV-0096

Contents

- The regulatory framework
- Governance checkpoints in the SCM process
- Structure of PPM
- Transnet's evaluation methodology: 2012 to present
- Transnet's current remedial plan projects
- Recommendations for process control improvements
- Acronyms and abbreviations

PSV-0097

The regulatory framework

PSV-0098

The Supply Chain Regulatory Framework

What does the regulatory framework seek to achieve?

- Give effect to the constitutional vision.
- Drive greater fiscal discipline.
- Promote legality.
- Objectivity and uniformity in decision-making.
- Transparency.

PSV-0099

Key challenges with the Supply Chain Regulatory Framework

Key challenges

- Fragmentation

(a) no single piece of legislation governing procurement

(b) at least 80 pieces of legislation governing procurement (NT).

- Misalignment (policy and legislation are not aligned)
- Mandatory nature (allows little to no discretion/flexibility)
- Ambiguity (rules are not clear).
- Punitive character (the cloud of irregular expenditure).

PSV-0100

The evolution of legislative landscape applicable to Transnet SCM

TRANSNET

Pre-2011

- PPPFA and its Regulations were not applicable to Schedule 2 entities in terms of the PFMA
- Schedule 2 entities determined their own procurement systems and evaluation methodology in compliance with the PFMA and Constitution

2011 -2014

- In 2011, NT issued new PPPFA Regulations.
- Local content was introduced for the 1st time in the 2011 Regulations.
- NT granted all Schedule 2 entities exemption from certain provisions of the Regulations for a period of 1 year i.e. from 7 December 2011 to 7 December 2012
- After the exemption period, SOCs were required to apply all provisions of the Regulations to procurement transactions.

2015 - 2016

In 2015 NT published a review of Public Sector Supply Chain Management. The following were identified as key challenges:

- Fragmentation of the SCM legislation was identified as a key challenge.
- Lack of uniformity of SCM processes.

A Procurement Bill/Act was anticipated that would govern all aspects of SCM processes.

The Office of the CPO at NT started to issue Instructions that applied to Schedule 2 entities to govern various aspects of the SCM system. These Instructions were issued in terms of the PFMA and included the mandatory use of the eTender Publication Portal, Central Supplier Database, rules on construction procurement (SIPDM), restriction of suppliers, use of emergencies, contract variation and deviations from a competitive bidding process.

There was little to no consultation with Transnet prior to the issue of these Instructions and also little to no time afforded for implementation in some cases.

2017 -2019

- In 2017, NT issued new Preferential Procurement Regulations
- The 2017 Regulations covered aspects such as the use of prequalificiation criteria to promote designated groups, the application of objective criteria, the obligation not to award bids where prices are not market-related, etc
- New Instructions were issued in relation to cost containment, tax compliance and irregular expenditure.

PSV-0101

The evolution of legislative landscape impacting Transnet SCM

TRANSNET

Period	Legislation, Regulation, Instruction applicable to Transnet
Pre-2011	• Section 217 of the Constitution • General provisions of the PFMA requiring Transnet to have and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective
2011 - 2014	• In 2011, the Minister of Finance issued the Preferential Procurement Regulations, 2011 with an effective date of 7 December 2011. • Government Notice R. 501 of 8 June 2011. For the first time PPPFA applied to all public entities listed in Schedules 2 and 3 to the PFMA. • Schedule 2 entities were given an exemption from certain provisions of the Regulations until 7 December 2012.
2015 - 2016	• NT Instruction 1 of 2015/16, effective from 1 May 2015, on the advertisement of bids on the e-tender publication portal. • NT Instruction 4 of 2015/2016, effective from 1 July 2016, on the Standard for Infrastructure Procurement and Delivery Management ("SIPDM"). • NT Instruction 2 of 2016/2017, effective from 1 May 2016, on the submission of Annual Procurement Plans ("APP"). • NT Instruction 3 of 2016/2017, effective from 1 May 2016, on preventing and combating of abuse in the SCM system. • NT Instruction 4A of 2016/2017, effective from 1 July 2016, relates to the Central Supplier Database ("CSD"). • NT Instruction 5 of 2016/2017, effective 1 July 2016, on Outstanding payments due to suppliers/creditors exceeding 30 days from submission of a valid invoice
2017 - 2019	• NT issues Preferential Procurement Regulations, 2017 effective 1 April 2017 repealing the Preferential Procurement Regulations, 2011 • NT Instruction 3 of 2017/2018, effective 15 May 2017, on Cost Containment Measures • NT Instruction 4 of 2017/2018, effective 25 May 2017, on Revised cost containment measures relating to travel and subsistence • NT Instruction 9 of 2017/2018, effective from 5 April 2018, refers to the tax compliance status of suppliers. • NT Instruction 1 of 2018/2019, effective 1 December 2018, on the Irregular Expenditure Framework

Note: Where Instructions have been repealed and replaced by later dated Instructions, reference is made to the current version of the Instruction applicable to Transnet in the list above.

PSV-0102

Governance checkpoints in the SCM process

PSV-0103

Bodies responsible to ensure good governance of SCM processes

CFST
- Responsible for ensuring that the specification, evaluation methodology and procurement mechanism is appropriate, objective and unbiased.

CFET
- Responsible for evaluation of a tender in accordance with the RFP terms and conditions and to ensure that the the evaluation is fair.

ACQUISITION COUNCIL
- Responsible for ensuring that the award of a tender is fair and legally compliant.

PROCUREMENT COMMITTEE (EXCO SUB-COMMITTEE)
- Approves the approach to market for open tenders and confinements within their delegation of authority
- To adjudicate on transactions within their delegation of authority
- To contract for transactions within their delegation of authority

FIC
- Plays an assurance role for all transactions within EXCO's delegation of authority

EXECUTIVE COMMITTEE
- Approves the approach to market for open tenders and confinements within their delegation of authority
- To adjudicate on transactions within their delegation of authority
- To contract for transactions within their delegation of authority

BOARD
- Board assumes final accountability

THE HIGH VALUE TENDER GATEWAY REVIEW
This process provides real-time independent assurance at key gateways for transactions above R100 million in value

THE TRANSNET PROCUREMENT OMBUDSMAN
Responsible for the investigation and resolution of procurement process related complaints above R5 million in value

THE FRAUD HOTLINE
Any employee, supplier, member of public, bidder, etc may lodge a complaint on the Tip-offs anonymous line which will then be investigated by Forensics.

SCM Delegations of Authority – 3 Step approval process

Approval to approach the market

Person with DoA to approve procurement strategy and RFP

Bid adjudication

Acquisition Councils to approve award of tender within their delegation of authority

Contract award/sign off

Person with DoA to sign contract

Comparison between 2016 Transnet SCM DOAs and 2019 SCM DOAs

2016 Delegation of Authority Framework	2019 Delegation of Authority Framework
• Board and ADC (sub-committee of Board) had delegation to make procurement decisions.	• Board is no longer involved in procurement decisions e.g. tender awards. • A Procurement Committee (sub-committee of EXCO) and EXCO make procurement decisions for transactions over R700m and R1bn, respectively. • FIC (sub-committee of the Board) plays an assurance role for all transactions within EXCO's delegation of authority.
• Delegation was given to certain individuals to conduct bid adjudication (so called "one-person" ACs).	• One-person ACs have been abolished. • Bid adjudication must be carried out by a multi-disciplinary committee.
• Provision was made for the concept of a confidential confinement. Such confinements did not follow the usual review process	• Provision for a confidential confinement has been removed.

Structure of the PPM

Transnet's SCM Governance Framework

- In terms of section 51(1)(*a*)(*iii*) of the PFMA, Transnet's accounting authority must ensure that the organization has and maintains an appropriate procurement and provisioning system which is *fair, equitable, transparent, competitive and cost-effective*.
- The SCM Policy and the PPM (read with other related documentation) establishes Transnet's procurement system, as contemplated in s 51(1)(*a*)(*iii*).

The SCM Policy defines overall principles to ensure alignment across Transnet SCM taking into account legislation, government's socio-economic policies and commercial objectives.

The PPM operationalises the objectives of the Supply Chain Policy

The PPM: Guiding Principles

Broadly speaking, Transnet's procurement system is structured around 4 guiding principles:

(a) The importance of fairness, equity, transparency, competitiveness and cost-effectiveness, as prescribed by s 217(1) of the Constitution and the PFMA;

(b) Legislative requirements that are applicable to Transnet as a Schedule 2 entity;

(c) Applicable governmental policies;

(d) Any other provisions that the Accounting Authority might regard as "appropriate".

PSV-0109

The Procurement Cycle

TRANSNET

Detailed Procurement Process as per PPM

TRANSNET

STAGE 1: PLANNING

1. Prepare business plan and obtain approval
2. Establish CFST, prepare specification & sourcing strategy
3. Obtain approval to approach the market as per DoAs
4. Approval of RFP
5. Advertise RFP (if applicable)
6. Issue RFP
7. Tender briefing session (if applicable)
8. Tender closes and bids are received
9. Evaluation of bids
10. Prepare TEAR report

STAGE 2: PROCUREMENT

11. AC approval for shortlisting and negotiation (if applicable)
12. Negotiation with preferred bidders (if applicable)
13. Request BAFOs in the tender box (if applicable)
14. AC approves award of tender
15. Inform successful & unsuccessful bidders of the outcome of the process

STAGE 3: IMPLEMENTATION

16. Develop and sign off final contract
17. Contract management

Strictly private and confidential

PSV-0111

Common problems in the procurement process

TRANSNET

Planning

- Inadequate needs assessment
- Specifications are poorly developed or biased
- Under-budgeting
- Sudden increase in procurement transactions before year-end
- Deviation from open bidding process
- Transaction not on annual procurement plan
- Inappropriate use of emergency procedure

Procurement

- Unclear specifications & evaluation criteria
- Short time for bidders to respond
- Changing criteria during bid evaluation & bid adjudication
- Inconsistent application of disqualification
- Inconsistent scoring
- Conflicts of interest
- Breach of confidentiality
- Political interference
- Recommendation of evaluation team overruled
- Manipulation of scores
- Detailed tender documents not kept
- Opportunistic use of "risk" factors as a reason to overlook top-ranked bidder
- Pricing schedule unclear
- Ever-green contracts
- Multiple/repetitive awards to same supplier
- Long delays in award of contracts
- Disqualification for immaterial defects
- Pressure from "above"
- Award not made by delegated official

Implementation

- Poor contract management
- Inadequate validation of services rendered prior to payment
- Quality of products compromised
- Use of sub-standard materials
- Abuse of variation procedures
- Contract remedy clauses e.g. penalty and breach clauses not applied
- Unexplained cessions to 3rd parties.
- Lessons learnt exercises not conducted

Transnet's evaluation methodology: 2012 to present

Transnet's evaluation methodology 2012

TRANSNET

METHOD 1

PHASE 1
Minimum Threshold > * %

* Threshold determined per transaction

PHASE 2

- Price / TCO
- SD
- Preference
  - Scorecard
  - FRC- current
  - FRC- future

METHOD 2

PHASE 1
SD Minimum Threshold > * %
Quality Minimum Threshold higher

* Threshold determined per transaction

PHASE 2

- Quality
- Price /TCO
- SD
- Preference
  - Scorecard
  - FRC-current
  - FRC-future

Term	Description
Supplier Development (SD)	SD is Transnet's mechanism to achieve DPE's Competitive Supplier Development Programme (CSDP). Initiatives aimed at building greater capability and capacity in the South African supply base. SD leverages SOC procurement spend by placing obligations on bidders (particularly OEMs) to develop downstream South African suppliers e.g. local to site purchases, skills transfer, sub-contracting, rural/regional integration, job creation/job preservation, etc.
FRC Current	Points allocated based on the extent to which a bidder's current black ownership, management control and employment equity exceeded certain minimum targets set by Transnet.
FRC Future	Points allocated based on the extent to which a bidder commits to improving its B-BBEE status over the contract period in areas of black ownership, management control, employment equity, preferential procurement and enterprise development.
B-BBEE Scorecard	Preference points allocated to a bidder based on its B-BBEE status in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
Local Content (LC)	The threshold that must be achieved based on the portion of the bid price or quotation which is not included in the Imported Content, provided that local manufacture does take place.

Example of application of Method 1

Example: Transnet issues a bid for furniture. The following evaluation methodology is applied.

Assuming Bidders A, B and C who responded to the bid passed the Local Content threshold, the SD/B-BBEE threshold which will be weighted 50/50 will be evaluated as follows:

Bidder	B-BBEE status level	B-BBEE points	B-BBEE based on weighting of 50%	SD points based on weighting of 50%	TOTAL SD/B-BBEE scorecard threshold	Result
Bidder A	1	10	50 (10/10*50)	35	85%	Qualified
Bidder B	6	3	15 (3/10*50)	12.5	27.5%	Disqualified
Bidder C	2	9	45 (9/10*50)	20	65%	Qualified

Example of application of Method 1

Assuming Bidders A and C meet the Quality threshold, Phase 2 will be evaluated as follows :

PRICE (60)

Bidder	Price
Bidder A	60
Bidder C	60

SD (20)

Bidder	SD points based on weighting of 20
Bidder A	(35/50*20) = 14
Bidder C	(20/50*20) = 8

PREFERENCE (20)

Bidder	B-BBEE status level	B-BBEE based on weighting of 10	FRC (current) based on weighting of 5	FRC (future) based on weighting of 5	Total for FRC out of 10	Combined points based on weighting of 50
Bidder A	1	10	3	2	5	15
Bidder C	2	9	3	2	5	14

TOTAL (100)

Bidder	Price	SD	Preference	TOTAL	Ranking
Bidder A	60	14	15	89	1
Bidder C	60	8	14	82	2

Transnet's evaluation methodology 2013 - 2015

* Indicative stipulated minimum threshold as prescribed by National Treasury (if applicable). If the sector is not designated localisation must be incorporated into SD

** Indicative threshold , not prescribed (if applicable)

*** Point system dependent on value of transaction

Transnet's evaluation methodology 2017

TRANSNET

PREQUALIFICATION

Step 1

Administrative responsiveness

Returnable documents/ schedules

Step 2

Substantive responsiveness

Pre-qualification

Step 2: Preferential Procurement prequalification criteria that only one or more of the following may participate:

- Minimum B-BBEE status
- EMEs or QSEs
- Entities must sub-contract a minimum of 30% to stated designated groups e.g. EMEs or QSEs that are 51% BO/BWO/BYO, etc

STAGE 1

MINIMUM THRESHOLDS

Step 3

Local Content*

Step 4

Functionality/ technical**

Technical / Functional criteria & weightings must be stipulated in the tender documents

STAGE 2

Step 5

Weighted scoring / 100***

- Price (80/90)
- B-BBEE scorecard (20/10)

WEIGHTED SCORE

Step 6

Post tender negotiation with preferred bidder [2nd and 3rd ranked bidders (if required) in a sequential and not simultaneous manner] if pricing is not market-related

Step 7

Selection of the preferred bidder & negotiation of various aspects including final SD commitments and the B-BBEE improvement plan. The B-BBEE Improvement and SD plans may have been requested as essential returnable documents in the RFX document

Objective criterion to justify award to someone other than the highest ranked bidder must have been stated in the bid documents and can be used at this stage.

Penalties for failure to achieve SD / B-BBEE Improvement commitments - different penalties will be set for Large Enterprises, QSEs & EMEs

Step 8

Conclusion of contract incorporating SD & B-BBEE Improvement Plan commitments

* Indicative stipulated minimum threshold as prescribed by National Treasury (if applicable).

** Indicative threshold , not prescribed (if applicable)

*** Point system dependent on value of transaction i.e. 80/20 for transactions between R30 000 and R50 million and 90/10 for transactions greater than R50 million

Transnet's current remedial action plans

Transnet's current remedial action plans

- Review of Supply Chain Policy
- Review of Procurement Procedures Manual
- Development of a "PPM made simple" for end users
- Dissolved the "Acquisitions and Disposals" sub-committee, as the Board should not be directly involved in procurement processes
- Established a "Finance and Investment" sub-committee of the Board with a mandate that includes the oversight of processes followed for high value procurement events (in terms of the DoA)
- Integrated assurance plan developed for 2019/20 for approval by the Board and implementation post approval
- Reviewed Transnet Delegation of Authority Framework
- Engagements with SCM and end users to understand PFMA and PPM requirements
- Review and implementation of the Contract Management Standard Operating Procedures (SOPs) for procurement
- Review and update the PFMA Control framework
- Implementation of lifestyle audit policy

PSV-0120

Recommendations for process control improvements

Recommendations for improvement of SCM

- SCM should have representation at EXCO level.
- Board and EXCO must receive in-depth training on SCM processes and also undergo SCM competency assessment.
- Transparency – public access to Bid Evaluation Committees and Bid Adjudication Committees.
- Fix the regulatory framework – Fundamental overhaul required to ensure greater coherence and clarity.
- Address the "bullying" culture - It should be a dismissible offence to intimidate SCM officials into complying with unlawful instructions.
- Independent review of procurement decisions – An independent body must be created with powers to review the procurement awards.
- Assessment of competencies and ensuring continuous training and development.
- Standard security clearance vetting of all SCM personnel.
- Reliable automation of SCM processes.

PSV-0122

Acronyms and abbreviations

PSV-0123

Acronyms and abbreviations

AC	Acquisition Council
ADC	Board Acquisitions and Disposals Committee
BAFO	Best and Final Offer
B-BBEE	Broad-Based Black Economic Empowerment
CEO	Chief Executive Officer
CFET	Cross Functional Evaluation Team
CFST	Cross Functional Sourcing Team
CIDB	Construction Industry Development Board
CPO	Chief Procurement Officer
DOA	Delegation of Authority
DPE	Department of Public Enterprise
DTI	Department of Trade and Industry
EME	Exempted Micro Enterprises
EXCO	Executive Committee

FIC	Finance and Investment Committee
FRC Current	Further Recognition Criteria Current
FRC Future	Further Recognition Criteria Future
GCE	Group Chief Executive
GCFO	Group Chief Financial Officer
GCSCO	Group Chief Supply Chain Officer
iSCM	Integrated Supply Chain Management
OD	Operating Division
PAIA	The Promotion of Access to Information Act 2 of 2000 as amended
PAJA	The Promotion of Administrative Justice Act, 3 of 2000 as amended
PFMA	The Public Finance Management Act (PFMA), 1 of 1999 as amended
PPM	The Procurement Procedures Manual
PPPFA	The Preferential Procurement Policy Framework Act (PPPFA)
QSE	Qualifying Small Enterprises
RFP	Request for Proposal
SD	Supplier Development
TEAR	Tender Evaluation and Recommendation Report

PSV-0124

End of Presentation

ANNEXURE PV 3

COMMISSION OF INQUIRY INTO STATE CAPTURE

PV3

Ex Parte: Transnet SOC Limited

In re: Ambit and reach of statutory provisions on procurement

OPINION

Introduction

1. My Consultant in this matter is Transnet SOC Limited, a major public entity that is listed in Schedule 2 to the Public Finance Management Act[1] (The PFMA"). Transnet seeks an Opinion that addresses a number of matters concerning its rights and obligations in respect of the procurement of goods and services. The necessity for the Opinion has been prompted by the considerations and developments set out in the paragraphs immediately hereunder.

2. Procurement of goods and services by organs of state is regulated in the first instance by s 217 of the Constitution and also by further statutory measures, namely, the Preferential Procurement Policy Framework Act[2] ("the PPPFA"); and the Preferential Procurement Regulations of 2011 ("the Regulations"). The effect of the PPPFA and the Regulations is *inter alia* to set out the framework within which an organ of state may implement a procurement policy that provides for the following: categories of preference in the allocation of tenders; and

[1] No 1 of 1999
[2] No 5 of 2000

protecting or advancing previously disadvantaged individuals or groups.

3. Until December 2012, major public entities listed in Schedule 2 to the PFMA were exempted from having to comply with provisions of the PPPFA or the Regulations, save for Regulations 9, 11(10) and 14. The effect of the exemption was that these entities were free to implement policies that did not comply with the framework set in the Act and the Regulations for categories of preference and for the protection and advancement of previously disadvantaged groups. In the case of Transnet, in fulfilling what it sees as its social goals and obligations, it introduced a number of measures that are not expressly permitted by the Act and the Regulations. It is also mindful of introducing further such measures.

4. Transnet is concerned that one effect of the lapse of the exemption is that it may no longer be entitled to implement those and possibly other measures. It seeks an Opinion that deals with a number of questions that it has identified. In the main the questions arise from specific provisions of the PPPFA and the Regulations that deal with, among other things, the following: criteria that may be taken into account in the scoring of tenders; and the setting of minimum thresholds for functionality and local production and content. A crucial issue for Transnet is whether these are the only matters in respect of which it

may set a minimum threshold. In respect of thresholds, Transnet wishes to know whether it can also have a minimum threshold in respect of for example supplier development. And, in respect of allocating scores, it wishes to know whether it may include factors not expressly identified in the PPPFA and the Regulations.

5. In my respectful view, these issues can only be determined after the ambit and reach of the PPPFA and the Regulations have been ascertained. This requires a close examination of the entire statutory regime to which procurement by organs of state is subject.

6. I should also point out that although the questions that I have been asked to address in this Opinion have only risen pertinently after the lapse of the exemption referred to above Transnet, ably supported by its Attorneys, has over a fairly extended period given consideration, albeit from a different perspective, to some of the issues to which the lapsing of the exemption is likely to give rise. In fact, a number of related issues have been extensively canvassed in quite detailed and extensive opinions and memoranda prepared by its Attorneys. I have been favoured with them and must record not only my appreciation but my compliments for the manner in which the issues have been addressed. So comprehensive have been the documents prepared by the Attorneys that it would be unfair to them were I not to note that, even though I may have reached different conclusions on some

matters, some of the analyses undertaken and the views expressed herein are contained in the documents prepared by the Attorneys. I must also record that the Instructions that I have received capture the background and the issues quite admirably and set out not only the different positions that may be adopted but also the strengths and weakness of each. I have used all these documents quite extensively.

7. The result of the foregoing is that most of what I have been asked to address in the Opinion has been canvassed, albeit as noted above from quite a different perspective, in the various documents emanating from my learned Attorney's office. This Opinion should accordingly be read together with what was prepared by my learned Attorneys. However, in drafting this Opinion I have borne in mind that the opinions and memoranda from my learned Attorney's office had been prepared whilst Transnet had still been exempted from having to comply with the preferential framework prescribed in the PPPFA and the Regulations and that they did not expressly deal with the questions that I have been asked to consider. As a result, the emphasis in this Opinion will be on what the position is now that the exemption has lapsed.

8. In light of the foregoing, and to keep this Opinion to a reasonable size, it is not my intention to burden it with all the details set out in the documents prepared by my learned Attorney's office. Nevertheless, in

order to make the Opinion reasonably self-contained I will include sufficient details.

9. The issues that I have been asked to address in the Opinion are quite complex. Whilst there is a fair amount of case law on procurement matters[3] neither these nor similar issues appear to have been canvassed by the Courts up to now. And, as the *Hidro-Tech Systems* case points out, the task is rendered even more difficult by the fact that some of the statutory provisions are hardly a model of clarity. In the result, I express my views with a degree of some diffidence and with the following caution. Having regard to the huge sums of money that are likely to be at stake in the award of tenders by Transnet, Transnet must accept that there is a real risk that if it bases its preferential procurement policy on the views expressed herein, it could well face legal challenges.

10. In other words, to interpret the applicable statutory measures as permitting it to fulfil its social responsibilities poses a risk for Transnet. But, as emerges from the opinions and memoranda referred to above, in this case all interpretations, including what may be said to be that based on conventional wisdom, are plagued by serious difficulties. However, whilst there can be no immunity from legal challenges,

[3] See, for example, *Moseme Road Construction v King Civil Engineering Contractors* 2010 (4) SA 359 (SCA), at [2]: and especially *Hidro-Tech Systems (Pty) Ltd v City of Cape Town* 2010 (1) SA 483 (C), at [41] to [60], although it must be borne in mind that that case dealt with the now repealed 2001 Regulations

having regard to the value of Transnet's projected spend for capital procurement, there are means available to Transnet to reduce the risk of successful legal challenges. What those measures are will be considered later in this Opinion.

The overall statutory scheme

11. Insofar as the statutory regime that is created by the various applicable statutory measures is concerned, in my respectful view the following matters are of significance. There are in essence three separate sets of provisions: section 217 of the Constitution; the PPPFA; and the Regulations. In order to form a proper picture of the scheme as a whole, the relevant provisions in each of these measures will have to be considered. However, it is perhaps worth noting at this early stage that each of the three measures presents certain interpretational difficulties in respect of what its ambit is. It goes without saying that the difficulties are exacerbated when the scheme is considered in its totality.

12. Be the foregoing as it may, it is useful to keep in mind that the starting point must be section 217.

13. Section 217(1) in effect requires an organ of state to develop and implement a procurement system. There is only one set of

requirements: the system must be fair, equitable, transparent, competitive and cost-effective.

14. Clearly, however, although not stated expressly, one requirement of the system required by s 217(1) is that it must treat tenderers equally. However, s 217(2) provides that s 217(1) does not prevent organs of state from implementing a procurement policy that provides for the following: categories of preferences in the allocation of contracts; and, the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. Section 217(3) goes on to provide that national legislation must prescribe a framework within which that preferential policy must be (devised and) implemented.

15. The legislation contemplated by s 217(3) is the PPPFA and the Regulations.[4] The relevant provisions of each must now be summarized.

16. According to its long title, the PPPFA has been enacted:

> "To give effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution; and to provide for matters connected therewith."

17. Its relevant provisions, for the purposes of this Opinion, are set out in s 2. Section 2(1) provides that an organ of state *must determine* its

[4] In terms of s 239 of the Constitution, "national legislation" includes "subordinate legislation made in terms of an Act of Parliament".

preferential procurement policy and that it *must implement* it within a framework that provides for the following matters:

- the maximum preference points that may be allocated for the *specific goals* referred to in s 2(1)(d) are, depending on the tender price, 10 or 20;[5]
- the specific goals identified in s 2(1)(d) may include the following: contracting with persons, or categories of persons, historically disadvantaged on the basis of race, gender or disability; and implementing the programmes of the RDP;
- *a specific goal* for which a point may be awarded must be clearly specified in the tender invitation;[6] and [in terms of s 2(2)] it must be measurable, quantifiable and monitored for compliance; and
- the contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in s 2(1)(d) and (e) justify the award to another tenderer.[7]

18. Section 5(1) of the PPPFA empowers the Minister [of Finance] to make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of the PPPFA.

---

[5] Section 2(1)(a) and (b)
[6] Section 2(1)(e)
[7] Section 2(1)(f)

19. The Regulations presently in force are those dated 8 June 2011.[8] The provisions of the Regulations that are relevant for the purpose of this Opinion are the following.

- Regulation 2(2), which provides that organs of state must only apply a preferential procurement system that is in accordance with the PPPFA and the Regulations;
- Regulation 4, which is headed: evaluation of tenders on functionality;
- The relevant provisions of Regulation 4 may be summarized as follows. First, an organ of state must indicate in the invitation to tender if that tender will be evaluated on functionality. Second, the evaluation criteria for measuring functionality must be objective. Third, the evaluation criteria, the weight of each criterion; the applicable values and the minimum qualifying score for functionality must be clearly specified in the tender document. Third, no tender may be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation. Fourth, tenders that have achieved the minimum qualification score for functionality must be evaluated in terms of the preference point system;

[8] They repeal the previous Regulations dated 10 August 2001

- Regulations 5 and 6 prescribe how the preference point system is to be applied. In effect, these two Regulations lay down the formula that must be used to calculate the points for price in respect of tenders;

- Regulation 7, which provides that a contract may be awarded to a tenderer that did not score the highest total number of points, only in accordance with s 2(1)(f) of the PPPFA.

- Regulation 9 deals with local production and content. It provides for a specific tendering condition that only locally produced goods, services or works with a stipulated minimum threshold for local production and content will be considered in certain circumstances.[9] In certain other circumstances, the organ of state *may* stipulate for a stipulated minimum threshold.[10] In both instances the tender must be measurable and audited. Significantly, Regulation 9 allows for a two-stage process, where the first stage involves functionality and a minimum threshold for local production and content and the second stage price and BEE with the possibility of price negotiations only with short-listed tenderers.

---

[9] Regulation 9(1)
[10] Regulation 9(3)

20. What emerges from the foregoing summary of the relevant provisions is this. An organ of state must, in terms of s 217(1) of the Constitution, have a system in terms of which it procures goods and services. The system must be fair, equitable, transparent, competitive and cost-effective. But the organ of state may formulate and implement a procurement policy that provides for categories of preferences and the advancement or protection of previously disadvantaged persons or groups, provided that that policy and its implementation conform to the framework prescribed in the PPPFA and the Regulations.

21. The PPPFA in the first instance prescribes the nature of the *preference points system* that must be followed. This includes the maximum preference points that may be allocated for the specific goals of contracting with persons, or categories of persons, historically disadvantaged on the basis of race, gender or disability; and implementing the programmes of the RDP. The PPPFA further provides that a specific goal must be identified and measurable and quantifiable and that the contract must be awarded to the tenderer who scores the highest points, unless other objective criteria justify the award to another tenderer.

22. The Regulations set out the formula for the implementation of the preference point system. Significantly, however, the maximum points refer only to the B-BBEE status of tenderers.

23. The questions that Transnet has asked me to address relate mainly to the Act and the Regulations. In my view, before answers to those questions can be essayed, it is necessary to have regard to the total regulatory regime applicable to procurement of goods and services by organs of state. A compelling reason for doing so is that the Regulations appear to deal with matters not specifically or expressly contemplated in s 217(2) and (3). This is probably true of the Act as well. I must hasten to point out however, as is detailed hereunder, that this does not mean that the Regulations are in some respect invalid. But this is a factor that may well have to be taken into account in determining what is the reach and ambit of the Regulations and the restrictions that they impose on procurement of goods and services by organs of state.

24. In my view, the prior questions that must be considered are the following. First, what approach must be adopted in interpreting the different measures. Second, in what order are the different categories of measures to be interpreted. Third, what is the ambit and reach of the total statutory regime. Fourth, what is the consequence, if any, if the reach and ambit of the Act extends beyond that contemplated in s 217(3). Fifth, what is the consequence, if any, if the reach and ambit of the Regulations is beyond that contemplated in the Act.

Approach to interpretation

25. Statutory interpretation is at the best of times a difficult task. In this case, having regard to the fact that there are three categories of measures, which do not appear to be in sync with one another, the task is rendered even more difficult. It is against that backdrop that I turn to the interpretation principles that appear to me should be emphasized in this case. I do so in the paragraphs immediately hereunder.

26. In recent pronouncements by the CC there has been a recurring emphasis on the fact that context must be given a central role in the interpretation of statutory measures.[11] In this regard, the CC pointed out:[12]

"The emerging trend in statutory construction is to have regard to the context in which words appear, even where the words to be construed are clear and unambiguous."

27. This theme and the general approach to interpretation have been addressed more recently by the SCA in *Natal Joint Municipal Pension Fund v Endumeni Municpality.*[13] In setting out the principles to be

[11] See, for example, *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC), at [52]
[12] Quoting what Ngcobo J had said in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 551 (CC), at [90]
[13] 2012 (4) SA 593 (SCA)

applied in interpreting statutes and other instruments, Wallis JA said the following:[14]

"[18] The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided **by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.** Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. **The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."**

28. Thereafter, Wallis JA went on to say the following:[15]

[14] At para [18]
[15] At paras [25] and [26]

"[25] Which of the interpretational factors I have mentioned will predominate in any given situation varies. Sometimes the language of the provision, when read in its particular context, seems clear and admits of little if any ambiguity. Courts say in such cases that they adhere to the ordinary grammatical meaning of the words used. However that too is a misnomer. It is a product of a time when language was viewed differently and regarded as likely to have a fixed and definite meaning, a view that the experience of lawyers down the years, as well as the study of linguistics, has shown to be mistaken. Most words can bear several different meanings or shades of meaning and to try to ascertain their meaning in the abstract, divorced from the broad context of their use, is an unhelpful exercise. The expression can mean no more than that, when the provision is read in context, that is the appropriate meaning to give to the language used. At the other extreme, where the context makes it plain that adhering to the meaning suggested by apparently plain language would lead to glaring absurdity, the court will ascribe a meaning to the language that avoids the absurdity. This is said to involve a departure from the plain meaning of the words used. More accurately it is either a restriction or extension of the language used by the adoption of a narrow or broad meaning of the words, the selection of a less immediately apparent meaning or sometimes the correction of an apparent error in the language in order to avoid the identified absurdity.

[26] In between these two extremes, in most cases the court is faced with two or more possible meaning that are to a greater or lesser degree available on the language used. Here it is usually said that the language is ambiguous although the only ambiguity lies in selecting the proper meaning (on which views may legitimately differ). **In resolving the problem the apparent purpose of the provision and the context in which it occurs will be important guides to the correct interpretation. An interpretation will not be given that leads to impractical,**

unbusinesslike or oppressive consequences or that will stultify the broader operation of the legislation or contract under consideration."

[All the emphases are mine.]

29. As is clear from the principles set out above, context is all important. But in a case such as this context too must be accorded its correct place. This is particularly important because the statutory provisions in issue, namely those contained in the PPPFA and the Regulations, were required to be enacted by a provision of the Constitution. In determining what rights they give rise to and what obligations they impose on organs of state, as pointed out by Wallis JA, *the circumstances attendant upon their coming into existence* must be taken into proper account. The Act and the Regulations have come into being by virtue of s 217(3) of the Constitution. That factor must be accorded its proper weight.

30. However, before attempting to determine the rights accorded to and obligations imposed on organs of state by the PPPFA and the Regulations, it will be helpful to point out that whilst the provisions of s 217 provide the prism, or part of the prism, through which the PPPFA and the Regulations are to be interpreted, in seeking the meaning of s 217 itself no regard may be had to the PPPFA and the Regulations. This follows from the following general principles relating to the interpretation of what may loosely be termed "primary legislation", in

this case s 217 of the Constitution. The general principles relating to this issue may be summarized as follows. Even where a statute provides that the regulations made under them are part of the enactment, the two may not be treated as a unitary piece of legislation and the regulations may not be used as an aid to interpreting any of the statutory provisions, nor can the regulations be used to extend the meaning of the enactment.[16] A provision in a statute must be interpreted before the regulation is considered. If the regulation purports to vary the provision as so interpreted it is *ultra vires* and void. In addition, the regulation cannot be used to cut down or enlarge the meaning of a statutory provision.[17]

31. These principles are also applicable to a case such as this. Thus, s 217 must be interpreted without reference to the PPPFA or the Regulations.

32. However, there is a further principle that is applicable in a case such as this. It is this. Even if the subordinate provision goes beyond the reach of the primary provision, it remains valid and binding provided that it does not take away or invalidly curb rights granted by the primary or overarching provision. In this regard, the CC has said the following in relation to the Promotion of Equality and Prevention of

[16] *Moodley v Minister of Education and Culture* 1989 (3) SA 221 (A), at 233 E-F
[17] *Somers v Director of Indian Education* 1979 (4) SA 713 (D), at 716 D; Hamilton-Brown v Chief Registrar of Deeds 1968 (4) SA (T), at 737 D

Unfair Discrimination Act,[18] which was enacted pursuant to the provisions of s 9(4) of the Constitution:[19]

> "The legislature when giving effect to the right to equality, may extend protection beyond what is conferred by s 9 [of the Constitution]. As long as the Act does not decrease the protection afforded by s 9 or infringe another right, a difference between the Act and s 9 does not violate the Constitution. It would therefore not be a problem if the definition of discrimination in the Act included forms of conduct not covered by s 9 as long as the prohibition of those forms of conduct conformed to the Bill of Rights."

33. The application of that principle in this case, in my respectful view, yields the following result. The Act and the Regulations may deal with matters that have not necessarily been prescribed in s 217(2) and (3). These provisions are valid so long as they do not violate any rights accorded to organs of state by s 217. In interpreting the ambit and the reach of the provisions of the Act and the Regulations, regard must be had to the rights granted to organs of state by s 217, which provided for *their coming into existence*.

34. The way is now clear to consider what rights are granted to organs of state and what obligations are imposed on them by the applicable statutory regime considered as a whole.

---

[18] No 4 of 2000

[19] *MEC for Education, KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC), at [43]

Ambit of the statutory regime

35. The various provisions must now be considered in accordance with the principles laid down by the CC and the SCA.

36. Section 217 must be considered first. Moreover, as pointed out above, because it is the overarching statutory provision, its meaning must be determined without reference to the legislation that it requires to be enacted.

37. In my respectful view, what emerges from a consideration of s 217 as a whole is that every organ of state is required to have and implement a procurement system that has the characteristics set out in 217(1). In essence, these requirements reflect the values of openness, accountability and fairness that underpin the exercise of all state and statutory power. Significantly, save in respect of ensuring that the outcome produced must be cost-effective, section 217(1) does not set out what factors must be taken into account when assessing tenders. For example, it does not refer to such factors as quality, functionality or for example the source of goods or services and the need to ensure long-term sustained and regular supplies and services. Still less does s 217(1) refer to the weight or value to be attached to them in the assessment process: it appears to leave these matters to the organ of state concerned. Accordingly, it would appear that so long as the

procurement system developed by the organ of state meets the requirements of s 217(1), it passes constitutional muster. It perhaps should be mentioned that the system must also comply with the provisions of s 33 of the Constitution, that is, it must be lawful, reasonable and arrived at in a procedurally fair manner.

38. In determining whether a procurement system that has been developed and is implemented by an organ of state meets the requirements of s 217(1), it is perhaps worth emphasizing the following matters. The determination of whether the requirements are met is in effect a value judgment that requires a balancing of the various requirements set in s 217(1). An emphasis on one requirement may yield a different outcome than if another is emphasized. For example, if an aggrieved tenderer were to challenge the system devised by an organ of state on the basis that the weight attached to price was insufficient, the organ of state may defend its system with among others, the following, considerations. First, the requirement in s 217(1) is cost-effectiveness, not price *per se*. Consequently, an over-emphasis on price in respect of a particular tender may in the long run not be cost effective for Transnet. This means that, as a requirement, cost effectiveness is a great deal more flexible than price. Second, to emphasise, or place undue weight on, price will lead to the system being uncompetitive, unfair and

inequitable. Third, in assessing whether a system is s 217(1) compliant, the system must be viewed as a whole. Fourth, in light of the fact that the requirements set out in s 217(1) are in fact value-laden rather than fact-intensive, the justification that an organ of state presents for the system it has devised and the manner in which it implements the system must be given due weight in assessing whether the requirements of s 217(1) have been met.

39. It should perhaps be appreciated that the effect of s 217(2) is not to qualify in any way the requirements laid down in s 217(1) for procurement systems. Rather, s 217(2) simply permits an organ of state to implement a policy that provides for categories of preferences in the allocation of contracts and the advancement or protection of previously disadvantaged persons or groups. However, the policy that the organ of state devises must comply with the framework prescribed in the PPPFA and the Regulations. It appears that Transnet does have a policy that provides for categories of preference and that protects or advances previously disadvantaged persons. In the circumstances, it is not necessary to consider, for the purpose of this Opinion, whether s 217(2) and (3) require all organs of state to have a policy that provides for such matters. What is clear however is this: if, in its allocation of tenders, an organ of state chooses to award tenders on the basis of some preference and/or to protect or advance

previously disadvantaged persons or groups it may do so only in terms of a policy that conforms with the framework prescribed in the PPPFA and the Regulations.

40. Whilst on the face of it s 217 does not appear to require an organ to have and implement a preferential procurement policy, s 2(1) of the PPPFA appears to require that each organ of state must determine, implement and follow a preference point system based on a maximum of 10 (or 20) points for the specific goals and 90 (or 80) points for price. Now however the following two categories for specific goals are identified: contracting with persons historically unfairly disadvantaged by their race, gender or disability; and implementing programmes of the RDP.

41. Before considering the provisions of the Act and the Regulations, in my view the following matter must be emphasized. After an organ of state has factored into its procurement system its preference procurement policy, the system that emerges and that it implements must still comply with s 217(1). Of course, in determining whether the system (which would obviously include the organ of state's preferential procurement policy) is fair, equitable and cost-effective, the matters that are permitted by the Act and the Regulations will heve to be taken into account. Nevertheless, seen it its totality and the having regard to

the provisions of the PPPFA and the Regulations, the system must be fair, equitable, transparent, competitive and cost-effective. In my view such a system may include take into account service development (SD). If the organ of state's procurement system, which would incorporate its preferential procurement policy and its promotion of SD, meets the requirements of s 217(1), in my view it would be constitutionally compliant.

42. It is against the backdrop of what is set out in the paragraphs immediately above, that I turn to consider the relevant provisions of the Act and the Regulations.

43. The first substantive issue dealt with in the Act is the points that are to be awarded for the *specific goals* referred to in s 2(1)(d), namely contracting with formerly disadvantaged persons and implementing RDP programmes.

44. There can be no doubt that the 10 (or 20) points contemplated in s 2(1) are in respect of the specific goals referred to in s 2(1)(d). Significantly, s(1)(d) says that the two specific goals expressly identified therein may be "included" as such. This makes it clear that the two identified goals are not the only specific goals contemplated by s 2(1)(d): s 2(1)(d) contemplates that there could be other specific goals. However, a second issue arises. It is this. Are the specific goals contemplated in s 2(1)(e) the specific goals contemplated in s 2(1)(d).

If they are, then the points allocated for all those specific goals must be taken into account for the purposes in the computation contemplated by s 2(1)(b). The question arises because s 2(1)(e) simply says that any specific goal for which a point may be awarded must be specified in the invitation to submit a tender. One possible interpretation of sections 2(1)(d) and (e) is that the same specific goals are referred to in each of the provisions. However, another possible interpretation is that sections 2(1)(d) and (e) contemplate different specific goals. This would be based on the following considerations. First, the wording of s 2(1)(e) suggests that the specific goals referred to therein are not those referred to in s 2(1)(d). If the goals contemplated in s 2(1)(e) are those specified in s 2(1)(d), one would have expected s 2(1)(e) to have said something like: the specific goal referred to in s 2(1)(d) must be specified in the tender document. Second, s 2(1)(f) refers to the criteria "contemplated in paragraphs (d) *and* (e) [Emphasis added.] Third, s 2(2) stipulates: any goals *contemplated in s 2(1)(e)* must be measurable, quantifiable and monitored for compliance. Whilst I accept that it is possible to regard the specific goals in s 2(1)(d) and (e) as being the same, in my view, the indications that I have referred immediately above suggest that the specific goals referred to in s 2(1)(e) are different from those specified in s 2(1)(d).

45. Based on the matters referred to above, I am of the respectful view that factors other than previous disadvantage and RDP programmes may be taken into account in the assessment and allocation of tenders. But they must meet the requirements set in s 2: they must be objective, measurable, quantifiable and capable of being monitored. In addition, they must be specified in the tender document. It would appear that these requirements have been included so that it can be determined objectively whether the award eventually made is justifiable on an objective basis. The inclusion of these requirements also ensures that the process by which tenders are awarded is transparent, which is also a requisite of s 217(1).

46. In addition, the points that may be allocated in respect of such factors are not included in the 10 (or 20) that are set aside in respect of the specific goals mentioned in s 2(1)(d). Read in the context of s 2 as a whole, only 10 (or 20) points may be allocated in respect of the preference points allocated in respect of the specific goals set out in s 2(1)(d). On this reading, although the other specific goals must be allocated points, these are not the *preference points* contemplated in s 29!)(d). However, in order to be allocated points, the goals must be measurable, quantifiable and monitored for compliance. And, they must be specified in the tender document.

47. I must point out that, even if the views expressed above are not correct, it is not without significance that s 2(1)(f) allows for a tender to be awarded to a tenderer who has not scored the highest points, provided that objective criteria other than those contemplated in s 2(1)(d) and (e) justify such a departure. In my view this is an express indication that other criteria may be taken into account in the allocation of tenders. However, there must objective criteria that justify not awarding the tender to the tenderer who scores the highest points. In other words, factors other than those mentioned in s 2(1)(d) may be taken into account in the allocation of tenders. Those factors are not specified or identified. This would suggest that if they were included in the system contemplated in s 217(1) and the policy contemplated in s 217(2), the system and policy would not be invalid under the PPPFA or the Regulations.

48. Insofar as the Regulations are concerned, as pointed out above, they may not be used to interpret either s 217 or the provisions of the Act. But the matters that they permit to be taken into account – namely functionality and local content – are quite revealing. They deal with matters other than preference and in a rather radical manner: they allow for minimum thresholds to serve as exclusionary mechanisms.

49. In my respectful view, the provisions of s 2(1)(e) and (f) of the Act and of Regulations 4 and 9 appear to confirm that s 217(1) simply ensures

that the procurement system devised by an organ of state is imbued with the values referred to therein. So long as its procurement system reflects those values, an organ of state is at large to decide what factors it would take into account in its adjudication of tenders. Of course, because the entire tendering process constitutes administrative action, as contemplated in s 33 of the Constitution, the system will have to be lawful, reasonable and developed in a procedurally fair manner.

50. The way is now clear to deal with the specific questions that I have been asked to answer. I deal with the questions in the order in which they appear in the Instructions of my learned attorney.

Is it possible to include thresholds or further criteria in addition to the thresholds of functionality and local production and content (where applicable) as provided for in the Regulations.

51. Having regard to the analysis undertaken above, I am of the view that in principle matters relating to Supplier Development (SD) may be factored into Transnet's procurement system and policy. This conclusion is based on the following views expressed above. First, the Regulations expressly provide for thresholds based on functionality and local content. It however must be borne in mind that it is s 217(1) that permits Transnet to develop and implement its procurement

system. The PPPFA and the Regulations are aimed, primarily though it transpires not exclusively, at setting out the framework within which Transnet's *preferential procurement policy* may be implemented. The Regulations permit thresholds for functionality and local production and content. It does not expressly say that those are the only thresholds that may be applied. Nor does such a restriction appear to be implied. In my view, considering the applicable statutory regime in its entirety, it does not appear that functionality and local production and content constitute a closed list of thresholds. Provided a particular factor, or set of factors, can be shown objectively to be justifiable and the system as a whole is fair, equitable, transparent, competitive and cost-effective, and in addition the factor or factors are measurable, quantifiable and monitored for compliance, and are clearly specified in the invitation to tender, I am of the view that they do not violate the governing statutory regime or any of its provisions.

52.

Are the thresholds for functionality and local content the only permissible thresholds in terms of PPPFA methodology or may other thresholds also be used.

53. I have already indicated that in my view, functionality and local content do not constitute a close list of criteria that may be used as thresholds. But for any other criterion to constitute a valid threshold there would have to be a valid justification. In addition, the outcome must be one that can reasonably be produced by a system that is fair, equitable, transparent, competitive and cost-effective.

May Transnet use Supplier Development, Further Recognition Criteria or the B-BBEE scorecard as a threshold?

54. In my view, Transnet may use SD as a threshold. Insofar as SD is concerned, care must taken to ensure that the factors that are taken into account when using it as a threshold do not include factors in respect of which preference points may be awarded. Otherwise, issues that are contemplated to be preferences will be elevated to thresholds. I may also point out that in my respectful view, SD may also be used as a preference, However, in that case it must be indicated in the tender document what score will be allocated for it as a separate criterion and what factors will be taken into account when determining SD. In addition, the question of "double counting" may come into place if SD is used as a preference. Having regard to the PPPFA and the Regulations, in my view Transnet may not use FRC or B-BBEE as a threshold. This is because s 217(2) provides that these

may be used as preferences. By implication, it appears to me that they may not be used as exclusions.

May Transnet utilise "set asides", on a case by case basis, in sectors that have been historically lagging behind in terms of transformation? In other words, may Transnet limit participation in a bid process to persons previously disadvantaged by unfair discrimination e.g. black owned companies, black women owned companies, exempted micro enterprises, persons with disabilities, persons in rural areas, etc?

55. The requirements of a valid procurement system are set out in s 217 of the Constitution: the system must be fair, equitable, transparent, competitive and cost-effective. In my view, central to such a system is that it does not unfairly exclude a person or group of persons. To the extent that preferences are allocated, these must be in terms of the statutory provisions that have been enacted. The statutory provisions do not provide for set asides. I very much doubt that the principle of set asides will pass constitutional muster. Of course, full use may be made of what is permitted by the s 2 of the Act and the Regulations.

Summary of conclusions

56. For the sake of convenience, I summarise the conclusions to which I have come in respect of the specific issue that I have been requested to address:

- Transnet's procurement system may include thresholds or further criteria in addition to the thresholds of functionality and local production and content (where applicable) as provided for in the Regulations, provided that when the system is assessed as a totality it meet the requirements of s 217(1).

- Whilst Transnet may use Supplier Development, as a threshold, it may not use Further Recognition Criteria or the B-BBEE scorecard as a threshold.

- It is unlikely that the principle of set asides will pass constitutional muster.

Overall conclusion

57. The governing regime created by the applicable statutory matrix does not on the face of it encourage organs of state to use procurement to promote the goal of a fairer and more equal society, certainly in respect of economic opportunities. If anything, it is likely to promote legal challenges to attempts by organs of state to promote those ends.

58. But Transnet is not without remedies. It is still entitled, under the PPPFA and the Regulations to seek exemptions in respect of specific matters. It should motivate these through a memorandum to the Minister and perhaps invoke the provisions of s 41 of the Constitution to address its concerns. It will find support for its concerns in the judgment of Ngcobo J in *Bato Star* (supra).[20]

59. In addition, Transnet should develop its procurement system and preferential procurement policy in as comprehensive a manner as possible and submit it to the Ministry of Finance as a means of gaining acceptance for it. This should be the basis on which it seeks the requisite exemptions. The advantage of that approach is that if its system or policy is challenged, it will be able to rely on that document in defence of its system and policy.

60. Finally, I would have preferred a little more time to set out my views on these rather complex matters. I appreciate however that the matter is somewhat urgent and submit this Opinion moreorless within the time specified.

61. Should there be matters arising, I will deal with them upon request by my learned Attorney.

V Soni SC

[20] The whole judgment of Ngcobo J is instructive. I respectfull refer especially to the following paragraphs: 72 to 77; and 88 to 107,

12 March 2013

COMMISSION OF INQUIRY INTO STATE CAPTURE

ANNEXURE PV 4

COMMISSION OF INQUIRY INTO STATE CAPTURE

PV 4

Peter Volmink **Transnet Corporate JHB**

From: Glenn Penfold <glenn.penfold@webberwentzel.com>
Sent: 28 March 2019 12:10 PM
To: Glenn Penfold
Subject: FW: PPPFA
Attachments: Opinion Vas Soni (2).doc

From: Achmat Toefy [mailto:achmat.toefy@webberwentzel.com]
Sent: 15 March 2013 10:28
To: Peter.Volmink@transnet.net
Cc: glenn.penfold@webberwentzel.com
Subject: FW: PPPFA

Dear Peter

Please find below the email we just sent to Vas. We have made some amendments (for instance taking out most of paragraph 7 and removing the pointed question to him to address the issues raised in paragraph 4). Glenn and I have had another long discussion this morning and feel it important that we at least raise the other concerns we have in the email to counsel.

We hope we have adequately expressed the comment you made in your email of this morning.

Could I get some clarity on the meeting of the Group Exco on Wednesday? - are you required to address matters there with the finalised opinion, or are you meant to only speak to the opinion, pending the final opinion to be fully addressed and tabled at the Board SubCom meeting of 27 March?

Kind regards
Achmat

From: Achmat Toefy
Sent: 15 March 2013 10:20
To: vassoni@mweb.co.za
Cc: Glenn Penfold
Subject: RE: PPPFA

Dear Vas

Thank you for your opinion and, in particular, for your quick turnaround time on it.

We have liaised with Peter Volmink on the content of the opinion. Further to your last paragraph in which you state that you will deal with any matters arising, we would like to raise certain issues in relation to the opinion, for your consideration. Some of the issues emanate from Peter while others arise from our reading of your opinion. Save for the issues identified in numbered paragraphs 3, 5 and 8 below in the "**less mundane**" section (and one or two others in the attachment), Peter is satisfied with Counsel's approach on SD.

Some of the issues are mundane typos while others are more substantive.

We therefore respectfully request that you consider these comments with a view to providing us with a finalised version of the opinion as soon as possible. We understand from Peter that the Group EXCO is meeting on 20 March 2013. Peter is to, in all likelihood, address matters relating to the opinion at that meeting.

The more mundane

1. In paragraph 4, at the end of the penultimate sentence, mention is made of "service development". We think this should be changed to "supplier development".
2. Para 9 - fourth sentence, the word "the" is missing just before the word "task".

3. Para 10, penultimate sentence- there are two commas, instead of one.
4. Para 11, last line, "in its totality" is repeated.
5. Para 19, 4th bullet - it seems to us that the reference to "price" should read "points".
6. Para 19, 5th bullet - the word "not" should be inserted between "did" and "score" in the second line.
7. Para 19, 6th bullet, 3rd sentence - the word "for" should be inserted before "a stipulated minimum".
8. Para 20, 4th sentence - the "or" to be replaced with "of" and should thus read "categories of preferences".
9. Para 21, first line - "instance" is misspelled.
10. Para 29, 4th sentence, the word "rise" is missing and should read "what rights they give rise to...".
11. Para 30, 3rd sentence, the word "of" should be deleted.
12. Footnote 16, the word "Education" is misspelled.
13. Para 37, 3rd sentence - the word "account" should be inserted after "taken into".
14. Para 41, 1st sentence - the reference to "s(1)(d)" should read "s2(1)(d)".

The less mundane

1. In the first and second sentences of paragraph 23 it is stated that Transnet has asked counsel to address issues relating to the PPPFA and the Regulations and "*In particular, they concern the types of specific goals referred to in the Act and how, according to the Regulations, functionality and local production and content are to be factored in in the adjudication and award of tenders.*" Respectfully, this question was not posed to Counsel. It seems to us that this sentence may be removed without affecting the remainder of the opinion.
2. Paras 37-39 - These paragraphs reflect the fulcrum argument upon which Transnet will rely for its inclusion of SD in its tender documents going forward. Please could you address the following potential difficulty in relation to section 217-
   a. Section 217(2) stipulates that section 217(1) "*does not prevent*" organs of state from implementing a procurement policy that provides for categories of preference and the advancement of HDIs. This wording, combined with the word "*must*" in section 217(1), suggests that the procurement system contemplated in section 217(1) must comply with each of the five principles listed in that subsection, with the only exception being those measures contemplated in subsection (2). We note that while the measures mentioned in subsection (2) are not, on our understanding, necessarily exceptions to the principles of fairness and equitability (as they promote substantive equality), they would seem to be exceptions to the principles of competitiveness and cost-effectiveness. The constitutional drafters therefore provided for an organ of state to put in place a system that deviates from the five principles, provided that it does so in accordance with the national legislation envisaged in section 217(3). Is it consistent with this framework to allow an organ of state to put in place a procurement system that deviates from one or more of the section 217(1) principles without the constraint of national legislation allowing for, and regulating, such deviation?
   b. SD will impact negatively on the price that the organ of state pays for the goods or services. While the principle of cost-effectiveness appears to denote value for money and is broader than simply the price of the goods or services (it includes, for example, the total cost of ownership), it would appear that the notion of cost-effectiveness is limited to value for money from the perspective of the contracting organ of state. The concept thus does not include laudable social and economic goals such as job creation and skills development. If this is the case, a procurement system involving SD would appear to deviate from the requirement of cost-effectiveness in section 217(1) and to thus, on the face of it, fall foul of that provision.
   c. While we note that there may be some scope for arguing that a particular procurement process may deviate from one of the section 217(1) principles in the interests of one or more of the other principles (e.g. low value contracts not being put out to tender thus sacrificing competitiveness for cost-effectiveness), this argument is somewhat more difficult to sustain in the context of a deviation across the whole procurement system (i.e. where Transnet applies SD in all or the majority of its tenders).
3. Paras 41 - 43: it seems that the analysis in the opinion relating to section 2(1)(d) and (e) assumes that the specific goals in (d) are different to those contemplated in (e). That is not how we read it. As we see it, subsection (d) is meant to be a shopping list of specific goals, which is admittedly not a closed list. However, (e) includes specific goals contemplated in (d) for which points are allocated in the 10 (or 20) points. So, the organ of state chooses the specific goals - which may include the goals listed in (d) - in respect of which it will allocate points as part of the 10 (or 20) points. This is reinforced by the prefacing section 2(1)(b) which states that in the preference points system, "*10 points may be allocated for specific goals contemplated in paragraph (d)*". Accordingly, the (e) specific goals for which points are allocated as part of the 10 points, are taken from a pool of specific goals contemplated in (d). The upshot of this approach is that the PPPFA does not contemplate taking into account factors other than HDIs and RDP Programmes as specific goals or that any additional goals must be allocated points out of the 10 (or 20). The conclusion reached in Counsel's paragraph 42 leads, on our reading, to the outcome that points outside of the 90/10 system may be allocated (potentially, for example, a 90/10/5 points system). On our reading, this is contrary to section 2 of the PPPFA

and the points calculation method set out in regulations 5 and 6. Client is not proposing to change the preference points system (or adding thereto). The issue is whether SD, FRC and BBBEE may be used as thresholds or prequalification criteria. We therefore respectfully disagree with this line of reasoning and client has requested that Counsel reconsiders this issue.

4. In paragraph 48 it is stated that - "*The Regulations permit thresholds for functionality and local production and content. It does not expressly say that those are the only thresholds that may be applied. Nor does such a restriction appear to be implied. In my view, considering the applicable statutory regime in its entirety, it does not appear that functionality and local production and content constitute a closed list of thresholds.*" By the same token, the Regulations do not specifically contemplate imposing SD as a threshold. It may be argued in this regard that the imposition of such a threshold undermines the structure, or specific provisions, of the Regulations, particularly given: (a) the Regulations' focus on price and BBBEE as determinants of successful tenders; (b) the use of the word "must" in regulation 4(5); (c) the deletion of the list of RDP goals for which points may be allocated (which appeared in the previous version of the Regulations) and their replacement with BBBEE as measured in terms of the Codes of Good Practice; (d) the fact that the only forward-looking socio-economic criterion provided for in the Regulations is local content, which is heavily regulated in regulation 9; and (e) the similarity between SD and local content as contemplated in regulation 9. Such an argument might seek support in the idea that that, as discussed above, a SD threshold deviates from the constitutional principle of cost-effectiveness and the power to impose such a threshold should thus not lightly be read into the Regulations.
5. The question above paragraph 49 is not a question posed to Counsel. With respect, it seems to us that both the question and the response conflate the distinct concepts of local production and content thresholds and the scores allocated for preference relating to HDIs and specific goals. An additional area of concern is the view expressed in this paragraph that points may be allocated for section 2(1)(f) factors. This seems contrary to the structure of ss(f) that contemplates an award being given to a person other than the highest scorer in terms of the 90/10 or 80/20 points system.
6. Paragraph 51 - Counsel states that section 217(2) provides for FRC and BBBEE as preferences and hence FRC and BBBEE may not be set as thresholds, which are exclusionary. We note that section 217(2)(a) speaks to "categories of preferences" while (b) speaks of measures aimed at the protection and advancement of HDIs. It seems to us that paragraph (b) applies in the context of FRC and BBBEE (as they are measures aimed at advancing HDIs). This paragraph does not speak to preferences and therefore would seem to be consistent with the use of thresholds.
7. The implication of your paragraph 51 is that SD is not a preference as contemplated in section 217(2). Please could you explain the reason for your view.
8. A related issue is that the manner in which Transnet measures SD includes criteria that are designed to provide preference to HDIs. We attach in this regard a summary of the criteria that are evaluated under SD. As you will notice, the criteria include, for example: the number of "Black owned" local suppliers in the value chain, the value of business to service providers with Black shareholding, the number and value of Black and Black-women training, the number of new skilled jobs for Blacks, Black-women and Black Youth as well as the promotion of persons with disabilities. It also includes other indirect preferences, e.g. procurement from EMEs and QSEs. Please could you consider whether there is a need for Transnet to remove certain of the criteria from its measurement of SD
9. Kindly provide a summary in the conclusion of the salient conclusions reached.

I also attach your opinion with comments and the odd correction directly from Peter Volmink.

Kind regards

Achmat and Glenn

Peter Volmink Transnet Corporate JHB

From: Glenn Penfold <glenn.penfold@webberwentzel.com>
Sent: 28 March 2019 12:11 PM
To: Glenn Penfold
Subject: RE: Meeting on 19 June

-----Original Message-----
From: Glenn Penfold [mailto:glenn.penfold@webberwentzel.com]
Sent: 13 June 2013 14:38
To: Peter.Volmink@transnet.net
Cc: Achmat.Toefy@webberwentzel.com
Subject: RE: Meeting on 19 June

Dear Peter

While we would have no difficulty in assisting Vas in preparing slides for his presentation, our understanding is that he would be presenting - and not us. As we understand it, the idea is for Vas to speak to the way in which he envisages that SD may be accommodated within the PPPFA framework. Given that we do not share his view on this issue, it would place us in an invidious position if we are to address this issue before other state-owned entities, some of which are also our clients. It would also not seem to serve Transnet's interests for us to present on this issue.

We would therefore suggest that we simply assist Vas in putting together the slides to which he will talk. Please let us know whether you are happy with that?

We are happy to discuss this.

Best regards

Glenn and Achmat

-----Original Message-----
From: Peter Volmink Coorporate JHB [mailto:Peter.Volmink@transnet.net]
Sent: 13 June 2013 13:15
To: Glenn Penfold
Subject: RE: Meeting on 19 June

Thanks Glenn

Would you, Achmat and Vas be able to have a power point presentation on your topic?

Regards
Peter

-----Original Message-----
From: Glenn Penfold [mailto:glenn.penfold@webberwentzel.com]
Sent: 13 June 2013 10:05 AM
To: Peter Volmink Coorporate JHB
Subject: Meeting on 19 June

Hi Peter

I got your message and tried to call you. We will certainly provide a finger lunch following the meeting.

Best

Glenn

DISCLAIMER: The information contained in this email and its attachments is both confidential and subject to copyright.
If you are not the intended recipient, you are hereby notified not to read, disclose copy or use the contents thereof in any manner whatsoever, but are kindly requested to notify the sender and delete it immediately.

This e-mail message does not create any legally binding contract between Transnet SOC LTD and the recipient, unless the contrary is specifically stated. Statements and opinions expressed in e-mails may not represent those of Transnet SOC LTD.
While Transnet will take reasonable precautions, it cannot give any guarantee or warrant that this email will be free of virus infections, errors, interception and, therefore, cannot be held liable for any loss or damages incurred by the recipient, as a result of any of the above-mentioned factors.

COMMISSION OF INQUIRY INTO STATE CAPTURE

ANNEXURE PV 5

COMMISSION OF INQUIRY INTO STATE CAPTURE

Annexure A

Main Changes to PPM 2012 – 2015

2012	2013	2015
Preferential Procurement included further recognition criteria, minimum B-BBEE thresholds, subcontracting minimum and set asides	Construction procurement rules incorporated into PPM	Revisions made with a view to: • Reduce timelines • Simplify and create efficiencies • Align to legislative changes • Further socio-economic objectives
Alignment to PPPFA insofar as local content is concerned	Alignment to PPPFA evaluation methodology	Annual procurement plan
SD included as part of the evaluation methodology	SD could only be used as a prequalification criterion, threshold or objective criterion	Introduction of the two envelope system
Demand planning and management was included	More emphasis on counter party risk management	Minimum requirements of a procurement strategy
Step by step guidance on how to evaluate a bid	Stipulating that the Acquisition Council (or higher approval bodies) has the authority to retrospectively approve emergency procurement procedures;	Thresholds for requesting 1, 2 and 3 quotes were increased to expedite the quotation process
Price formula to evaluate price based on a benhmarked price and not the lowest priced bid	Strengthening the rules relating to contract amendments.	Provision made for parallel evaluations
Contract management addressed in the PPM	As a general rule, Transnet will not allow service providers that were involved in the preparation of a scope of work or in prior stages of a particular procurement project to submit tender offers for that procurement project. This is due to the	Guidance on splitting of business

PV 5

PSV-0167

	unfair advantage they may gain as a result of prior knowledge of the project. This rule applies unless there are grounds for confinement. This rule does not apply fully in construction procurement: agents and contractors who prepare the scope of work for engineering and construction works contracts where the design and build contracting strategy is adopted, may submit bids to perform such work.	
Comprehensive guidance on Transnet's procurement mechanisms		Guidance on SD monitoring
Appointment of consultants and condonations removed from PPM – to be dealt with in separate directive as exceptions		Other contract options other than NEC can be used for construction contracts
Guidance on confinements and emergencies as "special cases" provided		Alignment to amended B-BBEE Codes of Good Practice
Restriction process		Alignment to the latest National Treasury Instruction Notes on Local Content in designated sectors
Piggybacking and consolidation of contracts		Alignment to the latest National Treasury Instruction Notes on Cost Containment
Unsolicited bids		

PSV-0168

ANNEXURE PV 6

COMMISSION OF INQUIRY INTO STATE CAPTURE

iSCM

TRANSNET

delivering freight reliably

INTEGRATED SUPPLY CHAIN MANAGEMENT

TRANSNET PROCUREMENT PROCEDURES MANUAL [PPM]

COMMISSION OF INQUIRY INTO STATE CAPTURE

Version 1

August 2012

PROCUREMENT PROCEDURES MANUAL

SECTION A Background and Context

SECTION B Procurement Planning

SECTION C Go To Market

SECTION D Evaluation and Adjudication

SECTION E Contract Management

SECTION F Governance Structures

Appendices

TABLE OF CONTENTS

SECTION A – BACKGROUND AND CONTEXT 7
CHAPTER 1 : INTRODUCTION 8
1.1 NATIONAL OBJECTIVES 8
1.2 INTEGRATED SUPPLY CHAIN MANAGEMENT ("iSCM") PROCUREMENT OBJECTIVES 8
1.3 iSCM CONTROL OBJECTIVES 9
CHAPTER 2 : DEFINITIONS, ABBREVIATIONS AND ACRONYMS 11
CHAPTER 3 : SCOPE AND EXCLUSIONS 17
3.1 PROCUREMENT PROCEDURES 17
3.2 COMPLIANCE WITH THE PPM 17
3.3 PURCHASING PROCEDURES 17
3.4 PPM EXCLUSIONS 17
3.5 APPLICATION 19
CHAPTER 4 : APPLICABLE LEGISLATION AND POLICIES 20
4.1 LEGISLATION 20
4.2 POLICIES 21
CHAPTER 5 : CODE OF ETHICS 26
5.1 SUPPLY CHAIN CODE OF ETHICS 26
5.2 CONFIDENTIAL INFORMATION AND TRADE SECRETS 27
5.3 INTELLECTUAL PROPERTY RIGHTS OF SUPPLIERS/TRANSNET 27
5.4 GIFTS AND GRATUITIES 28
5.5 DECLARATION OF INTEREST 29
5.6 FRAUD AND CORRUPTION 31
5.7 SANCTION 31
CHAPTER 6 : DELEGATION OF AUTHORITY FOR PROCUREMENT PROCESSES 32
6.1. HOW DELEGATION OF AUTHORITY WORKS 32
SECTION B – PROCUREMENT PLANNING 38
TYPICAL PROCUREMENT CYCLE 39
CHAPTER 7 : DEMAND PLANNING & MANAGEMENT 41
CHAPTER 8 : INTERNAL PROCUREMENT / INTERDIVISIONAL SUPPORT POLICY 51
8.1 INTERDIVISIONAL RELATIONSHIPS 51
8.2 STRATEGIC SPECIALIST UNITS 51
8.3 ABILITY OF TRANSNET ODS TO PERFORM 52
8.4 COMPULSORY UTILISATION OF SPECIALIST UNITS 52
8.5 INTERDIVISIONAL SUPPORT POLICY 52
8.6 MEMORANDA OF UNDERSTANDING 52
8.7 DISPUTES 52
8.8 SERVICE LEVEL AGREEMENT 52
8.9 INTERDIVISIONAL PRICING 53
8.10 NON-CORE BUSINESSES 53
8.11 AC INVOLVEMENT 53
CHAPTER 9 : CONTRACT OPTIONS 54
9.1 CHOICE OF CONTRACT 54
9.2 CONTRACTS FOR A PERIOD LONGER THAN TWO YEARS 55

9.3 STANDARD TRANSNET TERMS AND CONDITIONS OF CONTRACT 56
9.4 CONSOLIDATION OF CONTRACTS 56
9.5 CHOICE OF SALES/PURCHASE TERMS FOR IMPORTED GOODS (INCOTERMS) 56
CHAPTER 10 : PREFERENTIAL PROCUREMENT APPROACH AND DESIRED OUTCOMES 57
10.1 TARGETS 57
10.2 MECHANISMS 57
10.3 MEASUREMENT OF B-BBEE STATUS 60
CHAPTER 11 : LOCAL CONTENT 70
CHAPTER 12 : DETERMINING SD APPROACH AND DESIRED SD OUTCOMES 73
12.1 SD CATEGORIES 73
12.2 CATEGORISATION OF TRANSACTIONS INTO THE RIGHT SD QUANDRANT 74
12.3 SUPPLIER DEVELOPMENT (SD) EVALUATION CRITERIA 75
CHAPTER 13 : DETERMINING BID EVALUATION CRITERIA 79
13.1 CHOOSING AN APPROPRIATE EVALUATION METHOD 79
CHAPTER 14 : MAIN PROCUREMENT MECHANISMS 85
14.1 FACTORS TO CONSIDER IN SELECTING THE APPROPRIATE PROCUREMENT MECHANISM 85
14.2 PROHIBITED PRACTICES 87
14.3 THE QUOTATION SYSTEM FOR VALUES BELOW R2 MILLION REQUEST FOR QUOTATION ("RFQ") . 87
14.4 THE OPEN BID PROCESS (RFP) 90
14.5 APPROVED LIST PURCHASES 92
14.6 TWO-STAGE BIDDING SYSTEM (RFI/RFP PROCESS) 97
CHAPTER 15 : SPECIAL CASES 100
15.2 CONFINEMENTS 100
15.3 EMERGENCY PROCEDURE 103
15.4 HIGH VALUE TENDER PROCESS (HVTP) 104
15.5 UNSOLICITED BIDS 106
15.6 CONTRACT CONSOLIDATION 108
15.7 ACQUISITIONS ASSOCIATED WITH INCOME GENERATING CONTRACTS 111
SECTION C – GO TO MARKET 112
CHAPTER 16 : BID PREPARATION 114
16.1 COMPILING BIDS - GENERAL 114
16.2 EVALUATION CRITERIA IN BID DOCUMENTS 114
16.3 TIMEFRAMES 116
16.4 VALIDITY PERIOD 117
16.5 ESSENTIAL REQUIREMENTS IN BID DOCUMENT 117
16.6 SIGN-OFF OF BID DOCUMENTATION AND GO-TO-MARKET STRATEGY 119
CHAPTER 17 : BID ADMINISTRATION 120
17.1 PHASE 1: ISSUE OF BIDS 120
17.2 PHASE 2: RECEIPT AND SAFEGUARDING OF BIDS 125
17.3 PHASE 3: OPENING OF BIDS 127
17.4 PHASE 4: AMENDMENTS AND COMMUNICATION AFTER CLOSING DATE 129
SECTION D – EVALUATION AND ADJUDICATION 132
CHAPTER 18 : EVALUATION AND RECOMMENDATION 133
18.1 TEST FOR ADMINISTRATIVE RESPONSIVENESS 133
18.2 PREPARATION FOR EVALUATION 135
18.3 TEST FOR SUBSTANTIVE RESPONSIVENESS 137

18.4 EVALUATE THE BID AGAINST PRE-DETERMINED CRITERIA 138
18.5 FINAL EVALUATION 142
18.6 RECOMMENDATION 146
CHAPTER 19 : POST TENDER NEGOTIATION 148
19.1 POST TENDER NEGOTIATION (PTN) 148
19.2 AUTHORITY TO ENGAGE IN PTN (transactions falling within AC jurisdiction) 148
19.3 STANDING AUTHORITY TO PTN (transactions falling below AC jurisdiction) 149
19.4 PTN PROCESS 149
19.5 APPROVAL TO AWARD BUSINESS AFTER PTN 150
CHAPTER 20 : ADJUDICATION 151
20.1 GENERAL PRINCIPLES 151
20.2 THE ROLE OF THE AC DURING ADJUDICATION 151
20.3 RISK EVALUATION 152
20.4 SPLITTING OF BUSINESS 152
20.5 DISAGREEMENT REGARDING AWARD OF BUSINESS 152
20.6 NON AWARD / CANCELLATION OF BIDS 152
SECTION E – CONTRACT MANAGEMENT 154
CHAPTER 21 : AWARD OF BUSINESS AND CONTRACTING PROCESS 155
21.1 APPROVAL OF ACCEPTANCE OF BIDS NOT TO BE ANTICIPATED 155
21.2 DECISION TO ACCEPT BIDS OR OFFERS 155
21.3 NOTICES OF ACCEPTANCE AND NON-ACCEPTANCE OF BIDS TO BE FINALISED 155
21.4 APPLICATIONS RECEIVED IN TERMS OF PAIA 156
21.5 DELIVERY OF ACCEPTANCE TO BIDDER 156
21.6 FORMAL WRITTEN CONTRACT (LETTER OF AWARD) 156
21.7 CONTRACTING WITH SECOND-RANKED BIDDER 158
21.8 APPROVAL OF CONTRACTS FOR PERIODS EXCEEDING TWO YEARS 159
CHAPTER 22 : POST AWARD CONTRACT MANAGEMENT 160
22.1 POST-AWARD FUNCTIONS 160
22.2 SERVICE DELIVERY MANAGEMENT 161
22.4 CONTRACT ADMINISTRATION 168
22.5 INDICATIONS OF SUCCESSFUL CONTRACT MANAGEMENT 173
CHAPTER 23 : BLACKLISTING PROCEDURES AND GUIDELINES 175
23.1 DEFINITION 175
23.2 GROUNDS FOR BLACKLISTING 175
23.3 WHO MAY BE BLACKLISTED? 176
23.4 FACTORS TO CONSIDER BEFORE TAKING THE DECISION TO BLACKLIST 177
23.5 GUIDELINES FOR DETERMINING AN APPROPRIATE PERIOD FOR BLACKLISTING 177
23.6 BLACKLISTING PROCEDURE 178
23.7 APPEAL AGAINST DECISION TO BLACKLIST 179
23.8 RESCISSION OF A DECISION TO BLACKLIST 179
23.9 ENFORCEMENT OF THE TRANSNET LIST OF EXCLUDED BIDDERS 179
23.10 ANCILLARY ACTIONS 179
SECTION F – GOVERNANCE STRUCTURES 181
CHAPTER 24 : FUNCTIONS OF GOVERNANCE STRUCTURES AND DEPARTMENTS 182
24.1 MAIN ACQUISITION COUNCILS (Main AC) 182
24.2 TRANSNET ACQUISITION COUNCIL (TAC) 193
24.3 PROCUREMENT OMBUDSMAN 194

24.4 CAPITAL INVESTMENT COMMITTEE (CAPIC) 195
24.5 BOARD ACQUISITIONS AND DISPOSALS COMMITTEE (BADC) 196
24.6 INTEGRATED SUPPLY CHAIN MANAGEMENT (ISCM) 199

APPENDIX A: CONTROL FRAMEWORK
APPENDIX B: ROLES & RESPONSIBILITIES
APPENDIX C: ICC INCOTERMS 2010
APPENDIX D: B-BBEE PREFERENCE POINTS CLAIM FORM
APPENDIX E: DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT (SBD 6.2)
APPENDIX F: MATRIX FOR APPROVAL OF EMERGENCY PROCEDURES

ISSUED BY:

Garry Pita
Group Chief Supply Chain Officer
Date: 6 SEPTEMBER 2012

COMMISSION OF INQUIRY INTO STATE CAPTURE

SECTION A: BACKGROUND AND CONTEXT

Chapter 1: Introduction

- National Objectives
- iSCM Procurement Objectives
- iSCM Control Objectives

Chapter 2: Definitions, Abbreviations and Acronyms

Chapter 3: Scope and Exclusions

Chapter 4: Applicable Legislation and Policies

Chapter 5: Code of Ethics

Chapter 6: Delegation of Authority for Procurement Processes

SECTION B Procurement planning

SECTION C Go to Market

SECTION D Evaluation and Adjudication

SECTION E Contract Management

Functions of Governance Structures

Appendices

CHAPTER 1 : INTRODUCTION

Transnet SOC Ltd ("**Transnet**") is fully owned by the South African government and operates as a corporate entity. It is aimed at supporting and contributing to the country's freight logistics network by developing South African industry, reducing the cost of doing business, ensuring efficient and profitable operations, whilst at the same time promoting critical developmental and empowerment objectives.

Section 217 of the Constitution Act 108 of 1996 and section 51(1)(a)(iii) of the Public Finance Management Act 1 of 1999 ("**PFMA**") stipulate that Transnet must have and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

Transnet's Supply Chain Policy and this Procurement Procedures Manual ("**PPM**") give effect to these statutory requirements. The aim of the Supply Chain Policy is to ensure that Transnet gets value for money in the procurement of Goods and Services in order to fulfil its mandate whilst redressing the economic imbalances that have been caused by unfair discrimination in the past. Transnet shall therefore carry out its procurement processes as cost-effectively as possible whilst meeting its commercial, regulatory and socio-economic goals. The Policy ensures a coherent framework within which procurement principles and compliance controls are applied across Transnet.

The PPM seeks to operationalise the objectives of the Supply Chain Policy.

1.1 NATIONAL OBJECTIVES

The Transnet supply chain function should firstly be seen in the national context. Government's economic development policies such as the New Growth Path ("**NGP**") emphasise the role that State Owned Companies ("**SOCs**") should play as key agents in a developmental state to accelerate national development by leveraging their procurement spend to ensure that key goals such as job creation, skills transfer and empowerment take place. As one of the major State Owned Companies, Transnet has a pivotal role to play in ensuring that Government's economic development policy goals are met.

1.2 INTEGRATED SUPPLY CHAIN MANAGEMENT ("iSCM") PROCUREMENT OBJECTIVES

1.2.1 Transnet's procurement objectives are ensuring security of supply of goods and services that Transnet requires to fulfil its mandate, and achievement of key socio-economic goals, eg. job creation, empowerment. All Transnet's procurement activities shall be implemented in line with the following best practice principles:

1.2.2 Fairness and Transparency:

- equal treatment of bidders;
- openness and accountability; and
- ethical conduct.

1.2.3 Social Equity:

- Broad-Based Black Economic Empowerment ("B-BBEE"), Preferential Procurement and Supplier Development.

1.2.4 Value for money:

- competitiveness; and
- cost effectiveness.

1.2.5 Due regard must be given to the importance of:

a) the promotion of Transnet's Interdivisional Support Policy; and

b) the development, promotion and support of Transnet's Supply Chain Code of Ethics, which requires that all commercial conduct be based on ethical and moral values and sound business practice. This value system governs all commercial behaviour within Transnet.

1.2.6 Transnet will strive to procure Goods and Services which contribute to its mission: To anticipate and satisfy the requirements of its customers for a highly responsive and cost-effective transportation Service. In order to achieve this, Transnet is committed to working with suppliers who share its goals of continuous improvement in service, Quality and reduction of Total Cost of Ownership (TCO).

1.2.7 Transnet prefers not to do business with any agents ("middlemen"), who do not add significant value to the supply chain. Transnet would rather contract directly with the overseas and/or local Original Equipment Manufacturers (OEMs). In the case of dealing with overseas OEMs for relevant SD targeted commodities such as rolling stock and port equipment, Transnet will negotiate meaningful SD local capability and capacity building initiatives as part of their supply agreements with Transnet.

1.2.8 Transnet commits to clarity in its communication of requirements. It furthermore commits to being professional, courteous, fair, factual and responsive in its business dealings.

1.2.9 Transnet supports good corporate governance by ensuring the preservation of the highest standards of integrity, objectivity, fairness, efficiency and professionalism.

1.2.10 The purpose of one Supply Chain Policy and a uniform set of procedures for the whole Transnet Group is to facilitate a uniform interpretation internally, whilst complying with the requirements of Section 51(1) (a) of the PFMA and Section 217 of the Constitution.

1.3 iSCM CONTROL OBJECTIVES

Transnet's iSCM function is aimed at achieving the following control objectives:

- *only* Goods and Services required by the organisation are acquired;
- *all* Goods and Services required by the organisation are acquired;
- The demand for Goods and Services is appropriately planned and managed;
- Goods and Services required are acquired from the most appropriate supplier at the right time, right cost and right Quality;
- critical socio-economic objectives such as B-BBEE, job creation, skills transfer, etc are achieved;
- transactions are properly accounted for and approved (timeously, accurately and completely);
- accurate and timeous information will be produced for management, ensuring the integrity of the process;
- overall processes exhibit integrity and are efficient in meeting supply chain objectives in relation to strategy;
- optimum working capital balances for inventory and cash will be maintained; and
- all Goods and Services acquired are managed from demand to finalisation considering appropriate security.

NOTE: The detailed Business Critical Activities (BCAs) and Business Critical Controls (BCCs) derived from the above iSCM Control Objectives are attached hereto as Appendix A *(Control Framework)*.

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 2 : DEFINITIONS, ABBREVIATIONS AND ACRONYMS

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Acceptable Bid	Any bid which, in all respects, complies with the specifications and conditions of bid as set out in the bid document
Acquisition Council [AC]	The main Acquisition Council of an Operating Division, Specialist Unit or Business. Unless specifically stated otherwise "AC" also includes sub-Acquisition Councils operating under the auspices of the ACs and which caters for transactions falling below the minimum threshold of the main AC, e.g. Acquisition Councils operating on a local or regional basis, as well as the TAC catering for Corporate Head Office and transversal contracts
Advance Payment Guarantees [APGs]	is a guarantee issued by a financial institution, on behalf of a supplier to a buyer, in relation to any advance payment that is made by the buyer to the supplier to allow the work to commence. The guarantee protects the buyer against the risk of non-performance as the buyer can claim reimbursement of the advance payment against the guarantee in such a case
Advertisement	A public invitation to submit bids for the provision of Goods or Services
Alternative Bid	Is a bid that purports to satisfy a stated need but does not fully comply with the laid down specification of the RFX. Alternative Bids are allowed at the discretion of Transnet
B-BBEE	Broad-Based Black Economic Empowerment
B-BBEE Enterprise	Any supplier or contractor who has been rated anything from a Level 8 (10 % recognition level) to a Level 1 (135% recognition level), as defined in the B-BBEE Act and Codes of Good Practice issued by the DTI
Bid	A written offer in a prescribed form in response to an invitation by Transnet for the provision of Services, works or Goods, through price quotations, advertised open bids, approved lists, confinements or proposals
Bidder	Any person/Enterprise which has submitted a Bid
Black People	is a generic term which means Africans, Coloureds and Indians
Board Acquisitions & Disposals Committee [BADC]	A sub-committee of the Transnet Board of Directors tasked with providing oversight and approval for acquisitions and disposals falling within its delegation of authority
Board of Directors [BOD]	The Board of Directors of Transnet SOC Ltd
Buyer	Any person in Procurement or iSCM in any Transnet entity, who has the necessary delegated powers to undertake specific procurement functions with regard to transactions falling within his/her DoA, i.e. the R-value of the transaction

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Carrier	Any person who, in a contract of carriage of goods, undertakes to perform or to procure the performance of carriage, by rail, road, sea, air, inland waterway or by a combination of such modes (used in definitions of Incoterms)
Centre(s) of Excellence [COE(s)]	Cross-divisional teams strategically focusing on a particular functional area. They focus on tactical issues relating to the functional area, and are aimed at identifying and leveraging on the areas of excellence in Transnet. Key strategic objectives will be executed through the COEs with a risk mitigation plan supported by Enterprise Risk Management (ERM)
Chief Executive Officer [CEO]	The Chief Executive Officer at the head of a Transnet Division with appropriate delegated authorities which are in line with the Transnet Group Delegation of Authority (Group Limits of Authority)
Chief Financial Officer [CFO]	A Chief Financial Officer in an Operating Division of Transnet
Construction Industry Development Board [CIDB] bid/contract	Any construction related bid/contract, as defined in, and regulated by the Construction Industry Development Board, by virtue of the CIDB Act. This includes new construction activities as well as the maintenance of existing civil, mechanical or electrical structures
Confinement	A procurement process restricted to one or a limited number of Bidders
Consultant	A person, company or a close corporation that provides expert or specialised advisory skills / services. A consultant does not supply the ultimate end product, but provides a recommendation of the best solution to a specific need based on his/her expertise.
Chief Procurement Officer [CPO]	The Chief Procurement Officer of a Division of Transnet or a Specialist Unit
Cross Functional Evaluation Team [CFET]	A team that is involved in the evaluation of bids regarding transactions of a high value or where the quality / functionality criteria is complex and a simple yes /no answer on technical compliance is not possible or viable.
Cross Functional Sourcing Team [CFST]	A team that is involved in the procurement of transactions of a high value or where the quality / functionality criteria are complex. As they represent various functions, a holistic overview over the process will be ensured.
Delegation of Authority [DoA]	The extent of authority required in order to implement certain actions by or on behalf of the company, including any sub-delegation of authority where permitted. This includes the power to retrospectively authorise, condone or rescind a decision already taken by a sub-delegate.
Exempted Micro Enterprise [EME]	An enterprise with an annual turnover of less than R5 million, as defined by the DTI's Codes of Good Practice
Expression of Interest [EOI]	Means a request for Bidders to register their interest in providing specified Goods or Services and to submit their credentials so they may be invited to submit a Bid should they qualify or are selected to do so.

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Enterprise	A trading business (a company, close corporation, partnership or any other form of business) external to Transnet.
Entity	Used in the Transnet context to describe an internal Transnet Operating Division, Specialist Unit, Transnet business or the various Group Functions comprising the Corporate Centre
Fronting	A deliberate circumvention or attempted circumvention of the BBBEE Act and the Codes. Fronting commonly involves reliance on data or claims of compliance based on misrepresentations of facts, whether made by the party claiming compliance or by any other person
Fruitless and Wasteful Expenditure	Expenditure that was made in vain and could have been avoided had reasonable care been taken. The paying of exorbitant prices which are not market related is also regarded as fruitless and wasteful expenditure
Further Recognition Criteria (Current) [FRC Current]	A mechanism used to evaluate preference, based on the extent to which a bidder's current B-BBEE status in terms of ownership, management control and employment equity meets or exceeds a stipulated minimum target.
Further Recognition Criteria (Future) [FRC Future]	A mechanism used to evaluate preference based on the extent to which an enterprise commits to improving or sustaining its B-BBEE performance over the contract period in excess of stipulated minimum targets. These criteria focus on ownership, management control, employment equity, preferential procurement and enterprise development.
Goods	Any physical object or objects which has value, whether raw or processed, movable or immovable
Group	All Operating Divisions, Specialist Units, Businesses as well as the various different Group Functions comprising the Corporate Centre
Group Chief Executive [GCE]	The person in the Corporate Centre appointed as the Transnet Group Chief Executive, duly appointed by the Minister of Public Enterprises, or the person acting in his/her stead, at any given time, in terms of a proper mandate
Group Chief Financial Officer [GCFO]	The Group Chief Financial Officer in the Group Corporate Head Office, who reports directly to the GCE, or the person acting in his/her stead, at any given time, in terms of a proper mandate
Group Chief Supply Chain Officer [GCSCO]	The General Manager who heads up the integrated Supply Chain Management function in the Corporate Head Office, or the person acting in his/her stead, at any given time, in terms of a proper mandate
High Value Tender Process [HVTP]	A process that is used in the procurement of high value goods/services. This process includes a number of gateway reviews during key steps of the tender process, in order to ensure that any flaws in the process are detected timeously
IC^3 Supplier Development Matrix	A framework utilised to categorise SD opportunities on a matrix based on their value, extent of industrial leverage and strategic importance to Transnet. The matrix is adapted from the DPE Supplier Classification Matrix focused on **I**ncreased **C**ompetitiveness, **C**apability and **C**apacity

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Imported content	That portion of the Bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry
Incoterms	(ICC Incoterms 2010) means, in relation to international trade (sale and purchase of Goods), the globally accepted purchase terms for Goods, used to indicate the costs to be incurred by the seller and the buyer and the point at which the risk of the Goods passes from the seller to the buyer See Appendix C for detailed definitions of all Incoterms
Integrated Supply Chain Management [iSCM]	The Integrated Supply Chain Management function as a whole including all Operating Divisions and Centres of Excellence
Irregular Expenditure	Expenditure incurred in contravention of, or that is not in accordance with a requirement of any applicable legislation, including the PFMA
Letter of Award	Is issued when a Bidder is selected as the Successful Bidder. The letter of award informs the Successful Bidder unequivocally that he/she was awarded the business
Letter of Intent (LOI)	Is issued when a Bidder is selected as the Preferred Bidder. The LOI informs the Preferred Bidder of Transnet's intention to negotiate and conclude a contract with it
Local Content (LC)	The portion of the Bid price or quotation which is not included in the Imported Content, provided that local manufacture does take place
Manager	Means any employee in Transnet, by whatever designation he/she is known, who has been delegated certain specific powers in terms of a proper Delegation of Authority
Material Amendment	An amendment which increases the scope, cost or risk of a contract by more than 10% of the original contract value
Market Demand Strategy (MDS)	The Transnet strategy to invest in capital infrastructure in order to meet market demands for increased efficiency and effectiveness in delivery of Transnet's services
Non-Disclosure Agreement [NDA]	A confidentiality agreement between two or more parties
Open Bid	A public request to do business which has been properly advertised and to which any member of the public can submit a Bid
Operating Division [OD]	An operating division of Transnet, namely TFR, TPT, TNPA, TPL and TRE
Parcelling	The practice of deliberately splitting business into smaller portions to keep the transaction value within one's own Delegation of Authority, or to keep it below the threshold of an AC or a person with higher Delegation of Authority

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Parent Company Guarantee	A guarantee by a parent company of a supplier's performance under its contract with a buyer, where the supplier is a subsidiary of the parent company.
Performance Bonds (PBs)	A performance bond from a bank guarantees performance under a contract from commencement to completion. The bank issuing the performance bond undertakes to pay a specified sum of money to the buyer if the supplier does not fulfil its contractual obligations.
Post Tender Negotiation [PTN]	Negotiations between Transnet and one or more shortlisted Bidders after the Bids have been evaluated, but before the business has been awarded
Preferred Bidder	Means a Bidder that has been identified through an evaluation process as the Bidder with whom Transnet intends to conclude a contract subject to the successful completion of contract negotiations
Prequalification Criteria	These are criteria that have to be met for a Bid to be deemed as responsive, e.g. registration with a specific professional body, specific accreditation, etc
Qualifying Small Enterprise [QSE]	An enterprise with a turnover between R5m and R35m, as defined by the DTI's Codes of Good Practice
Quality (Functionality)	The totality of features and characteristics of Goods or Service that bears on its ability to satisfy a stated or implied needs
Rental or Lease	The use of Goods and/or moveable assets for a period and for consideration (compensation)
Request for Information [RFI]	An invitation to a broad base of potential suppliers to provide written information about their capabilities to meet a stated Transnet need. An RFI is primarily used in instances where Transnet is not clear about the precise specifications and/or scope of work required to meet its needs for specified Goods or Services. The information received through an RFI process is typically used to pre-qualify suppliers for consideration before an RFP for the Goods/Services is issued
Request for Quotation [RFQ]	Request for Quotation is used for transactions <R2m. However, CEOs may at their discretion lower the quotation limit
Request for Proposal [RFP]	Request for Proposal is used on the open Bid process i.e. for transactions > R2 million. However, CEOs may at their discretion lower the minimum threshold for open Bids
Request for ... [RFX]	A generic term which can be used interchangeably with either RFI, RFQ or RFP
Service	The provision of labour or work, including knowledge-based expertise, carried out by hand, or with the assistance of equipment and plant
SOC	State Owned Company
Supplier Development (SD)	Improving the socio-economic environment as required by the NGP by creating competitive local suppliers via Enterprise Development, the Competitive Supplier Development Programme and other initiatives such as Preferential Procurement. This results in a reduction in capital leakage and creates a supply base that can be competitive to market its Goods on the international market leading to

TERM	DEFINITION, ABBREVIATION OR ACRONYM
	increased exports.
Successful Bidder	Means a Bidder that has been identified as the Bidder to which business has been awarded
Tender Evaluation and Recommendation Report [TEAR]	A report that must be submitted by the evaluation team to the AC setting out an overview of the bid evaluation process, evaluation methodology, reasons for elimination of Bidders, a recommendation for the award of the tender as well as all supporting evaluation scorecards
Transnet Acquisition Council [TAC]	Acquisition Council catering for Corporate Head Office procurement and Centre-led transversal procurement
Transnet Capital Projects [TCP]	Transnet Capital Projects - a Specialist Unit of Transnet
Transnet Freight Rail [TFR]	Transnet Freight Rail - an Operating Division of Transnet
Transnet National Ports Authority [TNPA]	Transnet National Ports Authority - an Operating Division of Transnet
Transnet Pipelines [TPL]	Transnet Pipelines - an Operating Division of Transnet
Transnet Port Terminals [TPT]	Transnet Port Terminals - an Operating Division of Transnet
Transnet Properties(TP)	Transnet Properties – a Specialist Unit of Transnet
Transnet Corporate Centre [TCC]	The Head Office of Transnet SOC Ltd
Transnet SOC Ltd	Transnet SOC Ltd, Registration No. 1990/000900/30 incorporated in terms of the Companies Act 71 of 2008, as amended which includes all Operating Divisions, Specialist Units and/or subsidiaries
Transnet Rail Engineering [TRE]	Transnet Rail Engineering - an Operating Division of Transnet
Unsolicited Bid	A unilateral request from a person or enterprise to do business with Transnet without Bids or quotations having been invited by Transnet
Working day	Any day other than a Saturday, Sunday or public holiday
Year	Any defined period of 12 (twelve) consecutive months

Note: Words capitalised in the document have been defined in this Chapter.

CHAPTER 3 : SCOPE AND EXCLUSIONS

Save for the exclusions mentioned in Table 1 below and acquisitions that are governed by the Transnet Capital Projects (**"TCP"**) Construction Procurement Policy, Processes, Procedures and Methods Manual (the Construction Manual), the PPM is applicable to all acquisitions across the Transnet Group regardless of the value of the transaction. The Construction Manual has been aligned to the Construction Industry Development Board (**"CIDB"**) Act and Standards for Uniformity and applies to all construction-related acquisitions across Transnet. The PPM applies to construction-related acquisitions only where the Construction Manual is silent on an issue.

The PPM sets minimum standards for compliance, however, CEs and their duly appointed Acquisition Councils (**"ACs"**) may impose more stringent rules and thresholds than those laid down in the PPM.

3.1 PROCUREMENT PROCEDURES

Transnet's Procurement Procedures as encapsulated in this document (the **PPM**), aim to establish the framework within which procurement activities are to be conducted at Transnet. These procedures are derived from the Transnet Supply Chain Policy, and should be read in conjunction with delegated powers granted in terms of the Delegation of Authority Framework. Other formal procedural manuals, directives, circulars or practice notes may be issued from time to time, either from iSCM, or from an Operating Division (**"OD"**), AC or Group Function and these should be read in conjunction with this Manual. However, it must be noted that any directive that changes any substantive principles of the PPM will be issued only on approval from the BADC. Where any conflict arises between such directives and the **PPM**, the **later dated document** shall prevail.

3.2 COMPLIANCE WITH THE PPM

Subject to paragraph 3.4 below, all procurement within Transnet must be conducted in accordance with the PPM.

3.2.1 Non-compliance with the PPM will be regarded in a serious light as it could result in Irregular Expenditure and/or Fruitless and Wasteful Expenditure in terms of the PFMA.

3.2.2 Section 51(1)(e) of the PFMA places an obligation on Transnet to take the necessary appropriate action regarding acts of financial misconduct.

Failure to comply with the provisions of the PPM will lead to disciplinary action and depending on the severity of the non-compliance, possible dismissal and/or legal action. As a general rule, condonation of non compliance with procurement policies and procedures is not permitted in terms of the PPM.

3.3 PURCHASING PROCEDURES

These procedures cover the purchasing and supply of all Goods, Services (tangible and intangible), fixed assets and the appointment of consultants. The aforementioned are in respect of both Operational and Capital expenditure.

3.3.1 Ferrous and non-ferrous scrap

The process of appointing contractors for the disposal of ferrous scrap (steel) and non-ferrous scrap is subject to the PPM. Due to the high value income-generating nature of such disposals as well as the high risk of theft, the disposal of scrap is in addition governed by a separate, detailed "Scrap Disposal Policy and Procedures". This policy is available on the iSCM Transnet Intranet.

3.4 PPM EXCLUSIONS

The transactions and processes tabled below are excluded from this Procurement Procedures Manual:

TABLE 1

• Individuals (temporary staff), including contract workers employed by Transnet Human Resources. (However, the appointment of a recruitment agency, Consultant, consultancy firm or a firm providing a Service to Transnet must follow the **PPM**)
• Petty cash purchases, subject to such instructions as issued from time to time
• Inspection Services in connection with the procurement / sale of Goods / assets
• The rendering of Services by or to government departments, SOCs or other public entities provided that rates charged by such institutions are market related or certified as fair and reasonable
• Media advertising (excluding campaigns involving professional advertising agencies)
• Income generating transactions (i.e. where Transnet's infrastructure, etc. is utilised to provide a Service; including instances where cross-divisional support is engaged for strategic or other reasons. However, procurement relating to such income-generating contracts must follow the PPM - see Chapter 9 *(Contract Options)*
• Water and electricity which is supplied to Transnet, including the provision of Services, as well as the relocation of such Services as a result of Transnet's activities (e.g. the relocation of power lines or water mains due to the construction of a new railway line)
• Rates and taxes and other levies raised by local authorities or provincial administrations, both of which are excluded from these procedures, by virtue of the fact that they can only be obtained from the particular local authority, but which are for purposes of good corporate governance, paid by means of blanket orders, or other approved methods
• Purchase of Goods at auctions
• Sale of Goods at auctions but excluding the appointment of auctioneers
• Letting and hiring of dwellings, and acquisition and alienation of houses or acquisition of land for houses in terms of prescribed housing policy
• Letting and hiring, and acquisition and disposal of all immovable assets. Refer to the Transnet Group Delegation of Authority, available on the iSCM Transnet Intranet.
• Sponsorships and donations, which are strictly governed by Delegated Powers
• Disposal of non-core businesses by the Transnet Restructuring Department, which is strictly governed by the Restructuring Committee, a sub-committee of Transnet's EXCO. Such disposals are on the strict proviso that any employee of the Transnet Restructuring Department, a Transnet Board member or a senior Manager (or higher) in the Transnet Group or any of its divisions will be disqualified from the Bidding process for the said non-core businesses for a period of 18 months from the date of his/her exit from Transnet
• The disposal of all movable assets, e.g. the disposal of redundant PC equipment, cell phones, office equipment and furniture must be properly controlled in terms of the individual policies/procedures governing such disposals. These policies and procedures are available on the iSCM Transnet Intranet.
• The provision of degree or diploma certificates by tertiary institutions, attendance of training courses, seminars and conferences, provided that such transactions are approved by the person with the required DoA.
• Any such exclusions which a Transnet Division may apply for through iSCM and which have been duly approved by the Transnet Group Chief Executive ("**GCE**") or the Transnet Group Chief Financial Officer ("**GCFO**") in accordance with guidelines which may be issued from time to time.

3.5 APPLICATION

This version of the PPM applies to all new procurement processes which have been initiated on or after the commencement date of this document. Procurement processes initiated prior to the commencement date must be dealt with in accordance with the rules that were applicable at the time (i.e. the May 2009 version of the PPM).

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 4 : APPLICABLE LEGISLATION AND POLICIES

4.1 LEGISLATION

The Government of the Republic of South Africa, through the Department of Public Enterprise, is the sole shareholder of Transnet. The following legislation has been taken into consideration in the formulation of this document:

TABLE 2

LEGISLATION AND GOVERNMENT POLICY
• The Administrative Adjudication of Road Traffic Offences Act, 46 of 1998
• The Arbitration Act, 42 of 1965
• The Broad-Based Black Economic Empowerment Act, 53 of 2003 as amended, including the Department of Trade & Industry's Codes of Good Practice
• The Companies Act, 71 of 2008 as amended
• The Competition Act, 89 of 1998 as amended
• The Competitive Supplier Development Programme (CSDP)
• The Constitution of the Republic of South Africa Act, 108 of 1996
• The Construction Industry Development Board Act (CIDB Act), 38 of 2000
• The Conventional Penalties Act, 15 of 1962
• The Copyright Act, 98 of 1978
• The Currency and Exchange Act, 9 of 1933
• The Designs Act, 195 of 1993
• The Electronic Communications and Transaction Act, 25 of 2002
• The Framework for the Operationalisation of Government's Procurement Policies in State Owned Enterprises (dated 31 July 2001)
• The Industrial Policy Action Plan II
• The King III Report on Corporate Governance
• The Local Procurement Accord
• The National Ports Act, 12 of 2005
• The National Railway Safety Regulator Act, 16 of 2002
• The New Growth Path (NGP)
• The Occupational Health and Safety Act, 85 of 1993
• The Patents Act, 57 of 1978
• The Preferential Procurement Policy Framework Act (PPPFA), 5 of 2000 as amended, Regulations of 2011 - effective December 2011 (Transnet has applied for exemption and has been granted partial exemption for a period of 12 months. Further developments in this regard will be published in PPM Directives).
• The Prevention and Combating of Corrupt Activities Act, 12 of 2004 as amended
• The Promotion of Access to Information Act (PAIA), 2 of 2000 as amended
• The Promotion of Administrative Justice Act, 3 of 2000
• The Public Finance Management Act (PFMA), 1 of 1999 as amended (Transnet is not bound by the Supply Chain regulations issued in terms of this Act)

LEGISLATION AND GOVERNMENT POLICY
• The Promotion of Administrative Justice Act (PAJA), 3 of 2000 as amended
• The Second-Hand Goods Act, 6 of 2009
• The Standards Act, 8 of 2008
• The Trade Marks Act, 194 of 1993
• The Value Added Tax Act, 89 of 1991

4.2 POLICIES

4.2.1 General Overview of Transnet Policies

The following policies and procedures which are available on the Transnet Intranet are supplementary to this PPM and should be taken into consideration, where applicable. Parties using the PPM must apply the most recent edition of the documents listed in Table 3 below

TABLE 3

TRANSNET POLICIES AND PROCEDURES	LOCATION
• Transnet Code of Ethics	Company Secretary Intranet portal
• Cell phone Policy	ICT Intranet Portal
• PC Disposal Policy	ICT Intranet Portal
• Contracting Procedures Manual	iSCM Intranet portal
• Construction procurement policy, processes, procedures and methods within Transnet Capital Projects	TCP Intranet portal
• Declaration of Interest and Related Party Disclosure Policy	Company Secretary Intranet portal
• Delegation of Authority Framework	Company Secretary Intranet portal
• Gifts Policy	Company Secretary Intranet portal
• Supply Chain Policy	iSCM Intranet portal
• Procure to Pay Procedures(P2P)	iSCM Intranet portal
• High Value Tender Process	iSCM Intranet portal
• Records Management Policy	Company Secretary Intranet portal
• Reverse Logistics Procedure	iSCM Intranet portal
• Scrap Policy	iSCM Intranet portal
• Supplier Development Policy	iSCM Intranet portal
• Transnet Strategy for Broad-Based Black Economic Empowerment	iSCM Intranet portal
• Transnet Broad-Based Black Economic Empowerment Policy for Procurement	iSCM Intranet portal

4.2.2 Preferential Procurement

a) Strategic Intent

Patterns of racial inequality (as well as other forms of social inequality) stubbornly persist almost two decades after the demise of apartheid. There is also a huge disparity in income distribution between social groupings. Transnet will therefore act as a responsible corporate citizen in the context of its B-BBEE endeavours, by utilising various strategies to promote empowerment more vigorously. Such strategies must be applied subject to the discipline of our constitutional framework to ensure that the overall objectives of a non-racial and non-sexist society are achieved. Transnet will also apply these strategies in a manner as to ensure that the constitutional principles of fairness, equity, transparency, competitiveness and cost-effectiveness are not materially undermined.

The strategies referred to above include (but are not limited to) the following:

- allowing preference in accordance with the B-BBEE status of an enterprise, based on its B-BBEE scorecard;
- increasing the weighting allocated to preference in a particular bid beyond the 10 or 20 points allocated in terms of the PPPFA;
- allowing Further Recognition Criteria points to an enterprise whose **current** black ownership, management control or employment equity **meets or exceeds** a stipulated minimum target (This will be referred to as FRC Current);
- allowing points for Further Recognition Criteria points based on the extent to which an enterprise commits to **improving or sustaining its B-BBEE performance** over the contract period in the following areas in excess of stipulated minimum targets: ownership, management control, employment equity, preferential procurement and enterprise development (This will be referred to as FRC Future);
- setting minimum B-BBEE levels as a pre-qualification criterion to participate in a bid process;
- limiting participation in a bid process to persons or entities owned by persons who have been disadvantaged by unfair discrimination;
- requiring bidding entities to form Joint Ventures (JVs) with black owned entities, alternatively to sub contract a minimum percentage of the contract to black owned companies;
- stipulating that an Enterprise will not be awarded points for its B-BBEE status level if it has indicated in its Bid response that it intends sub-contracting more than 25% of the value of the contract to any other Enterprise that does not qualify for at least the points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the sub-contract;
- stipulating that an Enterprise who has been awarded a contract may not sub-contract more than 25% of the value of the contract to any other Enterprise that does not have an equal or higher BBBEE status level than the Enterprise concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the sub-contract.
- Requiring winning bidders to take steps to ensure:
    - management and daily operational involvement by Black professionals and managers as prescribed in the different sector charters;
    - skills transfer and training; and
    - employment creation and employment equity.

The underlying objective of the Preferential Procurement methodology is to create an enabling environment for B-BBEE Enterprises to access available procurement opportunities within Transnet and to add value to the supply chain. B-BBEE Enterprises will therefore be engaged as:

- principal contractors;
- joint venture partners;
- professional service providers;
- subcontractors, suppliers and/or manufacturers.

b) Scope and applicability

(i) Transnet's approach to Preferential Procurement applies to all purchases of Goods and Services and will apply to all QSEs, EMEs as well as to large enterprises.

(ii) The approach shall apply to and impact on all levels (Rand value) and types of Bids. It will also apply to any disposal, letting or leasing of assets and the acquisition or granting of any right for and on behalf of Transnet. The objective is to design innovative ways to promote Black Economic Empowerment.

(iii) Bid documents must specifically state that B-BBEE preference in terms of the DTI Codes of Good Practice and/or other relevant Charters will apply.

c) Objectives

(i) Transnet encourages and will recognise all improvement in current and future supplier ratings.

(ii) Transnet will encourage value–adding joint ventures with B-BBEE Enterprises. Bidders may develop joint ventures in order to comply with Transnet's B-BBEE requirements. The following documents shall form part of their submission:

- ownership documents showing the status of the partners to the joint venture;
- Joint Venture Agreement;
- Joint Venture Declaration Form; and
- any other documents as may be required by Transnet.

(iii) Transnet accepts that bidders often create JVs for a specific project only, on the basis that the JV will only be created if they are successful in winning the business and a contract is awarded to them. This is known as an unincorporated JV. A JV will qualify for points as an unincorporated entity provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated scorecard is prepared for every separate tender. The Bidders must also submit a Joint Venture Agreement for the unincorporated JV.

d) Preferential procurement targets and reporting

(i) To promote preference in the procurement of Goods and Services, targets will be set by the B-BBEE Forum and implemented by all the ODs.

(ii) The overriding principle in the setting of such targets is that a sectoral approach will be adopted. Thus for sectors where there is a high probability of finding B-BBEE Enterprises or where there is a need to accelerate transformation, the target may be set higher.

Transnet's approach to preferential procurement is dealt with in more detail in Chapter 10.

4.2.3 Supplier Development – Strategic Intent

a) Background

Government economic development policies such as the New Growth Path (NGP) and IPAP II have increased the focus on how procurement at SOCs such as Transnet can be leveraged to achieve the national goals of reducing unemployment, ensuring industrialisation and developing local suppliers.

Transnet strives to provide a competitive Service, while at the same time, creating opportunities for new entrants to the market and stimulating job creation through the implementation of its SD mission.

Transnet's mission is to transform its supplier base by engaging in targeted SD or B-BBEE initiatives to support local capability and capacity building and industrialisation whilst providing meaningful opportunities for South Africans with particular emphasis on:

- Black youth;
- Black women;
- small businesses;
- people with disabilities; and/or
- rural integration, upliftment and development.

Leveraging procurement to influence the development of the local supplier industry is key to realising Government's objectives relating to growth, employment creation and equality. Achieving SD objectives will provide the following key benefits for Transnet and the broader South African society:

- Acceleration of local capability and capacity building and transformation of local business by promoting technology transfer, skills development and job creation;
- Focused regional development and upliftment of rural communities;
- Increase in Local Content – security of supply, reduced cycle times, reduced exposure to foreign currency and reduction of supply chain costs (over time);
- Transformation of supplier dominance from large international or national monopolies in order to create more opportunities for locally owned and/or Black owned suppliers; and
- Improved B-BBEE rating for Transnet

A Transnet SD strategy, SD policy and SD plan forms the framework within which Transnet will implement its SD initiatives.

b) Applicability

All transactions involving SD should be evaluated against the IC^3 Supplier Development Matrix. This matrix (*Figure [1]* below) categorises transactions according to three principles:

- **Value leverage** refers to transactions where the financial scale of the transaction allows the buyer the opportunity to negotiate SD.
- **Industrial leverage** refers to transactions whereby the nature of the procurement is such that the scale and the industrial complexity of the item being purchased allow for local supply chain development around a particular industry.
- **Strategic importance** to Transnet refers to the extent to which the Goods to be procured has an impact on Transnet's core business.

Figure [1] – IC³ SD Classification Matrix

The IC³ Supplier Development Classification Matrix (refer Figure [I] above) assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet.

Once opportunities are identified it will be possible to identify the tools that should be implemented to maximise the full supplier development potential from these opportunities.

Based on the classification of a specific transaction, there will be certain SD objectives that Transnet will strive to meet. These objectives are all aligned to national objectives, and explained in more detail in Chapter 12 *(Determining SD Approach and Desired Outcomes)*.

CHAPTER 5 : CODE OF ETHICS

5.1 SUPPLY CHAIN CODE OF ETHICS

5.1.1 Transnet's Code of Ethics sets ethical standards for business practice and individual business conduct. It assists all Transnet stakeholders with their ethical deliberations and decisions. The objective of the Code of Ethics as it relates specifically to the Supply Chain environment is to set the standard by which all Transnet Board members and employees (including employees employed on fixed term contracts and temporary employees) are expected to act when engaging in any supply chain related activities. This will earn Transnet the reputation of being:

a) transparent and fair in all dealings and disclosures;
b) politically unbiased;
c) committed to providing Quality Goods and Services;
d) committed to transformation and empowerment;
e) proud of its integrity and credibility;
f) consistent in honouring its social, legal and moral obligations;
g) responsible and accountable; and
h) reliable and aware of the need to foster loyalty and long enduring relationships with all its stakeholders.

5.1.2 All Transnet employees should uphold the following key values:

a) act with integrity and professionalism at all times;
b) be honest;
c) be committed and dedicated to high Quality performance;
d) be customer orientated;
e) respect and maintain the confidentiality of sensitive information gained through association with Transnet;
f) maintain accurate, honest and complete records in appropriate detail;
g) protect Transnet's assets;
h) treat all suppliers with respect and dignity and foster a productive environment free of harassment, intimidation and discrimination;
i) refrain from using a position of authority and / or facilities provided by Transnet to further their own interests or that of friends and relatives;
j) desist from allowing personal interests to influence business decisions or tasks and disclose any actual or potential conflict of interest;
k) honour the content and spirit of all business transactions and not abuse Transnet's name; and
l) maintain an attitude of zero tolerance toward any form of bribery, corruption and inducements.

5.1.3 While considering the advantages of maintaining a continuing relationship with a supplier, Transnet iSCM must avoid any arrangement which in the long term might compromise fair competition or prevent Transnet from achieving optimal value.

5.1.4 No sale to or purchase from a Transnet employee is permitted under any circumstances. This excludes sales by auction or such other exceptions as may be authorised by management from time to time.

5.1.5 Former employees of Transnet shall not be restricted from doing business with Transnet unless they have been restricted from doing so in terms of paragraph 5.1.6 below. Due diligence should be exercised by evaluation teams to determine whether any undue influence/unfair advantage could have been possible between any Transnet employees and the former employee. This should be brought to the AC's attention, and should be stated clearly in submissions to the AC or to the delegated Manager for transactions falling below the AC's jurisdiction.

5.1.6 Former employees of Transnet who were dismissed following disciplinary action or who had resigned to circumvent disciplinary action following charges relating to dishonesty (e.g. bribery, corruption, theft, etc.) shall be formally excluded from future business dealings with Transnet. They will be blacklisted for a specific period and their names shall appear on Transnet's List of Excluded Bidders (see Chapter 23 on *Blacklisting*).

5.2 CONFIDENTIAL INFORMATION AND TRADE SECRETS

5.2.1 Employees have access to information related to Transnet's business strategies and contractual relationships with third parties. This information must be regarded as trade secrets. It includes intellectual property, know-how, processes, techniques, technical detail, methods of operating, cost and source of material, pricing and purchasing policies, systems design and development information. It also includes the contractual and financial arrangements between Transnet and its customers and suppliers. In this regard, all employees have a duty of trust and confidence and a duty to act at all times in the best interests of Transnet. The disclosure of trade secrets or any other confidential information could cause serious damage to Transnet, and possibly claims of damages for breach of contract against Transnet.

5.2.2 No employee may discuss or disclose prices which have been quoted or charged to Transnet.

5.2.3 No employee may disclose information which would, or could be perceived to place a Bidder in a better position than its competitors, or which would put Transnet at a disadvantage against Bidders or suppliers.

5.2.4 Where it is necessary to disclose confidential information to potential suppliers in order to solicit Bids, Non-Disclosure Agreements ("NDAs") must form part of the bid documentation. The NDAs must be signed by all Bidders.

5.3 INTELLECTUAL PROPERTY RIGHTS OF SUPPLIERS/TRANSNET

5.3.1 Transnet will acknowledge and respect suppliers' intellectual property (IP) rights. Transnet will also seek to promote fair competition.

5.3.2 It is recommended that in cases where the IP of suppliers is at stake, Transnet should hold clarification sessions with potential Bidders in order to clarify the position regarding IP rights. Furthermore, before concluding a contract, Transnet should ensure that all issues of IP are properly addressed in the contract and that both parties understand the nature of the agreement.

5.3.3 Depending on the merits of each case, one of the following approaches will be followed and must be stipulated upfront in the Request for Proposal ("RFP") document:-

a) Transnet may choose to pay the supplier outright for its IP in the Goods and purchase the Goods with its IP. In such instances, the supplier relinquishes its rights to the IP and Transnet acquires all rights to the Goods. This applies to all specifications, drawings and/or prototypes. Transnet will disclose this at RFP stage and all aspects pertaining to IP will be negotiated and captured in the contract between the parties. Transnet shall have the right to procure its future requirements via an Open Bid process and the original designer/developer will be free to participate.

b) Transnet may choose to share the IP with the supplier where Goods were jointly developed by Transnet and the supplier. In this scenario, Transnet shares the IP and the royalties emanating from the development of the Goods. This must be clearly set out in the contract between the parties.

c) Where an existing patented article is required by Transnet, Transnet may choose to confine the tender to the manufacturer concerned or issue an Open Bid stating that the patented item or "anything similar" is required. In

this instance the supplier remains the owner of the IP in respect of the article.

5.4 GIFTS AND GRATUITIES

5.4.1 All business decisions and transactions must be made with uncompromised integrity, honesty and objective judgment. Transnet does recognise that in executing its business and applying industry norms, employees may be required to accept or give gifts as a token of appreciation. The Transnet Gifts Policy regulates and controls the acceptance and giving of gifts.

5.4.2 The acceptance and giving of gifts exceeding the value (currently R750.00) stipulated in the Transnet Gifts Policy, as amended from time to time is prohibited.

5.4.3 The occasional exchange of gifts not exceeding this value may be accepted, provided that such gifts are not specifically intended to influence any procurement or sales decisions and are:

a) Declared to the employee's immediate Manager; and

b) Recorded in a Declaration of Gifts Register.

5.4.4 Under no circumstances should gifts be accepted from prospective suppliers, regardless of value, during any bid evaluation period including a period of 12 months after such bid has been awarded. This may be perceived as undue and improper influence over the bid process.

5.4.5 Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefits or Services. Such favours will be considered bribery. This is unlawful and the appropriate criminal / civil action will be enforced. If a supplier or employee offers or accepts such "favours" or bribes, it must immediately be reported to the Manager in charge of the function for appropriate action. In accordance with the ordinary principles of delictual liability, Transnet is entitled to recover all damages suffered as a result of the employee's corrupt or negligent conduct from that employee. Any person who has offered a bribe to a Transnet employee may also face criminal or civil action and/or exclusion from future Transnet business.

5.4.6 Employees are not permitted to accept gifts or buy Goods or Services at artificially low prices, not available to the public. Employees are also not allowed to accept personal favours and hospitality which might be deemed by others, to impinge upon the employee's sound business judgment.

5.4.7 Overseas visits on invitation by and at the expense of prospective suppliers will under no circumstances be permitted. Should an overseas visit be deemed necessary for the purposes of evaluating the supplier, this should be for Transnet's own account. All overseas visits have to be fully motivated in terms of the normal procedures for overseas visits. If current suppliers offer to pay for Transnet employees to travel to their offices or plants overseas, these requests need to be properly motivated and approved by the GCE or the relevant divisional CEO or Group Executive.

5.4.8 The following business courtesies are allowed, provided that the cost per instance does not exceed the amount as stipulated in the Gifts Policy:

a) entertainment;

b) advertising material of small intrinsic value such as pens, paper-knives (letter opener), diaries, calendars, etc.

5.4.9 A monetary limit will not be placed on the following:

a) business meals; and

b) hospitality packages to sports, arts and culture events held in the Republic of South Africa, with the objective of enhancing business relationships. Gifts received while on overseas business trips and from foreign delegates, which

exceed the limit set in the Transnet Gifts Policy, should be accepted, entered into the gifts register and submitted to the Group Company Secretariat for disposal in terms of the Gifts Policy.

5.4.10 In addition to the procedure for accepting gifts set out in the Gifts Policy, Supply Chain staff may only accept gifts after approval from their Manager. Supply Chain staff must declare all gifts irrespective of value. Supply Chain Managers must keep a proper gift register of all gifts and hospitality offered to their employees by suppliers and contractors, and vice versa. Unauthorised gifts that have not been accepted (e.g. exceeding the abovementioned limit) should also be entered into the gift register with an indication that they have been returned to the supplier or surrendered to Transnet or any other appropriate action that may have been taken.

5.4.11 All Supply Chain gift registers must be submitted to the relevant AC Chairperson for review on a quarterly basis. A Gift Register Template is attached to the Transnet Gifts Policy and must be used at all times to ensure that all relevant information and signatures of approval are captured.

5.5 DECLARATION OF INTEREST

5.5.1 In terms of the Companies Act 71 of 2008, directors or officers of a company have a duty to disclose their interests in contracts.

5.5.2 For the purposes of the Transnet Declaration of Interest and Related Party Disclosure Policy the requirement to disclose interests in contracts is extended to include all employees.

5.5.3 The Transnet Declaration of Interest and Related Party Disclosure Policy defines a conflict of interest as "a situation in which private interests or personal considerations affect, may affect, or may be perceived to affect, an employee's judgment in acting in the best interests of Transnet. This includes using an employee's position, confidential information, corporate time, material or facilities for:

- *private gain or advancement; or*
- *the expectation of private gain or advancement of the employee or any member of the employee's family, or friends or business associates of the employee."*

5.5.4 The Transnet Declaration of Interest and Related Party Disclosure Policy places a duty on all employees who have an interest, either directly or indirectly, in any new or existing contracts with an entity external to Transnet which may conduct, or does conduct business with Transnet, to declare such interest.

5.5.5 A direct interest in a bid includes the following:

a) Where the employee or Transnet Board member is -
   (i) a shareholder, member or director of a bidding enterprise;
   (ii) a shareholder, member or director of the holding company of a bidding enterprise; or
   (iii) a shareholder, member or director of a subsidiary of a bidding enterprise.

b) Where the employee or Transnet Board member is a direct family member or a close friend or associate of a person who is -
   (i) a shareholder, member or director of a bidding enterprise;
   (ii) a shareholder, member or director of the holding company of a bidding enterprise; or
   (iii) a shareholder, member or director of a subsidiary of a bidding enterprise.

5.5.6 Declaration of a direct interest will result in automatic recusal of an employee.

5.5.7 An indirect interest may include, but is not limited to:

a) being involved with the drafting of the specification or bid documents;

b) being involved with issuing / advertising of the bid; or

c) being involved in the evaluation, and subsequently being involved in the adjudication of the bid (applicable to members and/or alternates serving on the relevant AC).

5.5.8 Any indirect interest of an employee in a bid or offer must be declared and the Manager concerned will determine whether the employee should recuse him/herself. The reasons for this decision must be officially recorded and kept on file.

5.5.9 Bid documents must always contain a clause for prospective Bidders to declare any possible direct family or business relationship with a Transnet employee. Direct family or business relationships includes husband/wife, children (own and step), parents and grandparents (own and in-law), brothers and sisters (own, step and in-laws) and business associates.

5.5.10 Although business with Enterprises that have relationships with Transnet employees in terms of 5.5.9 above is not prohibited, it is imperative that it be properly declared and explicitly pointed out in the submission to the AC. This will allow the AC to consider all relevant facts and decide whether such involvement by a Transnet employee could be regarded as fair or whether other prospective Bidders will be prejudiced or may be perceived to have been prejudiced thereby. Bidders failing to declare such relationship(s) will be disqualified from the bid process. Contracts concluded without adherence to this rule, will be terminated and disciplinary action will be taken against the relevant Transnet employee(s). The company or companies involved will be placed on Transnet's List of Excluded Bidders.

5.5.11 All Transnet employees / board members involved in procurement activities are under a duty to declare their interests as soon as they become aware that they have a direct or indirect interest in a particular matter. If any doubt arises as to whether an interest should be declared or not, the employee concerned shall seek guidance from the office of the Company Secretary. The following must be noted with regard to the duty to declare interests:

a) in terms of the "Declaration of Interest and Related Party Disclosures Policy" all employees are required to submit an annual declaration of interest. These declarations are kept by the Group Company Secretary for employees at Group. Depending on the specific OD, declarations are kept by the OD Company Secretary, Compliance officer or the Legal department in respect of OD employees;

b) in addition to annual declarations, all employees involved in procurement should make a quarterly declaration of interest which must be kept by the relevant Manager;

c) all employees involved in the evaluation, Post Tender Negotiation ("PTN") or adjudication of Bids must sign a declaration of interest certificate indicating whether or not they have an interest in the matter at hand. This declaration must be placed on the relevant bid file; and

d) employees involved in procurement activities other than evaluation, post tender negotiation, or adjudication (such as buyers) will only be required to declare an interest if they in fact have an interest in a particular matter. Should such an employee not make any declaration in a particular matter, he/she will

be deemed not to have an interest in the matter. If it is later discovered that an employee did have an interest which he/she failed to declare, such employee will be found to have failed to comply with the duty to declare conflicts of interests.

e) A proper register of Declarations of Interest should also be kept by Managers responsible for departments involved in purchasing and disposal functions as well as by the Secretariats of the relevant ACs.

5.6 FRAUD AND CORRUPTION

5.6.1 Transnet insists on honesty, integrity and acting beyond reproach at all times and will not tolerate any form of improper influencing, bribery, corruption, fraud or any other unethical conduct on the part of Bidders / Transnet employees.

5.6.2 If Transnet's GCFO (or a duly authorised person) has determined that a Bidder / contractor / supplier has or has caused to be promised, offered or given to any Transnet employee, any bribe, commission, or any unauthorized gift, loan, advantage or other consideration, Transnet shall be entitled to revoke the bid / contract by following the process that governs the Exclusion of Bidders. Upon approval by the GCFO or duly authorized delegate, Transnet will be entitled to place any Bidder / contractor / supplier who has contravened the provisions of Transnet's business ethics on its List of Excluded Bidders. Furthermore, in terms of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2001, Transnet will refer all matters of suspected corruption to the South African Police Services (SAPS) for further investigation.

5.6.3 Transnet reserves the right to exclude a Bidder from further business and/or to cancel all existing contracts, should a Bidder/supplier be found to have acted in bad faith or engaged in misconduct towards Transnet. Furthermore, no part of a contract may be subcontracted to an Excluded Bidder.

5.6.4 Bid documents should always contain a clause indicating that any suspected fraud, corruption or other unethical activities should be reported to Transnet Tip-offs Anonymous at any of the following addresses and contact numbers. Confidentiality is guaranteed at all times.

- *Toll-free anonymous hotline : 0800 003 056*
- *Email : Transnet@tip-offs.com*
- *Fax number : 0800 007 788*
- *Freepost DN 298, Umhlanga Rocks, 4320*

5.7 SANCTION

Non-compliance with the Code of Ethics is considered to be misconduct and employees may be subject to disciplinary procedures that could lead to dismissal as well as criminal and/or civil action.

CHAPTER 6 : DELEGATION OF AUTHORITY FOR PROCUREMENT PROCESSES

6.1. HOW DELEGATION OF AUTHORITY WORKS

Figure 2 below explains how authority is delegated from the Minister of Public Enterprise to the various structures and persons within Transnet via a series of sub-delegations:

How Delegation of Authority works within the context of Procurement

Figure [2] – Delegation of Authority

6.2. DELEGATION OF AUTHORITY FRAMEWORK

The Transnet Delegation of Authority (DoA) Framework sets out the powers delegated to certain officials (e.g. GCE, GCFO, OD CEO, etc) to perform specified tasks in relation to various areas of operation (e.g. finance, treasury, procurement, etc). The following powers, depicted in Table 4 below, are derived from the Transnet Delegation of Authority Framework dated 1 May 2012. **However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.**

TABLE 4

	Approval Authority (R million)							
Procurement delegation	Group Exco Members (Specialist Units, excl.TCP	CEO/ HOD (budget owner) of Specialist Unit, excl. TCP	OD CEOs & TCP GE	GCSCO	GCFO	GCE	BADC	Board
Appointment of Consultants - Clause 5.4.1 of DoA Framework (Cumulative per annum)	≤R10m	Nil	≤R25m	Nil	≤R50m	≤R200m	≤R300m	>R300m
Approval to approach market with Open Bids - Clause 5.4.2 of DoA Framework	Nil	≤R75m	≤R450 m	≤R525m	≤R600m	≤R750 m	≤R1,500m	>R1,500m
Approval to approach market with Confined Bids - Clause 5.4.3 of DoA Framework	Nil	Nil	Nil	Nil	Nil	≤R250m	≤R1,000m	>R1,000m
Management's intervention to address non-compliance with procurement policies & procedures - Clause 5.4.4 of DoA Framework (Condonation)	Nil	Nil	Nil	Nil	Nil	≤R50m	≤R1,000m	>R1,000m
Enter into & signing of contracts - Clause 5.5.1 of DoA Framework	≤R30m	≤R5m subject to the contract period not exceeding 5 Years	≤R450 m	≤R525m	≤R600m	≤R750m	≤R1,500m	>R1,500m

6.3. POWERS VESTED IN TRANSNET OFFICIALS

It is important to bear in mind that not all powers vested in Transnet officials are contained in the DoA Framework. In the procurement context, certain powers are also vested in officials in terms of this PPM whilst other powers are inherent to the job function e.g. the day to day running of the procurement function. Figure 3 below explains the powers vested in Transnet officials in terms of the DoA Framework, the PPM and their job function, respectively:

Delegatee	From Whom	Delegation in terms of Transnet DoA Framework	Powers acquired in terms of the PPM	Delegation in terms of a "general blanket" delegation
GCE	Transnet Board	•Approve Confinements ≤R250m •Consultants ≤R50m •Condonations ≤ R250m •Going to market on open tender & sign contracts ≤ R500m	Final arbiter for appeals on blacklisting	Responsible for the day-to-day running of Transnet
GCFO	GCE	•Consultants ≤R25m •Going to market on open tender & sign contracts ≤ R400m	Approve decision to blacklist	N/A to procurement
OD CEOs	GCE	•Approve consultants ≤ R5m •Going to market on open tenders & sign contracts ≤ R300m	Approve OD Approved Lists Appoint AC & Chair/ members Mediate disagreements between AC and line/procurement, etc.	Responsible for the day-to-day running of the operating division
CPO	OD CEO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CEO	Delegate powers to CFSTs, CFET & PTN teams, empower procurement to utilise quotation system & emergency purchases and initiate blacklisting proceedings	Responsible for the day-to-day running of the OD procurement function
Procurement	OD CPO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CPO	Facilitate CFSTs, CFET & PTN teams Utilise quotation system and emergency purchases, issue open tenders and initiate blacklisting cases	Responsible for the day-to-day procurement tasks and functions

Figure [3] – Types of Delegated Authorities

6.4. DOA SUMMARY

Figures 4 to 9 below collectively represent a summary of the Delegations of Authority required for various procurement approval processes and thresholds as at 1 May 2012. However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.

Procurement approval processes at Transnet

Figure [4] – Procurement approval processes

The thresholds applicable to the various approval steps are depicted in the diagrams below.

(a) Thresholds for approval to go to market

*In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R2,5 billion as per the latest Shareholder's Compact) before proceeding with the acquisition.
#In order to frame an approved list, authority to approach the market must be obtained from the main OD AC.

Figure [5] – Thresholds for approval to go to market

(b) Appointment of consultants*

* Approval limits are cumulative per annum.
**In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R2,5 billion of the value of Transnet's asset base) before proceeding with the acquisition.
#In order to frame an approved list, authority to approach the market must be obtained from the main OD AC.

Figure [6] – Appointment of consultants

(c) Thresholds for Governance Structure approval of process

*NOTE: Should any approval body not agree with the recommendation, the matter must be referred back to the recommending officer(s) for reconsideration or remotivation.

Recommendations: The RAC, main AC and the BADC will support the recommendation for transactions above their thresholds. Local/Regional AC normally only consider transactions <R2m but OD CEOs may at their discretion increase these thresholds.
* In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R2,5 billion of the value of Transnet's asset base) before proceeding with the acquisition

Figure [7] – Thresholds for governance structure approval of process

(d) Thresholds for contract sign off / award of business

*In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R2,5 billion in terms of the latest Shareholder's Compact) before proceeding with the acquisition.

Figure [8] – Thresholds for contract sign off / award of business

(e) Management's intervention to address non compliance with procurement policies & procedures (Condonations)

Figure [9] – Management's intervention to address non-compliance with procurement policies & procedures

SECTION A Background and Context

SECTION B: PROCUREMENT PLANNING

Chapter 7: Demand Planning & Demand Management
- Preface
- Demand levers
- Role of procurement in managing demand
- Demand process
- Checklist for demand planning & management
- Sourcing Strategy

Chapter 8: Internal Procurement / Interdivisional Support

Chapter 9: Contract Options
- Summary of contract options
- Contracts > 2 years
- Standard Transnet Terms and Conditions

Chapter 10: Preferential Procurement Approach
- Targets
- Mechanisms
- Measurement of BBBEE status

Chapter 11: Local Content

Chapter 12: Supplier Development Approach
- Categories of SD transactions
- Process of categorising transactions
- Evaluation criteria

Chapter 13: Determining Evaluation Criteria
- Choosing an appropriate evaluation method
- Determining evaluation criteria
- Determine weightings of evaluation criteria

Chapter 14: Main Procurement Mechanisms
- Quotation system
- The open bid process (RFP)
- Approved list purchases
- Two stage bidding process

Chapter 15: Special Cases
- Confinements
- Emergency procedure
- High Value Tender Process
- Unsolicited bids
- Contract consolidation
- Acquisitions associated with income generating contracts

Go to Market

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

TYPICAL PROCUREMENT CYCLE

Figure 10 below depicts a typical procurement cycle. Comprehensive guidance on each of these steps is dealt with in the Chapters that follow:

Figure [10] – The Procurement Cycle

SECTION A Background and Context

SECTION B: PROCUREMENT PLANNING

Chapter 7: Demand Planning & Demand Management
- Preface
- Demand levers
- Role of procurement in managing demand
- Demand process
- Checklist for demand planning & management
- Sourcing Strategy

Chapter 8: Internal Procurement / Interdivisional Support

Chapter 9: Contract Options
- Summary of contract options
- Contracts > 2 years
- Standard Transnet Terms and Conditions

Chapter 10: Preferential Procurement Approach
- Targets
- Mechanisms
- Measurement of BBBEE status

Chapter 11: Local Content

Chapter 12: Supplier Development Approach
- Categories of SD transactions
- Process of categorising transactions
- Evaluation criteria

Chapter 13: Determining Evaluation Criteria
- Choosing an appropriate evaluation method
- Determining evaluation criteria
- Determine weightings of evaluation criteria

Chapter 14: Main Procurement Mechanisms
- Quotation system
- The open bid process (RFP)
- Approved list purchases
- Two stage bidding process

Chapter 15: Special Cases
- Confinements
- Emergency procedure
- High Value Tender Process
- Unsolicited bids
- Contract consolidation
- Acquisitions associated with income generating contracts

SECTION C Go to Market

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

CHAPTER 7 : DEMAND PLANNING & DEMAND MANAGEMENT

7.1. PREFACE

7.1.1. Demand is a business requirement for Goods/Services raised by the business/OD and received by the procurement department for further processing, such as sourcing and payment. There are 2 areas of demand i.e. demand planning and demand management.

7.1.2. Demand Planning is the first step in the procurement process, where:

7.1.2.1. the business needs are assessed in order to ensure that the required Goods/Services are procured so as to meet the business requirements of Transnet;

7.1.2.2. specifications are precisely determined;

7.1.2.3. requirements are linked to budget; and

7.1.2.4. the supplying industry has been analysed and constraints identified and assessed.

7.1.3. Demand planning is a medium term and cross functional planning process supported by a series of meetings that promote alignment, decision making and coordinated action towards achievement of financial budgets and organizational strategy.

7.1.4. Demand Management is about understanding the factors that drive demand for people and products and using this knowledge to identify and implement new and innovative ways to eliminate, reduce or serve demand more efficiently and by doing so reduce costs.

7.1.5. Demand management is about understanding the factors that drive demand for Goods/Services and about using this knowledge to identify and implement new and innovative ways to eliminate, reduce or serve demand more efficiently and to support robust demand planning – and in so doing optimise value and quality by enabling suppliers to have a forward looking view of requirements expected of them and adequately plan production and by enabling the procurement department to adequately prepare itself and work more efficiently and effectively. Demand management therefore involves the reviewing, monitoring and improving of demand.

7.1.6. Demand review is a strategic decision process ensuring that all stakeholders are fully aware and agree to the Goods/Services that are to be procured, why it is to be procured, how it is to be procured, and the cost.

7.1.7. Demand monitoring is a tactical process ensuring that only the required quantity and Quality of Goods/Services are sourced from the right suppliers.

7.1.8. Demand improvement is a strategic and a tactical process ensuring that the quality of demand improves continuously as the demand management process matures, with initiatives such as reducing the demand and rationalising the Goods/Service portfolio.

7.1.9. Therefore, the purpose of demand planning and management is to ensure that the resources required to fulfil the requirements identified in Transnet's Corporate Plan are delivered at the correct price, time and place and that the delivered quantity and quality will satisfy those requirements.

7.1.10. The intention of demand planning is to:

7.1.10.1. to have a clear view of the demand requirements for major strategic commodities;

7.1.10.2. to ensure that end-users and the procurement department are brought closer together in order to enhance efficiency and achieve value for money; and

7.1.10.3. to foster an improved working relationship of openness between Transnet and its suppliers and/or service providers.

7.2. DEMAND LEVERS

A demand consists of various demand levers that are managed by the demand planning and management process. These levers are:

TABLE 5

SOURCE	The origin of the demand such as the initiating department or OD
REASON	The motivation for the demand such as why these Goods/Services need to be sourced
QUANTITY	Review the number/scope of the Goods/Services required
SPECIFICATION	Opportunity to simplify/standardise specifications
TIMEFRAME	Reduce demand frequency
COST	The indicative cost of the Goods/Services that need to be sourced
PREFERRED SUPPLIER	The preferred supplier (if any) for the requested Goods/Services Other potential suppliers who could also be in a position to supply the same Goods/Services

7.3. ROLE OF PROCUREMENT IN MANAGING DEMAND

Procurement needs to manage the demand for Goods/Services by:

- analysing demand levers and sourcing data that will enable a more accurate view/prediction of demand;;
- identifying opportunities for improvement of the entire demand management function;
- short-listing and prioritising improvement initiatives;
- developing and implementing an action plan for identified initiatives;
- monitoring the progress of improvement of the initiatives; and
- conducting regular assessment of the effectiveness and relevance of improvement initiatives.

7.4. DEMAND PROCESS

Figure 11 below gives an outline of the main steps in the demand management process.

Figure [11] – Demand Steps

For sourcing events falling within the threshold for High Value Tenders, refer to the "High Value Tender Process (HVTP)" available on the iSCM Transnet Intranet.

OPERATIONS (end users) are responsible for completing STEP 1

7.4.1. STEP 1 : Identify, approve and communicate demand

a) Definition of business need

The end users in the business (operations) need to follow the steps outlined below, in order to ensure that there is a clearly defined need in the business:-

(i) conduct a needs analysis to establish requirements relating to the business, taking into account all required capital acquisitions, planned maintenance, and other operational needs – this will be informed by both future requirements (based upon Transnet's Corporate Plan); as well as market demand forecasts (based upon Transnet's current client base demand and/or commitments made by Transnet's sales department);

(ii) establish and consolidate the reasons for the need;

(iii) ratify the need irrespective of whether it is a CAPEX or OPEX acquisition and apply for and obtain budget approval; and

(iv) draw up an annual procurement plan.

b) Compilation of demand document (per transaction)

The end users in the business (operations) are responsible to provide procurement with a detailed demand requisition. This should provide a clear description of the function, required specifications, drawings, and where applicable it should:-

(i) indicate the quantity/-ies required;
(ii) indicate the frequency/-ies required;
(iii) indicate the quality required;
(iv) indicate the unit of measure;
(v) indicate packaging, if applicable;
(vi) attach the relevant specification/drawing, where applicable;
(vii) provide previous price or estimated costs and budgetary requirements;
(viii) indicate the expected delivery date(s) and delivery address(es);
(ix) indicate any logistical and/or storage requirements;
(x) any material obsolescence risks; and
(xi) suggest potential source/s of supply and a brief analysis of the supplier industry landscape, if available.

The demand document should first be approved at an operational level. Once that is completed, it should be submitted to procurement. Operations should submit this document timeously, and allow sufficient time to acquire the Goods/Services, given lead times and governance processes.

PROCUREMENT is responsible for completing STEP 2 and STEP 3

Step 2

Process demand
Validate and prioritise demand
Review nature and quantity required
Reduce demand frequency
Consider alternative ways of filling demand

7.4.2. **STEP 2 : Processing Demand**

a) **Validate and prioritise demand**

Procurement shall establish the following:

(i) Is the demand document/requisition duly approved by operations?
(ii) Is this a critical demand? ("Critical" is defined as having an impact on the Service provided by Transnet or the profit made by Transnet).
(iii) What would be the impact on operations if the procurement did not occur?

b) **Review nature and quantity required**

Procurement shall establish and review the following:

(i) Establish whether this is a requirement for Goods or a Service?

(ii) If Goods are required, whether the demand will be on-going or once-off?

(iii) If Goods are required, determine how many types of items and quantity of each item are required in total by operations at present time and going forward? What are the options (if any) for reducing volume?

(iv) If a Service is required, determine for what length of time the Service is required? (Indicate length of Transnet's previous use (if any) of the specific Service). Could this be reduced or extended?

(v) Determine the estimated value of the sourcing event (if not provided by operations) to establish which sourcing process must be followed:

- if below R2 million, or lower threshold set by the OD CEO for Open Bids, use the quotation system (see Chapter 14);
- if over R2 million use an "open RFX", approach (see Chapter 14); and
- if within the threshold for High Value Tenders, use the High Value Tender process (see iSCM Transnet Intranet portal).

c) **Reduce demand frequency**

Procurement shall establish and review the following:-

(i) If the Goods to be purchased will require additional purchases going forward, is it reasonable for an "as-and-when call off" contract to be established? State reasons either for or against an "as-and-when call off" contract.

(ii) If a Service is required, what is the length of the anticipated contract? Explain rationale for this time period.

d) **Consider alternative ways of fulfilling demand**

Procurement shall establish and review the following whether:-

(i) the required Goods can be re-engineered or reclaimed from existing assets or Goods;

(ii) any other OD can manufacture the required Goods or provide the required Service;

(iii) the Goods are currently available in another OD with spare capacity;

(iv) this is a stock item; or

(v) this item is available on a current contract– even if it is potentially at another OD.

Establish a cross functional sourcing team (CFST)

Composition

Functions

7.4.3. STEP 3 : Establish a Cross Functional Sourcing Team ("CFST") in the case of acquisitions greater than R5 million or where the quality criteria is not a simple yes/no decision

a) **Rationale for the formation of a CFST**

Demand management shall be a cross-functional exercise with a view to ensuring that end users, procurement and all stakeholders are brought together in order to enhance efficiency and achieve value.

b) **Composition of the CFST**

Procurement shall establish a CFST, consisting of at least the following roles: Procurement, operations (end users), SD (including B-BBEE) and risk. Other possible representatives are finance, treasury, maintenance, logistics/warehousing, disposal and legal or governance.

In instances where the sourcing event is uncomplicated and the risk to Transnet is low, the CFST can be comprised of only procurement and Quality (technical) representatives.

Procurement must ensure that the CFST consists of the relevant expertise; and that the size of the team is not of such a nature that it cannot function effectively. Nonetheless, in all instances, procurement and operations must reach agreement on the composition of the CFST.

In order for the CFST to be effective, consistent attendance by the same members is required for continuity.

c) **Functions of the CFST**

(i) Determining specifications:-

"Specification" is the terminology used to describe the requirement for goods.

If Goods are being sourced, consider whether there is any opportunity to purchase standard "off-the-shelf" Goods.

If there are technical specifications:-

- these must be compiled with a view to promoting the broadest possible competition, whilst still assuring that critical elements of performance or other requirements are achieved;
- ascertain whether similar (albeit not identical) Goods are currently in use elsewhere in Transnet, which could enable standardisation;
- interrogate the specification, i.e. determine whether it is possible to provide a functional/performance-based specification rather than a detailed specification;
- determine whether the specification has been over-engineered; and
- verify that the specification is not biased in favour of a particular brand or type of Goods.
- If a functional specification is the chosen option, the following must be observed and described in detail:

- functions and characteristics;
- desired performance and/or result parameters, based on both inputs and outputs;
- method statement templates on how outputs will be reached; and
- inclusion of relevant KPIs.

If a detailed specification will be issued, ensure that the latest specification is used, and that the quality standards (e.g. SANS, ISO) are included where applicable. In addition, ensure that the drawings are up to date and that detailed descriptions of manufacturing processes, workmanship and/or materials are indicated.

The following must be observed and indicated in the RFX in respect of functional as well as detailed specifications:

- the location(s) of required provision;
- details of qualifications required where appropriate;
- details of the conditions in which the Goods must operate;
- environmental and safety features;
- packaging, marking and labelling requirements;
- inspection or testing requirements;
- documentation required, i.e. manuals, user guides, licenses, test certificates, etc.;
- size/dimensions;
- integration with other Goods/Services;
- security requirements;
- health, safety, electrical, environmental requirements;
- training requirements, if applicable;
- timing considerations; and
- interfaces with other systems.

(ii) Determining Terms of Reference

"Terms of Reference" (ToR) is the terminology used to describe the requirement for services.

The following must be observed and indicated in respect of the ToR:

- project title;
- background;
- objective of the project
- expected outcomes/deliverables;
- competency and expertise requirements;
- timeframes;

- reporting requirements;
- whether a site inspection or information session are required with date, time and venue stated;
- available documentation; and
- minimum requirements.

(iii) Reduce portfolio or range complexity:

- Options for rationalisation of the range of Goods/Services must be considered.
- Implications for users if choice options are reduced must be considered.

(iv) Identify and mitigate risks:

- All risks to Transnet associated with the demand must be identified and addressed in the eventual RFX;
- It should be ascertained whether suitable skills are available within procurement to address the demand and its management process.

(v) Establish the evaluation methodology to be employed – See Chapter 13 on Determining bid Evaluation Criteria.

(vi) Establish evaluation criteria and weightings – See Chapter 13 on Determining Evaluation Criteria. Clear evaluation criteria must be established, as bids may only be evaluated according to the criteria stipulated in the bid documents.

(vii) Oversee preparation and sign off of the bid documentation – See Chapter 16 on Bid Preparation.

(viii) Determine who should serve on the evaluation committee – See Chapter 18 on Evaluation.

(ix) Handover the sourcing event to procurement

7.5. CHECKLIST FOR DEMAND PLANNING & MANAGEMENT

The following checklist could be used as a template to identify the progress with respect to the Demand Management process:

TABLE 6

Demand Planning & Management Focus	Responsible
Is there a business case and approval of the demand?	Business
Has the demand been identified in the annual Procurement Plan? (The Procurement plan forms the basis of demand management)	Business & Procurement
Is there a budget allocated for this demand?	Business
Is there an approval as per the associated DoA?	Business
Have the options of fulfilling the demand (such as existing contracts and critical items) been assessed?	Business & Procurement
What is the outcome of reviewing the quantity required (i.e. are	Procurement

Demand Planning & Management Focus	Responsible
the Goods/Services required on an on-going or once-off basis)?	
Has the possibility of reducing the demand frequency, such as further purchasing or call-off, been assessed?	Business & Procurement
Have the options of alternate ways of fulfilling this demand, such as whether other Transnet ODs could manufacture these Goods, been assessed?	Procurement
Have the options of re-use been assessed? (e.g. re-engineered Goods from existing Goods or whether the Goods are available from other Transnet ODs) Have the 3 Rs (Reduce-Reuse-Recycle) been considered?	Business & Procurement
Has the possibility of standardising the Goods and its specifications, such as off-the-shelf and customised, been assessed?	Business
Has the opportunity of reducing the Goods portfolio, such costing and risk implications associated with it, been identified?	Procurement
Have the strategic risks associated with this demand, such as strategic nature of this demand been identified?	Business
Has internal availability been assessed, i.e.	
• Can the needed Goods be re-engineered / reclaimed from existing assets/Goods?	Business & Procurement
• Can any OD of Transnet manufacture the required Goods or provide the required Service?	Business & Procurement
• Are these Goods currently available in another OD with spare capacity?	Business & Procurement
• Is this a stock item?	Business & Procurement
• Is this item available on a current contract?	Business & Procurement
Was the CFST properly constituted?	Procurement
Have the risks associated with the CFST working on this demand, such as capacity and capability not available within the Transnet been identified?	Procurement
Does the CFST represent all the necessary disciplines for identifying the risks associated with the event?	Procurement
Did the CFST members sign confidentiality agreements and declarations of interest?	CFST
Did the CFST properly interrogate the specification?	CFST
Were all risks identified and included in the RFX?	CFST
Has it been considered whether this should be a transversal event in the interests of Transnet as a whole?	CFST
Has an 'As-and When' contract option been investigated, in order to cater for future demand?	CFST
Was the appropriate evaluation method chosen?	CFST
Were thresholds set for SD and Quality/Functionality?	CFST
Were proper evaluation criteria set for:	

Demand Planning & Management Focus	Responsible
• SD • Functionality • Preference • Price / TCO?	CFST
Were appropriate weightings allocated to each criterion?	CFST

7.6. SOURCING STRATEGY

Once a CFST has been established, the next step is to determine the sourcing strategy. The methodology for determining a sourcing strategy is depicted in the figure below. Please refer to the Strategic Sourcing Standard Operating Procedures (SOP) which provides detailed guidance on the strategic sourcing process. The SOP can be downloaded from the iSCM Transnet Intranet.

Figure [12] – Methodology for developing a sourcing strategy

CHAPTER 8 : INTERNAL PROCUREMENT/INTERDIVISIONAL SUPPORT POLICY

8.1 INTERDIVISIONAL RELATIONSHIPS

Transnet Entities are required to develop trust and a sound interdivisional working relationship with one another in the interest of Transnet. To achieve this, such entities **must** be afforded the right of first refusal in the procurement of Goods and Services.

8.2 STRATEGIC SPECIALIST UNITS

The following Specialist Units have been identified as strategically important to the Transnet Group:

TABLE 7

Division or Specialist Unit	Goods and/or Services Provided
Transnet Rail Engineering (**"TRE"**, a specialist core Division)	TRE is responsible for: • heavy engineering including locomotive, wagon and coach repairs, upgrades and maintenance • component manufacture, locomotive manufacture and assembly • port equipment, and is being positioned for maintenance and repairs thereof
Transnet Capital Projects (**"TCP"**)	TCP is responsible for: • multi-disciplinary design Services • project management and construction management Services Construction projects >R300 million **must** be carried out by TCP. In the case of construction related projects <R300 million, the following rules apply: • The project may be carried out by the OD itself if the OD has the necessary in-house resources; and • If the OD decides not to run the project itself, TCP must be given the first right of refusal before the external market can be approached
Transnet Fuel Solutions (TFS, previously known as HSA)	TFS is responsible for: • Transnet-wide fuel acquisition, distribution and management
Transnet Freight Rail (**"TFR"**) School of Rail	TFR School of Rail is responsible for: • training tailored exclusively for core businesses, e.g. School of Rail, train drivers, train control officers, • software training in general, etc.
Transnet National Ports Authority (**"TNPA"**) School of Ports	TNPA School of Ports is responsible for: • Facilitation of knowledge transfer as the provider of marine training programmes in South Africa • Planning to position itself as Africa's training leader in Marine Operations, Port Management and Port Engineering.

Division or Specialist Unit	Goods and/or Services Provided
Transnet Property (TP)	TP is responsible for: • Property management • Facilities management • Property development • Property valuations • Property surveying

8.3 ABILITY OF TRANSNET ODS TO PERFORM

Before considering which procurement mechanism would be most appropriate, it is important that the end-user and procurement department consider whether another Transnet OD is able to provide the required Goods or Services.

8.4 COMPULSORY UTILISATION OF SPECIALIST UNITS

The Specialist Units mentioned above must be utilised by other Transnet Entities for required Goods and Services falling within their scope. The external market may not be approached for Goods and Services falling within the strategic Specialist Units' or Division's core-competency areas. The only exception to this rule is if the Specialised Unit indicates in writing that they do not have the ability or capacity to provide the required Goods or Services.

8.5 INTERDIVISIONAL SUPPORT POLICY

Internal contracts (Memoranda of Understanding) between ODs and Specialist Units are dealt with in the terms of the Interdivisional Support Policy. Such contracts do not require AC approval. However, any external contracts which may be required by the internal Specialist Unit are subject to these procedures and require AC approval.

8.6 MEMORANDA OF UNDERSTANDING

The business relationship between Transnet Divisions and Specialist Units must be governed by an overarching Memorandum of Understanding (MOU) between the parties. The MOU must be signed by the CEs of the relevant ODs or Specialist Units and Service Level Agreements should be signed where appropriate.

8.7 DISPUTES

Any disputes must be resolved in terms of the agreed MOU. If the OD CEs are unable to resolve the dispute, the matter must be escalated to the GCE who shall make a final decision on the matter.

8.8 SERVICE LEVEL AGREEMENT

ODs will need to enter into a project-specific agreement (SLA) in relation to each individual project. This agreement will set out in details the rights, duties and obligations of each OD in that specific project. Contracts between divisions such as SLAs and project specific agreements may be entered into between OD CEs in terms of paragraph 5.5.3 of the DoA Framework.

8.9 INTERDIVISIONAL PRICING

Transnet entities undertaking work on behalf of other entities should reciprocate by pricing and carrying out their Services in a way that promotes and develops a culture of interdivisional support. The pricing must be based on appropriate market analysis to benchmark fair and reasonable prices. Should there be a dispute regarding pricing, the matter is to be escalated to the CEs of the relevant Divisions for resolution. Should the CEs not reach consensus, the matter must be escalated to the GCE who shall make a final decision on the matter.

8.10 NON-CORE BUSINESSES

Non-core businesses which have already exited Transnet, such as Freightdynamics and Autopax (Pty) Ltd will enjoy no interdivisional support.

8.11 AC INVOLVEMENT

Interdivisional transactions between Transnet Entities and Specialist Units fall outside the scope of the AC. However, in any case where the external market is approached, normal procurement procedures must be followed, and if relevant, the AC needs to approve the transaction.

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 9 : CONTRACT OPTIONS

9.1 CHOICE OF CONTRACT

The selection of the type of contract to be entered into with a supplier is based on various factors such as the duration of the contract, the type of Goods or Services to be acquired, the frequency of demand and the availability of the Goods. The following table outlines the various contract options and provides a guideline as to when those options may best be utilised.

TABLE 8

Ref	Contract Options	Description	Characteristics	Best Suited For
1	"As and When" contracts	Short or medium-term contracts entered into for a fixed period against which call-offs are made as and when required by the customer	• Shorter contract periods (1-2 Years) • Estimated quantities • Specific period/volume/value ceiling or a combination.	• Continuous but irregular demand for Goods/Services • Volumes cannot be accurately determined upfront • Demand cannot be anticipated • Generally off-the-shelf items
2	Fixed quantity contracts	Contracts entered into for once-off purchases	• Demand is known • Once-off purchase • Once-off or staggered delivery	• Planned programmes
3	Long-term contracts	Contracts entered into for a fixed period typically for five-Years or more	• Long term demand signal • Emphasis on SD • Suppliers' recoupment of investment is long-term • Restricts other market players for a period of time	• Purchase of high value Goods/Services • Goods/Services of strategic importance • Goods with long lead time
4	Transversal contracts	A contract that services more than one internal consumer (an internal shared service arrangement) entered into for a fixed period. A transversal contract may be entered into for the benefit of the entire Group, a particular OD and/or just a region. Below is a list of the types of Transversal contract options:	• Emanates from a formal strategic sourcing event • Fixed-contract period Optimising economies of scale through consolidation of demand/purchasing power	

Ref	Contract Options	Description	Characteristics	Best Suited For
		• Group-wide Transversal contracts		Consolidation of Goods / Services used Group wide
		• Transversal between ODs/Corporate		Consolidation of Goods / Services used between ODs
		• OD-wide Transversal contracts		Consolidation of Goods / Services used within an OD
		• Regional Transversal contracts		Consolidation of Goods / Services used within a region by one or more than one OD
5	Lease/Rental contracts	Lease contract for the use of moveable assets entered into for a fixed period	• Specified/unspecified period • Agreed Rental • Option of renewal	• Goods /Services where it would be more economically viable to lease than to purchase
6	Inter-Divisional Memoranda of Understanding (MOUs)	A 'contract' to govern the service performance agreed between ODs	• Not a formal contract • It governs the internal relationship between the ODs	• Governing the performance as agreed between the ODs
7	Income-generating (revenue) contracts	Although excluded from the PPM, associated procurements fall within the ambit of the PPM (See paragraph 15.6)	• Listed as a process excluded from PPM • Associated procurement must follow the PPM	• As per OD requirements
8	CIDB and NEC3 Engineering & Construction Contracts	Contracts for construction procurement	• Refer to the TCP Construction Manual	• Construction supply, engineering & construction and services contracts

**Any of the above-mentioned contract options can originate from any of the defined procurement mechanisms and/or special mechanisms for procurement.*

9.2 CONTRACTS FOR A PERIOD LONGER THAN TWO YEARS

Contracts for a period longer than two Years require prior AC approval. However, if the RFP provides for a number of bid options including a period of up to two Years and more than two Years, prior AC approval is not required. (Also see paragraph 21.9). Irrespective of which of the two options above is followed, the award of the business has to be approved by the relevant AC in the normal manner.

9.3 STANDARD TRANSNET TERMS AND CONDITIONS OF CONTRACT

Standard templates must be used unless there are cogent reasons why such standard agreements cannot be used in a particular instance. Refer to the Standardised Transnet Templates available on the iSCM Transnet Intranet, including but not limited to:

- Standard Terms and Conditions of Contract
- Master Agreements

Any additions or deletions from the above-mentioned templates must be contained in a Special Conditions Schedule. (Also see paragraph 21.7.2)

9.4 CONSOLIDATION OF CONTRACTS

Refer to paragraph 15.5 for the process to be followed when there is an opportunity to consolidate two or more existing contracts in the best interest of Transnet rather than engaging the market anew.

9.5 CHOICE OF SALES/PURCHASE TERMS FOR IMPORTED GOODS (INCOTERMS)

The Incoterms rules or International Commercial terms are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) widely used in international commercial transactions. A series of three-letter trade terms related to common sales practices, the Incoterms rules are intended primarily to clearly communicate the responsibilities, costs and risks associated with the transportation and delivery of Goods. The Incoterms rules are accepted by governments, legal authorities and practitioners worldwide for the interpretation of most commonly used terms in international trade. They are intended to reduce or remove uncertainties arising from different interpretation of the rules in different countries. First published in 1936, the Incoterms rules have been periodically updated, with the eighth version (Incoterms 2010) having been published and made effective on January 1, 2011. "**Incoterms**" is a registered trademark of the ICC[1].

Refer to Appendix C for a detailed explanation of all Incoterms.

[1] *Source: Wikipedia*

CHAPTER 10 : PREFERENTIAL PROCUREMENT APPROACH AND DESIRED OUTCOMES

10.1 TARGETS

In accordance with its vision of being a significant agent of empowerment within the South African society, Transnet has adopted the following plan to achieve its B-BBEE targets. These targets are more ambitious than those prescribed in the DTI Code of Good Practice:

TABLE 9

Sub Element	DTI Generic Targets	Base Line	Short-term Target 2012/2013	Interim Target 2013/2014	Long-term Target 2014/2015
B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	70%	To be completed after completion of base line exercise			
B-BBEE procurement spend from QSEs or from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend.	10%	To be completed after completion of base line exercise			
B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: • Suppliers who are more than 50% Black-owned (3 out of 5 points); and • Suppliers who are more than 30% Black women-owned (2 out of 5 points)	15%	To be completed after completion of base line exercise			

10.2 MECHANISMS

Transnet's exemption from applying most of the provisions of the PPPFA regulations affords it a greater degree of flexibility in determining its preferential procurement framework than is currently allowed for in the PPPFA.

Transnet would like to conduct a holistic assessment of bidders' B-BBEE performance based on the following:

- bidders' past B-BBEE performance based on the B-BBEE scorecard;
- the extent to which bidders' present black ownership, black management and employment equity exceed certain minimum targets set by Transnet. [This is referred to as Further Recognition Criteria (Current)]; and
- the extent to which bidders undertake to improve or maintain their future B-BBEE status in excess of certain minimum targets over the contract period. [This is referred to as Further Recognition Criteria (Future)].

Preference points will be allocated for each of the above categories.

Transnet therefore applies the following additional mechanisms to ensure its B-BBEE targets are achieved:

10.2.1 Allocating additional points for preference

Transnet has adopted a scoring methodology based on a sliding scale of 20 to 40 points to be allocated to preference depending on the nature of the transaction involved. The points allocated to preference should be split between the following categories: B-BBEE scorecard, B-BBEE Further Recognition Criteria (Current) and/or Further Recognition Criteria (Future). FRC (Current) must be given a higher weighting than FRC (Future) if both FRC (Current) and (Future) are included in a particular tender. Should it be decided that only B-BBEE scorecard is going to be used to evaluate preference, the total points for B-BBEE scorecard may range from 20 to 40 points. Table 10 below indicates how the point allocation should take place, depending on the total number of points allocated to preference[2]:

Table 10

	Total of 20 points allocated to preference	Total of 30 points allocated to preference	Total of 40 points allocated to preference
B-BBEE Scorecard	**10**	**10**	**10**
B-BBEE FRC (Current)	**7**	**15**	**20**
B-BBEE FRC (Future)	**3**	**5**	**10**

10.2.2 Further Recognition Criteria (Current)

This would entail allocating points to entities based on the extent to which their current black ownership, management control and employment equity exceeds stipulated minimum targets.

10.2.3 Further Recognition Criteria (Future)

This would entail allocating further points to Bidders based on the extent to which they commit to improving their B-BBEE status over the contract period in the areas of black ownership, management control, employment equity, preferential procurement and enterprise development.

[2] Note that this table is a guideline. Depending on the nature of the commodity/service being purchased, it must be determined whether FRC (Current) and/or FRC (Future) are appropriate.

10.2.4 Minimum B-BBEE threshold

On a case by case basis, Transnet may set minimum B-BBEE thresholds as pre-qualification criteria in its bidding process in instances where it is considered that the application of the normal preference point system will not bring about the required transformation. In order to give effect to the principles of fairness, competitiveness and cost effectiveness, while at the same time promoting equity, the threshold should not be set at an unrealistically high level. A thorough market analysis must be undertaken prior to setting a B-BBEE threshold.

10.2.5 Limiting participation in a bid process to persons previously disadvantaged by unfair discrimination (set asides)

South Africa's economy still excludes the vast majority of its people from ownership of productive assets and the possession of advanced skills. Unless further steps are taken to increase the effective participation of the majority of South Africans in the economy, the stability and prosperity of the economy in the future may be undermined to the detriment of all South Africans, irrespective of race. The introduction of "set asides" is required in sectors that have been historically lagging behind in terms of transformation. On a case by case basis, Transnet may decide to limit (set aside) participation in a bid process to persons previously disadvantaged by unfair discrimination e.g. black owned companies, black women owned companies, exempted micro enterprises, persons with disabilities, persons in rural areas, etc. Set asides will be considered where there is evidence that applying only a preference point system will not achieve desired transformation objectives. The application of set asides must also be conducted in a manner that does not materially undermine the constitutional principles of fairness, competitiveness and cost effectiveness.

Set asides must be approached with great circumspection, as it has the potential to create unfairness if dealt with incorrectly. Set asides must therefore be based on a proper market analysis and rationale to justify the use of this mechanism in a particular instance. The following guidelines are provided for the use of set asides:

- identify the specific contract or commodity where a set aside will apply;
- give an indication of the number of black owned and/or black women owned companies which operate within the sector;
- give an indication of the percentage of Transnet's procurement spend on black owned and black women owned companies operating in the sector over the previous 3 to 5 Years;
- identify the obstacles to success i.e. why are black owned and black women owned companies not achieving success when bidding for Transnet contracts e.g. pricing, quantity, etc.
- explain why an increased weighting for black ownership is unlikely to achieve the desired result and why a set-aside is the only solution;
- explain that the percentage spend in relation to the contract/sector targeted for the set aside is relatively small when compared with Transnet's overall spend;
- demonstrate that the set aside will not operate in an overly harsh manner in relation to entities that are not black owned or black women owned;
- explain that the use of set asides will not be a permanent feature in relation to the procurement of the relevant commodity, but will be used on a case by case basis to increase Transnet's procurement spend on black owned and black women owned companies;

- demonstrate that the principles of competitiveness and cost effectiveness are not materially undermined.

10.3 MEASUREMENT OF B-BBEE STATUS

10.3.1 Measurement as per scorecard

Bid documents must specifically state that all Suppliers will be measured in accordance with the DTI Generic Scorecard provided for in the Codes of Good Practice or the applicable Sector Code.

Transnet prefers doing business with enterprises that share its values, and are prepared to contribute to meaningful B-BBEE initiatives (e.g. subcontracting, JV's etc.) as part of their Bid responses. Transnet will accordingly allow a preference to companies who provide a B-BBEE Verification Certificate. As a general rule, Transnet will award between 10 and 40 points to a Bidder on the basis of the B-BBEE Verification Certificate[3]. The remaining points will be allocated to FRC (Current) and FRC (Future) (see Table 10 above for an indication as to how the available points for preference will be divided between the scorecard, FRC (Current) and FRC (Future). Transnet requires prospective Bidders to have themselves verified by any verification agency accredited by the South African National Accreditation System ("SANAS") or Registered Auditors approved by the Independent Regulatory Board of Auditors ("IRBA") in accordance with the approval granted by the Department of Trade and Industry. Verification certificates are only valid for one Year from the date of issue. Enterprises will be rated by such agencies based on the following:

TABLE 11

Type of Enterprise	Annual Turnover	Number of Elements Scored on the B-BBEE Generic Scorecard
Large	In excess of R35 million	All 7 elements
Qualifying Small Enterprise (QSE)	Between R5 million and R35 million	Any 4 elements (equal weighting of 25% each)
Exempted Micro Enterprise (EME)	R5 million or less	Deemed to be 100% compliant. Automatic Level 4 rating irrespective of race of ownership

a) Exempted Micro Enterprises (EMEs) are defined by the Codes as companies with an annual total turnover of R5 million or less. EMEs enjoy a deemed BBBEE recognition of a Level 4 contributor. EMEs which are either 50% Black owned or 50% Black women owned are promoted to a Level 3 contributor.

b) Sufficient evidence of qualification as an EME is an auditor's certificate (auditors need not meet the prerequisite for Independent Regulatory Board of Auditors ("IRBA") approval to provide B-BBEE assurance services for the purpose of conducting verification and issuing EME B-BBEE certificates), a certificate issued by an accounting officer as contemplated in the Closed Corporations Act 69 of 1984, or a certificate issued by a Verification Agency accredited by SANAS.

10.3.2 In addition to the above, Bidders who wish to enter into a Joint Venture or sub-contract portions of the contract to B-BBEE companies, must state in their bids the percentage of the total contract value that will be allocated to such B-BBEE companies should they be successful in being awarded any business. A rating

[3] This will depend on whether FRC (Current) and FRC (Future) will also be evaluated as part of Preference. Should it be decided that only B-BBEE scorecard is going to be used to evaluate preference, the total points for B-BBEE scorecard may range from 20 to 40 points.

certificate in respect of such B-BBEE JV-partners and / or sub-contractor/s, as well as a breakdown of the distribution of the aforementioned percentage must also be furnished.

10.3.3 Transnet has adopted a scoring methodology based on a maximum 20 to 40 points to be allocated to preference of which a maximum of 10 points will be allocated to a Bidder based on its B-BBEE scorecard.

10.3.4 Based on the overall performance of a supplier using the Generic Scorecard, it receives one of the following B-BBEE statuses and a point out of 10 is awarded based on Figure [13] below:

BEE Status	Qualification	Recognition level	Ten Preference Points based on scorecard
Level **One** Contributor	≥100 points on the Generic Scorecard	135%	10
Level **Two** Contributor	≥85 but <100 points on the Generic Scorecard	125%	9
Level **Three** Contributor	≥75 but <85 on the Generic Scorecard	110%	8
Level **Four** Contributor	≥65 but <75 on the Generic Scorecard	100%	6
Level **Five** Contributor	≥55 but <65 on the Generic Scorecard	80%	4
Level **Six** Contributor	≥45 but <55 on the Generic Scorecard	60%	3
Level **Seven** Contributor	≥40 but <45 on the Generic Scorecard	50%	2
Level **Eight** Contributor	≥30 but <40 on the Generic Scorecard	10%	1
Non-Compliant Contributor	<30 on the Generic Scorecard	0%	0

Figure [13] – B-BBEE Scorecard

10.3.5 B-BBEE points must be claimed by Bidders utilising the B-BBEE Preference Points Claim Form. This Claim Form must be listed as a returnable document and is annexed as Appendix D.

10.3.6 **Measurement based on Further Recognition Criteria (FRC) (Current)**

Points will be allocated in respect of preference to measure the Respondent's CURRENT B-BBEE status at the time of submission of their bid. These points are allocated based on the extent to which the Respondent's current ownership, management control and employment equity meets or exceeds certain minimum targets. Please note that a Respondent's ownership, management control and employment equity at the time of the submission of the bid, may differ from that which is reflected in the B-BBEE scorecard. When claiming points for FRC (Current) the bidder must reflect his B-BBEE status at the time of submitting the bid. Supporting documentation may be requested in this regard. Please see Table 12 below - a guideline on evaluating FRC (Current).

TABLE 12

Indicator	Required Responses	Compliance Target	Score out of 10
A. Ownership (O/S):			

Indicator	Required Responses	Compliance Target	Score out of 10
1. The percentage of the business owned by Black persons.	Indicate ownership in the hands of Black persons as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >25% to 100%, on a sliding scale	26 - 30% = 1 31 - 40% = 2 41 - 50% = 3 51 - 60% = 5 61 - 70% = 6 71 - 74% = 7 75 - 100% =10
2. The percentage of the business owned by Black Women.	Indicate ownership in the hands of Black women as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >10% to 100%, on a sliding scale	10 - 20% = 1 21 - 30% = 2 31 - 40% = 4 41 - 50% = 5 51 - 60% = 6 61 - 70% = 7 71 - 75% = 8 76 - 100% = 10
3. The percentage of the business owned by black youth.	Indicate ownership in the hands of Persons living with Disabilities as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >5% to 100%, on a sliding scale	6 – 20% = 1 21 - 30% = 2 31 - 40% = 3 41 - 50% = 4 51 – 60% = 5 61 – 70% = 6 71 – 80% = 7 81 – 90% = 8 91 – 95% = 9 96 – 100% = 10
4. The percentage of the business owned by black youth and/or black Persons living with Disabilities	Indicate ownership in the hands of Persons living with Disabilities as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >3% to 100%, on a sliding scale	3-5% = 1 5.1-7% = 2 7.1-10% = 3 11-20% = 4 21-30% =5 31-40% = 6 41-50% = 7 51-60% = 8 61-70% = 9 71-100% = 10
5. The percentage of the business owned by Employment Schemes/Co-Operatives.	Indicate ownership in the hands of Employment Schemes/Co-Operatives as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >5% to 100%, on a sliding scale	6 – 10% = 1 11 - 20% = 2 21 - 30% = 3 31 - 40% = 4 41 – 50% = 5 51 – 60% = 6 61 – 70% = 7 71 – 80% = 8 80 – 100% = 10
B. Board Participation (BP):			
1. The percentage of Black Board members in relation to the total number of Board members.	Indicate the number of black Board members as a percentage of the total Board.	Points will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8

Indicator	Required Responses	Compliance Target	Score out of 10
			91-95% = 9 96-100% = 10
2. The percentage of Black Female Board members in relation to the total number of Board members.	Indicate the number of black female Board members as a percentage of the total Board.	Points will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
C. Management (MC):			
1. The percentage of Black Senior Top Management involved in day to day management of the organisation, in relation to the total Top Management cadre.	Provide the percentage of Blacks that are appointed by the Board and operationally involved in the day to day **Top management** of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of overall strategy of the organisation.	Points will be allocated for any percentages >40% to 100%, on a sliding scale	41-45% = 1 46-50% = 2 51-55% = 3 56-60% = 4 61-65% = 5 66-70% = 6 71-75% = 7 76-80% = 8 81-85% = 9 86-100% = 10
2. The percentage of Black Middle Management involved in day to day management of the organisation, in relation to the total Middle Management cadre.	Provide the percentage of Blacks appointed by the organisation in the **middle management** cadre and operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the day to day management of the organisation.	Points will be allocated for any percentages >63% to 100%, on a sliding scale	64-67% = 1 68-71% = 2 72-75% = 3 76-79% = 4 80-83% = 5 84-87% = 6 88-91% = 7 92-95% = 8 96-100% = 10
3. The percentage of Black Junior Management involved in day to day management of the organisation, in relation to the total Junior Management cadre.	Provide the percentage of Blacks appointed by the organisation in the **junior management** cadre and operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a supervisory role with regard to the day to day management of the organisation.	Points will be allocated for any percentages >68% to 100%, on a sliding scale	69-71% = 1 72-74% = 2 75-77% = 3 78-80% = 4 81-83% = 5 84-86% = 6 87-89% = 7 90-92% = 8 93-95% = 9 96-100% = 10
D. Employment Equity (EE):			
1. The percentage of Black employees as a percentage of the total workforce i.e. of all employees in the organisation.	Indicate the number of Black employees as a percentage of the organisation's total workforce.	Points will be allocated for any percentages >65% to 100%, on a sliding scale	66-68% = 1 69-71% = 2 72-74% = 3 75-77% = 4 78-80% = 5 81-83% = 6

Indicator	Required Responses	Compliance Target	Score out of 10
			84-86% = 7 87-89% = 8 90-92% = 9 93-100% = 10
2. The percentage of Black women employees as a percentage of the total workforce.	Indicate the number of Black women employees as a percentage of the organisation's total workforce.	Points will be allocated for any percentages >40% to 100%, on a sliding scale	41-45% = 1 46-50% = 2 51-55% = 3 56-60% = 4 61-65% = 5 66-70% = 6 71-75% = 7 76-80% = 8 81-85% = 9 86-100% = 10
3. The percentage of Black youth and/or Black disabled employees in relation to the total number of employees in the organisation.	Indicate the percentage of Black disabled employees in relation to the total of all employees in the organisation.	Points will be allocated for any percentages >2% to 10%, on a sliding scale	3% = 1 4% = 2 5% = 3 6% = 4 7% = 5 8% = 6 9% = 7 10% = 8 11 - 12% = 9 13 - 15% = 10

Once all FRC (Current) evaluation criteria have been scored, the scores must be reduced to the weighting allocated to FRC (Current).

For example, assume a weighting of 10 points has been allocated to FRC (Current). A particular Bidder scored 100 for FRC (Current) out of 130 points (as there are 13 criteria for FRC (Current) scored out of 10). The Bidder's score must be divided by 130 and multiplied by the weighting of 10 in order to obtain the weighted score for FRC (Current) i.e. $\frac{100}{130} \times 10 = 7.7$

10.3.7 Measurement based on Further Recognition Criteria (FRC Future)

In addition to points allocated on the basis of the scorecard and FRC (Current), further points may also be allocated in respect of FRC (Future). Bidders may earn points for FRC based on the extent to which they commit to improving their B-BBEE status over the contract period. Points are allocated on an ascending scale calculated on the extent to which Bidders propose to maintain, meet or exceed Transnet's compliance targets. The contract with the Successful Bidder must contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the preference targets in the contract. Furthermore, failure to achieve FRC Future targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract. Milestones in terms of achievement of FRC (Future) targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.Please see Table 13 below - a guideline on evaluating FRC (Future).

TABLE 13

Indicator	Required Responses	Compliance Target	Score out of 10
A. Ownership (O/S):			
1. The percentage of the business owned by Black persons.	Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
2. The percentage of the business owned by Black women.	Provide a commitment based on the extent to which ownership in the hands of Black women as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >30% to 100%, on a sliding scale	31-35% = 1 36-40% = 2 41-45% = 3 46-50% = 4 51-55% = 5 56-60% = 6 61-65% = 7 66-70% = 8 71-75% = 9 76-100% = 10
3. The percentage of the business owned by Black youth	Provide a commitment based on the extent to which ownership in the hands of black youth as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Points will be allocated for any percentages >5 to 100%, on a sliding scale	1 = 6 -20% 2 = 21-30% 3 = 31-40% 4 = 41-50% 5 = 51-60% 6 = 61-70% 7 = 71-80% 8 = 81-90% 9 = 91-95% 10 = 96-100%
4. The percentage of the business owned by Black Persons living with Disabilities	Provide a commitment based on the extent to which ownership in the hands of persons living with disabilities as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Points will be allocated for any percentage above 3%to 100% on a sliding scale	3-5% = 1 5.1-7% = 2 7.1-10% = 3 11-20% = 4 21-30% =5 31-40% = 6 41-50% = 7 51-60% = 8 61-70% = 9 71-100% = 10
5. The percentage of the business owned by Employment Schemes/Co-Operatives.	Provide a commitment based on the extent to which ownership in the hands of Employment Schemes/Co-Operatives as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Points will be allocated for any percentages >10% to 100%, on a sliding scale	11-20% = 1 21-30% = 2 31-40% = 3 41-50% = 4 51-60% = 5 61-70% = 6 71-80% = 7 81-90% = 8 91– 100% = 10
B. Board Participation (BP):			

Indicator	Required Responses	Compliance Target	Score out of 10
1. The percentage of Black Board members in relation to the total number of Board members.	Provide a commitment based on the extent to which the number of black Board members as a percentage of the total Board will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
2. The percentage of Black Female Board members in relation to the total number of Board members.	Provide a commitment based on the extent to which the number of Black Female Board members as a percentage of the total Board will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Points will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
C. Management (MC):			
1.The percentage of Black Senior Top Management involved in day to day management of the organisation, in relation to the total Top Management cadre.	Provide a commitment based on the extent to which the percentage of Blacks appointed by the Board and operationally involved in the day to day **Top management** of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of overall strategy will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >40% to 100%, on a sliding scale	41-45% = 1 46-50% = 2 51-55% = 3 56-60% = 4 61-65% = 5 66-70% = 6 71-75% = 7 76-80% = 8 81-85% = 9 86-100% = 10
2.The percentage of Black Middle Management involved in day to day management of the organisation, in relation to the total Middle Management cadre.	Provide a commitment based on the extent to which the percentage of Blacks appointed by the organisation in the **middle management** cadre and operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the day to day management of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the	Score will be allocated for any percentages >63% to 100%, on a sliding scale	64-67% = 1 68-71% = 2 72-75% = 3 76-79% = 4 80-83% = 5 84-87% = 6 88-91% = 7 92-95% = 8 96-100% = 10

Indicator	Required Responses	Compliance Target	Score out of 10
	contract period.		
3. The percentage of Black Junior Management involved in day to day management of the organisation, in relation to the total Junior Management cadre.	Provide a commitment based on the extent to which the percentage of Blacks appointed by the organisation in the **junior management** cadre and operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a supervisory role with regard to the day to day management of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >68% to 100%, on a sliding scale	69-71% = 1 72-74% = 2 75-77% = 3 78-80% = 4 81-83% = 5 84-86% = 6 87-89% = 7 90-92% = 8 93-95% = 9 96-100% = 10
D. Employment Equity (EE):			
1. The percentage of Black employees as a percentage of the total workforce i.e. of all employees in the organisation.	Provide a commitment based on the extent to which the number of Black employees as a percentage of the organisation's total workforce will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >65% to 100%, on a sliding scale	66-68% = 1 69-71% = 2 72-74% = 3 75-77% = 4 78-80% = 5 81-83% = 6 84-86% = 7 87-89% = 8 90-92% = 9 93-100% = 10
2. The percentage of Black women employees as a percentage of the total workforce.	Provide a commitment based on the extent to which the number of Black women employees as a percentage of the organisation's total workforce will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >40% to 100%, on a sliding scale	41-45% = 1 46-50% = 2 51-55% = 3 56-60% = 4 61-65% = 5 66-70% = 6 71-75% = 7 76-80% = 8 81-85% = 9 86-100% = 10
3. The percentage of Black youth and/or Black disabled employees in relation to the total number of employees in the organisation.	Provide a commitment based on the extent to which the percentage of Black disabled employees in relation to the total of all employees in the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >2% to 10%, on a sliding scale	3% = 1 4% = 2 5% = 3 6% = 4 7% = 5 8% = 6 9% = 7 10% = 8 11 - 12% = 9 13 - 15% = 10
E. Preferential Procurement (PP) :			

Indicator	Required Responses	Compliance Target	Score out of 10
1. B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	Provide a commitment based on the extent to which B-BBEE spend will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
2. B-BBEE procurement spend from QSEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend.	Provide a commitment based on the extent to which B-BBEE spend from QSEs will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >10% to 100%, on a sliding scale	11-20% = 1 21-30% = 2 31-40% = 3 41-50% = 4 51-60% = 5 61-70% = 6 71-80% = 7 81-90% = 8 91-95% = 9 96-100% = 10
3. B-BBEE procurement spend from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend.	Provide a commitment based on the extent to which B-BBEE spend from EMEs will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >10% to 100%, on a sliding scale	11-20% = 1 21-30% = 2 31-40% = 3 41-50% = 4 51-60% = 5 61-70% = 6 71-80% = 7 81-90% = 8 91-95% = 9 96-100% = 10
4. B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: • Suppliers who are more than 50% Black-owned • Suppliers who are more than 30% Black women-owned	Provide a commitment based on the extent to which spend from suppliers who are more than 50% Black owned or 30% Black women owned will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >15% to 100%, on a sliding scale	16-20% = 1 21-30% = 2 31-40% = 3 41-50% = 4 51-60% = 5 61-70% = 6 71-80% = 7 81-90% = 8 91-95% = 9 96-100% = 10
F. Enterprise Development (ED) :			
1. The organisation's annual spend on Enterprise Development as a percentage of Net Profit after Tax (NPAT)	vide a commitment based on the extent to which your organisation's annual spend on Enterprise Development initiatives as a percentage of its Net Profit after Tax will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Scores will be allocated for any percentages >1% of NPAT, on a sliding scale OR based on the actual Rand-value spent on ED	<1% = 0 1%-1.4% = 1 1.5– 2.9% = 2 3%-4.9% = 3 5% -10% = 4 >11% = 10

Once all FRC (Future) evaluation criteria have been scored, the scores must be reduced to the weighting allocated to FRC (Future).

For example, assume a weighting of 15 points has been allocated to FRC (Future). A particular Bidder scored 100 for FRC (Future) out of 180 points (as there are 18 criteria for FRC (Future) scored out of 10). The Bidder's score must be divided by 180 and multiplied by the weighting of 15 in order to obtain the weighted score for FRC (Future) i.e. $\frac{100}{180} \times 15 = 8.33$

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 11 : LOCAL CONTENT

11.1 Increased Local Production and Content ("LC") forms an integral component of Transnet's Supply Chain Strategy. This is aligned to Government's vision as articulated in IPAP 2 and the NGP as well as Transnet's Supply Chain Policy. Transnet Entities are therefore required to actively promote local content and production in their bidding processes.

11.2 Designated sectors

11.2.1 The PPPFA Regulations, 2011 which came into effect on 7 December 2011, prescribe how Local Production and Content is to be measured in public sector Bids. In accordance with Regulation 9(1), when issuing bids involving "designated sectors" Transnet must advertise such bids with a specific Bid condition that only locally produced goods, services or works which meet a **stipulated minimum threshold** for Local Production and Content will be considered.

11.2.2 Designated sectors are those sectors which have been designated by the Department of Trade and Industry ("DTI") for Local Production and Content. The following table indicates the designated sectors and minimum threshold for local content as determined by the Department of Trade and Industry and National Treasury:

TABLE 14

Designated sector	Prescribed minimum % for local content
Textile, clothing, leather and footwear	100%
Power Pylons (not including Steel)	100%
Rolling Stock	65%
Canned/processed vegetables	80%
Buses (bus body)	80%

11.2.3 Please note that the above reflects only the first wave of designated sectors as at the date of issue of this PPM. Future changes to the list of designated sectors and/or the applicable thresholds will be communicated as they are issued by National Treasury.

11.3 Non designated sectors

11.3.1 When issuing bids in sectors that have not been specifically designated for Local Production and Content ("non designated sectors"), Transnet will actively promote Local Production and Content where possible. Therefore, before approaching the market, Transnet Entities are required to conduct proper market analysis to determine on a case by case basis whether opportunities for Local Production and Content exist. Where opportunities do exist, this must be reflected in the

procurement strategy. Furthermore, in accordance with Regulation 9(3), the RFP must reflect the minimum threshold for LC that must be met by bidders to qualify for further consideration. Bidders who fail to achieve the set minimum thresholds will be disqualified from the bidding process.

11.3.2 In this regard Transnet must consciously look for ways to incorporate local content in its tenders, where appropriate, particularly where the tender falls within one of the sectors clusters identified in IPAP II. These sector clusters are as follows in terms of the IPAP 2012/2013 – 2014/2015:

a) **Cluster 1 Qualitatively New Areas of Focus**
   - Metal fabrication, capital and transport equipment sectors;
   - Oil and gas sectors;
   - 'Green' and energy saving industries;
   - Agro-processing linked to food pricing and security; and
   - Boatbuilding.

b) **Cluster 2 Scaled up and Broadened Interventions in Existing IPAP Sectors**
   - Automotive products and components;
   - Plastics, pharmaceuticals and chemicals;
   - Biofuels;
   - Forestry, paper, pulp and furniture;
   - Strengthening of links between cultural industries and tourism; and
   - Business processing.

c) **Cluster 3 Sectors with Potential for Long Term Advanced Capabilities**
   - Nuclear;
   - Advanced Materials; and
   - Aerospace.

11.4 Definition of LC

11.4.1 Local Content is defined as that portion of the Bid price which is not included in the Imported Content, provided that local manufacture actually does take place. Local Production and Content is therefore determined as a percentage of the Bid price. For example, if the stipulated minimum threshold for Local Production and Content is 60%, this means that 60% of the Bid price must be spent on Local Production and Content (i.e. everything that is not included in Imported Content.) "Imported Content" is given a very specific meaning in the regulations. It means "*that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry.*"

11.5 Evaluation of LC

11.5.1 The calculation of LC can therefore be expressed in the following simple formula:

Bid price-value of Imported Content (cost of components, parts & materials)
= value of Local Production & Content

The value of the Local Content must be reflected as a percentage of the bid price to determine whether it meets the stipulated minimum threshold.

11.5.2 National Treasury requires that the value of Local Production and Content be calculated according to the following formula:

$$LC = \left(1 - \frac{x}{y}\right) \times 100$$

Where

x imported content

y bid price excluding VAT

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank at 12:00 on the date, one week (7 calendar days) prior to the closing date of the Bid.

11.6 DTI and National Treasury are in the process of issuing directives and guidelines to ensure compliance with the regulations. These directives and guidelines will be provided to Transnet Entities as soon as they have been issued by DTI and NT.

11.7 It is important to note that LC does not form part of SD evaluation and must be evaluated as the first threshold in the evaluation process. The evaluation of LC must not overlap or be duplicated in the evaluation of "local capability and capacity building" which forms part of the SD evaluation. LC is purely concerned with the percentage of the bid price that will be spent locally. "Local capability and capacity building" on the other hand also takes non monetary measurements into account, such as the number of local suppliers to be utilised, etc.

11.8 It is a requirement of National Treasury that the Declaration Certificate for Local Content (SBD 6.2) form part of the RFP, whenever a minimum threshold for LC is required. In such instances, SBD 6.2 must be listed as a compulsory returnable document. SBD 6.2 has been annexed as Appendix E.

11.9 **Note:** LC will always be the first threshold – i.e. LC will always be evaluated as a first step, to determine whether bids comply with the minimum stipulated threshold for that particular designated sector or non designated sector where Transnet intends to set a minimum threshold for LC. Bidders that do not meet the set minimum threshold for LC must be rejected at this stage.

CHAPTER 12 : DETERMINING SD APPROACH AND DESIRED SD OUTCOMES

SD (including CSDP and/or B-BBEE) should form an integral part of the procurement strategy in every procurement transaction. The nature and extent of the SD opportunities will depend on the nature of the transaction.

Increased Competitiveness, Capability and Capacity (IC^3) matrix:

Figure [14] – SD Approach

The Figure referred to above, categorises SD opportunities based on their value, extent of industrial leverage and strategic importance to Transnet.

12.1 SD CATEGORIES

All transactions involving SD should be evaluated against the IC^3 Supplier Development Matrix. The IC^3 Supplier Development Classification Matrix assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet. Once opportunities are identified it will be possible to identify the tools that should be implemented to maximise the full SD potential from these opportunities.

The categories of SD identified in the Matrix are as follows:

12.1.1 Programmatic

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet's balance sheet. They are identified either in IPAP II or through Transnet as a strategic fleet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructural development and industrialisation are attained through joint support and in some cases public spending.

Investment is focused in plant, technology and skills in both intermediate and advanced capabilities to develop competitive advantage. An example is the Transnet locomotives fleet.

12.1.2 Strategic

Strategic initiatives follow a 3 to 5 Year planning horizon, involving investment in technology and/or skills in intermediate capabilities to achieve local capability and capacity building. This ensures that multinational corporations, original equipment manufacturers (OEMs) and service providers develop a certain percentage of their Goods locally. Strategic initiatives can therefore be used to achieve local capability and capacity building objectives by increasing the competitiveness, capability and efficiency of local suppliers. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require government support to develop local capability.

12.1.3 Focused

Focused initiatives include all medium to high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium term contracts that can be leveraged to encourage supplier and product development. The focus on investment in technology or skills enhances existing local industrial capability and/or the ability to supply strategic Services. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local suppliers. It furthers the objectives of empowerment, transformation, regional development and rural upliftment.

12.1.4 Small Enterprise Development

Small Enterprise Development transactions are typically of low value and have no industrial leverage as it is characterised by low complexity Goods and high competition. These initiatives concentrate on increasing the capability of small local suppliers and are targeted toward previously disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of financial and non-financial Services that help entrepreneurs to start new businesses and to grow existing ones.

12.2 CATEGORISATION OF TRANSACTIONS INTO THE RIGHT SD QUANDRANT

Transnet has designed a focused four-step process for identifying high value generating SD opportunities (see *Figure [15]* below). The process takes Transnet's CAPEX and OPEX spend and then filters specific commodities by value to identify significant spend items. Significant spend items are likely to have the most leverage for SD opportunities. The industrial leverage analysis provides a view on the risk and the complexity of the commodity to understand the risk to the supplier and to Transnet. The process needs to be conducted in its entirety in order to determine the true nature of the opportunity as there are various elements which impact on the categorisation of opportunities. Each transaction must be analysed on a "case by case" basis, taking cognisance of the nature and complexity that is involved in that particular SD activity.

Figure [15] – 4 Step Process

This process is briefly described above, but a detailed description can be obtained in the Transnet Supplier Development Plan.

12.3 SUPPLIER DEVELOPMENT (SD) EVALUATION CRITERIA

If a specific commodity has been earmarked as a SD commodity, SD should be included in the evaluation criteria. A rigid "one size fits all" approach cannot be implemented as each procurement transaction will need to be evaluated on its own merits based on the nature of the transaction with specific focus areas. The assistance and guidance of the SD COE must always be sought when developing SD criteria.

Depending on the supplier market and what is feasible and achievable on a specific bid, SD criteria will differ on a case by case basis. For example, in one case local manufacture, local assembly, industrialisation may be feasible, whilst in another the focus may fall on skills transfer, job creation/preservation and skills development (*Figure [16]* below).

The IC³ framework developed by the DPE was adopted to assist in the prioritisation of SD opportunities and includes transformation

Figure [16] – SD Criteria

These broadly stated evaluation criteria that were developed during the planning phase, should be broken down into specific measurable components and incorporated in the bid documents. This is shown in the table below:

TABLE 15

Evaluation criteria	Measurable areas	Further explanation
Industrialisation	• Value of investment in plant • % of Local Content utilised in the investment in plant • Reduction in import leakage • Potential increase in export content	• Quantification of the monetary value invested in machinery, equipment, buildings • % of the value invested in machinery, equipment, buildings that are sourced from local companies • A percentage indication of the increase in locally supplied Goods and therefore the resultant decrease in imports as a result of the contract • The % increase in exports that will result from increased industrial capability developed in relation to the award of the contract

Evaluation criteria	Measurable areas	Further explanation
Capability & capacity building	• % Local Content • Value of local parts in relation to the bill of materials • Value spent on local suppliers • Number of local suppliers in the supply chain of the Bidder	• Planned use of local parts as a percentage of the total contracted items • Planned monetary value of the parts utilised in the bill of materials (as a percentage of the total spend) • Planned percentage monetary value spend on procurement of Goods and Services procured from SA suppliers • Number of South African suppliers that are to be utilised in the fulfilment of the contract
Technology transfer and sustainability	• Technology transfer including: o Methods of manufacturing o Introduction of new technologies o IP transfer (no. and value)	• Introduction of a new/improved method of manufacturing o Provision of new technologies o For processes o ICT o The transfer of patents, trademarks and copyrights
Skills development	• Number company employees to be trained including: o Number of artisans o Number of technicians o Number of Black People o Total number of people • Number of downstream supply chain individuals to be trained, including o Number of artisans o Number of technicians o Number of Black People o Total number of people • Certified training • Rand value on training to be spent in the industry • Number of bursaries / scholarships (specify field of study)	• No. of individuals within the company (in South Africa) that the supplier plans to train over the contract period; training undertaken in the previous Year will not be taken into account as past employee training appears in the skills development pillar of the BBBEE scorecard; criteria broken down as for industry training above • No. of individuals that the supplier plans to train in the industry over the contract period; training undertaken in the previous Year will be taken into account to make allowance for suppliers who have just completed a training drive within the industry • What percentage of training for 1 and 2 above complies with local and/or international skills accreditation • Total planned monetary value spend (as a % of contract value) on skills development/training for the contract period within the industry; money spent in the previous Year will be included in Year 1 to make allowance for suppliers who have just completed a training drive within the industry • The number of higher education bursaries/scholarships provided in the previous Year and planned for the duration of the contract • The number of apprentices that the company plans to enlist during the course of the contract • The monetary value that the supplier is

Evaluation criteria	Measurable areas	Further explanation
	• Number of apprentices (specify industry) • Investment in schools in specific sectors (e.g. engineering)	prepared to invest in the development and running of schools to increase technical skills development
Small business promotion	• % of planned procurement from QSEs • % of planned procurement from EMEs • % of planned procurement from start-ups • Non-financial support provided to small business • Joint ED initiatives with Transnet	• Refers to the planned procurement from small business as a % of the total planned procurement spend • Suppliers will be given a point for each non-financial ED support that they are planning to give to small business e.g. Professional support; employee time allocated to assisting small business • Suppliers will be given a point for each financial ED support initiative that they are planning to undertake during the contract period e.g. Shorter payment terms; interest free loans • The number of ED initiatives that the supplier will jointly run with Transnet: • That are aligned to Transnet's objectives • That are financial or non-financial in nature
Rural development and regional integration	• Number of local employees • Value spent on local business • Proximity of business to operations • Number of rural businesses to be developed • CSI spend	• Number of people to be employed from within the town / city of operation • Monetary value to be spent on business within the town / city of operation • The locality of the bidder's business in relation to operations. Preference is given to regional (provincial) locality • The monetary value of CSI to be spent on rural community development projects

12.4 SUCCESSFUL BIDDER'S FAILURE TO MEET SD TARGETS

The contract with the Successful Bidder must contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the SD targets in the contract. Furthermore, failure to achieve SD targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract with the Successful Bidder. Milestones in terms of achievement of SD targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.

CHAPTER 13 : DETERMINING BID EVALUATION CRITERIA

13.1 CHOOSING AN APPROPRIATE EVALUATION METHOD

There are two possible evaluation methods that can be followed when evaluating a bid.

Method 1 follows a two-stage methodology where minimum thresholds are set for Local Content (where applicable – designated sectors), B-BBEE/SD and Quality. Only those bidders that meet (or exceed) the relevant minimum thresholds, advance to the next evaluation phase (step 6 in diagram below, where Price/TCO, SD and BBBEE are scored using the pre-determined weightings. Method 1 is the preferred method for evaluating bids within Transnet. Method 2 is used only in instances where Quality is of critical importance and assigned a greater weighting than price in Step 6 of Phase 2 (SD, B-BBEE and FRC weights remain unaffected).

13.1.1 Method 1 (Preferred Method)

*When issuing a tender in a designated sector, Transnet **must** set a minimum threshold for Local Content. When issuing a tender in a non designated sector, Transnet has a discretion whether to include a minimum threshold for Local Content or not. However, as a general rule Transnet will actively pursue opportunities for Local Content in all bids.

Figure [17]: Method 1

- Phase 1: A minimum threshold must be set for Local content (where applicable) and both SD/B-BBEE and Quality. These are separate thresholds, and the Bidder must meet the minimum criteria for all of these in order to proceed to phase two.
- Phase 2: The suppliers who meet the minimum threshold for Local content, SD and Quality (phase 1) will then be evaluated against each other using price, SD and BBBEE (including FRC) as criteria

13.1.2 Method 2

(An alternative used in limited instances where Quality is of critical importance)

*When issuing a tender in a designated sector, Transnet **must** set a minimum threshold for Local Content. When issuing a tender in a non designated sector, Transnet has a discretion whether to include a minimum threshold for Local Content or not. However, as a general rule Transnet will actively pursue opportunities for Local Content in all bids.

Figure [18]: Method 2

- Phase 1: A minimum threshold must be set for Local Content if applicable and both SD/B-BBEE and Quality. These are separate thresholds, and the Bidder must meet the minimum criteria for all of these in order to proceed to phase two.
- Phase 2: Quality/Functionality is included in the evaluation and has a higher weighting than Price. The weightings allocated to SD, B-BBEE and FRC remain unaffected.

13.2 CHOOSING APPROPRIATE EVALUATION CRITERIA

13.2.1 General principles

Evaluation criteria must be:

- **Unambiguous.** The bid documents must provide a complete explanation of the scope of work as well as the criteria and sub-criteria that will be used in the evaluation of bids. Care should be taken to ensure that the RFP does not contain any contradictory clauses. Where drawings are included as part of the RFP, such drawings must be completely aligned to the written description of the Goods or Services required.
- **Rational and justifiable.** Evaluation criteria must be rationally linked to the projected procurement outcomes.
- **Quantifiable.** If a criterion cannot be measured, it should not be included as an evaluation criterion.

- **Predetermined.** Evaluation criteria must be stated upfront in the RFP document. No evaluation criteria should be used in the evaluation process that were not stipulated in the RFP document.
- **Objective.** Evaluation criteria should not be written with a specific product in mind, but should rather describe functional (as opposed to product specific) characteristics.

13.2.2 Quality criteria

Quality criteria must be determined taking into account the needs and expectations of the end user with regard to functional outcomes of Goods or Service, i.e. conformance to stated requirements. It is important to note that only necessary quality/ technical criteria must be included as evaluation criteria. Quality evaluation criteria must not be drafted in an exclusionary manner e.g. requesting 10 years experience in an industry when actually 5 years experience would suffice. In developing Quality criteria, it is necessary to consider how these items are to be measured, verified and evaluated in Bid submissions.

a) Quality criteria may include criteria such as[4]:-

(i) technical merit;
(ii) aesthetic and functional characteristics;
(iii) safety characteristics;
(iv) environmental characteristics (including green economy, energy conservation and climate control);
(v) quality control practices;
(vi) reliability;
(vii) durability;
(viii) method statement (including organization, logistics and support resources) relevant to the scope of work;
(ix) qualifications and demonstrated experience of key staff in relation to the scope of work;
(x) demonstrated experience of the Bidder with regard to specific aspects of the project/comparable projects;
(xi) running costs;
(xii) after sales Service and technical assistance;
(xiii) delivery date;
(xiv) delivery period or period of completion;
(xv) inspection or testing requirements;
(xvi) integration with other Goods / Services; and
(xvii) training requirements.

b) Where the weighting for Quality forms a significant part of the overall weighting, at least 2 persons of the CFST who are conversant with the technical aspects of the bid shall set the evaluation criteria and weightings. These persons shall also determine the prompts or qualitative indicators for judgment, with fixed scores assigned to each prompt. Quality must be scored in terms of such prompts for judgment, individually and then averaged, subject to moderation.

c) It should also be determined whether interviews, site visits and presentations should form part of the scoring, and if so, the relative weights assigned to each of these must be determined. These aspects must be clearly dealt with in the RFP. It is important to note that interviews, site visits and presentations should only form

[4] *This section on quality is largely based on clause 4.3 of the CIDB Standard For Uniformity in Construction Procurement*

part of the scoring if there are aspects of the bid that cannot be evaluated based on the responses to the RFP document.

d) The evaluation of bids shall be based only on the information contained in Bid submissions, and where relevant from interviews, presentations and site visits.

13.2.3 Price criteria

a) When dealing with more complex bids, the evaluation of price must involve an evaluation of the Total Cost of Ownership (TCO). In such cases, Bidders must be requested to provide all information relevant to the evaluation of TCO. It is recommended that Bidders be provided with a comprehensive pricing schedule to ensure that they all follow a standardised approach with pricing. This will facilitate uniformity in the evaluation of price. The evaluation of TCO includes, but is not limited to, factors such as:

- Installation costs;
- Warranties;
- Service and maintenance costs;
- Operating supplies;
- Storage costs;
- Commercial discounts;
- Incoterms;
- Price adjustment conditions; and
- Exchange rate fluctuations.

b) When calculating prices, only discounts which have been made unconditionally must be taken into account during evaluation. However, where a discount is made conditionally, such discount must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

13.2.4 Preference criteria

All Bids should be evaluated against preference criteria. The preference criteria, as set out in Chapter 10, should be included in the bid document.

13.2.5 Supplier development (SD) criteria

If a specific commodity has been earmarked as a SD commodity, then SD should be included in the evaluation criteria. The SD criteria, as developed in Chapter 12, should be included in the bid document.

13.2.6 Evaluation of financial stability

Depending on the type of Goods/Services being procured, it may be important that the financial stability of Bidders be evaluated based on their audited financial statements, etc. Depending on the importance of the financial stability of the successful Bidder/s, financial stability may either be included as a pre-qualification criterion or an evaluation criterion. It is important to note that the evaluation of financial stability will not feature in every bid, particularly those which seek to advance Start-up and emerging enterprises. Financial stability may also be evaluated at the discretion of the AC in terms of paragraph 20.3.

13.3 DETERMINING THE WEIGHTING FOR EVALUATION PURPOSES

The weighting of the various components i.e. Quality, Price, SD, and B-BBEE need to be considered on a case by case basis as each procurement event will differ. It is important that these be determined upfront and included in the RFX document. Once included in the RFX document one cannot deviate from that and the evaluation has to be done strictly in accordance with what was stated in the RFX document.

The weighting of Quality requirements as a whole, as well as the sub-requirements within the Quality section, need to be carefully determined to ensure that the end product/service is optimal and fit for purpose.

It is suggested that the component weighting should vary in terms of preference, SD and Quality/price, depending on the particular IC[3] quadrant. (see *Figure [19]* below).

Figure [19]: Methods 1 & 2

13.4 It is important that all of the above should be carefully considered by the CFST and included in the sourcing strategy, the RFX and RFX sign-off template prior to issuing the RFX to the market, as neither the evaluation criteria, nor the weightings, nor the evaluation methodology (i.e. Method 1 or 2) may be changed during the evaluation phase.

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 14 : MAIN PROCUREMENT MECHANISMS

14.1 FACTORS TO CONSIDER WHEN SELECTING THE APPROPRIATE PROCUREMENT MECHANISM

Sourcing/procurement strategies are closely linked to the strategic importance and value of the Goods/Services. The first step is to classify Goods/Services on a risk/value matrix. In order to determine the importance of Goods/Services to Transnet as well as the appropriate procurement mechanism to be used, the commodity should be plotted on the four quadrant matrix below:

Figure [20] – Risk / Value Matrix

The following guidelines will assist in determining the correct procurement mechanism to use depending on where in the matrix particular the Goods/Services are placed:

TABLE 16

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
Routine/ Transactional	• Low risk; low spend • Non-critical items • Many suppliers in the market • Objective is to minimise spending significant time and effort on obtaining these Goods / Services through 'as and when' contracts	• Open Bid • Quotation system (only when non repetitive and under R2 million)	• "As and when" contract for short and medium term • Transversal contract
Leverage	• Low risk; high spend • Non-critical items • Many suppliers in the market	• Open Bid	• Transversal contract • "As and when" contract for short and

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
	• Objective is to leverage economies of scale		medium term
Bottleneck/ Development	• High risk; low spend • Limited suppliers • These are items that Transnet must have but which are difficult to obtain • Critical items • Includes specialised equipment, instrumentation or software from proprietary suppliers • Objective is to secure supply	• Two stage bidding system • Approved list • Confinement	• "As and when" contract for medium term • Fixed quantity
Strategic	• High risk; high spend • These are items that are critical to Transnet's business	• Open Bid • Two stage bidding system • Approved list • Confinement	• Medium to long term contract • Transversal contract

Depending on the circumstances of each requirement for the procurement of Goods or Services, any one of the following main procurement mechanisms or procurement paths may be utilised:

* Known market - suppliers are listed on the vendor database
** Limited market - only a restricted number of suppliers exist eg. Original Equipment Manufacturers, limited suppliers or a sole supplier
*** Competitive market - many suppliers exist in the market
**** Unknown market - there is no clear specification of requirements and/or the availability of the goods/services is unknown

Figure [21] – Procurement Mechanisms

14.2 PROHIBITED PRACTICES

14.2.1 As a general rule, the quotation / bidding system must not be used merely to obtain market related prices for budget or benchmarking purposes.

14.2.2 In cases where it is absolutely necessary to obtain test bids for budget purposes only, the request to the market must clearly and unambiguously state that the request for a quote is for budget purposes only and that no business will be awarded against this invitation. Care should, however, be exercised that such budget pricing exercise is not abused merely to give certain contenders advance notification of a new project in the pipeline. It would be advisable to rather obtain test quotes from more than one, or even better, all the known suppliers so as not to run the risk of being perceived to have given only one contender advance notification.

14.2.3 Requirements may not be deliberately split into parts or items of lesser value in order to keep the transaction value within a particular Delegation of Authority level or to keep it below the threshold of an AC or a person with higher Delegation of Authority. This is considered to be Parcelling.

14.2.4 Specifications should be functional and fit for purpose, rather than brand- or product-specific. Specifications must not include any exclusionary terms. Compiling a specification around one supplier's product is unfair and not allowed.

14.3 THE QUOTATION SYSTEM FOR VALUES BELOW R2 MILLION REQUEST FOR QUOTATION ("RFQ")

- Only used for transactions below R2 million in value
- The Goods or Services must be required on a non-repetitive basis
- The market should be known
- A minimum of three quotes must be obtained, where possible

14.3.1 Definition

The quotation system is a procurement system used for transactions below R2 million that are required on a non-repetitive basis.

14.3.2 When to use the quotation system

b) The quotation system is intended for non-frequent purchases of fairly low value. It should not be used on a continual / repetitive basis for the same commodity i.e. instances where the same commodity is purchased (sometimes even from the same supplier), but on different purchase orders/requisitions. This will be regarded as Parcelling.

c) The quotation system is best suited in the following circumstances where:

(i) transactions are valued at less than R2 million;

(ii) the purchase is not required on a repetitive basis. Where the same purchase is regularly made, consider a fixed term as-and-when-required contract. If market prices of the commodity are volatile and it is impossible to obtain firm prices for a specific period (even with price

review mechanisms included), consider a short term as-and-when-required contract;

(iii) the value of the transaction would make it impossible, impractical or economically unviable to call for Open Bids; or

(iv) there are opportunities to develop suppliers in order to achieve transformational objectives. This mechanism is considered to be the best avenue to facilitate entry to the market for emerging small B-BBEE companies.

14.3.3 Advantages and disadvantages of the quotation system

Advantages	Disadvantages
Quick turn-around times in the case of non-repetitive purchases	• This procurement mechanism is not the most cost-effective as the benefit of volume discount is lost • Turnaround time is longer when using the quotation system as opposed to an 'as and when' contract, in the case of repetitive purchases • Risk of limiting competition to only certain service providers

14.3.4 The authority to obtain quotes

CEOs may at their own discretion decide to allocate different levels of authority to different Managers in terms of their Delegation of Authority. The CEO [and ultimately the Chief Procurement Officer (**"CPO"**)] will delegate specific powers to specific Managers in the procurement function to invite quotations up to a certain value and secondly for the award of the business resulting from the quotation system.

Furthermore, the CEO of a Division may at his/her own discretion and within the Transnet DoA framework, introduce OD specific control mechanisms for these "low" value transactions (e.g. Petty Cash policies, etc).

Depending on the value of transactions falling within the quotation system, appropriate control measures must be implemented from low value quotes to high value quotes:

TABLE 17

Transaction value	Mechanism for obtaining quote	No. of quotes
Less than R5 000.00	Fax/email quotes	1
R5 000.00 – R50 000.00	Fax/email quotes	2
Greater than R50 000.00 – R250 000.00	Fax/email quotes	3
Greater than R250 000.00 – R1000 000.00	Short form RFQ request (receipt of bids at the tender box)	3 or more

Greater than R1000 000.00 – R2 000 000.00	Formal RFQ process (receipt of bids at the tender box)	3 or more

14.3.5 Number of quotes to be requested

a) As a general rule, a minimum of three quotations should be requested. However, a buyer may request more than three quotes if necessary. Where it is impossible to request three quotes e.g. patented articles, OEM spares etc., one or two quotes will suffice. However, a submission must be prepared with the reasons for not being able to request at least three quotations. This must be approved by the CPO or his/her delegate, depending on the value of the transaction and the delegated authority of the procurement official. Since OEM spares and components will in all probability be required on a regular basis, consideration should be given to either the framing of an Approved List, or the conclusion of an "As-and-when required" term contract.

b) It is important to note that once a request for quotations has been made to prospective Bidders, a buyer cannot subsequently request further quotes if all Bidders approached have not responded to the request by the closing date.

14.3.6 Transnet Vendor Portal

a) An automated Transnet wide Vendor Portal (TVP) has been created for all potential suppliers wishing to do business with Transnet to register and update their company profiles. The web address is https://vendorportal.transnet.net.

b) Potential suppliers should provide full details of the Goods/Services on offer, their tax clearance certificate, their BBBEE level, including % Black ownership and area of operation. Suppliers will be classified accordingly on the TVP.

c) Buyers who wish to obtain quotations must proceed to search the TVP and/or the OD's own vendor database for potential Bidders.

d) The TVP should ultimately have the functionality to invite quotes from potential suppliers on a rotational system to ensure an equitable spread of opportunities among all potential suppliers.

14.3.7 Process

a) As indicated above, the buyer will request quotes from at least 3 potential Bidders on the TVP where possible.

b) For relatively low value, simple Goods/Services, the RFQ should ideally be open for 3 to 4 Working Days in order to afford Bidders a reasonable opportunity to respond. For higher value, more complex Goods/Services, the RFQ should be open for a minimum of one week.

c) The bids must be received in a controlled environment, e.g. a dedicated email address, dedicated fax number or a tender box.

d) As a general rule, quotations are to be evaluated on the basis of price and B-BBEE. In addition to the 10 points allocated to the B-BBEE Scorecard, bidders

will be evaluated against the current status of their Ownership and Management Control. Ten points will be allocated to Ownership and a further 10 points to Management Control (see Figure [19] above). A minimum B-BBEE threshold of Level 4 should be used as pre-qualification criteria for quotations, unless not possible. In the event that technical evaluation is also necessary, the technical evaluation criteria must be pre-determined and included in the RFQ document. The highest scoring Bidder is to be selected as the Successful Bidder.

e) In instances where quotes are invited from potential new bidders, the prices quoted should, where possible, be benchmarked against previous prices paid, to ensure that Transnet obtains optimal value for money, whilst achieving its social obligation.

f) As indicated in paragraph 14.3.6 (d) above, quotations should be invited from potential bidders on the TVP on a rotational basis so as to ensure an equitable spread of opportunity among all potential suppliers.

Figure [22] – Quotation Process

14.4 THE OPEN BID PROCESS (RFP)

- Generally used for transactions greater than R2 million in value
- There must be a competitive market and a clear detailed specification available to which many prospective Bidders are able to respond
- Bids may be advertised in local, national and / or international media depending on the market

14.4.1 Definition

The Open Bid Process (RFP) is a competitive process where the general public is approached with an invitation to bid that is published in the media. All interested parties are granted an equal opportunity to bid for Transnet's business. Once the bid has closed, the winning Bid is selected by means of a transparent evaluation, recommendation and adjudication process.

14.4.2 When to use the open bid process

The Open Bid system is the procurement/disposal mechanism best suited to the following circumstances:

a) the monetary value of the purchases is in excess of R2 million;

b) even if the bid value is less than R2 million, an Open Bid should be issued if the market is not known or the Goods or Services are required on a repetitive basis;

c) the market is competitive (i.e. many potential suppliers are able to provide the required Goods/Services);

d) there are clear and unambiguous specifications to ensure that all potential suppliers bid for the same product;

e) there is enough time available;

f) the value of the transaction must warrant the cost, time and effort taken to use an Open Bid process; and

g) in cases where Transnet's needs / specifications etc. are still too vague to issue a formal bid, the two-stage Bid system (RFI) should be followed.

14.4.3 Advantages and disadvantages of the open bid process

Advantages	Disadvantages
The Open Bid system is regarded as the procurement mechanism which best ensures open and fair competition.	The Open Bid process is time consuming. In order to ensure that Goods / Services are delivered to the business when they are needed, the need for the Goods / Services needs to be anticipated well in advance. Requires significant resources (cost, time, etc.)

14.4.4 Process

a) Before any bid document may be issued to the market, the person with the necessary delegated authority must provide written authority to approach the market. This must include approval of the evaluation methodology, evaluation criteria and the availability of funds. The evaluation team is also to be decided on at this point.

b) The bid document should be compiled according to the guidelines set out in Chapter 16 *(Bid Preparation)*.

c) Bids may be advertised in local, national and / or international media depending on the market and value of the bid.

d) Bids should be kept open for a reasonable period. Refer to paragraph 16.3 for more detail.

e) Bids are to be finalised as soon as possible after the closing date of the bid.

See process below to be followed in the case of an Open Bid process

Figure [23] – Open Bid Process

14.5 APPROVED LIST PURCHASES

- An approved list is utilised for Goods or Services that are required according to unique specifications, on a continual basis and from a limited number of suppliers.
- This mechanism is used for non-standard items that are not available off the shelf.

14.5.1 Definition

An approved list is generally used for Goods or Services that are required according to unique specifications, e.g. OEM spares or proprietary articles. An approved list is framed and utilised for Goods or Services required on a continual basis.

14.5.2 General principles

a) In order to qualify for inclusion on any approved list a supplier must be able to supply Goods or Services of the quantity and quality required. Furthermore, if so required, the supplier must have submitted samples or delivered Goods which have satisfactorily passed Transnet's quality tests.

b) Approved supplier status cannot be acquired merely by being on a Division's Vendor Master or on a B-BBEE Manager's List of EMEs or QSEs for specific Goods or Services. Approved supplier status can only be obtained after following the process stipulated below.

c) Specifications must be drawn up to promote fair competition.

d) ODs and Specialist Units must attempt as far as possible to procure off-the-shelf Goods as opposed to drawing up their own specifications.

e) An Open Bid may not be issued for Goods/Services appearing on an approved list.

f) Information regarding Transnet's Approved Lists may not be disclosed to anyone outside Transnet without the written approval of the GCSCO.

g) The standard template for approved lists must be used.

14.5.3 When to use the approved list process

This procurement mechanism is ideally suited for the following transactions:

a) strategic, high-value, high-risk items, non-standard items which are not available "off-the shelf";

b) where equipment can only be obtained from Original Equipment Manufacturers (OEMs) or limited suppliers; or

c) Goods and specialised Services that cannot be sourced from non-approved suppliers because of Transnet's own unique specifications, Quality standards, or safety requirements i.e. commodities that are not freely available in the market from a range of suppliers.

14.5.4 Advantages and disadvantages of the approved list process

Advantages	Disadvantages
• Reduces administrative burden as there is no need to approach the open market every time there is a requirement for Goods/Services. • Bidders are pre-qualified and need not be evaluated on technical aspects every time there is a requirement. • New entrants can be accommodated at any time.	Delays between identifying and approving new entrants into the market due to stringent testing requirements.

14.5.5 Types of Approved Lists

a) **Type 1: Generic Approved Lists – Indefinite validity**

(i) This type of approved list remains valid indefinitely, subject to the proviso that they must be advertised every 6 months to afford new suppliers an opportunity to be included onto the list.

(ii) Although the list remains valid indefinitely, the suppliers on the list will be subject to periodic quality testing in order to maintain their name on the list. Should suppliers fail to meet quality standards, their names may be removed from the approved list as per paragraph 14.5.8.

(iii) This type of approved list may be framed by following one of the two procurement processes outlined below:

- After public Advertisement of the intention to frame an approved list in a notice requesting all prospective suppliers to formally apply.
- By framing an initial approved list of suppliers based on previous experience and/or tests carried out. The list will nevertheless be advertised publicly thereafter to invite new entrants to the market.

(iv) Testing: Bidders are entitled to a full explanation of the testing process that was/is to be carried out on their product. Bidders may, upon request, be allowed to observe the testing process carried out by Transnet. Those Bidders who's Goods fail the relevant tests, must be provided with detailed reasons why their Goods failed the tests and should be afforded an opportunity to resubmit their Goods for testing once the necessary improvements have been made.

(v) In either of the two processes listed above, aspirant suppliers may apply for inclusion after the approved list has been established. Such suppliers may be provisionally included on the approved list where it is not practical to test their product/sample beforehand e.g. overhaul of traction motors; reconditioning of transformers for electric substations, etc. Potential suppliers in this category will be subjected to a quality check e.g. ISO certification, previous experience on work of a similar nature and complexity, quality control systems etc. Qualifying suppliers will then, subject to AC and CEO approval, be placed on the approved list as "aspiring suppliers". When obtaining bids from suppliers already appearing on the approved list, the aspiring prospective suppliers must also be invited to submit bids. If an aspiring applicant is awarded a contract or portion of the contract for testing purposes and performs satisfactorily, their name must be placed on the approved list by following the normal approval process i.e. AC and CEO approval must be obtained.

(vi) A list of all approved lists with their respective specifications, contact details of technical expert, etc. must be displayed on the notice/bulletin boards in bid issuing offices so that potential new entrants are made aware of its existence.

(vii) Although the generic approved list remains valid for an indefinite period, it must be advertised every 6 months in order to afford new suppliers an opportunity to be included. However, such approved lists can be updated at any time. It is not necessary to wait for the 6 month interval to include a new name on the approved list. After a new entrant's product has successfully passed the quality tests, AC and CEO approval must be obtained and the list must be updated accordingly.

(viii) New entrants may apply at any time for inclusion on the approved list. Any new applications received outside of the 6 month advertising intervals must be dealt with immediately and not held over until the next Advertisement.

(ix) It is important to note that when such an approved list is utilised to solicit bids, all approved suppliers (including aspiring suppliers, if applicable), must be approached and invited to submit bids. Under no circumstances may only certain names be selected off an approved list on a selective or rotational basis. Furthermore, all such requests for bids must be dealt with in terms of the standard procedures.

(x) Award of business on the approved list is subject to approval from the person/body with the necessary DoA, as well as the relevant AC if such transaction falls within its jurisdiction.

(xi) It is important to note that the names on the generic approved list will remain on the list unless their names are removed for one or other reason.

b) Type 2: Hybrid Approved Lists – Fixed period validity

Hybrid Approved Lists are typically used in the following circumstances:

- Competitive market where there is a need to prequalify suppliers, as well as to limit the need to continuously evaluate large numbers of bids

(i) "Hybrid approved lists" are publicly advertised and framed for a fixed period. The validity period of the list must be clearly stated in the Advertisement, as well as in the subsequent letter informing successful applicants of their inclusion on the Approved List.

(ii) The nature of the Goods/Services will inform the decision on whether to make use of this type of approved list. Typically, a competitive market must exist in order to use this type of approved list. Examples of such "approved lists" are the Transnet Legal Panel and the Transnet List of Approved Security Service Providers.

(iii) Unlike the generic approved list, no new applications for inclusion on the list may be considered during the period that the existing list is in force.

(iv) The manner in which the approved list is to be structured and implemented must be fully motivated and submitted to the relevant AC for prior consideration and approval by the CEO.

(v) At the end of the fixed period, the list must be re-advertised and a new list must be framed, if there is still a need for such an approved list. Suppliers who were included on the previous approved list must re-apply for inclusion onto the new list, and they must be made aware of this when the new list is being advertised.

14.5.6 Authority to frame an approved list

a) The framing of an approved list or any amendment thereto must be approved by an OD CEO or in respect of Transnet Corporate Centre ("TCC") requirements or transversal contracts, the GCSCO, upon recommendation from the AC.

b) The AC will be responsible for the distribution of the List within the particular entity and to Group iSCM. All Approved Lists should be communicated to the Governance function at Group iSCM, who will distribute the list to all other ACs in the Transnet Group. Group iSCM will be responsible for developing a shared portal to facilitate easier access to all approved lists, by all Transnet entities. The division which initiated the list will, however, be responsible for the periodic updating thereof.

c) Any person or Enterprise whose application for inclusion on the approved list has been refused or whose name has been removed from the list, may make representations to the relevant CEO. Should the person/Enterprise not be satisfied with an OD CEO's ruling, an appeal may be made to the Group Chief Supply Chain Officer ("GCSCO") whose decision shall be final. In respect of TCC, an appeal may be made to the GCFO whose decision shall be final.

14.5.7 Process

a) The OD AC must first provide "in principle" approval for the framing of an approved list.

b) The Advertisement for an approved list must only make reference to the Goods/Services for which the list is being framed and not the names of the approved suppliers.

c) All approved lists have to be advertised at least every 6 months, by means of a public notice in the appropriate media, inviting all interested parties to submit applications for possible inclusion on the relevant approved list.

Figure [24] – Process to frame Approved List

14.5.8 Removal of names from the approved list

a) The name of an Enterprise may be removed from an approved list at any time if the Enterprise:

b) has been convicted of any offence under any law relating to wages, hours of work or other conditions of employment;

c) fails or ceases to comply with the requirements of such approved list;

d) continues to perform unsatisfactorily after having been informed accordingly when measured on any of the following criteria: timeliness, Quality, price escalation and service;

e) sub-contracts the whole or any portion of a contract for the supply of Goods or Services in respect of an approved list to an Enterprise or person whose name does not appear on that list;

f) otherwise acts in a manner which, in the opinion of Transnet, is construed to nullify the object of framing an approved list;

g) has ceased to carry on business under the name on the approved list and has not informed Transnet of this change;

h) has been dealt with in terms of Transnet's List of Excluded Bidders;

i) has shown little interest over a reasonable period to submit quotations when invited to do so; or

j) has not been awarded any business over a reasonable period due to non-competitive prices;

Before a name is removed from an approved list, the Enterprise concerned shall be notified in writing of the intention to remove it from the list including reasons. The Enterprise shall be afforded the opportunity to make representations as to why its name should not be removed from the list.

14.6 TWO-STAGE BIDDING SYSTEM (RFI/RFP PROCESS)

This procurement mechanism is appropriate under the following circumstances:

- where the suitability of service providers must first be determined prior to them being invited to bid for Goods / Services;
- when assessing the availability of Goods / Services where there is no clear specification of requirements; or
- there could be solutions available in the market unknown to Transnet.

14.6.1 Principles

This procurement mechanism is appropriate under the following circumstances as it takes into account the most satisfactory solution to Transnet's specific procurement needs:

a) where due to the nature of the Goods / Services being acquired, the suitability of service providers must first be determined prior to them being invited to bid for the Goods / Services (pre-qualification);

b) where there is no clear specification of requirements and it is not feasible/possible for Transnet to formulate detailed specifications for the Goods or Services required; or

c) where Transnet seeks first to establish the various possible solutions available in the market in order to determine the best solution for Transnet.

In scenarios (a) and (b) above Transnet may draw up a functional specification in the RFP based on the responses received to a Request for Information ("**RFI**") taking into account its specific needs. It is critical that the specification not be drafted around a particular supplier's response to the RFI. Intellectual property issues must be taken into account prior to proceeding to stage two of the process.

14.6.2 When to use the two-stage bidding process

a) This mechanism is used in assessing the availability of Goods/Services where there is no clear specification of requirements or where the suitability of service providers must first be determined prior to the undertaking of any development work.

b) The use of this mechanism is appropriate where there are various possible means of meeting the need.

c) The RFI process is ideally suited to projects involving research, development, studies or experiments. In such instances it is not in the best interests of either Transnet or the prospective Bidders to develop a detailed plan when it has not yet been determined as to whether implementation is feasible.

d) The RFI process can be utilised to determine the availability of Goods and different suppliers' specifications in order for Transnet to draft its own specifications in such a way that accommodates as many potential suppliers as possible that are able to provide a product of acceptable quality.

e) To obtain Expressions of Interest (EOI) from the market before stage 2 of the two-stage bidding process is embarked upon.

14.6.3 Advantages & disadvantages of the two-stage bidding process

Advantages	Disadvantages
• Allows Transnet to obtain an indication of what is available in the market before approaching the market with a firm invitation to bid. • Allows Transnet to draft a clear specification when it approached the market	• The two stage bidding process is a time consuming process • There is a risk of possible infringement of IP

14.6.4 Process

A two stage bidding process involves the following steps:

a) **Stage 1 (RFI stage):**

(i) Prospective Bidders are invited to submit their proposals via an open RFI after approval to approach the market has been obtained.

(ii) The evaluation criteria in the first stage may include criteria such as technical, Quality, contractual terms, conditions of supply and the professional and technical competence of the suppliers. Transnet may wish to request rough costing estimates during this first stage. However, price would typically not be requested at this stage.

(iii) The RFI must clearly indicate Transnet's intention during the second stage of the process: i.e. whether:

- suppliers will be subjected to pre-qualification criteria and be short listed in order to proceed to the second stage;
- Transnet will issue an Open Bid based on the responses and specifications received in the first stage; or
- Transnet will approach one or a shortlist of Bidders based on the responses and specifications received in the first stage.

(iv) The RFIs received must be evaluated in terms of pre-determined criteria which have been made available to all contenders in the RFI.

(v) A recommendation is made to the AC or relevant authority regarding the outcome of the first stage, and the eligibility of the bidders to participate in the second stage.

(vi) AC agreement with the recommendation effectively authorises the second stage of the process.

b) **Stage 2 (RFP stage)**

(i) Depending on the option exercised in stage 1, Transnet may either issue an Open Bid or limit the second stage to only one or a shortlist of Bidders, as approved by the AC.

(ii) Bidders are invited to bid in the normal manner.

(iii) The bids are evaluated and awarded in the normal manner.

Figure [25] – Two stage bidding process

CHAPTER 15 : SPECIAL CASES

15.1 CONFINEMENTS

Confinements are to be used under the following circumstances:

- for transactions over the value of R2 million
- usually when Goods/Services are required on a once-off basis
- when the nature of the Goods/Services fall within one of the grounds for Confinement

15.1.1 Definition

A Confinement is a mechanism where permission is sought from the person with the appropriate Delegation of Authority to "**confine**" enquiries for required Goods/Services to one or a limited number of Bidders.

A Confinement is a departure from the norm of an open, competitive bidding process and as such must be treated with great circumspection. The misuse of confinements has the potential to entrench monopolies and as such is at odds with the imperatives of the New Growth Path. The NGP seeks to encourage open competition and the introduction of new entrants into the market, particularly those from previously disadvantaged communities.

It is important to note that confinements only apply to transactions over R2m. These rules therefore do not apply to transactions falling below R2m. The quotation system applies to such transactions regardless of the number of quotations the buyer is able to obtain.

15.1.2 Grounds

Confinements will only be considered under the following circumstances:

a) where a genuine unforeseeable urgency has arisen. Such urgency should not be attributable to a lack of proper planning. In such cases appropriate action must be taken against the individual(s) responsible for the bad planning.

b) the Goods/Services are only obtainable from one/limited number of suppliers. For instance, patented/proprietary Goods or OEM spares and components. Operating divisions are however required to provide evidence that there are no new entrants to the market who could also be approached;

c) for reasons of standardisation or compatibility with existing Goods and Services. A case must be made that deviation from existing standardized Goods or Services will cause major operational disruption. If not, confinements based on "standardisation" will not be considered; or

d) when the Goods or Services being procured are highly specialized and largely identical to those previously executed by that supplier and it is not in the interest of the public or the organization to solicit other offers, as it would

result in wasted money and/or time for Transnet. When this particular ground is intended to be used as a ground for Confinement, it is important to note that all pre-requisites must be satisfied: The Goods or Services must be highly specialised, almost identical to previous work done and approaching the market again would result in wasted money and time.

15.1.3 Types of confinements

Depending on the circumstances one of the following two Confinement routes will be applicable:-

a) The normal Confinement route:
- prior authority to confine must be obtained from the person with the relevant delegation;
- bids will close at the relevant AC (relevant AC to be indicated in the submission for approval); and
- the relevant AC will consider the award of business.

b) Confine and award which is only to be used in cases where there is a sole supplier and/or cases of extreme urgency:
- prior authority to confine and award must be obtained;
- the submission to the person with Delegated Powers must fully motivate the reason for the urgency and provide an indicative / benchmark price;
- bids will close at the relevant AC (relevant AC to be indicated in the submission for approval);
- the business will be awarded by the person with the delegation to the relevant Bidder provided that the final price is within the benchmark as initially approved by the person with the delegation to approve the Confinement; and
- the AC must be informed after award.

15.1.4 Delegation of authority

a) Depending on the value of the transaction, only the GCE, BADC and the Transnet Board have the authority to authorise a Confinement.

b) The relevant monetary thresholds for authorising confinements are as follows:

(i) GCE – up to but not exceeding R250 million;

(ii) BADC – up to but not exceeding R1 000 million; and

(iii) The Board – exceeding R1 000 million.

15.1.5 Process

a) The submission for Confinement must be fully motivated in writing by the end-user and the OD CPO to the OD's main AC and the OD's CEO for prior written support of the recommendation to confine. It is important to properly motivate submissions taking into account all relevant factors. Poorly motivated submissions will be referred back to the OD concerned for re-motivation. The submission should be submitted on the relevant template under cover of a memo to the GCE.

b) Only if the reasons advanced for the proposed Confinement are supported and considered to be in the best interest of Transnet, should the Confinement of business to one or more contenders be escalated to Group.

c) The Confinement request must be considered by the Transnet GCSCO and the Group CFO each of whom shall indicate whether or not they support the request.

d) The matter must then be submitted to the GCE, the BADC or to the Board itself for final approval depending on the value of the transaction.

Figure [26] – The Confinement process

15.1.6 **Confinement divided between more than one Bidder**

Should it be decided to divide the total requirement of a Confinement between more than one Bidder, the total value of the business and not the individual contracts shall determine the level of approval required for the Confinement. Only after the necessary approval has been obtained, may the individual contracts be signed by the Manager with the necessary delegated contractual powers.

15.1.7 **Amendment to contracts awarded via Confinement**

a) Where a Material Amendment (i.e. the price, duration or scope is increased by more than 10%) to a contract awarded via Confinement is required, the matter must be sent to the relevant AC for support. The AC must submit the amendment to the original approver of the Confinement for prior approval of the amendment. The same principle applies where the cumulative value of amendments equals or exceeds 10% of the original contract value.

b) Where an amendment increases the price, duration or scope by less than 10%, this should be submitted to the AC for approval.

c) Where an amendment to a contract results in the value of the Confinement reaching a higher approval level, the matter must be sent to the original approver for review and recommendation. Approval must then be sought from the person with the delegated authority to approve the higher value of the Confinement.

15.2 EMERGENCY PROCEDURE

The emergency procedure is to be used under the following circumstances:

- Where the circumstances giving rise to the emergency were unforeseeable;
- Where engaging in normal bidding procedures or any other methods of procurement would be impractical; and
- Where the occurrence requires immediate action

The concept of retrospective authority applies only in the context of emergencies. Where an emergency process is followed correctly, condonation is not required.

15.2.1 Definition

a) The following circumstances would normally be regarded as sufficient grounds for invoking the emergency procedure i.e. a situation has arisen where there is an imminent risk of:

- human injury or death;
- human suffering;
- serious business disruption that could not have been reasonably foreseen;
- interruption of essential services;
- serious damage to property or financial loss;
- suffering or death of livestock or other animals; or
- serious environmental damage or degradation.

b) The concept of an "emergency" must be applied restrictively and should not be used as an excuse for bad planning. As such, in order to qualify for the emergency procedure:

- the circumstances giving rise to the emergency must not have been foreseeable;
- engaging in bidding procedures or any other methods of procurement would be impractical; and
- the occurrence requires immediate action.

An emergency should not be attributable to a lack of proper planning. In such instances appropriate action must be taken against the individual(s) responsible for the bad planning.

15.2.2 Process to institute the emergency process

a) The end-user requests authority from the person with the necessary delegation of authority to institute the emergency procurement procedure. If possible, the end user must notify procurement of the emergency requirement telephonically followed by email.

b) The duly authorised Manager to invoke the emergency process will consider the request and decide on whether to grant such authority. He/she will notify the requestor in the form of an email, SMS or even verbally. If by SMS or verbally, this must be confirmed in writing or by e-mail afterwards.

c) Procurement will invite a Bid(s) from a supplier(s) best able to deal with the emergency immediately. Alternatively, if the emergency occurs after office hours or it is not possible to contact procurement, the end user, after having received the required approval as per sub-paragraph (a) above, may invite the Bid/s directly from suppliers and/or issue instructions to commence the work.

d) Retrospective authority must be obtained as soon as possible thereafter.

15.2.3 Retrospective authority for the emergency procedure

a) The person who has the delegated authority to retrospectively approve the transaction, must be approached for retrospective authority for the emergency. This person, who is different from the person authorised to institute the emergency process, must consider the motivation and provide retrospective authority if the emergency is validated. Please see attached Appendix F for the Matrix for Approval of Emergency Procedures.

NB: Each Entity is responsible for developing its own Emergency Procedural Manual, covering all the relevant disciplines in the entity, and assigning specific persons and value thresholds, for the different roles (i.e. to institute (invoke) and to retrospectively approve). Note that the AC may also be utilised to retrospectively approve the emergency procedure.

b) Retrospective authority must be sought using the standard template.

c) All emergency procedure purchases, irrespective of the value, must then be submitted to the AC for information purposes.

d) The concept of retrospective authority applies only in the context of emergencies and does not apply to the condonation process.

e) If an emergency procedure is followed correctly, condonation is not required. It is also important to note that a correctly followed emergency procedure also falls outside the ambit of the Confinement process.

15.3 HIGH VALUE TENDER PROCESS (HVTP)

- The High Value Tender Process (HVTP) subjects all transactions falling within the High Value Tender threshold to independent scrutiny and validation of all commercial, contractual, process and governance aspects of the Bid process.
- The process enables Supply Chain to detect any shortcomings at key gateways in the Bid process and to make appropriate corrections before any award of business is made.

15.3.1 Principles

a) The HVTP applies to all transactions falling within the High Value Tender threshold. The HVTP offers an opportunity for peer review, guidance, advice and the sharing of good practice and experience. The HVTP subjects all high value bids to independent scrutiny and validation of all commercial, contractual, process and governance aspects of the bid process.

b) The process enables Supply Chain to detect any shortcomings at key gateways and to make appropriate corrections. This further reduces Transnet's risk on larger value acquisitions as any inefficiencies are addressed before any award of business is made.

The gateways that are reviewable in the process are as follows:

Figure [27] – The HVT process

15.3.2 The HVT Process

The following steps must be followed for any transactions falling within the High Value Tender threshold:

Entities must contact and involve the HVT team from the outset of the bidding process i.e. at the demand review stage;

The HVT team must attend to all procurement processes and advise Entities during each phase of the process as follows:

- Review the demand and business cases.
- Review the RFX document for accuracy and correctness before going to market.
- Assess the adequacy of the procurement proposed mechanism used i.e. RFP/RFI/Confinement and determine if governance is being followed by ensuring that the approval process has been complied with.
- Ensure that in all high value bids, a CFST contains at least Technical, Financial, Operational and Legal Support.
- Advise on the scoring methodology and governance issues related to the evaluation process.
- Advise the teams during the evaluation process on all bids;
- Advise and support teams during the moderation process of scores on all bids;
- Review AC documents for accuracy and correctness.
- Advise teams during the negotiation process and also determine if governance processes have been followed.
- Advise teams during the contracting process and also determine if governance processes have been followed.

- During each gateway review the HVT team will raise questions and/or concerns. The teams may not continue with the process until all the HVT team's concerns have been addressed.
- The HVT team must report significant process breaches to Transnet management. Firstly at Entity level, and if still not satisfied with the outcome / corrective action, such matters must be reported to Group iSCM.
- The HVT team must document lessons learnt throughout the process and provide feedback so that processes may be improved.

A detailed description of the HVTP and associated templates can be found on the iSCM Transnet Intranet.

15.4 UNSOLICITED BIDS

- An Unsolicited Bid is an offer unilaterally submitted by a potential supplier of its own accord and received by Transnet outside of its normal procurement process.
- Transnet is not obliged to consider Unsolicited Bids received outside its normal bidding process.
- These rules do not apply to Bidders who merely seek to be registered on Transnet's Potential Vendor Portal (TPVP) in order to be considered as potential suppliers for future business. When Goods or Services are to be acquired from such Bidders, the normal procurement mechanisms are to be used

15.4.1 Definition

An Unsolicited Bid is an offer unilaterally submitted by a potential supplier of its own accord and received by Transnet outside of its normal procurement process.

Transnet does not encourage the consideration of Unsolicited Bids. Furthermore, Transnet is not obliged to accept Unsolicited Bids.

15.4.2 Risks

There are a number of risks related to the consideration of Unsolicited Bids:

a) It potentially undermines fair and competitive bidding processes.

b) It can result in purchasing Goods/Services at higher than market-related prices.

c) Transnet runs the risk of being accused of infringing on the Unsolicited Bidder's intellectual property if it uses the concepts used in the Unsolicited Bid to approach the market.

d) There is also danger that an Unsolicited Bid may be received, evaluated and regarded as an excellent proposal and accepted, only to ascertain afterwards that there were many suppliers in the market supplying the same or better goods or technology at much better / similar prices.

15.4.3 Criteria for consideration of unsolicited bids[5]

[5] *This section is largely based on the Municipal Finance Management Act Regulations and National Treasury's Practice Note 11 of 2008/2009 on Unsolicited Proposals*

Transnet may only consider an Unsolicited Bid if the following requirements are met:

a) the product or service offered is a demonstrably or proven unique and innovative concept;

b) a need for the service or product has been established;

c) the product or service will be exceptionally beneficial to Transnet or have exceptional cost advantages for Transnet;

d) the Bidder is the sole supplier of the service or product; and

e) the reasons for not using one of the normal bidding processes have to be found to be sound by the person with the necessary delegation of authority.

15.4.4 **Unacceptable unsolicited bids**

Transnet must reject an Unsolicited Bid if the Bid:

a) relates to known institutional requirements which can, within reasonable and practicable limits, be acquired by conventional competitive bidding methods;

b) relates to goods or services which are generally available; or

c) does not comply substantially with the requirements of paragraph 15.4.3 above.

15.4.5 **Rejection of unsolicited bids**

Should Transnet decide to reject an Unsolicited Bid, the following steps must be followed:

a) The Bidder must be notified of the decision;

b) All documents received in the Unsolicited Bid must be returned to the Bidder; and

c) Transnet must ensure that it does not make use of any intellectual property or data that was contained in the Unsolicited Bid.

15.4.6 **Process for consideration of unsolicited bids**

a) The Unsolicited Bid must be considered by an evaluation team. The minutes of the evaluation meeting must be recorded.

b) The evaluation team should investigate and verify whether there are no other suppliers in the market.

c) In the event that the evaluation team has resolved to procure the Goods or Services, depending on the contract value, the Confinement or quotation process must be followed and thereafter a recommendation made to the AC, Manager or person with the relevant authority to approve the award.

d) All copies of Unsolicited Bids, records of discussions, records of deliberations and copies of correspondence relating to it, will be kept by the procurement official who led the process, and the AC secretary for record purposes.

15.4.7 **Information to accompany the recommendation for award of the unsolicited Bid**

The following information must be contained in the recommendation:

a) A detailed description of the goods or services;

b) A detailed description of benefits Transnet is to derive from the envisaged acquisition;

c) The costs associated with the acquisition of the service or product;

d) The validity period of the Unsolicited Bid;

e) Proof of certification that the Bid was submitted by the person who holds the intellectual property rights in the goods or service; and

f) Certification by the evaluation team that there are no other suppliers who can provide the goods or services.

15.5 CONTRACT CONSOLIDATION

Contract consolidation may represent optimal value for Transnet in the following circumstances:

- where more than one Entity have existing contracts for the same Goods / Service with the same or different suppliers with significant price variations and differing contract terms; or
- where one or more Transnet Entity become aware that another Entity has already concluded a contract for the Goods /Services required by it and wish to utilise the existing contract ('piggybacking').

15.5.1 Principles

Consolidation of existing contracts is potentially problematic from a governance and operational perspective. For this reason, Transnet must endeavour to approach the market with a consolidated demand signal clearly outlined in a single RFP, rather than having each Entity approach the market in a piecemeal fashion and thereafter seeking to consolidate a number of different contracts. Therefore, when an Entity identifies the need to acquire goods/services that are common to more than one entity, it is imperative that they first ascertain whether it is feasible and advantageous to approach the market with the consolidated requirements of all Entities that require the goods / services.

Transnet can gain significantly from consolidating its demand. Due to economies of scale, it will be in a better position to negotiate price and contractual advantages. In addition, it will lessen the administrative burden on Transnet to manage a multiplicity of contracts.

15.5.2 Triggers for consolidation

One of the following circumstances should trigger the need for consolidation of existing contracts:

a) The same commodities or categories of commodities are being purchased by more than one entity from the same supplier but with differing prices and contract terms. For example:

Supply of bottled water

b) The same commodities or categories of commodities are being purchased by more than one entity from different suppliers with differing prices and contract terms. For example:

Supply of bottled water

c) The same commodities are being purchased by one OD from the same or different suppliers, with significant price variations. For example:

Supply of bottled water

15.5.3 Factors to consider when consolidating

The following factors need to be considered when consolidating existing contracts:

a) The probable increase in volumes required from the preferred suppliers (expressed in %) if contracts were to be consolidated;

b) Whether the existing contracts allow volume changes, and what the contract terms and conditions regarding volume changes are;

c) Price differentials between various contracts;

d) Other key contractual differences (e.g. specifications, delivery, payments, volume discounts etc.);

e) Whether the contracts allow for cancellation 'without cause';

f) The expiry dates of the various contracts;

g) The cost of termination (penalty for breach); and

h) Current contract management and monitoring.

The merits of each case should be evaluated based on the factors above in order to determine the feasibility of consolidation. Once the feasibility of contract consolidation has been determined, a decision will be made on whether to renegotiate one of the existing contracts or issue a new bid.

The cost of termination of existing contracts must be calculated and then weighed against potential benefits of consolidation in terms of cost and Quality. It is important to note that existing contract periods must be adhered to where financially viable. Paying high penalties due to the cancellation of existing contracts should be avoided as far as possible.

Where it is clear that there is no financial benefit for Transnet to renegotiate the existing contracts then the process to be followed would be to issue a new bid for the consolidated spend, when the existing contract(s) terminate.

15.5.4 Deciding on which contract to consolidate

Once a decision has been made to consolidate, the next issue is to determine which contract is the most favourable for consolidation. In arriving at this decision, the following factors must be considered:

a) Identify the contract that entails the biggest spend or usage;

b) The OD and/or region contributing the largest volume;

c) Whether one supplier can meet all Transnet's requirements;

d) The perception regarding potential market challenges (type of commodity and potential suppliers);

e) The competitive landscape of these Goods and Services; and

f) New suppliers in the market.

15.5.5 Process for consolidation of a number of existing contracts

a) Where it is considered feasible to consolidate spend to one of the existing contracts, all other contracts must be terminated. The most favourable existing contract would be increased to include other Transnet Entities' requirements after negotiation. The Transnet Entity originally managing that contract will be responsible to initiate the approval process for the increase of contract value.

b) Where the increase in value is below 10% of the original contract value, the matter must be submitted to the relevant Entity AC for noting.

c) If the increase in contract value is above 10%, the matter must be submitted to the relevant Transnet Entity's AC for approval.

d) Once the relevant Transnet Entity has approved the increase, the matter must be submitted to the other Transnet Entities' ACs for information.

e) Where consolidation would result in a substantial increase in the scope and value of the contract (more than 50% of the original estimated contract value as approved by the AC), it would be peremptory to embark upon a new bid process for the consolidated spend.

f) Inclusion of entities into the consolidated contract may be on a staggered basis. For example, where a current Transnet Entity's contract expires 3 months after the consolidated contract commences, that contract can be allowed to run its full period. Thereafter, the entity will be included in the new transversal agreement, with a sliding-scale volume discount structure being coupled to the pricing.

g) Contract "owners" must notify all Transnet users of the new transversal contracts that are in place to ensure maximum advantage for Transnet. However, please note that this mechanism is to be regarded as almost an interim measure. Ideally all entities must be approached during the demand planning stage already to obtain their estimated requirements beforehand for inclusion in the consolidated RFX document.

h) Note that the process to be followed for the normal increase of contract values and cancellation of contracts will still apply.

15.5.6 "Piggybacking"

a) "Piggybacking" arises when an existing contract has been identified, which one Transnet Entity has concluded for specific goods/services, and which another entity would like to utilise for their requirements.

b) The Transnet Entity who wishes to "piggyback" off an existing contract should obtain prior approval from the AC of the Transnet Entity that concluded the contract. Once approval from that AC is obtained, the supplier should be approached to indicate whether he/she is able to meet the increased volume as well as any price discounts that may be offered.

c) Where the increase in value is below 10% of the original contract value, the matter must be re-submitted to the relevant AC for noting. If the increase in contract value is above 10%, the matter must be re-submitted to the relevant Entity AC for final approval.

d) Once the relevant Entity has approved the increase, the matter must be submitted to the other ACs of Entities who want to make use of this contract for information.

e) The respective Transnet Entities must make satisfactory arrangements between themselves regarding the apportionment or recovery of costs for goods / services, if applicable.

f) Where consolidation would result in a substantial increase in the scope and value of the contract (more than 50%), it would be prudent to embark upon a new bid process for the consolidated spend.

15.6 ACQUISITIONS ASSOCIATED WITH INCOME GENERATING CONTRACTS

15.6.1 Although income generating contracts are in principle excluded from this Procurement Procedure Manual, all associated expenditure contracts necessary to fulfil such contracts (i.e. procurement contracts to acquire the necessary Goods or Services), falls within the ambit of the PPM.

15.6.2 For example, TFR negotiates an income generating contract to transport fuel from the Port of Durban to Zimbabwe. This would be a pure income generating contract and although it might require approval from the TFR Exco or even Transnet Board of Directors, it would fall outside the scope of the PPM and AC approval would not be necessary.

15.6.3 However, if TFR needs to purchase 2 additional locomotives and 90 rail tank wagons to provide this Service (fulfil the contract); such associated expenditure / procurement contracts would fall within the ambit of the PPM and would also require AC approval.

15.6.4 The only exception to this rule would be in circumstances where a Transnet Division or Specialist Unit needs to respond to an external bid invitation (e.g. TRE responding to a bid invitation issued by PRASA for the supply of suburban coaches). In such instances Transnet would need to prepare its bid for the income generating contract taking into consideration any goods/services that it would need to acquire in order to respond to the bid. The limited time available to respond to such bid invitation would not allow the Transnet Division or Specialist Unit to invite bids in the normal manner for goods/services required.

15.6.5 In such cases, irrespective of the monetary value of such transaction(s), the CEO, BADC or the Board may authorise such "confined" requests for bids from potential suppliers and/or approve the selection of possible joint venture partners/subcontractors, etc., without AC approval, provided that the matter(s) be reported for the AC's information as soon as possible after the Transnet OD has lodged its bid. When obtaining bids in respect of goods and services required in order to respond to an external bid invitation, the Transnet Entity must clearly state that the award of any business pursuant to such bids cannot be guaranteed and is conditional on the Transnet Entity being selected as the Successful Bidder.

15.6.6 Such transaction(s) need not be submitted for approval again, should the Transnet Entity be selected as the Successful Bidder, as this could lead to delays in the execution of such external income generating contract.

15.6.7 On completion of the project, the AC should be informed of the outcome in detail, e.g. how the selected subcontractors/JV Partners performed, whether the project was completed on time, what income was derived from the income generating contract after all outsourced parts have been accounted for, etc.

SECTION A Background and Context

SECTION B Procurement planning

SECTION C: GO TO MARKET

Chapter 16: Bid Preparation

- Compiling bids – General
- Evaluation criteria in bid documents
- Timeframes
- Validity period
- Essential requirements in bid documents
- Sign off

Chapter 17: Bid Administration

- Issue of bids
- Receipt and safeguarding of bids
- Opening of bids
- Amendments and communication after closing

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

CHAPTER 16 : BID PREPARATION

16.1 COMPILING BIDS - GENERAL

Bid documents define the rights, risks and obligations of the parties involved in the bidding process and subsequent contract. Documents must therefore clearly and precisely spell out all relevant aspects of the bid such as the work to be carried out, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements and the warranty and maintenance requirements.

Accordingly, such documentation should be legally and technically sound and should assign risk in an appropriate manner. The bid documents must provide Bidders with clear and comprehensive information necessary to enable them to submit responsive bids. The specifications, including the evaluation criteria and weightings, must be determined upfront as indicated in Chapter 13 above *(Determining Evaluation Criteria)*, as bids may only be evaluated according to the criteria stipulated in the bid documentation. Bid documents must be drafted with care and precision so as to reduce the risk of legal challenge by unsuccessful bidders and avoid unintended consequences.

16.2 EVALUATION CRITERIA IN BID DOCUMENTS

The bid documents must make it clear that, [6]where applicable, Bidders will be assessed in two stages:

16.2.1 STAGE 1

a) **Test for administrative responsiveness**

Inform Bidders of the minimum requirements for responsiveness, and the consequences of not being responsive.

b) **Test for substantive responsiveness (Prequalification criteria)**

Indicate Prequalification Criteria, if any.

c) **Threshold**

(i) Indicate that there are thresholds that have to be met before a Bidder can proceed to further evaluation in the following order: Local Content/Production threshold if applicable, SD/B-BBEE threshold and Functionality (Quality) threshold.

(ii) State what these thresholds are, as well as the minimum score that has to be met to pass the threshold.

(iii) The RFP may also state that if no Bidders pass a particular threshold, or if only one bidder passes the relevant threshold, then in the interests of promoting competitiveness and cost effectiveness, Transnet reserves the right to lower the threshold by a certain pre-determined percentage. This must be clearly specified in the RFP, provided it is in Transnet's best interests to do so and there is concurrence between the end user and the CPO.

(iv) Kindly note that since the LC thresholds are laid down in terms of legislation, the lowering of such minimum thresholds as determined by the DTI is not allowed, and bidders who fail to meet the laid down minimum thresholds for LC, will be disqualified.

[6] This is the default position but will not necessarily be applicable in all instances, e.g. low value transactions or approved list purchases where the quality of the product has already been pre-approved.

16.2.2 STAGE 2

a) **Evaluation criteria**

The RFP must specify all the evaluation criteria which will be taken into account in evaluating the bid and how such criteria will be evaluated. The weighting of each criterion must also be disclosed in the RFP document. Typically this would include the following:

(i) **Quality**

(Quality is normally included only as a threshold in Phase 1. However, where Quality is of critical importance, it may be included as an evaluation criterion again in Phase 2)

Include Quality criteria as discussed in Chapter 13 *(Determining Evaluation Criteria)*. If interviews, presentations or site visits are required in order to assess Quality, this should be stated in the RFP. The specific purpose and outcomes of the interviews, presentations or site visits and the associated scoring should also be included.

(ii) **Price**

The following issues are frequently included in price to assess TCO:

- Installation costs
- Warranties
- Service and maintenance costs
- Operating supplies
- Storage costs
- Commercial discounts
- Incoterms
- Price adjustment conditions
- Exchange rate fluctuations

It is necessary to provide Bidders with a comprehensive pricing schedule to enable proper and uniform submission from Bidders and to enable a uniform approach to evaluation.

(iii) **Supplier development**

The SD criteria that were developed during the planning phase should be incorporated in the bid document. These typically include a combination of the following:

- Industrialisation
- Capability and capacity building
- Technology transfer/ sustainability
- Skills development
- Job creation/ preservation
- Small business promotion
- Rural development/upliftment and regional integration

(iv) **Preference (B-BBEE)**

The preference criteria that were developed during the planning phase should be incorporated in the bid document. These typically include a combination of the following:

- Standard B-BBEE criteria, as per B-BBEE scorecard;
- Minimum B-BBEE thresholds;
- Further Recognition Criteria (Current)
  - Ownership;
  - Management control;
  - Employment equity;
- Further Recognition Criteria (Future)
  - Ownership;
  - Management control;
  - Employment equity;
  - Preferential Procurement; and
  - Enterprise development.

These could differ on a case-by-case basis depending on the specific market, and what Transnet's expectations and objectives for that particular market are.

(v) **Financial stability** (if applicable - see paragraph 13.2.6)

This will be evaluated using ratios based on Bidders' audited financial statements.

16.2.3 Alternative Bids

The RFP should indicate clearly if Alternative Bids would be accepted. If Alternative Bids are acceptable, the RFP must state that an Alternative Bid will only be considered if a Bidder also submits a main offer strictly in accordance with all the requirements stated in the RFP. Such alternative bids will be evaluated as separate bids and included in a schedule that compares the requirements of the RFP with the Alternative Bid that is proposed.

In instances where the RFP did not invite alternative bids, alternative bids will as a general rule not be considered, as that could prejudice bidders who did not provide alternative bids and also on the basis that the RFP did not state clearly that alternative bids will also be considered. The CFST therefore has to consider this aspect carefully when preparing the bid documents.

16.3 TIMEFRAMES

16.3.1 Submission of Bids

Suppliers should have sufficient time to prepare and submit Bids. Below are guidelines to determine the minimum timeframes:

a) **Off-the-shelf type of purchases:** a minimum of two weeks should be allowed, if possible.

b) **More complex bids** (such as construction works which involve quantity surveying, national bids, etc): a minimum of 3 weeks should be allowed.

c) **When international responses are anticipated**, more than 3 weeks should be allocated to ensure a sufficient response.

16.4 VALIDITY PERIOD

The validity period must allow ample time for the evaluation, drafting of the recommendation and approval by all the necessary governing structures for each bid. Unless circumstances require a longer or shorter period, bid documents must state that the Bids must hold good for at least 90 days from the closing date.

16.5 ESSENTIAL REQUIREMENTS IN BID DOCUMENT

The standard RFX template, available on the iSCM Transnet intranet, must be used when Goods and Services are procured.

16.5.1 Inclusions

When preparing the bid documentation based on the standard RFP template, the following must be considered:

a) Name and address of the Transnet Entity/ies procuring the goods/services.

b) Manner and place for the submission of proposals.

c) Deadline for submission of proposals.

d) Validity period of submitted Bids.

e) Bid reference number (see paragraph 17.1.1).

f) Instructions for preparing Bids.

g) Consecutively indexed and numbered pages of the bid documents in order that both Bidder and contract administrator can easily check the completeness of the bid document.

h) The rules governing communication between the Bidder and Transnet during the bidding process.

i) The name and contact details of the Transnet employee who is authorised to communicate directly with and to receive communications directly from suppliers in connection with the bid invitation, including clarifications of the bid.

j) An indication as to whether or not Transnet intends to convene a compulsory briefing session.

k) General terms and conditions of contract.

l) Requirements of the CIDB in the case of a bid relating to construction, upgrading or refurbishment of buildings and infrastructure.

m) Any criteria required by other applicable legislation.

n) Obligation on Bidders to declare any conflict of interest they may have in respect of the Bid that is to be submitted. In particular, Bidders must state whether they have any personal or business relationship with any employees or directors of Transnet.

o) An indication of whether or not suppliers are permitted to submit proposals for only a portion of the goods/services to be procured and if so, a description of the portion(s) for which such proposals may be submitted. Bid documents must be specific as in certain instances Transnet may require that the whole contract be completed by the same contractor in order to establish responsibility.

p) Bid documents must state that Transnet reserves the right to accept a complete Bid, even if it is not the lowest, provided it is in the best interest of Transnet.

q) Whether the process may involve negotiations.

r) Anticipated date(s) for starting delivery and/or completion of delivery of the Goods/Services.

s) Conditions regarding shipping, if applicable.

t) Currency and the manner in which the proposal price is to be formulated or expressed.

u) A notice to Bidders that Bids must be submitted by the Bidder in a sealed envelope. The envelope must indicate the bidder's name, a contact person and details, the bid number, the subject and closing date, time and venue so that there is no need to open the document and risk the possibility of prices being leaked.

v) Terms of payment.

w) Where Bidders are required to insert prices on price lists supplied by Transnet, they must be advised to delete items for which they do not wish to bid if they have this option. If the price has been included elsewhere in the price list, this must be indicated. After Bids have been opened, Bidders may not supplement their original offer if it was incomplete.

x) A list of the required returnable documents, e.g. tax clearance certificates, industry-specific certificates, etc. The list should indicate clearly which returnable documents must be submitted by the closing date, failing which bidders will be eliminated.

y) Bid documentation must state that Transnet shall not be obliged to accept the lowest, any bid or an alternative bid.

z) Bid documentation must stipulate that disputes regarding the bidding process must be settled by the Procurement Ombudsman.

aa) A space on each page where the Bidder has to append his signature plus name of company and company stamp.

bb) A certificate of acquaintance with the RFP documents, as well as a certificate of attending a compulsory site inspection/tender briefing session.

16.5.2 A CD containing pricing spreadsheets may be requested in order to simplify the copying of information for comparison purposes. This CD should be supplementary and should contain no information that is not in the hard copy of the Bid submission.

16.5.3 **Transnet's Disclaimers**

The standard RFP documents should state that Transnet is not committed to any course of action as a result of its issuance of the RFP and/or its receipt of a proposal in response to it. The RFP should also state that Transnet will not be bound by an interim step in the procurement process such as the selection of a preferred bidder/s. In particular, Transnet reserves the right to:

a) modify the RFP's goods/services or other terms and conditions and request respondents to re-bid on any changes;

b) reject any proposal which does not conform to the detailed instructions and specifications;

c) disqualify proposals submitted after the stated submission deadline;

d) not necessarily accept the lowest priced proposal;

e) reject all proposals, if it so decides;

f) award a contract in connection with the RFP at any time after the RFP's closing date;

g) award only a portion of the proposed goods/services which are reflected in the scope of the RFP;

h) split the award of the contract between more than one supplier; or

i) make no award of a contract.

Bidders who submit Bids subject to certain qualifications which are in conflict with certain bid conditions must be advised to withdraw such qualification, failing which the Bid may be disqualified.

16.5.4 Transnet's standard terms and conditions of contract

When issuing any RFP, Transnet's standard terms and conditions must be used. Please note that a standard contract template has been prepared for Market Demand Strategy related projects. For any additional terms and conditions, a schedule detailing these must be added to the standard terms and conditions. The reason for this is that the terms and conditions that accompany the RFP document will become the terms and conditions of any master agreement that is concluded with a supplier in terms of the RFP.

16.6 SIGN-OFF OF BID DOCUMENTATION AND GO-TO-MARKET STRATEGY

Once the bid documentation has been compiled, the bid document must be reviewed and signed off as correct by the CPO or person to whom the power has been delegated, as a quality control measure. Once this sign-off has been obtained the media advert must be approved by Group Communications in terms of extant instructions issued by that office, before adverts may be placed in the media.

CHAPTER 17 : BID ADMINISTRATION
(issue, receipt, opening of bids and communication)

Figure [28] – Four phases of bid administration

17.1 PHASE 1: ISSUE OF BIDS

17.1.1 Bid reference numbers and short descriptions

At this stage in the process, the RFX document, the evaluation criteria and weightings, the evaluation methodology, as well as the going to market strategy has already been signed off by the person or governance structure with the appropriate DoA.

Prior to advertising, each RFX must be issued with a business-unique consecutive number. The issuing of RFX numbers must be controlled by a responsible person. The RFX number must clearly indicate the following:

- whether it was an Open Bid or a quotation; e.g. RFX No, Quotation No, or Approved List No.;
- the entity which issued the bid;
- in the case of a CIDB bid, allocated a prefix to the bid number to indicate that it is a CIDB-bid;
- a specific digit/character can be allocated to indicate whether a bid will close at the AC or at Regional/depot level e.g. BID NO: TPT/CT/11/01/138/CIDB; and
- following the unique number, a short description of the requirement must be added, e.g. "CONSTRUCTION OF NEW ELECTRIC SUB-STATION AT THE CONTAINER TERMINAL AT PIER NO 2, PORT OF SALDANHA".

17.1.2 All notices and adverts to be issued in the name of Transnet SOC Ltd

All documentation relating to bids shall be issued in the name of Transnet SOC Ltd and shall be published (advertised) in the Republic of South Africa,(nationally and/or

regionally), and abroad if necessary. The name of the relevant OD requiring the service shall be clearly indicated, e.g. Transnet Freight Rail, a Division of Transnet SOC Ltd (Reg. No. 1990/000900/30). The rationale for issuing notices in the name of Transnet is that every legal document must reflect the registered company name i.e. the legal persona of the company which will be contracted with.

17.1.3 Important information to be included in notices and Advertisements

The format of the Advertisement is informed by Group Communications guidelines. This format must be used for all Advertisements, and can be obtained on the Transnet Intranet.

The advert should be as short as possible but nevertheless should contain all relevant information. Notices and Advertisements calling for Bids must include the following information pertaining to the collection and lodging of bid documents:

- RFX number;
- brief description of the goods / services required;
- where the prescribed forms may be obtained and the cost to purchase them (if any) and the closing date for collection of bid documents;
- closing date and time for submission of the bid document;
- place where Bids must be lodged;
- information pertaining to site inspections or pre-bid briefing sessions;
- contact person's business address, telephone/fax number and email address; and
- details of Transnet's fraud line.

17.1.4 Bid document fees

a) A Manager with the necessary Delegated Authority for a particular contract may decide, at his/her own discretion, that a non-refundable fee be charged to Bidders for bid documents. This fee must only reflect the administrative costs of preparing and issuing the bid documents. The price to be charged for the bid documentation must be stated in the advertisement and invitation to bid. The decision to charge a document fee must be taken with circumspection as small companies may be unfairly excluded from the process due to the prohibitive costs of the bid documents.

The following guidelines (though not prescriptive) may be used at the discretion of the Manager, to determine a fee for bid documents:

TABLE 18

Value of bid	Bid fee (guideline)
<R2million	no charge
R2million to <R5 million	R250
R5million to <R10 million	R500
R10million to <R35 million	R750
>R35 million	R1000 or higher (discretion of CPO)

b) Where a document fee is to be charged, the advert must clearly state the payment method. Due to the risks involved in handling cash, the sale of bid documents at site meetings should be avoided. Strict control over cash received

should be exercised and documentary proof of documents sold and receipts issued should be kept on the appropriate files.

c) Should cash payment be one of the chosen payment methods, bid documents must clearly stipulate that payments be made to the finance office (or another office independent from the office that issued the bid).

d) The finance office must ensure that the RFX number is clearly reflected on the receipt. Bid documents may only be issued to Bidders producing a valid original receipt clearly indicating the relevant RFX number. A copy of the receipt with the signatures of the issuing officer and the Bidder who purchased the document must be kept on the appropriate file. A copy of this documentation must be sent to the Secretary of the AC before the closing date.

17.1.5 Publication of notice / advert

a) The notice/advert must be published on or before the day of issuing of the bids. Bids may be published in the appropriate media for the Goods/Services being procured, e.g. trade magazines, newspapers which are distributed locally or wider, in electronic bid bulletins, other media which specifically targets specific markets or small business enterprises, whichever is best suited to reach the potential Bidders.

b) Copies of the notice and prescribed forms shall be furnished to the AC secretariat if the bid is expected to fall within the jurisdiction of such an AC. This would be the case if the bid is expected to be over the laid-down limit or longer than two Years or where there is uncertainty as to whether it will fall within the jurisdiction of a Manager.

c) Any subsequent amendments to notices inviting Bids (e.g. extension of the closing date) shall be communicated in the same media as the initial bid. The AC Secretariat must be notified timeously of such amendments. The office responsible for placing the adverts shall retain copies of all adverts as placed by the relevant media, for audit purposes.

17.1.6 RFX Issue Register

The following important information pertaining to <u>all</u> bid documents issued must be entered into the RFX Issue Register, which is compiled by the RFX Issuing Office:

- RFX number and description;
- receipt number and date of purchase if a bid document fee was charged;
- document number e.g. 'Document 3' sold to 'Potential Bidder x';
- name and contact particulars of person who collected documents;
- bidder's (company) name; and
- closing date.

A record must be kept of all the names, contact particulars of the persons or enterprises to which bid documents have been issued, as well as the document number sold to the potential Bidder. This is necessary in case there is a clarification or amendment, and all Bidders need to be informed.

17.1.7 Queries from bidders / amendments before the closing date

Employees/persons listed in bid notices as contact persons must be available to answer requests for clarification from the prospective Bidders. This is because a

Bidder may only communicate with the person listed on the bid document on any matter regarding his Bid prior to the closing date of the bid.

Without identifying which bidder sought the clarification, the clarification provided must be communicated simultaneously in writing to all Bidders who obtained bid documents. The response to such a request must be effected within a reasonable time prior to the deadline of the bid to enable the Bidders to make timely submissions of their Bids, considering the clarification. If necessary, the deadline should be extended.

The disclosure of information to potential Bidders by the contact person must be made with circumspection. For example, it would not be allowed to provide potential Bidders with information such as budget amount approved, names of previous respondents, prices paid on previous contracts, number of bid documents issued to date, etc.

17.1.8 **Amendments before the closing date**

a) Transnet is entitled to amend any bid condition, validity period, specification or plan; or extend the closing date before the closing date, or in the case of a compulsory briefing session, before the scheduled session.

However, such amendments or extensions must be advertised and/or all Bidders who obtained bid documents must be advised in writing per fax or email of such amendment or extension a minimum of three Working Days before the scheduled date. The new closing date and time must be clearly reflected.

b) Where the closing date of a bid is extended, the notice of extension shall also state that Bids already received will be retained unopened in the tender box and be duly considered after the expiry of the extended period. However, the Bidder may request that such Bid be returned to him/her. The Bidder may also cancel the existing Bid by submitting a later dated Bid before the extended closing date. For amendments after the closing date refer to paragraph 17.4.1.

17.1.9 In the event of a Material Amendment to the specification or scope of work, to which other new Bidders could possibly respond, the bid must be cancelled and a revised RFX must be advertised. This would give all other potential Bidders the opportunity to respond. This can only be done after approval by the person who signed off the RFX document (refer paragraph 16.6 above), has been obtained. The cancellation must be advertised in the relevant media. If the cancellation and reissue happen simultaneously, they may be advertised together where the re-issue makes reference to the cancellation.

17.1.10 **Compulsory Site Inspection / Briefing Sessions**

a) A compulsory site inspection or briefing session has to be held in cases where it is necessary for the Bidders to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Bidders with further information to allow them to complete their Bids properly.

b) If a compulsory site inspection/briefing session is convened, minutes of the meeting must be recorded together with an attendance register. The minutes must include the queries/requests raised for clarification at the meeting, together with the responses to those requests without identifying the sources of the requests. It is recommended that questions be submitted in writing by Bidders and that Transnet respond in writing to all bidders within 48 hours of the briefing session. The minutes must be forwarded to all Bidders who attended the meeting so as to ensure that the same information is provided to

all Bidders. This would enable the Bidders to take the minutes into account in preparing their Bids.

c) Bidders are obliged to attend scheduled compulsory briefing sessions, as failure to do so will result in disqualification of the Bids. The bid notices must clearly indicate this. Discretion must therefore be exercised in deciding whether or not a compulsory site inspection or briefing session is absolutely necessary.

d) If a compulsory briefing session is not considered absolutely essential, consideration could be given to having a non-compulsory briefing session. In such instances, attendance at such a meeting would be on a voluntary basis. The RFX documents must clearly state this. The RFX should also state that Transnet will not be held responsible if any Bidder who did not attend the non-compulsory session subsequently feels disadvantaged as a result thereof.

e) Latecomers to any briefing session will be allowed to attend. However, no information will be repeated for the benefit of latecomers. They must be advised that the information will be made available to them by means of the minutes of the briefing session. The minutes will be made available to all attendees who completed the attendance register. Details of latecomers (e.g. company name and names of their representatives, as well as approximate time of (late) arrival) must be recorded on the site register, so as to ensure that Transnet's interest is protected.

17.1.11 Electronic issuing and receipt of Bids

ODs may at their discretion, and provided that they have introduced sufficient controls to prevent abuse, make use of electronic technology to:

- advertise bids electronically (e.g. website);
- issue bid documents electronically;
- enable electronic payment for bid documents where applicable; and/or
- receipt of Bids electronically.

This will only be allowed **provided** that the following basic requirements are complied with:

a) Potential Bidders who are not in a position to access electronic media must also be accommodated;

b) There is an option for potential Bidders to obtain either electronic or hard copies of the bid document;

c) Where applicable, bid documents must be paid for, irrespective of whether the bid documents are obtained in hard copy or electronically;

d) Appropriate measures must be taken to protect electronic versions of the bid document;

e) Bids must be received in a controlled environment, and may only be accessed /downloaded from the dedicated 'Electronic Tender Box' (ETB) after the closing date and time;

f) The ETB should be able to send an automated acknowledgment confirming date and time of delivery;

g) There should be a backup system in case of server failure;

h) The ETB may not accept late Bids. A Bid is late if it is received at Transnet after the closing date and time. Bidders must be advised that server issues outside of the Transnet electronic environment will not be considered as a reason for acceptance of late Bids.

i) The ETB should be able to send a message to the sender to inform him/her that the Bid was received late and will not be considered;

j) The ETB should be able to handle unlimited numbers of last minute Bids. It should be impossible to overload;

k) ETBs need to be able to cater for different bids closing on different dates;

l) It will be allowed to receive scanned original documents e.g. Tax and BBBEE certificates; Transnet may however at its discretion decide to subsequently call for hard copy certified originals if deemed necessary.

m) Documents must be write protected; and

n) There must be no file size constraints with regard to mail attachments.

Receipt and safeguarding of bids

17.2 PHASE 2: RECEIPT AND SAFEGUARDING OF BIDS

The RFX document should clearly indicate what must be stated on the outside of the sealed envelope containing the Bid. Refer to paragraph 16.5.1u) in Chapter 16 on *Bid Preparation*.

17.2.1 Bids are to be lodged are kept in a controlled environment

a) All bids falling within the jurisdiction of the AC must clearly indicate the physical (and courier address, if not the same), and/or ETB address (if electronic Bids will be allowed) of the AC where the Bids will be received.

b) Where the Bid price is reasonably expected to fall within the jurisdiction of a Manager, (i.e. below the jurisdiction of the AC), the bid document must clearly indicate to whom the Bids are to be addressed, the closing venue, date and time.

c) If upon receipt it is found that such Bids do fall within the AC's jurisdiction, they are to be dealt with in exactly the same manner as if it had closed at the AC. The award of such business must be referred to the AC for consideration in the normal manner, together with an explanation as to why the bid did not close at the AC.

d) Under no circumstances should such bids be cancelled and re-issued. Furthermore, condonation is not required.

e) Bids that were anticipated to fall within the AC threshold, and which therefore closed at the AC, but were subsequently found to fall below the AC threshold,

must be dealt with by the relevant Manager. The matter must be reported to the AC for information.

f) Where some Bids fall below the AC jurisdiction and some are within the AC jurisdiction, the lowest priced responsive bid will determine where the matter must be dealt with.

g) The tender box shall be fitted with two locks, and the keys shall be kept separately by two nominated officials. No single person must be allowed to open a tender box on his/her own. Both officials shall be present when the box is opened on the stipulated closing date and time.

17.2.2 **Unsealed Bids/Bids without sufficient cover information**

a) If a Bid is received unsealed or without the relevant information on the envelope, the contents shall be ascertained and then sealed with a note made on the envelope indicating:

- date of receipt and by whom (name, designation and contact number);
- the state in which the Bid had been received;
- number and description of Bid; and
- correct closing date, time and venue.

It will then be placed in the correct tender box for opening at the appropriate closing time.

b) When finally opened, such envelopes shall be kept on the appropriate files as a record. The bid list compiled by the officer responsible for the bid opening should also indicate that such Bid was received open, so that the evaluation team can consider whether or not there is evidence of possible manipulation of the process. However, such Bids should not be summarily disqualified.

17.2.3 **Receipt of quotes via fax or e-mail**

a) No Bid received by e-mail or fax must be considered unless the bid document specifically provides for it.

b) Where the bid document specifically provides for the receipt of Bids via e-mail or fax, provision must be made in the bid document to indemnify Transnet against any claims which may arise as a result of a Bidder not being able to transmit his/her quote to Transnet for any reason whatsoever before the closing time.

c) Faxed or e-mailed offers must be received by a person who has not been involved in the development of the bid documents and/or will not be involved in the evaluation of submissions.

d) Strict control measures must be exercised over fax machines used for the receipt of low value Bids. Once received, the person responsible for receiving the Bids must seal the respective Bids in separate envelopes and keep them in a controlled environment until the closing date.

e) On the closing date and time, the Bids must be opened and stamped. A register of the quotes requested and received must also be kept. No additional quotes are to be requested or considered after the closing date and time.

17.2.4 **Late Bids**

a) Transnet will not accept any late Bids. A Bid is late if it is not placed in the relevant Tender Box or delivered by hand by the bidder or his courier to the relevant responsible person indicated in the bid document by the closing time for such bid. A late Bid shall not be admitted for consideration and where feasible shall be kept unopened. A letter explaining the reasons for not considering the late Bids must be sent to all late Bidders. The Bidders must be notified that they may collect their late Bids if they wish to do so.

b) A Bidder must, however, not be penalised if a Bid is received late due solely to a fault on the part of Transnet.

c) Where it is necessary to open a late Bid to obtain the contact details of the sender, each page of the document shall be stamped "Late Bid" before the Bid is placed on the appropriate files. The exact time and date that the Bid was received must be recorded. The envelope must be stamped, initialled and retained for record purposes on the appropriate files.

d) However, the Chairperson of the AC has the discretion to decide whether a late Bid may be considered where exceptional circumstances arise. The decision to consider a late Bid should be taken with great circumspection. All documentary evidence leading to such decisions as well as proof of the decision itself must be kept on the appropriate file as part of the record. Hereunder follows a non-exhaustive list of circumstances where an AC Chairperson may decide to exercise discretion and accept a late Bid:-

- If Transnet was solely to blame for his Bid being late e.g. a labour strike action in front of the building, or an evacuation drill effectively denying the bidder access to the tender box;
- In cases where only one Bid is received and such Bid is received late. In such cases, no prejudice is suffered by anyone if the late Bid is accepted. Consideration must, however, be given to whether the process could have been manipulated to favour the one and only late Bidder.
- Late responses on a RFI process where the purpose of the RFI was merely to gauge what is available in the market, or to compile a specification; and
- Where the Bidder provides compelling reasons for being late, indicating that the lateness of the submission is not due to any fault or bad planning on his or her part.

e) Bidders who submit late Bids must be informed of their right to petition the Chairman of the AC should they believe that they have valid grounds for inclusion. The motivation for acceptance of a late Bid, plus the chairperson's ruling on the matter, must be retained on the relevant files.

f) Late Bids that are not considered must be retained for a period of at least 6 months before being destroyed. Record of destruction must be recorded on the relevant file.

17.3 PHASE 3: OPENING OF BIDS

17.3.1 Time and manner of opening of bids

a) Bids shall be opened promptly after the deadline for the receipt of Bids, or as soon as possible thereafter.

b) Bids shall be opened by a duly authorised senior employee in the presence of at least one other employee. The persons must declare their interest. In the event of a conflict of interest they must recuse themselves from the opening of the Bids. In addition, the persons opening the Bid documents must not be involved in the issuing, evaluation or adjudication of that bid as they are perceived to have an indirect interest in the bid.

c) There should be a check to verify that Bidders had paid bid fees, where applicable. If bid fees had not been paid, the Bid must be endorsed accordingly, and an explanation obtained from the Bidder by the AC Secretary. If no reasonable explanation can be provided by the Bidder, the Bid must be disqualified. A record of this decision must be kept by the Secretary.

17.3.2 **Stamping of Bids**

a) An employee shall date stamp the Bid and all attachments to the bid document to signify that such documents were part of the original bid document. Bids must be numbered in the sequence in which they have been opened and the words "and last" must be endorsed on the last Bid. Where only one Bid has been received, the words "and only" must be endorsed on such Bid.

b) Where Bidders are required to insert prices on price lists supplied by Transnet and prices have not been inserted in all the relevant spaces on the forms or have not been deleted by Bidders, such spaces shall be stamped "no price" by the employee who opens the Bids. All pages indicating prices, delivery times, special conditions, etc., that will be regarded as crucial during the evaluation process must be stamped and initialled by the opening official.

c) Likewise, in instances where the Bidder has deleted prices and inserted new prices, or where prices have been corrected with correction fluid, the opening official must endorse the correct amount in words, initial next to it, make a copy of the relevant page, and retain it on the bid file. When the matter eventually serves at the AC for the award of the business, the AC Secretary must verify that Bid prices or other crucial information have not been tampered with.

d) Where Bidders were requested to submit their Bids in duplicate (or more copies) all duplicate documents must be stamped "Duplicate" on the cover page after the opening official has verified that all the crucial information in the different documents are identical.

e) The employee in charge of the bid opening will record particulars of all Bids received in duplicate in a Bid Opening Register. The original list of Bids received must accompany the original Bid documents when forwarded to the department that invited the Bids. The name, contact details and signature of the person collecting the Bid documents must be obtained and the duplicate list with the signature will be kept by the bid opening office, either on the appropriate file or in a register as part of the record.

Phase 4

Amendments and communication after closing date

17.4 PHASE 4: AMENDMENTS AND COMMUNICATION AFTER CLOSING DATE

17.4.1 Amendments after the closing date

Transnet is entitled to amend any bid condition, validity period, specification or plan **after** the closing date of a bid. However, all parties who obtained bid documents and submitted valid Bids must be advised thereof in writing by fax or e-mail and be given the opportunity of bidding on the amended basis by an extended closing date and time. Proof of such written communication must be kept for record purposes. Bidders who did not submit valid Bids (e.g. submitted their Bids late, or who did not attend the compulsory briefing session/site inspection) cannot participate in the extended invitation. Authority for such communication must be obtained and is dealt with in paragraph 17.4.3.d) below.

In the event of a material amendment to the specification or scope of work, to which other new Bidders could possibly respond, the RFX must be cancelled and a revised RFX must be advertised. This would give all other potential Bidders the opportunity to respond. This can only be done after approval had been obtained from both the person who signed off the RFX document (refer paragraph 16.6 above), and the relevant AC. The cancellation must be advertised in the same media where the initial advert was placed. If the cancellation and reissue happen simultaneously, they may be advertised together where the re-issue makes reference to the cancellation. In such instances it will not be necessary to obtain AC approval for a non-award as this will delay the matter unnecessarily at this critical stage. However, full details of this 'intervention' must be disclosed to the AC when the final award of business recommendation is made. Also refer to paragraph 17.1.8(c) in this regard.

17.4.2 Extension of validity periods

If a bid cannot be evaluated and awarded within the stated validity period, a motivated request for an extension of the validity period should be made to the appropriate AC to request an extension of the validity period. This request should explain the reasons for the delay, and include the revised timeline for the completion of the bidding process.

NB: Validity periods must be extended BEFORE expiry. Bids in respect of which the validity periods have already expired cannot be revived. In such instances the process must be started afresh after having obtained the necessary AC approval for the non-award of the expired RFP.

If an avoidable delay occurs with adjudication, Bidders must be requested to extend the validity period of their Bids <u>on the same terms and conditions</u> **before** the expiry of the validity period. In such instances, Bidders will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of the extension of the validity period e.g. price changes due to changes in the market which have impacted major cost components of their price. If a need arises to extend the validity period of the bid, this must be done BEFORE the validity date expires since a bid process automatically terminates on the validity date unless timeously extended.

17.4.3 Communication after the closing date

a) After the closing date of a bid (i.e. during the evaluation period) a Bidder may only communicate with the chairperson and the secretary of the relevant AC.

b) No communication relating to the specific bid is allowed between a Bidder (or any other party who has an interest in a bid), and any employee of Transnet after the closing date and before award, except as provided for in paragraph 17.4.3 (c) below. Every case of unauthorised communication must immediately

be reported to the Chairperson of the AC. The Bidder that is associated with an unauthorised communication may be disqualified from the process.

c) It is accepted that in certain cases Bidders might have existing contracts with Transnet, where communication regarding the existing contract is unavoidable. However, any communication during the evaluation period of another bid, should be limited where at all possible, and under no circumstances should socialising, e.g. golf days, product launches, lunch/dinner invitations, sporting events, etc., be entertained during this period. Even if no discussion about the bid being evaluated is entertained during such social events, other competing Bidders may form a perception of bias and it may lead to claims of an unfair bidding process.

d) The chairperson, the secretary of the AC, or the Manager with the delegated power, may subject to the provisions of paragraphs 17.4.3e), f) and g) below, authorise an employee in writing (including by fax or email) to communicate with a Bidder after the closing date for the purpose of:

(i) Explaining and verifying declarations made in Bid response;

(ii) Confirming that a quoted price is correct, or requesting a breakdown of the pricing without altering the price;

(iii) Confirming technical particulars and the compliance thereof with specifications;

(iv) Determining whether there will be any change in price if only a portion of the work is awarded to a Bidder;

(v) Requesting an explanation for an unreasonable price increase when it is compared with a previous price and the interim movement of a relevant price index;

(vi) Clarifying delivery times, quantities, etc;

(vii) Amending any bid condition, validity period, specification, etc. after the closing date;

(viii) Clarifying any other commercial aspect;

(ix) Carrying out site inspections of the bidder's premises; and

(x) Requesting presentations by all Bidders. If only certain shortlisted Bidders are invited for presentations, the relevant AC's prior approval of the shortlist must be obtained.

(xi) Requesting returnable documents erroneously omitted from the original Bid.

e) During communication after the closing date, no change in a matter of substance of the Bid, including changes in price, terms or changes aimed at making an unresponsive Bid responsive must be sought, offered or permitted. Also note that the abovementioned communication issues covered in paragraph 17.4.3 (d) do not include post-tender negotiation. This topic is covered in Chapter 19 (Post Tender Negotiation) below.

f) Where the bid is managed by a Specialist Unit with a specific strategic focus on behalf of the user OD, the Specialist Unit shall coordinate all communication of a technical, financial or commercial nature between Transnet and the Bidder.

g) In all cases where authority to communicate with Bidders has been granted in terms of paragraph 17.4.3(d) above, the submission to the AC must clearly state the nature of the communication as well as who granted the authority to communicate and the outcome thereof. Documentary evidence of all authorisations to communicate, the actual communication as well as the outcome thereof (bidder's response) are to be kept on the appropriate files as part of the record.

COMMISSION OF INQUIRY INTO STATE CAPTURE

SECTION A Background and Context

SECTION B Procurement planning

SECTION C Go to Market

SECTION D: EVALUATION AND ADJUDICATION

Chapter 18: Evaluation and Recommendation

- Summary of bid evaluation process
- Test for administrative responsiveness
- Preparation for evaluation
- Substantive test for responsiveness
- Evaluation of bid against pre-determined criteria
- Final evaluation
- Recommendation

Chapter 19: Post Tender Negotiations (PTN)

- Purpose of PTN
- Authority to engage in PTN
- PTN process
- Approval to award business after PTN

Chapter 20: Adjudication

- General principles of adjudication
- The role of the AC during adjudication
- Risk evaluation
- Splitting of business
- Disagreement regarding award
- Non-award / cancellation of bids

SECTION E Contract Management

SECTION F Functions of Governance Structures

Appendices

CHAPTER 18 : EVALUATION AND RECOMMENDATION

SUMMARY OF BID EVALUATION

It is the responsibility of the evaluation committee to ensure that the evaluation takes place within the validity period. If there are delays, the validity date(s) of the bids should be extended, using the process described in Chapter 17 *(Bid Administration)*.

The following are the key steps to be followed during the evaluation of Bids.

Figure [29] – 6 Steps for Bid Evaluation

18.1 TEST FOR ADMINISTRATIVE RESPONSIVENESS

18.1.1 Test for Responsiveness based on returnable documents submitted and signatures on the Bid documents:

a) Check the Bid document to see whether all returnable documents called for in the bid documents and which are required for evaluation purposes and/or incorporation into the contract have been received.

b) The RFP must clearly identify those material returnable documents which must be submitted upfront with the bid submission. If any such mandatory returnable documents are not provided upfront, the bid must be regarded as non-responsive e.g. tax clearance certificate, etc.

c) Certain other returnable documents, although essential, may not result in automatic elimination if not provided upfront. In such instances, a reasonable grace period (about 5 Working Days) may be afforded to the Bidders to supply the required documents. If the Bidder does not provide the document(s) by the end of the grace period, the Bid(s) must be regarded as non-responsive.

d) A third category of returnable documents are those that are required from an administrative perspective but which are not material or essential to the bid e.g. a completed Vendor Application Form. The failure to submit such documents for the purpose of evaluating and awarding the business will not result in the bid being regarded as non-responsive, but could be requested at a later stage.

e) If a Bidder had omitted to sign certain pages of the Bid documentation, he/she may be requested to do so within a reasonable period of time (about 5 Working Days). If the signature is not provided within the timeframe provided, the Bid must be regarded as non-responsive.

18.1.2 A schedule must be drawn by Procurement to indicate whether the Bids received are administratively responsive or not, and the efforts expended to obtain any outstanding information (see example in Figure [30] below):

Returnable Document Comparative Schedule (add fields for all returnable documents)

RFX Number _____

Bidder	Correctly Recorded by AC Secretary	Tax Clearance Certificate	VAT Registration Certificate	PSIRA Certificate	Due date for responses after grace period	Docs received by due date	Returnable Documents outstanding after due date	Bid responsive	Remarks
A	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	
B	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	
C	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	
D	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	
E	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	

Figure [30] – Schedule to record Bid compliance

Step 2

Preparation for evaluation

Constitute an evaluation committee

Sign Declaration of interest / Confidentiality agreements

18.2 PREPARATION FOR EVALUATION

18.2.1 Composition of Evaluation Committee / Panel

The composition of the evaluation committee would vary depending on the nature of the particular goods/services being procured. As a guide, evaluation committees should be determined as follows:

a) **Low complexity evaluations**

There are very limited criteria for consideration due to the absence of complexity. Typically, criteria can be assessed through a 'yes' or 'no' question. There must be at least two members on the committee - one from the procurement department and the other from the user department.

b) **Complex evaluations**

Where a number of criteria are evaluated on a weighted point system method, the evaluation committee should be cross-functional and should be composed of procurement personnel and officials from the department/s requiring the goods/services.

There must be at least three members, one of which must be a subject matter expert. When it is deemed necessary, independent experts may also be invited to a bid evaluation committee in an advisory capacity.

It is recommended that the people who serve on the CFST do not also serve on the bid evaluation committee. Only if separation of duties is not possible due to a lack of resources/expertise, may the CFST and the evaluation committee be allowed to have the same membership. If the same people served on both the CFST and evaluation committee, this must be recorded in the minutes, and be disclosed to the relevant AC.

c) **Highly complex evaluations**

A properly appointed multi-disciplinary evaluation team must be utilized. The evaluation committee may comprise sub-committees. Each sub-committee must be composed of at least 3 or more specialists in that field of expertise. A sub-committee will evaluate Bids only in the field that they are tasked with, e.g. Quality, commercial, SD, preference, etc.

(For bids falling within the threshold for High Value Tenders also refer to the High Value Tender Process available on iSCM Transnet Intranet).

18.2.2 Declaration of Interest / Confidentiality

a) Prior to commencing with the evaluation all members of the evaluation panel must sign a Declaration of Interest form, indicating whether or not they have an interest in the particular bid or any of the Bidders. Also refer to the Code of Ethics (paragraph 5.5 above) for further information on Declaration of Interest.

b) Information relating to the evaluation of Bids shall not be disclosed to suppliers or to any other person not officially involved in the evaluation or adjudication process. A confidentiality agreement must therefore be signed by all members at the start of every meeting of the evaluation committee.

18.2.3 Setting the ground rules for evaluation and rules of conduct

At the onset of the initial meeting, the Chairperson of the committee must indicate to the members that the following scoring methodology is to be used:

a) Confirm whether Method 1 or 2 will be followed as well as the weighting per category and thresholds as set out in the RFP (See Chapter 13 – Determining Evaluation Criteria).

b) Confirm whether scoring will be done in terms of a desktop evaluation only, or whether it will also include site visits, presentations and/or interviews. This should be indicated in the RFP;

c) Validate scorecard, including the prompts for judgment;

d) Members of the evaluation committee must score each Bid individually, i.e. each member must score every Bid without consulting any other members;

e) Thereafter, the raw scores given by each evaluator in respect of every criterion and sub criterion are populated onto a comparative score sheet;

f) The Chairperson of the evaluation committee identifies any numerical outliers (if any) and follows a process of moderation;

g) After moderation, the scores given by each of the evaluators in respect of each Bidder are averaged and allocated per Bidder;

h) The weightings for each criterion and sub criterion are then allocated against the average score for each Bidder, to determine the final weighted score per Bidder.

18.2.4 Rules of Conduct

a) Consistency throughout the whole bid evaluation process is essential. All members of the evaluation team must evaluate all the bid responses. This also entails having a kick-off meeting where the entire evaluation team is present and all aspects of the evaluation process is agreed upon to ensure that everyone is aligned.

b) Although it would be ideal, the evaluation of all bids need not necessarily be completed at one sitting of the CFET.

c) It is important that all members are present at the moderation session, be it in person or via teleconference. All members must sign off on all the relevant score sheets, including the final automated scorecard (previously known as the B-BBEE scorecard)

d) Minutes must be kept of all decisions and important deliberations taken at each meeting of the evaluation team.

e) Document security must be maintained at all times.

18.2.5 Evaluation criteria

Bids may only be evaluated in accordance with the criteria specified in the bid documentation (such as specific returnable documents, pricing, quality, commercial, SD, preference, financial stability, etc.).

a) In cases where an evaluation criterion was unclear and it resulted in divergent and incomparable responses being received from the Bidders, the criterion should be clarified and sent to all Bidders. They will then be required to resubmit Bids only in respect of such amended criterion/criteria.

b) In cases where a critical factor was not included in the evaluation criteria, an addendum to the RFP should be issued and sent to all Bidders to provide information pertaining to the additional criteria. The CPO must approve the inclusion of the additional criteria as well as the amendment to the RFP.

c) However, if the required clarity in respect of a) above or the introduction of new criteria in respect of b) above, introduces a substantive change to the RFP then, in the interest of fairness, an amended RFP should be issued by issuing a new tender to the market.

Test for substantive responsiveness

Evaluation committee confirms results of initial administrative test for responsiveness conducted by procurement and conducts test for substantive responsiveness

18.3 TEST FOR SUBSTANTIVE RESPONSIVENESS

The evaluation committee is required to confirm the result of the administrative test for responsiveness undertaken by Procurement.

A Bid is substantively responsive if it conforms to all the terms, conditions, scope and/or specifications of the bid documents without material deviation or qualification. A Bid is regarded as substantively responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bid documents. Any such deviations must be quantified as far as possible. These deviations must be considered during the evaluation and comparison of Bids.

Before evaluating the Bids, members of the evaluation team are required to:

18.3.1 Verify the names of the entities appearing on the bid documents against the correspondence (copy of the bid register) received from the AC Secretariat (i.e. check that only those Bids received through the Secretariat, are being considered);

18.3.2 Check that all the pages of the respective Bids had been date-stamped by the Secretariat;

18.3.3 Check that each Bid reflects a consecutive stamped number, consistent with the Secretariat's correspondence. (This normally forms part of the Secretariat's bid date stamp).

18.3.4 Check that all pages of the bidder's covering letter (if any) and all pages containing pricing, delivery and any other conditions, which may have a direct influence on the evaluation process, have also been initialled by the Secretariat;

18.3.5 Check that the last (highest numbered) Bid also reflects the stamp "and last" (or "and only", in respect of instances where only one Bid was received) on all its pages; and

18.3.6 Any deviation from the above must be brought to the attention of the AC Secretary. A memo explaining such deviation must be compiled by the Secretary

and submitted to the evaluation team. Copies of this memo shall be kept on the Secretary's file as well as the evaluation file. The memo shall also be included in the AC agenda pack. The evaluation committee shall express an opinion on such deviation in their final report to the AC.

18.3.7 Confirm the results of the initial test for administrative responsiveness conducted by Procurement.

18.3.8 Reject Bids that do not pass the test for substantive responsiveness.

A Bid is considered substantively non responsive if it:

(i) does not contain pricing or response to any other crucial aspect stated in the RFP document;

(ii) does not meet minimum pre-qualification criteria;

(iii) materially departs from the scope, or specification of the Goods/Services requested; and

(iv) would affect the competitive position of other Bidders presenting responsive Bids, if it were to be rectified.

Non-responsive Bids must be rejected and Bidders shall not be allowed to modify their Bids once they have been rejected as non-responsive. Exclusion of a Bid as non-responsive must be defensible based upon objective and justifiable grounds.

18.4 EVALUATE THE BID AGAINST PRE-DETERMINED CRITERIA

Evaluate the Bid against pre-determined criteria using comparative schedules or score-sheets as follows:

18.4.1 Ensure that the evaluation process is strictly aligned with the evaluation methodology outlined in the bid documents, i.e. either Method 1 or Method 2 (see Chapter 13 – Determining Evaluation Criteria). If certain Bidders have not met the thresholds for Phase 1, no further scoring in respect of those Bidders takes place in Phase 2.

a) **Local Content**

If the transaction falls within one of the designated sectors as determined by DTI, and it was stated as such in the RFX document, Local Content/manufacture (LC)

will always be evaluated as a first step, to determine whether such Bid complies with the stipulated minimum threshold for that particular designated sector. Bidders that do not meet the stipulated minimum threshold for LC do not progress any further and are rejected at this stage. This applies irrespective of whether Method 1 or 2 is utilised. The threshold as determined by the DTI is not negotiable and bidders who do not meet the minimum set thresholds will be disqualified and will not be evaluated any further.

b) **Supplier Development/ Quality (functionality) and Preference**

(i) Evaluating each Bid individually

Each member of the evaluation committee is required to study Bid responses and record observations. The evaluator must first get an overall view of each Bid. This is done by studying each Bid individually, and then comparing it to the evaluation criteria.

The prompts that were provided for judgment or qualitative indicators relating to all SD criteria and any sub-criteria that are linked to a specific score should be used in assessing the Bids.

The evaluation of Bids shall be based on the information contained in Bid submissions, and where relevant from interviews, presentations and site visits. **Bids should not be evaluated on the basis of speculation or the personal knowledge or subjective experience which an evaluator has of any particular Bidder.**

The evaluator must record observations on the bidder's response to each specific evaluation criterion on the score sheet. References to page numbers should be added where applicable.

At this stage, no scoring is done.

Score-sheet 1 (*Figure [31]* below is used for such observations and is available on the Transnet Intranet).

Sheet 1	Working scoresheet
RFP Number	(Insert RFP Number)
Name of evaluation committee member	(Insert name of evaluation committee member

CRITERIA (Supplier Development	BIDDER NO.1		BIDDER NO.2		BIDDER NO.2	
	Score	COMMENTS	Score	COMMENTS	Score	COMMENTS
Value of investment in plant	Do not complete score at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria	Do not complete at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria	Do not complete at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria
Reduction in import leakage						
Potential increase in export content						
Number company employees to be trained						
Number of downstream supply chain individuals to be trained						
Certified training						
Rand value on training to be spent in the industry						
% of planned procurement from QSEs						

Figure [31] – Score-sheet 1

(ii) Scoring

The next step is to allocate scores on Score-sheet 1 above. This is done by scoring one evaluation criterion at a time for all Bidders. E.g. compare and score the responses to 'Value of investment in plant' for all Bidders before moving on to the next criterion.

All scores must preferably be out of 10 (i.e. the 1 to 10 scale, although a 1 to 5 scale can also be used if specific objective measuring criteria has been set).

Finally, each member's individual scores in respect of each bidder must be carried over from Sheet 1 and inserted on score sheet 2 – see below.

Sheet 2	Final member scoresheet
RFP Number	(Insert RFP Number)
Name of evaluation committee member	(Insert name of evaluation committee member

CRITERIA (Supplier Development)	BIDDER NO. 1	BIDDER NO 2	BIDDER NO. 3	BIDDER NO. 4
	Score	Score	Score	Score
Value of investment in plant	5	7	5	7
Reduction in import leakage	4	6	5	6
Potential increase in export content	5	6	4	6
Number company employees to be trained	5	8	5	8
Number of downstream supply chain individuals to be trained	4	5	4	7
Certified training	5	6	3	8
Rand value on training to be spent in the industry	4	7	5	7
% of planned procurement from QSEs	5	6	4	6
Total	**37**	**51**	**35**	**55**

Figure [32] – Score-sheet 2

(iii) Moderating scores

The Chairperson of the evaluation committee transcribes all the individual members' scores from the respective score sheets (Sheet 2) onto the consolidated score-sheet. (Score-sheet 3, see example (*Figure [33]*) below. These scores should be regarded as provisional and subject to moderation.

In the event of significant variances in individual scores, the scores must be moderated at the discretion of the Chairperson of the evaluation committee. An outlying score/s should as a general guideline be determined where there is a point differential of more than 4 points on the 10 point scale as compared to the other scores. The outlying scorer (Nivan, in the example of Sheet 3 below) must be asked to motivate his/her score(s). If the score can be rationally explained, the score can remain unchanged. Other scorers should be afforded the opportunity to reconsider their scores, in light of the explanation provided by the outlier. If the outlier cannot rationally explain his/her score, he/she must be asked to reconsider the score. If the outlier refuses to reconsider the score, the chairperson of the evaluation committee may approach the AC Chairperson for a ruling on whether the outlier should be replaced with a different scorer or not.

The process followed with moderation of scores must be recorded in the minutes of the evaluation committee. Any changes to a score sheet due to the moderation must be countersigned by both the scorer and the Chairperson. This should also be cross-referenced with the relevant minute/resolution.

(iv) Weighting scores

The following provides an explanation on how weighted scores are arrived at. However, there is an automated score sheet available on the iSCM Transnet

Intranet, where the weighted scores are automatically calculated based on the raw scores.

Step 1

The Chairperson calculates the average scores per criterion per Bidder (after moderation). This is done by dividing the sum by the number of evaluators to arrive at an average score for each particular criterion per Bidder.

Sheet 3 — Combined score sheet
RFP Number — (Insert RFP Number)

CRITERIA (Supplier Development)	Bidder No. 1 Evaluation Member Scores					Bidder No. 2 Evaluation Member Scores				
	Nomhle	Thulani	Bill	Nivan	Average	Nomhle	Thulani	Bill	Nivan	Average
Value of investment in plant	4	5	3	8	5	6	7	7	1	5.25
Reduction in import leakage	3	4	4	8	4.75	5	6	5	1	4.25
Potential increase in export content	4	5	3	9	5.25	5	6	6	2	4.75
Number company employees to be trained	4	5	4	8	5.25	5	8	5	4	5.5
Number of downstream supply chain individuals to be trained	5	4	5	7	5.25	6	5	7	3	5.25
Certified training	4	5	4	8	5.25	5	6	6	2	4.75
Rand value on training to be spent in the industry	3	4	4	7	4.5	5	7	6	2	5
% of planned procurement from QSEs	4	5	3	8	5	6	6	5	1	4.5
Total	31	37	30	63	40.25	43	51	47	16	39.25

Figure [33] – Score-sheet 3

Step 2

The Chairperson must now calculate the weighted scores against each criterion to determine the total weighted score against each Bidder. (See example in Score-sheet 4 - Figure [34] below)

For example, a score of 8 out of 10 for a particular criterion that has a weighting of 20 will be calculated as follows:

$$\frac{8}{10} \times 20 = 16$$

Sheet 4 — Final weighted scoresheet
RFP Number — (Insert RFP Number)

CRITERIA (Supplier Development)	Weighted maximum	Bidder Number							
		No. 1		No. 2		No. 3		No. 4	
		Score	Weighted	Score	Weighted	Score	Weighted	Score	Weighted
Value of investment in plant	20	5	10	7.5	15	4	8	7	14
Reduction in import leakage	10	4.75	4.75	6	6	5	5	6	6
Potential increase in export content	10	5.25	5.25	6	6	4.5	4.5	6	6
Number company employees to be trained	20	5.25	10.5	8	16	5.5	11	8	16
Number of downstream supply chain individuals to be trained	10	5.25	5.25	5	5	4	4	7	7
Certified training	5	5.25	2.625	6	3	3	1.5	8	4
Rand value on training to be spent in the industry	10	4.5	4.5	7	7	5	5	7	7
% of planned procurement from QSEs	15	5	7.5	5	7.5	4.5	6.75	6	9
Total	100	40.25	50.375	50.5	65.5	35.5	45.75	55	69

Figure [34] – Score-sheet 4

The total weighted score above represents the ranking of each Bidder in respect of SD.

Note: The score for preference (B-BBEE scorecard only), together with the score for SD determines the SD Threshold. See example below, which indicates how the SD score and the B-BBEE score according to recognition level added together are used to determine the consolidated SD/preference score for threshold purposes assuming a 60% threshold.

Bidder	SD (50)	Scorecard (50)	TOTAL (100)	
Bidder No. 1	35	40	75	
Bidder No. 2	41.5	50	91.5	
Bidder No. 3	43.25	35	78.25	
Bidder No. 4	45	45	90	
Bidder No. 5	25	5	30	(Non-responsive - minimum threshold not met)

Figure [35] – Consolidated scorecard for SD /B-BBEE

18.4.2 Quality / functionality offer

For the purpose of evaluation, Quality is considered to comprise all the criteria set out in the RFP, except price (or TCO), SD and preference (B-BBEE and/or FRC).

As with the evaluation of the SD offer, the Quality/Functionality proposal must be evaluated against the criteria as stipulated in the RFP. Repeat the process as stipulated in paragraph b), utilising the Quality/Functionality criteria and component weightings.

18.4.3 Preference

Preference is scored according to the B-BBEE scorecard only and the FRC criteria (Current and Future) will only be used in the final evaluation stage.

18.5 FINAL EVALUATION

One of two methods of evaluation may be used depending on what was stated in the RFX document (Refer to paragraph 13.1).

18.5.1 Applying the criteria in Method 1

a) **Method 1: Phase 1** (Refer paragraph 13.1.1 above)

All Bids which have failed to achieve the minimum qualifying threshold for LC (where applicable), SD/Preference or Quality must be rejected. All Bids which exceed the minimum qualifying threshold for quality are regarded as *'equally technically compliant'* irrespective of the margin by which they exceed the threshold.

All Bids that have achieved or exceeded the minimum qualification thresholds for firstly, LC (if applicable), SD/Preference and Quality/Functionality proceed to Phase 2. They must now be evaluated further in terms preference and SD for a second time, as well as Price.

b) **Method 1: Phase 2** (Refer paragraph 13.1.1 above)

Only the Bidders who had met the predetermined thresholds for firstly LC (if applicable) and both SD/Preference and Quality progress to this stage.

(i) Score for SD

With regard to the evaluation of SD in this phase, no new evaluation takes place. The points awarded to Bidders in Phase 1 for SD are simply weighted and added to the weighted scores for preference and FRC both Current and Future strictly in terms of the criteria as stipulated in the RFP document.

(ii) Score for Price

Before conducting a mathematical evaluation of price, a cognitive evaluation will be conducted in order to determine the reasonableness of the price quoted. All bidders will be required to provide supporting documentation motivating their price e.g. complete a checklist indicating which aspects of their bids have been quoted for. Such a checklist will be included as a returnable document in Transnet tenders and will allow Transnet to conduct a comparative analysis in terms of pricing. Bidders who fail to quote on all Transnet mandatory requirements will be declared non responsive.

Next, select and utilise the automated scorecard for Method 1.

The following formula has been built into the automated score sheet to calculate the score for price:

$$Ps = \frac{Pbm}{Pt} \times W1$$

Where:
- Ps = Score for Bid under consideration
- Pt = Comparative price of Bid under consideration
- Pbm = Benchmarked price calculated using average price of bids received less 10%
- W1 = The percentage score given to price

Bidders with a price lower than the benchmark will be given an automatic score of the full points allocated to price.

The method to calculate the benchmark against which all prices are evaluated may be adjusted on motivation to and approval by the GCE.

A bidder's score for price must be added to the consolidated score for SD, BBBEE and FRC. The Bid with the highest score must be selected unless there are objective criteria other than the evaluation criteria that justify the award to another Bidder. This discretion must be exercised sparingly. Examples which would justify the award to a bidder other than the highest ranked bidder includes instances where the highest ranked bidder has just been fined a huge amount by the Competition Commission which impacts on its ability to deliver on the contract; or notice has just been received from iSCM Governance that the company has been placed on Transnet's List of Excluded Bidders.

Where two or more Bids have scored the highest equal points based on Price and SD/Preference, the Successful Bid must be the one with the highest score on preference.

Pricing Offer

All Bid pricing offers must be reduced to a common base in a comparative schedule in order to facilitate a fair comparative analysis. In order to facilitate a fair comparison between Bids, it is necessary to distinguish between the bid price and comparative price as the Bid price may not include certain factors impacting on cost. As stated in chapter 16 above on Bid Preparation, it is necessary to provide all Bidders with a uniform pricing schedule to ensure all Bidders include not only the base price, but all other factors that may influence total cost of ownership (TCO). If a comprehensive pricing schedule is provided by all Bidders, it will ensure that prices received are already on a common basis. Failing this, Bidders must be asked to re-submit prices in accordance with a clear pricing schedule; alternatively, prices must be reduced to a comparative schedule as follows:

- Whether the cost of transport has been factored into the Bid price.
- Incoterm-related costs, i.e. all other transit-related costs in respect of Goods supplied from abroad, must be added to the Bid price. These include: inspection costs, freight and insurance (from the place where the Goods have been offered to the destination where it shall be delivered), landing charges, customs duties, import duties, wharfage, etc.
- Unconditional discounts must be subtracted from the Bid price, where applicable.
- Other considerations which affect a non-fixed Bid price such as price adjustment factors, currency, etc. that affect the prices over the full period or part of the contract period.
- Time value of money where cash flow implications differ, e.g. when upfront or staggered payments are required rather than a lump sum payment at the end of the contract.
- Differences in Quality which can be expressed in monetary value, e.g. if one bidder's brake blocks guarantees a 20% more useful lifespan than another bidder's.
- Any other incidental costs which may arise from the acceptance of an offer.

Any modification to the bidder's original Bid price due to the process of reaching comparative pricing must be validated with the Bidder him/herself.

Arithmetical errors, i.e. obvious arithmetical errors, must be pointed out to the Bidder (with permission from the AC Secretary) and corrected figures utilised for comparative purposes.

The comparative schedule should reflect the comparison of prices under the following headings (delete where not applicable):

- Tendered prices

- Arithmetical corrections
- Comparative prices
- Projected prices
- TCO adjustments
- Total comparative price

(iii) Score for Preference

Preference is scored according to the B-BBEE scorecard and FRC Current and Future in the final evaluation stage.

EXAMPLE 1 (Automated score sheet in respect of Method 1)

BASIS FOR COMPARATIVE OFFER : METHOD 1: PRICE (60) SD (20) BBBEE (10) AND FRC (10)

Name of Tenderer : Ranked lowest to highest Price	Financial Offer (P)	Comparative Offer (Pm)	Points for Financial Offer (Max 60)	Points for SD (Max 20)	BBBEE Level of Contribution (Level 1 to 9)	BBBEE Point out of 10 (scorecard only)	Points for FRC (Max 10)	Total point out of 100	Overall Ranking Price, SD, Function-ality and BBBEE	% Premium payable	Premium payable in Rands
BIDDER E	NON-RESPONSIVE - Minimum threshold for SD and BBBEE not met										
BIDDER A	R 119,000,000	R 119,000,000	60.00	14.00	Level 3	8	7	89.00	2	0.00	R 0
BIDDER B	R 120,837,221	R 119,000,000	59.07	16.67	Level 1	10	5	90.74	1	1.54	R 1,837,221
BIDDER C	R 122,898,753	R 119,000,000	58.04	17.30	Level 4	7	6	88.34	3	3.27	R 3,898,753
BIDDER D	R 140,965,432	R 119,000,000	48.92	18.60	Level 2	9	7	83.52	4	18.46	R 21,965,432

		SD (20)	Scorecard (10)	TOTAL(30)	
BIDDER A		14	8	22	
BIDDER B		16.6	10	26.6	
BIDDER C		17.3	7	24.3	
BIDDER D		18.6	9	27.6	
BIDDER E		10	1	11	(Non-responsive - minimum threshold not met)

MINIMUM THRESHOLD FOR SD and BBBEE = 15, i.e. 50%

Figure [36]

From *Figure [36]* above, Bidder B becomes the Preferred Bidder as he has attained the highest score out of 100. The recommendation to the AC will therefore be in favour of B (and not Bidder D although D has the highest B-BBEE contribution level or Bidder A who is the cheapest).

18.5.2 Applying the criteria in Method 2

Phase 1 of Method 2 is exactly the same as Phase 1 of Method 1. The difference between the two methods is in Phase 2, where Quality/Functionality is added as a fourth evaluation criterion and given a weighting greater than price, SD and preference.

Select and utilise the automated scorecard for Method 2.

A bidder's score for price must be added to the consolidated score for SD, BBBEE and FRC.

Where two or more Bids have scored the highest equal points based on Price, Quality and SD/Preference, the Successful Bid must be the one with the highest score on quality, since quality carries the highest weighting.

Such criteria must be communicated in advance in the bid documents.

EXAMPLE 2 (Automated score-sheet in respect of Method 2)

BASIS FOR COMPARATIVE OFFER : METHOD 2: PRICE (20) TECHNICAL (40) SD (20) BBBEE (10) AND FRC (10)

Name of Tenderer : Ranked lowest to highest Price	Financial Offer (P)	Comparative Offer (Pm)	Points for Financial Offer (Max 20)	Points for Technical (Max 40)	Points for SD (Max 20)	BBBEE Level of Contribution (Level 1 to 9)	BBBEE Point out of 10 (scorecard only)	Points for FRC (Max 10)	Total point out of 100	Overall Ranking Price, Technical, SD, Function-ality and BBBEE	% Premium payable	Premium payable in Rands
BIDDER E	NON-RESPONSIVE - Minimum threshold for SD and BBBEE not met											
BIDDER A	R 95,574,943	R 95,574,943	20.00	18.00	14.00	Level 3	8	7	87.00	4	0.00	R 0
BIDDER B	R 111,837,221	R 95,574,943	16.80	28.40	16.67	Level 1	10	5	76.87	2	17.02	R 16,262,278
BIDDER C	R 150,896,753	R 95,574,943	8.42	36.00	17.30	Level 4	7	6	74.72	3	57.86	R 55,321,810
BIDDER D	R 170,965,432	R 95,574,943	4.22	38.00	18.60	Level 2	9	7	78.82	1	78.88	R 75,390,489

	Technical (40)			SD (20)	Scorecard (10)	TOTAL	
BIDDER A	45%	18		14	8	22	
BIDDER B	71%	28.4		16.6	10	26.6	
BIDDER C	90%	36		17.3	7	24.3	
BIDDER D	95%	38		18.6	9	27.6	
BIDDER E	50%	20		10	1	11	(Non-responsive - minimum threshold not met)

MINIMUM THRESHOLD FOR SD and BBBEE = 15, i.e. 50%

Step 6

Recommendation

Prepare TEAR report containing recommendation to the AC
Record proper minutes of all the proceedings

18.6 RECOMMENDATION

18.6.1 Tender Evaluation and Recommendation Report (TEAR)

After a bid is evaluated a TEAR report should be completed by the Chairman of the evaluation committee setting out how all relevant evaluation criteria were measured and how Bidders were ranked as a result of the evaluation process. The motivation for the award of business must be supported by the evaluation score sheets as well as a copy of the automated scorecard. These documents must accompany the AC submission regarding the final award of business or the submission to short-list for post-tender negotiation.

The TEAR report must substantiate the results of the evaluation. This includes reasons why a Bidder was eliminated, for example, due to non-responsiveness or failure to meet any minimum technical qualifying criteria.

18.6.2 The recommendation to the AC

a) A recommendation for the award of the business must be drafted for submission to the relevant AC. This must be accompanied by the evaluation report motivating how all the relevant selection criteria have been evaluated.

The evaluation panel may be called upon by the AC to clarify any uncertainties.

b) When for whatever reason, it is considered in Transnet's best interest to award only a portion of the scope of requirements, Transnet should consider giving an opportunity to all participants in the bid process to re-bid on the amended scope by a new closing date and time. This is because a reduction in scope may impact on pricing / discounts offered by Bidders which in turn could affect their competitive position.

18.6.3 **Reasons for recommendation**

a) The reasons for recommending a particular Bid(s) must be clearly stated by the recommending officers.

b) When only one technically Acceptable Bid is received and recommended for acceptance, it shall be indicated whether the prices are fair and reasonable and how this has been determined (e.g. benchmarking against previous prices etc.).

c) If a Bid other than the Bid with the overall highest score is selected, the recommending officer shall provide a full explanation for this decision, and state which objective criteria are relied upon to justify the recommendation of such Bid.

d) In the event that two or more bids have scored equal total points, the successful bidder must be the one which scored the highest number of preference points for B-BBEE, except in the case of Method 2 where the equal scorer, with the highest score for quality will be the successful bidder.

e) Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

CHAPTER 19 : POST TENDER NEGOTIATION

19.1 POST TENDER NEGOTIATION (PTN)

19.1.1 Post Tender Negotiation is an effective tool to drive down cost or extract further value for Transnet and can be used very effectively in conjunction with any procurement mechanism. PTN is used after the evaluation process has been completed and the Preferred Bidder/s have been identified and approved by the relevant AC, based on the criteria as set out in the RFX. PTN is normally reserved for high-value, strategic commodities, but it may also be used in lower value transactions where it is considered that further value for Transnet can be extracted from this process. Depending on the circumstances, this tool can be used either with all technically compliant Bidders, or a selected short-list, or even with the Preferred Bidder only, but subject to the following requirements to ensure good corporate governance.

19.1.2 In order to ensure that PTN is conducted in a fair manner, shortlisted Bidders should be negotiated with individually. The negotiation process should follow the same agenda for all Bidders. After negotiation the Bidders should submit their best-and-final offers, in the relevant tender box, by a specified closing date and time. After proper evaluation of all best-and-final Bids received, business is ultimately awarded to the highest rank Bidder, based on these offers.

19.1.3 PTN may only take place if the RFX document contained a clause stating that 'Transnet reserves the right to enter into post tender negotiations with a Preferred Bidder or any number of shortlisted bidders'.

19.1.4 Before PTNs are conducted with the Preferred Bidder or short-listed Bidders, it must be approved by the relevant AC. The R-value of the proposed contract to be negotiated will determine within which AC's jurisdiction the matter falls. (Refer to paragraph 19.3 below for instances where PTN is envisaged for transactions falling below the AC jurisdiction.) The submission requesting authority to negotiate should include the following:

- list of Preferred Bidders (or Bidder) and how the list has been determined including the threshold set for qualification for PTN;
- the composition of the negotiating team;
- the targeted price reduction;
- the increase in SD commitment;
- B-BBEE commitment;
- the motivation for PTN; and
- other aspects that will be negotiated to achieve a "win-win" situation, e.g. payment terms, minimum order size and frequency, delivery, lead times, etc.

19.2 AUTHORITY TO ENGAGE IN PTN (transactions falling within AC jurisdiction)

19.2.1 Matters falling within the jurisdiction of the AC (i.e. above the minimum R-threshold of the AC), should be submitted for the approval of the AC in the normal manner, indicating in detail the process followed in determining the shortlist of Bidders to be negotiated with, details of the agenda that will be negotiated, etc. (refer to paragraph 19.4 below).

a) Upon receiving AC approval, and completion of the PTN process, and the resultant evaluation and scoring of the best-and-final Bids, full details of the

best-and-final offers, must be provided when a recommendation on the final award of the business is made to the relevant AC

b) On these higher value transactions, the negotiating team to be appointed by the relevant AC, shall comprise of procurement, SD, technical, financial and commercial (marketing) and legal disciplines, (where appropriate), to facilitate unity of purpose from Transnet's perspective and to enable the Bidder to deal with all relevant matters before making a final offer.

19.3 STANDING AUTHORITY TO PTN (transactions falling below AC jurisdiction)

19.3.1 It would also be acceptable, especially in respect of transactions falling below the AC minimum Rand thresholds, for certain officials (preferably in procurement), to be given specific standing Delegated Powers to conduct and/or authorise PTN, without the necessary prior AC approval as contemplated in paragraph 19.2 above.

a) This authority must be obtained from the Manager or CPO and must be included in the Delegation of Authority of the relevant official. Copies of this should be filed with the AC Secretariat. The standing Delegation of Authority must clearly reflect the maximum transaction value for which the official may conduct or approve PTNs, without prior AC approval. Full details of all such PTN transactions undertaken, should be reported to the AC at regular intervals.

b) A standing authority to negotiate is different from a standing authority to communicate (refer to paragraph 17.4.3) and separate PTN authority must be obtained. Standing Delegated Powers to negotiate will be granted with great circumspection and only to employees who have demonstrated the necessary negotiation skills.

c) Detailed records must be kept in the relevant files of the Bidders who have been negotiated with, how their eligibility for PTN was determined, including their best-and-final offers received. Copies of such standing authority must also be kept on the relevant files. Standing authority to conduct/approve PTN should not exceed the minimum R-value thresholds of the AC. In such cases the process as outlined in paragraph 19.2 above detailing the AC's involvement in the various stages, must be followed.

19.4 PTN PROCESS

19.4.1 Under no circumstances may prices of one Bidder be disclosed to another with the request to improve on such price in order to be awarded the business. This is considered as 'horse-trading' and is considered an unfair business practice. Such misconduct will not be tolerated and will result in disciplinary action.

19.4.2 It is important that all members of the PTN team sign declarations of interest and non-disclosure or confidentiality agreements when appointed to such teams. These forms must be kept on the appropriate files as an audit trail.

19.4.3 Negotiations must be preceded by thorough research and a caucus discussion by the cross-functional negotiation team to be able to obtain a co-ordinated approach.

a) To ensure fairness, the same agenda must be used with all short-listed Bidders to ensure that all Bidders are provided with the same information and the same opportunity to improve their Bid in all respects. The agenda must be made known in advance to all shortlisted Bidders so that they can prepare for the negotiations. The final evaluation criteria against which the best-and-final Bids

will be scored should also be disclosed to the shortlisted Bidders. Such criteria may only differ marginally from the original criteria as per the RFX document.

b) The objectives of the negotiating team must be recorded in consultation with the relevant disciplines concerned (e.g. financial, SD, technical and commercial).

c) The objectives should be approved by the relevant AC. The financial advantages, or other objectives sought (e.g. B-BBEE commitment, Enterprise Development initiatives, faster delivery, etc.), must be quantified and no negotiation will be regarded as final until all the approved objectives have been properly negotiated by the negotiating team. After receipt and evaluation of the best-and-final offers, the results must be recorded against the envisaged objectives.

d) Under no circumstances should a Preferred Bidder be informed that he has been awarded a contract prior to the PTN process, as that would jeopardise Transnet's negotiation power.

e) Where PTNs are conducted with a duly approved short-list of Preferred Bidders, all such Bidders must be requested to deposit their "best-and-final offer" in the tender box by a set closing date.

f) This method may also be employed in the single Preferred Bidder scenario, if there is reason to believe that this may yield a further price reduction, or extract further value for Transnet, subsequent to the negotiation session.

g) Although PTN offers shortlisted Bidders the opportunity to improve upon their Bid in areas such as price, quantity, etc., care should be exercised to ensure that the final contract negotiated does not differ substantially from the terms and conditions of tender set out in the original RFP document.

19.5 APPROVAL TO AWARD BUSINESS AFTER PTN

19.5.1 Business may be awarded to one of the shortlisted Bidders or split between any number of shortlisted Bidders.

19.5.2 It is possible and permissible for the ranking of shortlisted Bidders to change from the first evaluation stage when the shortlist was determined, to the final ranking after PTN was conducted and the best-and-final Bids were evaluated, provided that PTN was conducted strictly in terms of the rules as stipulated above.

19.5.3 In instances where the relevant AC has authorised PTN with a shortlist of Preferred Bidders, the ultimate award of the business, whether awarded to one or more than one shortlisted contender (i.e. a split-award) should again be presented to the relevant AC which approved the Preferred Bidder/short-list.

19.5.4 In instances where the relevant AC has authorised PTN with a single Preferred Bidder, the ultimate award of the business must also be presented to the relevant AC for approval to ensure that the final contract is substantially the same as the terms indicated in the RFP, unless the AC approved the preferred bidder and the subsequent award of the contract, upfront, due to operational requirements, (urgency etc), in which case the final negotiated terms, and contract value needs to be reported to the AC for information purposes only.

CHAPTER 20 : ADJUDICATION

20.1 GENERAL PRINCIPLES

Adjudication can best be described as the validation of the process leading to the recommendation of the Successful or Preferred Bidder/s. It is important to note that there are two different elements to this and these are often confused.

20.1.1 The ACs do not have any contracting powers and as such do not actually conclude the contract in the name of Transnet. The AC validates the process of selecting the Successful / Preferred Bidder.

20.1.2 When an AC has approved a submission, it clearly does so subject to the provisos listed in paragraph 21.3.1, one of which is that the person with the necessary DoA has to sign the actual contract. Likewise, the person with the necessary DoA may not execute his DoA and sign the contract, without the relevant AC approval of the process.

20.2 THE ROLE OF THE AC DURING ADJUDICATION

The function of the AC is to validate both the process related aspects as well as the commercial aspects of the bid process. The AC is required to satisfy itself that all Bidders were treated fairly in the bidding process and that the process was conducted in accordance with the applicable regulatory framework and Transnet's internal rules. The AC is also required to determine that the price to be paid by Transnet is market related, that the commercial terms and conditions are fair and reasonable and that the award of business is in the best interests of Transnet.

Factors to be considered during adjudication include whether:

20.2.1 the bid was advertised for a reasonable period of time and in the appropriate media;

20.2.2 all Bids are still valid i.e. still within the validity period;

20.2.3 communication with Bidders after the closing date was properly authorised and conducted in a fair manner;

20.2.4 Bidders were evaluated against the evaluation criteria stated in the RFP;

20.2.5 the scoring of Bidders was reasonable, rational and in accordance with the scoring methodology;

20.2.6 the recommended Bidder scored the highest points overall. If not, whether the recommendation to award the contract to another Bidder is based on other objective criteria

20.2.7 the recommended Bidder is not on the Transnet List of Excluded Bidders, the Treasury list of Bid Defaulters or the Treasury database of Restricted Suppliers;

20.2.8 the recommended Bidder has legal capacity to enter into a contract;

20.2.9 the contract is to be awarded to the same business enterprise as the one which submitted the Bid;

20.2.10 the recommended Bidder submitted a valid and original tax clearance, VAT certificate (where applicable) and whether the recommended Bidder complies fully with all legal requirements stated in the RFP;

20.2.11 the recommended Bidder is not insolvent, in receivership, bankrupt or being wound up, has his affairs administered by a court or judicial officer, has suspended his business activities or is subject to legal proceedings in respect of the aforegoing;

20.2.12 the award of business to the recommended Bidder would not be harmful to Transnet's image. In this regard, it must be borne in mind that Transnet is a public company and its sole shareholder is the Government of the Republic of South Africa. For this reason, business transactions with entities that could harm Transnet's image should be avoided;

20.2.13 price and other commercial terms are market related; and

20.2.14 The award of business does not pose any other legal or material risks to Transnet that has not been mitigated.

20.3 RISK EVALUATION

Upon receiving a recommendation to award business to a particular Bidder, the AC may at its own discretion call for a risk evaluation on the Bidder if it is of the opinion that this was not considered at the evaluation stage. If on reasonable grounds it is determined that there is a material risk involved in awarding the business to that particular Bidder, the AC may, depending on the likelihood and consequence of the risk materialising recommend one of the following:

- not awarding to the Bidder;
- awarding part of the business to the Bidder; or
- splitting the business between the Bidder and another Bidder.

The concept of material risk must be interpreted restrictively and be limited to instances where Transnet would be severely prejudiced by the award of business to a particular Bidder.

20.4 SPLITTING OF BUSINESS

The AC should enquire whether the splitting of the award of business was considered during evaluation, as this is a feasible mechanism to promote the development of new entrants into the market. Transnet's standard bid conditions allow for the selection of multiple suppliers or the award of the whole, or any part of a Bid to any particular Bidder. Transnet may also choose not to make an award if there are valid grounds for doing so.

Bidders who qualify their Bids on the basis that the whole Bid should be accepted (in conflict with the bid conditions) must be advised that the restriction must be withdrawn before their Bid can be considered.

20.5 DISAGREEMENT REGARDING AWARD OF BUSINESS

20.5.1 Should a dispute arise between the recommending officer(s) and the AC regarding a submission after the AC has referred the matter back to the recommending officer for re-motivation, the matter must be escalated to the Entity's CEO for a final decision.

20.5.2 Where the recommendation of the evaluation team conflicts with the opinion of the end user, the matter must be referred to the AC for a ruling.

20.6 NON AWARD / CANCELLATION OF BIDS

20.6.1 Non award of business must be approved by the relevant AC. A motivation for non award may be considered by the AC at any stage of the process before the Successful Bidder is finally selected and informed about the bid award. Once a Successful Bidder has been selected and informed about the outcome of the bid

process (i.e. he/she was awarded the bid), Transnet is said to be functus officio and can no longer cancel the bid process without an order of court authorizing it to do so.

20.6.2 It should be noted that a Bidder can only be regarded as the Successful Bidder when he/she was unequivocally informed that the bid was awarded to him/her. An award that is made subject to further negotiation or qualification cannot be regarded as a final and unequivocal award. Thus the award of "Preferred Bidder status", subject to the successful negotiation and conclusion of a subsequent contract does not amount to being selected as the "Successful Bidder" as the award is conditional and subject to the outcome of the negotiation process.

20.6.3 Group legal / the OD Legal department should be consulted before a decision to cancel a bid is taken to advise on the legal risk associated with cancellation and also whether Bidders should be invited to make representations before a final decision can be taken.

20.6.4 The decision not to award business must as far as possible be taken timeously. Bidders must be advised of this decision as soon as possible after the decision has been approved.

20.6.5 Non-award of business (as a result of Transnet's bad planning) should for obvious reasons be minimised as far as possible as Bidders expend a significant amount of time, effort and money when preparing and lodging Bids. Non award has the effect of cancelling a bid and the AC must therefore act judiciously when authorising a non award so as to minimize prejudice to Bidders.

20.6.6 When no Bid can be recommended for acceptance, the Manager concerned shall provide a motivation to the AC clearly stating the reasons why no Bid can be recommended and give an indication as to how need for the required Goods/Services will now be met.

20.6.7 The AC may approve a non award under the following circumstances:

a) Where due to changed circumstances there is no longer a need for the Goods or Services;

b) Where due to a fundamental change in specification, the bid has to be cancelled and re-advertised;

c) Funds are no longer available to cover the envisaged expenditure;

d) No Acceptable Bids were received;

e) When a material irregularity has occurred in the bidding process which cannot be remedied, other than through cancellation; or

f) All bids received are well over budget and considered to be excessive.

When the AC authorises a non award on the grounds of a), b) or c) above, all Bidders should be reimbursed for the bid document fee, if bid documents were sold. Where a non-award is authorised on the basis of ground e) above, Bidders not involved in the material irregularity should be reimbursed.

SECTION A Background and Context

SECTION B Procurement planning

SECTION C Go to Market

SECTION D Evaluation and Adjudication

SECTION E: CONTRACT MANAGEMENT

Chapter 21: Award of Business & Contracting Process

- Approval of acceptance of bids not to be anticipated
- Decision to accept bids or offers
- Notices of acceptance & non-acceptance
- Applications received in terms of PAIA
- Delivery of acceptance
- Formal written contract (letter of award)
- Contracting with the second ranked bidder
- Approval of contracts for periods exceeding 2 years

Chapter 22: Post Award Contract Management

- Post award functions
- Service delivery management
- Supplier relationship management
- Contract administration
- Indications of successful contract management

Chapter 23: Blacklisting

- Definition of blacklisting
- Grounds for blacklisting
- Who may be blacklisted
- Factors to consider before blacklisting
- Appropriate blacklisting period
- Representation
- Blacklisting procedure
- Appeal / Rescission

SECTION F Functions of Governance Structures

Appendices

CHAPTER 21 : AWARD OF BUSINESS AND CONTRACTING PROCESS

21.2 APPROVAL OF ACCEPTANCE OF BIDS NOT TO BE ANTICIPATED

No employee shall anticipate the approval of acceptance of bids. Therefore, no employee may enter into contracts verbally or in writing or place orders before the prescribed adjudication process has been performed and authority has been duly granted by a Manager with the appropriate DoA.

21.3 DECISION TO ACCEPT BIDS OR OFFERS

21.3.1 A Manager may only communicate the acceptance of a Bid i.e. issue a Letter of Award and proceed to conclude the contract if the following provisos have been adhered to:

a) he/she has complied with all internal policies and procedures and obtained the AC's concurrence by means of an AC resolution or (if applicable) approved AC minutes;

b) he/she has confirmed that there is still a need for the Goods/Service(s);

c) he/she has confirmed that the appropriate funds are still available;

d) the value of business awarded is within the level of his/her powers to contract in terms of his Delegation of Authority;

e) where the value exceeds his/her powers, he/she shall obtain a mandate from higher authority to conclude and administer the contract; and

f) where the value of business exceeds the relevant OD CEO's Delegated Powers to contract, the relevant higher authority (e.g. Transnet GCSCO, GCFO, GCE, BADC or Transnet Board) must conclude the contract. Alternatively, a mandate must be sought from the relevant higher authority in Group in favour of the OD CEO to conclude and administer the contract. The award can be to one or more specified contractors for a specific amount/s, but the cumulative value of the business (individual contracts) shall determine the approval authority required. As stipulated in the Transnet DoA Framework, it is advisable to obtain a written mandate from that Approval Authority (as defined) to administer the contract and to effect amendments to it not exceeding 10% of the initially approved contract value. Such mandate must be in writing and kept on the appropriate file for record purposes.

21.4 NOTICES OF ACCEPTANCE AND NON-ACCEPTANCE OF BIDS TO BE FINALISED

21.4.1 As soon as possible after approval to award a contract has been received, the OD which invited the Bids shall arrange to inform the Successful or Preferred Bidder(s) of the acceptance of his Bid. This notice may only be communicated by a person with the necessary DoA, or a person with a written mandate for a specific contract. Unsuccessful Bidders shall be advised in writing of the name of the Successful Bidder. On award of business to the Successful Bidder all unsuccessful Bidders must be informed of the reason as to why their Bids had been unsuccessful, e.g. price, delivery period, Quality, SD, preference or any other applicable reason. Please refer to the standard regret letter templates available on the iSCM Transnet Intranet. It is essential that the reasons for not accepting a Bid are factually correct, as the regret letter could form the basis for litigation against Transnet.

21.4.2 The details of the contract award must be placed on the Transnet internet site. These details must include:

a) bid number and description;

b) name(s) of the Successful Bidder(s) and preferences claimed;

c) the contract price(s); and

d) the duration of the contract.

21.5 APPLICATIONS RECEIVED IN TERMS OF PAIA

Should an application be received in terms of the Promotion of Access to Information Act (PAIA) or the Promotion of Administrative Justice Act (PAJA), the matter should be referred to either the OD Legal Department or Group Legal. It is important to note that all requests received in terms of PAIA or PAJA must be dealt with immediately, as there are deadlines within which to respond to the requestor.

21.6 DELIVERY OF ACCEPTANCE TO BIDDER

21.6.1 When a Bidder has been advised by letter of the acceptance of his Bid, the South African Post Office shall be regarded as the agent of the Bidder and delivery of such notice of acceptance to the above-mentioned offices shall be considered as delivery to the Bidder.

21.6.2 Where a Bidder has been informed per fax of the acceptance of his Bid, the acknowledgement of receipt transmitted by his fax machine shall be regarded as proof of delivery to the Bidder.

21.6.3 Where a Bidder has been informed by e-mail of the acceptance of his Bid, the "delivered message" on the sender's mailbox will be regarded as proof of delivery. Where the bidder's mailbox is set to allow for "Read messages" to be transmitted to the sender, these should also be kept as an audit trail.

21.7 FORMAL WRITTEN CONTRACT (LETTER OF AWARD)

A formal commitment in the form of a written contract is entered into with the Successful Bidder (Letter of Award)

Contracts provide the framework to mitigate risks and to measure operational and financial performance as well as compliance with business obligations and regulatory requirements.

A contract arises when an offer made by the Bidder is accepted. The Bid submitted by the Successful Bidder, read together with Transnet's letter of acceptance and terms and conditions of the RFP, constitute a binding contract between Transnet and the Bidder. Usually, this constitutes an "interim" contract until such time as Transnet and the Successful Bidder have been able to conclude a written contract to formalise their contractual relationship.

Although a verbal contract is equally binding on the parties, it is Transnet's policy that only formal written contracts shall be entered into with the Successful Bidder unless the Goods or Services are for immediate delivery or execution, in which case a formal order must be processed.

21.7.1 Letter of Intent (LOI)

a) A Letter of Intent is issued when a Bidder has been selected as a Preferred Bidder. The LOI informs the Preferred Bidder of Transnet's intention to negotiate and conclude a contract with it. The LOI also makes it clear that if a contract

cannot be agreed upon, Transnet reserves the right not to award the business to the Bidder. No contractual or other legal rights are vested in a Bidder purely by virtue of having been issued a LOI.

b) The validity of such LOI should be for a limited period only and every effort must be made to finalise the signing of the contract within the shortest possible period. The extension of the validity period of a LOI should be avoided and only considered in exceptional circumstances.

c) Only if the Goods/Services are critical for operations, will it be permissible to draw off a LOI, whilst the negotiation process is underway. In such cases the LOI serves as a proxy for the binding legal agreement and under its authority Transnet may place orders on the supplier for its interim requirements, during which period the final agreement will be negotiated and finalised between the parties. Should negotiations between the parties break down for any reason, the supplier may immediately invoice Transnet for all reasonable costs for Goods/Services delivered (based on proof of delivery). Such amounts shall become due and payable by Transnet.

d) It is important to note that the longer the LOI is allowed to continue, the less likely it will be that Transnet will be able to leverage its negotiating power to change a contract condition to benefit Transnet.

e) When issuing an LOI, one of the approved standard templates available on the Intranet must be used.

21.7.2 Use of Transnet's Standard Agreements

Where Transnet has standard agreements or terms and conditions in place, it is imperative that the standard template (available on iSCM Transnet Intranet) be used unless there are cogent reasons why such standard agreements cannot be used in a particular instance. Any omissions or additional clauses to such standard agreements must be captured in a schedule of special conditions. Should it not be possible to utilise a standard agreement, any non-standard agreement must be vetted and signed off by the relevant OD's Legal Department or Group Legal. The deviation from the standard agreement must be properly motivated.

It is always advisable to include Transnet's standard requirements/terms and conditions/agreements in the bid documents and/or RFPs. The respondent(s) will therefore be made aware of Transnet's requirements/expectations in advance.

21.7.3 Process for expediting contracts

On award of the bid, the following process must be followed in expediting a formal contract:

a) The employee responsible must draft the contract using the appropriate Standard Template plus a schedule and service level agreement (SLA) (where applicable).

b) He/she must present the draft contract and SLA to the Transnet representative with the requisite DoA and obtain his/her approval of the contract and SLA in principle.

c) Two duplicate originals of the contract and SLA must then be presented to the external party for signature.

d) Once the external party has signed, the duplicate original contracts and SLA must be returned to the Transnet representative with the DoA for signature.

One original must be forwarded to the external party and the other must be kept by Transnet.

e) The contract and a copy of the SLA must be stored in a secure repository and be readily available when reference to it is required.

21.7.4 **Non adherence to existing contracts ('Maverick Spend')**

a) As a general rule, Transnet is required to acquire the relevant Goods/Services only from the contracted supplier. Transnet is exposed to legal risk if it purchases Goods/Services outside of the contract.

b) If any person wishes to buy outside of a contract, the prior approval of the relevant Manager is required.

21.7.5 **Formal contracts are to be entered into in the name of Transnet SOC Ltd**

All contracts shall be concluded, as soon as possible after the award of the business to the Successful Bidder, in the name of Transnet SOC Ltd, according to guidelines issued. It shall be signed for and on behalf of Transnet by a Manager with the appropriate DoA.

21.7.6 **Transnet may insist on a suitable security/guarantee for fulfilment of contract**

a) When security has to be provided by Successful Bidders in terms of the contract, the delegated Manager entering into a contract shall ensure that adequate security is obtained for the fulfilment of the contract. It shall preferably be in the form of a guarantee by a bank or approved guarantee corporation, or a deposit with Transnet of approved Government or municipal stock in negotiable form. All securities shall be safely held by the OD concerned which shall keep a register thereof and shall ensure that the security does not lapse before the contract is completed.

b) Cash deposits or a "guarantee" in the personal name of an official of a bank or other institution is not acceptable.

c) Provided that the contract document allows for that, one can also retain part of the payment as retention money. Retention money (performance guarantees), normally 5 to 10% of the individual payments, is held back by Transnet as a guarantee for the satisfactory completion of the project. When such amounts have accumulated sufficiently, consideration is normally given to the refunding of the guarantees or sureties. Retention money is only refunded after completion of the guarantee period (normally 6 to 12 months, depending on the risk of latent defects).

d) Depending on the risk to Transnet, these measures may be relaxed to facilitate Transnet's B-BBEE objectives to develop small or emerging black companies.

21.8 CONTRACTING WITH SECOND-RANKED BIDDER

In the following cases Transnet will be allowed, at its sole discretion, to consider accepting the second most favourable Bid, provided that this option is exercised within a reasonable period after the initial award:

21.8.1 when a Successful Bidder, after having been informed of the acceptance of its Bid, fails to sign a contract within a reasonable period after being called upon to do so;

21.8.2 when a Successful Bidder has failed to provide the necessary security, if required;

21.8.3 when a Successful Bidder fails to meet a condition precedent for the award of business (e.g. to obtain the necessary funding, provide valid and/or original tax clearance certification, etc.), or

21.8.4 when final contract negotiations with a Preferred Bidder fails and a contract is not agreed upon; and

21.8.5 it is not practical within the time available to call for fresh Bids.

The award of business to the second ranked Bidder must be approved by the relevant AC.

21.9 APPROVAL OF CONTRACTS FOR PERIODS EXCEEDING TWO YEARS

The Main AC is to approve all contracts for periods exceeding two Years

No contract shall be entered into for a period longer than two Years without the main AC's (or the person with DoA) written approval, except for large construction contracts where the period allowed will be the completion period of the project. The same principle also applies with respect to the extensions of contracts, i.e. the initial period of the contract together with the extension may not exceed 2 Years without the main AC's (or the person with DoA) approval.

Property leases are also excluded from these Procedures and approval levels are determined by means of the Delegation of Authority of those employees, CEO's and higher authorities of the relevant property division/s.

CHAPTER 22 : POST AWARD CONTRACT MANAGEMENT

(Also refer to the Contracts Management Manual available on the iSCM Transnet Intranet)

Contract Lifecycle Management (**CLM**) is "the process of systematically and efficiently managing contract creation, execution and analysis for maximising operational and financial performance and minimising risk".[7]

Contract Management is an end-to-end process but is often confused with the concept of contract administration which constitutes only one part of it. This Chapter addresses the core components and activities of post-award Contract Lifecycle Management, including contract administration:

Delivery Management	to ensure that the Goods and/or Services are being delivered in accordance with agreed performance, costs and Quality levels set out in the contract
Supplier Relationship Management	to manage Transnet's relationship with the supplier in order to develop and maintain an open and constructive association with the supplier
Contract Administration	to undertake the formal contractual processes and obligations required and to comply with Transnet's post-award policies and procedures

In addition there are three fundamental aspects for consideration in relation to performance measurement:

PERFORMANCE FEEDBACK	SOURCE
Factual, objective information from the supplier	Normally obtained from IT systems and managed by outputs from the Service Level Agreement (**SLA**)
Feedback from users concerning Service/Goods received	A supplier relationship function, typically through questionnaires, surveys, telephone or face-to-face enquiry
The supplier's own experience of dealing with Transnet	A supplier relationship function, reported through supplier feedback

22.1 POST-AWARD FUNCTIONS

The immediate post-award contract management activities establish the basic awareness and procedures required to initiate Transnet's on-going contract management obligations. These include:

- Ensuring that all relevant parties are aware of their roles and responsibilities in the immediate implementation and transition process;
- Checking that the agreed processes for contract management are in place by both parties;
- That knowledge transfer from the procurement or project team (which may not have included members of the contract management team) to the contract management team takes place to ensure successful management of the contract

[7] *Source: Aberdeen Group*

- That, where necessary, the continuity plans for the seamless transition of the Service from the previous supplier to the new supplier will be carried out as agreed.

22.2 DELIVERY MANAGEMENT

This activity is concerned with Transnet's ability to measure the supplier's performance in terms of the contract, whilst managing the associated risks. It is important that the performance measures selected provide clear and demonstrable evidence of the success (or otherwise) of the contractual deliverables. In principle, issues such as the following should typically be considered:

- cost and value obtained;
- performance and customer satisfaction;
- delivery improvement and added value;
- Supplier Development (SD), Empowerment and Local Content (LC) where applicable;
- delivery capability;
- benefits realised; and/or
- supplier responsiveness.

22.2.1 Service Level Agreements (SLAs)

Contracts with suppliers will normally define the service levels and terms under which Services are to be provided. Service level management includes assessing and managing the performance of suppliers to ensure value for money.

It is generally beneficial to establish an SLA, since an SLA creates a common understanding about services, priorities and responsibilities of both parties. Transnet must decide in each instance whether or not it is appropriate to utilise an SLA. However, the default position should be to establish an SLA.

Where applicable, an SLA must be put in place with the Successful Bidder to ensure proper performance management and to mitigate any financial, operational, safety, environmental or reputational risks which may arise during the term of the contract.

The SLA shall, at the very least, govern the following aspects:

- representative(s) from both parties who will attend the meetings;
- schedule of meetings;
- venue(s) for meetings;
- party responsible for taking minutes (to be approved by both parties prior to circulation);
- risk areas to be measured (refer sub-paragraph 22.2.10 below);
- size of the samples to be tested in terms of performance management;
- key performance indicators (KPI);
- required outcomes;
- commitment to remedial actions, when needed;
- reporting on the results; and
- dispute resolution procedure in the event of disagreement or deadlock between the representatives of the parties (dispute resolution procedures are normally set out in the contract, failing which it is the Transnet Relationship Manager's responsibility to set out the procedures to be adopted – refer sub-paragraph 22.3.2 below)

22.2.2 Performance Scorecard

Service levels should be agreed and benchmarked for both Transnet and the supplier and should be:

- established at a reasonable level; if they are set too high they will attract additional charges from the supplier;
- prioritised by Transnet in order of importance and on agreed scales, for example; critical, major, urgent, important, minor;
- easily monitored (objective, tangible and quantifiable);
- unambiguous and understandable; and
- open to renegotiation at any time.

A performance management scorecard reflecting the performance of both parties should form an integral part of the SLA.

(See table below for a typical example of a scorecard for the purchase of Goods)

TABLE 17

KPA	Sample	KPI	Acceptable	Assessment	Remedial Action
DELIVERY	*Daily* all deliveries	On time	99% on time	*88%*	*Supplier to improve to 92%*
	Daily all deliveries	Accurate	99% accurate	*100%*	*N/A*
	Daily 1 in 5 deliveries	Lead-times met	99% lead-times met	*40%*	*Supplier to improve to 70%*
	Daily all deliveries	Paperwork in order	100% paperwork correct	*100%*	*N/A*
QUALITY	*Daily* 1 in 5 deliveries	No. of items rejected by GR	<2% Items rejected	*0*	*N/A*
	Weekly all deliveries	No of items rejected by production	0 items rejected	*0*	*N/A*
	Weekly 1 in 2 deliveries	Items properly packed	<3% items incorrectly packaged	*0*	*N/A*
PRICE REVIEW	*Monthly* 10 prices	Price charged vs. market	95% of items in market pricing range	*91%*	*Supplier to improve to 95%*
PAYMENT	All payments	Payment within 30 days	90% payments on time	*40%*	*Transnet to improve to 80%*

22.2.3 Performance review meetings

The following must be observed by the Relationship Manager (refer sub-paragraph 22.3.1 below) prior to and/or during the performance review meetings between Transnet and the supplier:

- ensure that performance review meetings are convened at intervals as agreed upon with the supplier;
- ensure that tangible proof of the supplier's performance against all the KPAs is obtained prior to the meeting;
- proper minutes shall be kept of all performance meetings; and
- over and above the requirement that minutes should be kept, a specific record (paper trail) shall be kept of recurring instances of poor performance by the supplier. Such record shall reflect the various performance assessments, interventions by the contract Manager, the remedial actions agreed upon, and the results thereof.

22.2.4 Performance monitoring

a) A process for monitoring the delivery of the suppliers must be set up by management to ensure continuing adherence to the supplier contract and service level agreements. Suppliers must be monitored against agreed performance metrics defined in service level agreements and contracts, it must be confirmed that suppliers are meeting current business requirements.

b) Contracted fees must be in line with fees specified in the contracts.

c) Performance metrics must be periodically reviewed to ensure that they continue to support business requirements. Improvements in price, Quality or service must be sought and, where possible and built into the contract terms.

d) Benchmarking against similar organisations, appropriate international standards or recognised industry best practices must be undertaken. Benchmarking results must be used to evaluate and compare supplier prices and services. Results of benchmarking must be used to make adjustments to current supplier contracts and agreements.

e) Independent audits must be undertaken with key suppliers and recommendations obtained from independent audits must be reviewed by Transnet management for subsequent use to improve delivery.

22.2.5 Adherence to contractual sourcing (Goods)

For Goods manufactured in South Africa:

When a contract is placed for Goods to be manufactured in South Africa, the supplier may not be permitted to substitute imported Goods without the AC's prior written approval. For contracts of values below the AC's jurisdiction, the Manager concerned may decide whether imported Goods can be substituted. Where the supplier has secured the business by reason of the Local Content offered, it shall not be allowed to substitute imported Goods for those to be supplied from South African sources. An exception to this ruling may only be considered when the supply from the South African source has been curtailed due to reasons beyond the supplier's control.

22.2.6 Conformance with specifications and delivery instructions (Goods)

a) Inspection and shipment/delivery of Goods:

All Goods are to be delivered strictly in accordance with the contract. Timeous arrangements must be made by Transnet for the inspection and/or shipment and delivery arrangements, as indicated by the contract terms.

(i) In the case of imported Goods:

The supplier must notify Transnet or its nominated clearing and forwarding agent as to when consignments are to be ready for inspection and/or shipment in order that arrangements may be made for inspection and/or shipment, except in instances where it has been specified that the Goods shall be inspected at destination. (Refer *Appendix C – ICC Incoterms 2010* for further details relating to alternative purchase terms and related responsibilities of seller and buyer).

(ii) In the case of locally manufactured Goods:

- where Quality is not assured by means of SANS, ISO or other standards, suitable Quality assurance mechanisms must be provided for in the contract e.g. inspections during manufacturing process, inspections at point of despatch or delivery. A suitable clause should be included in the relevant contract to the effect that Transnet reserves the right to return defective Goods for replacement in accordance with specifications;
- where Goods are of such a nature that Quality inspections are not deemed necessary, a suitable clause should be included in the relevant contract to the effect that Transnet reserves the right to return defective Goods for replacement in accordance with specifications.

b) Acceptance of Goods received:

Transnet employees responsible for the receipt of delivered Goods must ensure that all Goods are provided:

(i) strictly in terms of the contract, i.e. the delivery note may not differ from what was required in terms of the contract or purchase order; and

(ii) that the Goods delivered correspond exactly with the delivery note, i.e. short supplies should be clearly endorsed on the delivery note and over-supplies should be returned to the company, with the delivery note clearly endorsed as such.

22.2.7 Remedy for repetitive instances of poor performances

Where poor performances have been recorded and when no improvement in performance has been demonstrated by the supplier after several interventions on the part of the Transnet representative (including the imposition of penalties, where applicable – refer sub-paragraph 22.2.8 below), the following remedies should apply:

a) Should the contract Manager believe that the supplier is unlikely to improve its performance, the Manager must approach OD Legal or Group Legal to obtain direction regarding cancellation of the contract; and thereafter

b) Procurement is to initiate the blacklisting process, if appropriate.

It is of utmost importance that the specific additional record (a paper trail) of recurring instances of poor performance by the supplier is available to inform the recommendation to cancel the contract and/or to blacklist (see Chapter 23, paragraph 23.4 for Blacklisting protocols).

It must be remembered that poor performance amounts to breach of contract. Transnet's contracts contain a standard "breach clause" in terms of which a defaulting supplier must be notified of the breach and afforded an opportunity to remedy the breach. Only if this fails may steps be taken to cancel a contract.

22.2.8 Imposition of penalties

a) A penalty is a stipulation in a contract (a "penalty clause") providing that a party who acts in conflict with its contractual obligations must pay a sum of money to the other party. Where a contract provides for penalties in the event of breach such penalty should be enforced.

b) However, unless a contract expressly provides for a penalty, a penalty may not be imposed. Where a contract does not contain a penalty clause Transnet must sue for damages arising from breach of contract. Damages must be recovered by way of litigation and only after the amount of damages is proven and awarded by a court.

c) Transnet cannot recover both penalties as well as damages. Furthermore, Transnet cannot claim damages in lieu of penalties unless the contract states so specifically.

d) Penalties should be reasonable and not out of proportion to the prejudice suffered. In terms of the Conventional Penalties Act 15 of 1962, a court may reduce a penalty if it is unreasonable, disproportionate and inequitable.

22.2.9 Failure by a supplier to perform - liability for additional expenses

The bid documents (as well as the eventual contract) shall make provision for the Bidder to undertake that if, after it has been notified of the acceptance of its Bid, it fails to perform, whether by not entering into a contract or by not undertaking any steps when requested to do so within a period stipulated in the bid conditions or within such extended period as Transnet may allow, the supplier will be held liable for any additional expense which Transnet may incur in having to call for Bids afresh and/or accepting any less favourable Bid to complete the whole or remaining portion of the contract. In addition, consideration can also be given to placing such a contractor on Transnet's List of Excluded Bidders (See Chapter 23).

22.2.10 Risk Management

Risk can be defined as 'the probability of an unwanted outcome happening".

It is advisable to seek to remove or at least mitigate risk whenever possible before contract award. The obligations placed upon buyers to analyse, assess and mitigate risk during the pre-award stages of contract management are dealt with in previous chapters of this PPM. These pre-award activities can be collectively summarised as follows:

Analysis	The process of identifying all potential issues that can go wrong with an activity and estimating the probability of each happening
Assessment	The process of assessing the likely impact of a risk on Transnet
Mitigation	Having assessed the risks and identified those requiring action, responsibility for managing and mitigating them is allocated, which allocation must be dependent on the assessment of the likelihood and consequence of the risk

Contracts provide the framework to mitigate risks and to measure operational and financial performance as well as compliance with business obligations and regulatory requirements.

Post-award risk management undertaken during the contract period comprises those activities associated with identifying and controlling the risks that may potentially affect the successful fulfilment of the contract. Risks to the contract include such issues as:

- lack of capacity of the supplier, particularly if there are significant increases in demand;
- reduction in demand leading to higher unit costs borne by the supplier;
- an event which causes an increase in the total price to Transnet;
- an event which causes a programme delay;
- supplier staff changes;
- changes to the supplier's business objectives;
- deterioration in the supplier's financial standing;
- demand changes that cannot be met by the supplier;
- deterioration of Quality;
- *force majeure* issues;
- market fluctuations for commodities; and/or
- labour unrest.

When a risk is anticipated or perceived, to manage this involves the parties working together to identify *who* has the responsibility for the risk, the *method* of minimising it and *how* the risk will be managed. In order to do so the contract Managers must undertake the following actions:

- establish a binding process to encourage early warning system for issues such as those mentioned above;
- identify the party best able to control the situation leading to the risk occurring;
- identify the party best able to control the risk itself;
- identify who should be responsible if the risk cannot be controlled; and
- if the risk is transferred to the supplier, establish whether or not this cost will fall to Transnet, whether transfer will introduce new risks and the legal position of any such transfer.

Finally it should be considered that business risk cannot be transferred to the supplier and that the ultimate responsibility will always remain with Transnet for any failure in the fulfilment of a contract.

22.3 SUPPLIER RELATIONSHIP MANAGEMENT

In addition to the contractual and commercial aspects with Transnet's suppliers, a healthy relationship between Transnet and its suppliers is fundamental to the effective management of a contract. Management structures for contracts need to be designed to facilitate such a healthy relationship. There must be set procedures for raising and handling issues, so that these are dealt with as early as possible and at the appropriate level within the organisations.

The value, risk and strategic positioning of a contract will dictate the appropriate degree of supplier relationship management to be established per contract. This decision must be made by the OD's CPO and recorded accordingly in the supplier's contract file.

22.3.1 Supplier Relationship Managers

a) Transnet management must appoint relationship Managers (a "Relationship Manager") to be responsible for ensuring the quality of the relationships with suppliers. Relationship Managers are responsible for liaising between Transnet and the supplier regarding issues arising and must retain accountability for provisions and Quality of services delivered by suppliers. Supplier roles and responsibilities and Transnet roles and responsibilities for management of overall supplier relationships and individual supplier contracts must be defined and communicated to Transnet and the suppliers. Those involved in managing the supplier must understand Transnet fully and know the contract documentation thoroughly. This is essential if they are to understand the implications of problems (or opportunities) over the life of the contract.

b) Transnet and suppliers need to understand the objectives and business of each other. Transnet must have clear business objectives, coupled with a clear understanding of how the supplier will contribute to them. The supplier must also be able to achieve its objectives, including making a reasonable margin.

c) Supplier relationship management must maintain mutual trust and understanding, openness, and excellent communications which are key to the fulfilment of the formal contract terms and conditions.

22.3.2 Duties of a Relationship Manager

The activities of a Relationship Manager that must be accomplished to effectively manage a Transnet supplier are summarised as follows:

- Relationship Managers must control the technical relationship between Transnet and the supplier regarding the schedule of requirements or statements of work and specification as per supplier contracts and service level agreements.
- Relationship Managers must communicate potential issues for mitigation and immediate diffusion before issues are escalated.
- Relationship Managers will establish and manage a communication framework for the supplier for which they are responsible and ensure that it is employed effectively to sustain communication flow.
- Informal issues resulting in concerns in a supplier relationship must be identified and resolved by the Relationship Manager.
- Relationship Managers can identify and recommend changes to supplier arrangements, communication flows, supplier contracts and SLAs to ensure an effective relationship is maintained.
- Regular formal and informal reporting procedures will be established by Relationship Managers.
- Relationship Managers must be actively involved in supplier dispute resolution processes.
- Relationship Managers will organise the necessary forums, working groups, seminars, road shows, training sessions and other information activities involving Transnet staff and suppliers.
- Ways to improve supplier relationships wherever possible must be proactively considered by Relationship Managers, based on end-user and supplier feedback.

22.3.3 Factors that can inhibit the development of a successful supplier relationship include:

Frequent and rapid recourse to the formal contract to overcome problems

Clashes in company cultures which are so disparate as to prevent the creation of the level of trust and confidence required

Reluctance by the supplier to cooperate in value for money or benchmarking tests conducted by Transnet

Commercial issues, for example lack of real competition resulting in uncompetitive poor value for money terms from the supplier, or conversely that Transnet is critically dependent on one supplier leading to price rise vulnerability and/or problems of management capability, resources or financial capitalisation

Too frequent demands for submission of competitive Bids which reduces trust in the relationship

22.3.4 **Factors that encourage the development of a successful supplier relationship include:**

Securing senior level support in both organisations

Recognising that actions and attitudes affect the tone of the relationship

Ensuring that the governance arrangements are fair

Ensuring that the relationships between the parties are peer-to-peer as far as possible

Ensuring that roles and responsibilities are clearly understood by both parties and that the necessary authority levels have been ascribed

Ensuring that escalation routes are clear and understood but that problems are resolved as early as possible and as low down the management tree as possible

Separating strategic matters from the day-to-day service delivery issues

Ensuring that appropriate attitudes and behaviours are practised and displayed to assist the promotion of a positive and constructive relationship

22.4 CONTRACT ADMINISTRATION

This activity is concerned with the practicalities of the relationship between Transnet and the supplier and the operation of the routine administrative and clerical functions. The importance of contract administration to the smooth running of post-award contract management must not be underestimated and should be resourced appropriately. This is the responsibility of Transnet's Relationship Manager.

The typical functions included under post-award contract administration responsibilities are:

- Change control;
- Charges and cost monitoring;
- Ordering and payment procedures;
- Budget controls;
- Contract meeting schedules and minutes;
- Resource management and planning; and
- Contract termination or extension/renewal.

All the above issues should have been addressed at the pre-award stage and included in the contract documentation, as applicable. The role of Transnet's Relationship Manager is to

manage these functions during the term of the contract. Certain key administrative issues and the governance thereof are further addressed in the following paragraphs.

22.4.1 Change control procedures

Changes will almost inevitably occur during the period of a contract and managing these changes is a particularly important activity. Formal change control procedures should be designed and set out in the original contract documentation to avoid misunderstanding and ambiguity about roles, responsibilities and the actions to be taken in any given situation.

The procedures need to be comprehensive but also flexible and straight forward and should cover such issues as:

How to request changes, including additional demands placed on the supplier

Assessing the impact including contractual implications

Prioritisation and authorisation levels

Agreement on methodology

Controls for implementation

22.4.2 Extension of contracts

The relevant legal principles are explained as follows:

a) A contract may be extended before its expiry date. This will involve an agreed Material Amendment to the existing terms and conditions of the contract. Where the contract expressly allows for an option to extend or renew, such prescribed extension or renewal process must be followed before the termination date.

b) A contract that has lapsed or expired cannot be extended. The purported "extension" of an expired contract either for a given period (e.g. 1 Year) or on a month-to-month basis has inherent risk, because the terms and conditions safeguarding Transnet would have expired with the original contract itself. Transnet would have effectively entered into a "new" contract without the safeguards of the initial contract. This could also give rise to irregular expenditure in terms of the PFMA.

22.4.3 In view of the legal principles set out above, the practice of extending a contract after its termination date is considered to be irregular.

The following approach with regard to the extension of contracts must be followed:

a) Any request for the extension of a contract must be submitted to the AC at least 45 (forty-five) Working Days before the contract is due to expire. This is to ensure that the AC may consider the request before the expiry date.

b) A request for the extension of a contract must indicate whether such extension is as a result of exercising an option to extend or whether the extension sought amounts to an amendment to the contract.

c) Any request for the extension of a contract for a given period (e.g. 1 Year) or on a month-to-month basis should contain proof that the supplier is willing to extend the contract based on the same or better terms and conditions for Transnet.

d) No request for the extension or renewal of a contract after the expiry date of the contract shall be entertained and any proposed continuation of business shall be regarded as a new sourcing event, i.e. open RFX, Confinement or to be effected under laid down emergency procedures.

e) In the event that the contract has been allowed to exceed its termination date, such irregular "extension" shall be submitted to the AC for condonation of the action taken.

f) Should a supplier request extension of the contract completion date, the relevant circumstances must be considered in order to reach a fair decision in response to such a request, as follows:

(i) Where the bid document or contract stipulates that completion of the works, services, project or delivery of the Goods has to take place by a specified date and the supplier completed it / handed it over only after the contractual completion date, penalties may be raised under the terms of the contract.

(ii) A supplier may apply for an extension of the contract completion date if it considers that the reasons for late completion were/are:

- beyond its control (e.g. *Force majeure* events such as acts of God, rain, floods or earthquakes);
- whereas the supplier had exercised reasonable control, the late completion could not have been foreseen, minimised or prevented; and/or
- or the delay(s) had been attributable to Transnet

(iii) The supplier's claims in terms of (ii) above may be lodged at any time during the course of the contract or after the expiry date and must be substantiated by means of site diary entries, etc. Transnet then has to consider the reasoning and if considered to be valid, shall recommend to the AC the refund of some or all penalties already levied in terms of the contract or the waiving of some or all penalties.

(iv) Late completion of the contract due to valid reasons will require an extension of the contractual completion date. This would constitute a Material Amendment to the contract and would require AC approval. Should the extension of time be granted, i.e. approved by the AC, the supplier shall be entitled to price escalation over the extended period only if escalation has been provided for in the original contract.

(v) If Transnet does not consider the supplier's claim for an extension of time to be valid, the contract completion date may nevertheless be extended but penalties may be imposed in terms of the contract. Price escalation will also not be payable after the official completion date. However, Transnet is not obliged to grant the supplier's request for an extension of time and may (especially in instances where time is of the essence) decide to cancel the contract.

(vi) A waiver or reduction of penalties would constitute a Material Amendment to the contract and would require AC approval.

22.4.4 Exercising options

a) If Transnet wishes to reserve the right to extend a contract period, this should be stipulated upfront in the RFP. Furthermore, the inclusion of this option must be brought to the attention of the AC (or the person with DoA) when the initial recommendation to award the business is made.

b) Should it be decided to exercise the option during the course of the contract, the recommendation to exercise the option must be submitted to the AC for prior written approval in the normal manner. An indication must be given at that stage that the exercise of the option is still the best value in the market place (also see paragraph 9.2 and 22.4.3(b)).

22.4.5 Involvement of AC in material contract amendments

Goods/services contracts

These contracts are normally fixed term contracts. The AC must approve all Material Amendments to contracts within their threshold and recommend those above their threshold. This applies even if the initial award had only been submitted for the information of the AC, e.g. an emergency procedure or business awarded via the 'confine and award' process.

Extension of contracts, additional work, increase in quantities, price amendments, cession and assignments, waiving of penalties, etc., are all examples of Material Amendments to contracts, and need prior AC approval.

Where a contract specifies:

(i) estimated quantities at unit prices in respect of "as-and-when required" purchase or service contracts; or

(ii) specified quantities at unit prices in respect of purchase or service contracts over a fixed period,

a Manager may approve any increases or decreases in quantities or additions or additional work of which the total value does not exceed 10% (10 per cent) of the original value of the contract, and must inform the AC accordingly.

This provision does not include price escalations not provided for in the contract, i.e. the same goods to be provided at an increased price. Such matters should be presented to the AC for prior approval regardless of the value of the proposed increase in price.

22.4.6 General amendment principles

General principles applying to amendments of both Goods/Services and engineering/construction-type contracts include the following:

a) where the original value of the contract falls below the AC's jurisdiction, a Manager may approve additions, increases or decreases provided the total value of the contract does not exceed his/her Delegated Powers. However, if the original contract value is below the AC's jurisdiction but amendments bring it within the AC's jurisdiction, the matter must be submitted to the AC; or

b) where the value of the contract falls within the AC's jurisdiction, a Manager may approve the amendment of non-material provisions (less than 10% of the original contract value) provided that such amendment shall be reported for the information of the AC as soon as possible thereafter; or

c) where any material provision needs to be amended (e.g. price or delivery date, cession and assignment of contract, or the termination of a contract, waiving or reduction in penalties, etc.) the Manager concerned shall submit a recommendation for AC consideration together with supporting documentation indicating that the proposed amendment to the contract is in the best interest of

Transnet, that it represents the optimal value for Transnet, and how this has been determined.

Following AC approval such amendment needs to be signed off by the person with DoA who signed the initial contract (or the person mandated to do so) provided the cumulative value of the contract and subsequent amendment(s) still falls within his/her DoA.

22.4.7 Contract closure

This stage concerns the activities associated with finalising the close-out or termination of a contract, whether in accordance with the expiry date or as a result of early contract cancellation. Depending on the nature of the contract, such activities may include the following:

- Complete all administrative matters;
- Record all technical issues have been resolved;
- Determine the extent of any liquidated damages to be deducted from the contract price made against or received from the supplier;
- Record the end of retention and guarantee periods, plus date of final inspection;
- Record the date of release of retention and/or bank guarantees;
- Agree to limits on any on-going obligations, including warranties;
- Record any material reconciliations;
- Transfer any assets, including data, intellectual property and loan items;
- Transfer operating systems (as applicable) to new/replacement supplier;
- Conclude final contract payments;
- Summarise claims made against or received from the supplier; pr
- Ensure retention of records (refer sub-paragraph 22.4.8 below)

On completion of the above activities agreement should have been reached between Transnet and the supplier on all technical and commercial aspects of the contract.

22.4.8 Safe custody of Bid documentation, contracts and contract files

a) Each OD shall arrange for the safe custody of Bid documentation and contracts at a suitable, approved, centralised or regional location.

b) Related documents which should be kept on contract files as part of the contract records include, but are not limited to, documents such as
   - RFP (requisition);
   - the going to market strategy and approval;
   - bid Advertisements;
   - authorisations to confine;
   - minutes of relevant meetings/briefings;
   - evaluation score-sheets;
   - TEAR reports;
   - declaration of interest documents signed by members of evaluation teams and post bid negotiation teams;
   - certificates authorising communication with Bidders;
   - agendas and minutes of post bid negotiation meetings;

- correspondence with Bidders;
- RFX offer from Successful Bidder;
- letters of award and non-award;
- Letter of Intent;
- Approvals of draft contract (sign off schedule);
- Executed original copy of contract;
- Vendor Application Form;
- Insurance details (if applicable);
- Original and valid SARS VAT and Tax Clearance Certificate (to be update annually);
- B-BBEE Verification Certificate;
- Contract Addendums (if any); and
- Confirmation of expiry or extension to contract.

Refer to the iSCM Transnet Intranet for the checklist template of documents and signoffs which should be kept on contract files.

22.4.9 **Document Retention**

The following may be used as guidelines as to how long records should be retained:

a) Unsuccessful Bids must be kept for 5 Years after completion of the contract, and thereafter may be destroyed.

b) Successful Bidder's Bid/contract document, as well as the contract file and related general correspondence must be kept on site in a proper and safe archiving facility for a period of 5 Years after completion of the contract, and thereafter may be archived in an off-site archiving facility in compliance with normal archiving procedures.

These files should be properly archived and recorded by means of a formal register so that they can be easily traced when required for audit investigations and/or litigation purposes.

22.4.10 **CONTRACT LIFECYCLE MANAGEMENT METHODOLOGY**

Transnet has a standardised Contract Lifecycle Management (CLM) methodology. It is a requirement in terms of this PPM document that these CLM prescripts be followed. **INDICATIONS OF SUCCESSFUL CONTRACT MANAGEMENT**

22.5 Successful contract management will achieve benefits by:

Managing Transnet's own responsibilities during the contract

Ensuring the supplier meets the minimum performance criteria, such as compliance

Allowing the achievement of both short and long term supplier performance improvement through developing effective supplier relationships

Ensuring that suppliers deliver Goods/Services of the agreed quality and price

B-BBEE and SD commitments are closely monitored and enforced

Reduction of costs and continuity of supply

Roles, responsibilities, rights, obligations of all stakeholders are clearly communicated and understood

Early identification and resolution of poor performance and disputes thereby minimising risks

Eliminating unethical practices within Transnet

Enhanced Supplier relationships through the visualisation and establishment of win-win scenarios

Entrenching uniformity of managing contracts and the principle of fairness

Creating a database of lessons learnt to aid future planning through the dissemination of good practices

Increased competitive and strategic advantages through effective control and visibility of contracts

Evaluation of the specification against contract performance and identification of contract changes or variations

In summary, successful contract management is indicated if:

The arrangements for service delivery continue to be satisfactory to both parties

The expected business benefits and value for money are being achieved

The supplier is co-operative and responsive

Transnet understands its obligation under the contract

There are no disputes

There are no surprises

A professional and objective debate over changes and issues arising can be had

Efficiencies are being realised

CHAPTER 23 : BLACKLISTING PROCEDURES AND GUIDELINES

23.1 DEFINITION

Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist must be based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.

The Transnet GCFO or his delegate may, upon a recommendation by the relevant AC and the Group Chief Supply Chain Officer decide that no Bid from that person or Enterprise be considered/accepted for any new contracts concluded for a specified period as may be determined.

Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company /person from future business, Transnet may decide to terminate some or all existing contracts with the company /person as well.

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

23.2 GROUNDS FOR BLACKLISTING

23.2.1 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

a) has withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;

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

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

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

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

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

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

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

h) has litigated against Transnet in bad faith.

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

(iii) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;

(iv) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;

(v) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.

(vi) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.

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

a) When issuing RFXs, prospective Bidders must be requested to disclose whether the company or any of its directors were found guilty of a serious breach of the law during the preceding 5 Years.

b) Should any prospective Bidder declare a conviction of a serious nature, the blacklisting process should be instituted without delay and dealt with expeditiously, whilst the evaluation of the bidder's Bid continues.

c) Under no circumstances may any prospective Bidder be excluded from the evaluation process or overlooked for the award of business until such time as a final decision to blacklist has been made.

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

23.3 WHO MAY BE BLACKLISTED?

The following persons / entities may be considered for blacklisting:

23.3.1 any person/company who has submitted a Bid in response to a bid request issued by Transnet;

23.3.2 any person/company who has concluded a contract/s with Transnet;

23.3.3 any person who has acted in the capacity of subcontractor to a supplier of Transnet;

23.3.4 any agent or employee of the company concerned, or his/her spouse who may be conducting the same business but under a different name;

23.3.5 Transnet employee found to be involved in fraudulent or corrupt activities;

23.3.6 companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons); and/or

23.3.7 any companies subsequently formed by the person(s) guilty of the misconduct or where such person(s) acquires a controlling stake in an existing company.

23.4 FACTORS TO CONSIDER BEFORE TAKING THE DECISION TO BLACKLIST

23.4.1 A decision to blacklist has far reaching implications for the company/person concerned. Therefore, Transnet must act fairly, reasonably and rationally whenever it decides to blacklist a company/person. The decision to blacklist must be considered on a case-by-case basis and must be based on the merits of the particular matter.

The following factors must be taken into account in deciding whether to blacklist a company/person:

a) the gravity / seriousness of the offence/misconduct/breach;

b) any previous offence/misconduct on the part of the company/person;

c) any remedial action taken by the company, including steps to ensure that the misconduct will not be repeated;

d) the seniority of the person(s) who acted in bad faith;

e) the impact of the proposed blacklisting of the company on Transnet's operations;

f) the reasonableness of the explanation for the misconduct;

g) whether the company/person has received direct or indirect benefit as a result of the misconduct; and

h) whether Transnet suffered actual or potential prejudice.

23.4.2 The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet and must be carefully considered. Associated companies must not be blacklisted by default. The merits of each case will inform the decision as to whether a particular associated company will be blacklisted or not. In addition to considering the factors mentioned above, as a general rule the blacklist should only be extended to associated companies where the directors/members common to both entities were either directly involved in the misconduct against Transnet, or failed to take remedial action for a serious offence. Furthermore, it is important to consider whether the blacklisted director/member plays an active role in the associated company or has a controlling stake in the associated company.

23.5 GUIDELINES FOR DETERMINING AN APPROPRIATE PERIOD FOR BLACKLISTING

Blacklisting cannot be imposed for an indefinite period. The following is a general guideline on the number of Years of blacklisting to impose on suppliers found guilty of misconduct against Transnet:

TABLE 18

Grounds for Blacklisting	Suggested Period
Offences involving bad faith / dishonesty (e.g. theft, corruption, fraud, Fronting, misrepresentation, etc.)	Not less than 5 Years, and not exceeding 10 Years
Other misconduct (e.g. breach of contract, poor performance, etc.)	1 – 5 Years (However, Transnet reserves the right to impose a longer period of restriction to a maximum of 10 Years, depending on the gravity of the misconduct.)

23.6 BLACKLISTING PROCEDURE

The following procedure must be followed in order to blacklist any person/company:

23.6.1 As soon as an OD detects misconduct by a person/company falling within one of the grounds for blacklisting, the matter must immediately be reported to the procurement division of the OD concerned.

23.6.2 Procurement will review the motivation for the blacklisting. If possible grounds for blacklisting exist; a forensic audit may be conducted to establish whether the grounds for blacklisting are valid.

23.6.3 Should the forensic report establish that possible grounds for blacklisting exist; the OD AC shall be approached for approval to proceed with the blacklisting in principle.

23.6.4 Transnet Internal Audit will be requested to conduct ITC searches on the Company and its members/directors in order to ascertain the identity of all companies associated with such members/directors.

23.6.5 The matter must then be referred to the OD legal department or Group Legal where an OD does not have its own legal department, who will be responsible for the following:

a) The company, its directors and all associated entities are to be informed both by registered and hand delivered mail of the intention to blacklist, as well as reasons for the proposed blacklisting. The letter should also indicate whether Transnet intends to cancel any existing contracts with the supplier. Proof of delivery should be obtained. The companies/persons must be afforded a period of 14 Working Days within which to make representations as to why they should not be blacklisted or why existing contracts should not be cancelled.

b) After the 14-day period the Legal Department must consider the responses (if any) from the companies/persons. The motivation must then be completed and signed off by the Legal Department, Management and procurement.

23.6.6 The matter must then be submitted to the AC to consider whether or not to proceed with the blacklisting. Should the AC support the blacklisting motivation, the matter shall be forwarded with all supporting documentation to Group iSCM for further action where the GCSCO will consider the matter. If blacklisting is no longer recommended, the relevant Legal Department is to inform the OD and the relevant entity concerned of this decision.

23.6.7 If supported, Group iSCM will draft the final submission and attach all original documents including the relevant AC minutes for consideration by the GCFO.

23.6.8 Final approval for blacklisting will be made by GCFO.

23.6.9 Group iSCM will then notify all companies/persons by registered (or hand delivered) mail of the blacklisting. Group iSCM will also update and circulate the List of Excluded Bidders.

23.6.10 Group iSCM will notify the Transnet Content Bureau to update the RAMIS and SAP CLM system to either:

a) block the blacklisted company(ies) on the system altogether if all existing contracts have been terminated and ensure that all payments already incurred have been settled; or

b) ensure that no new contract may be loaded on the system if existing contracts with the company have not been terminated so that payments on the existing contracts may still be effected, and

c) Publish the blacklist on Transnet's external website so that blacklisted entities may not be used as subcontractors or JV partners.

23.7 APPEAL AGAINST DECISION TO BLACKLIST

Any company/person against whom a decision with regard to exclusion from future business has been taken may make representations to the GCE whose decision shall be final.

23.8 RESCISSION OF A DECISION TO BLACKLIST

The Transnet GCFO or his duly authorised delegate may at any time, on good cause shown, rescind a decision taken or reduce the period of exclusion as initially determined.

23.9 ENFORCEMENT OF THE TRANSNET LIST OF EXCLUDED BIDDERS

Prior to the approval of the award of business by any AC, the Secretary of the AC shall verify that no business is awarded to companies or persons appearing on Transnet's List of Excluded Bidders. This will include verifying the identity numbers of the directors/members of the recommended Bidder against the identity numbers of the restricted persons on the List. The Secretary and Chairperson of the AC shall sign off a certificate stating that no business is awarded to entities or persons appearing on Transnet's List of Excluded Bidders. The certificate should be retained by the Secretary of the AC.

23.10 ANCILLARY ACTIONS

Furthermore, in cases of corruption or fraud, theft, extortion and forgery involving R100, 000.00 or more, Transnet must:

a) act in terms of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 and report the matter to the South African Police Services for further investigation.

b) in addition to subparagraph (a) above Transnet may also, at its sole discretion, decide to institute criminal and/or civil action.

Figure [37] – The blacklisting process

SECTION A Background and Context

SECTION B Procurement planning

SECTION C Go to Market

SECTION D Evaluation and Adjudication

SECTION E Contract Management

SECTION F:

GOVERNANCE STRUCTURES

Chapter 24: Functions of Governance Structures and Departments

- Main OD Acquisition Councils
- Transnet Acquisition Council (TAC)
- Procurement Ombudsman
- Capital Investment Committee (CAPIC)
- Board Acquisitions and Disposals Committee (BADC)
- Integrated Supply Chain Management (iSCM)

Appendices

CHAPTER 24 : FUNCTIONS OF GOVERNANCE STRUCTURES AND DEPARTMENTS

24.1 MAIN ACQUISITION COUNCILS (Main AC)

Each division will have its own main AC which will consider and approve all procurement processes, as well as the disposal of scrap, falling within its jurisdiction from R2 million, but not exceeding R500 million. This is subject to the discretion of the OD CEO to lower the R2 million threshold, or to create secondary ACs. Transactions exceeding the CEO's Delegated Powers will likewise be considered by the OD's main AC. If it concurs with the recommendation, the matter will be referred to the relevant governance structure for approval.

Recommendations: The RAC, main AC and the BADC will support the recommendation for transactions above their thresholds. Local/Regional AC normally only consider transactions <R2m but OD CEOs may at their discretion increase these thresholds.
* *In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R2,5 billion in terms of the latest Shareholder's Compact) before proceeding with the acquisition.

Figure [38] – Thresholds for process approval

The **Transnet Acquisition Council** ("**TAC**") has similar roles and responsibilities to that of the ODs' main ACs but it caters for the Group Corporate Head Office requirements, as well as centre led transversal contracts. The TAC has no higher status than the ODs' main ACs.

24.1.1 Composition of the Main AC

The main AC is constituted as a governance committee of the OD CEO and shall consist of senior management members within the OD. The main AC or CEO shall have the discretion to create regional and/or local ACs, hereinafter referred to as secondary ACs. An AC shall be comprised of the following persons:

a) A Chairperson, who will either be the CEO, or an executive or senior management member, shall be appointed by the CEO of the OD. The Chairpersons of secondary ACs will likewise be appointed by the main AC or CEO.

b) A Deputy Chairperson, who shall be one of the members mentioned in paragraph (c) below and who shall be appointed by the OD CEO or elected by the AC at a properly constituted meeting.

c) Members, all of whom are senior Transnet employees in the particular OD or where applicable seconded from Transnet Group, selected by virtue of their specific expertise or business focus, appointed by the CEO, with the clear proviso that the heads of Procurement, Finance, Legal and Risk in the OD will be mandatory appointments.

(i) Members must be capable of exercising sound, unbiased judgement and offer constructive comment.

(ii) It is a minimum requirement for members and appointed alternates to attend the annual training course on AC Roles and Responsibilities, Procurement and Bid Evaluation, presented by the Group Governance Function.

d) ACs may, at the discretion of the OD CEO or Chairperson, opt to appoint alternates for its members. Should the AC opt to appoint alternates, each member may, in writing, nominate one alternate. Alternates must be formally appointed by the CEO. Should the member be unable to attend a scheduled meeting, the appointed alternate should attend in his/her stead. All alternates are to be of suitable seniority to represent the member adequately and to make decisions on the member's behalf.

e) ACs may, at the discretion of the CEO/Chairperson, opt to appoint members on an ex officio basis. Such members shall not be counted to constitute a quorum and shall have no vote.

f) Secretary: The CEO or duly authorised delegate shall appoint an employee of Transnet as secretary to the AC. The incumbent must have extensive procurement and governance knowledge and experience, and should ideally be part of the procurement structure of the particular OD. However, to ensure a proper segregation of duties, the Secretary should report directly to the chairperson for purposes of day-to-day operations and performance management. This is to avoid any perceived conflict of interest which may jeopardise the objectiveness of the Secretary, as procurement will inevitably be tabling the vast majority of submissions.

24.1.2 Primary Mandate (Main AC)

To consider all recommendations from the OD with regard to the award of external contracts for the procurement of Goods and Services, or the disposal of scrap, where the total value of the business exceeds R2 million (subject to the discretion of the CEO to lower such threshold, or to create secondary ACs – see paragraph 24.1.3 below). Likewise such ACs will also consider any subsequent amendments to the contracts falling within their jurisdiction.

24.1.3 Secondary Acquisition Councils

The Main AC or the CEO of an OD may at their discretion decide to lower the limit set in paragraph 24.1.2 above and/or introduce similar secondary structures on local or regional level, to cater for matters falling below the jurisdiction of the main AC. The Terms of Reference of all ACs have been standardised, except for the ambits and delegations applicable to secondary ACs. The thresholds must be clearly stipulated in the relevant appendices to the Terms of Reference of the respective Main and secondary ACs. It is also a requirement that the Divisional Delegation of Authority, applicable to the signing authorities of individuals (similar to the Transnet DOA

Framework) be included as part of the relevant main and secondary ACs' Terms of Reference so as to ensure that there is no uncertainty as to the approval thresholds.

(Refer to DOA Summary Section A, Chapter 6)

Figure [39] below illustrates the current AC hierarchy within the Transnet Group.

Figure [39] – Acquisition Council Hierarchy at Transnet

24.1.4 Term

Members and alternates will be appointed for a specific term. The letter of appointment shall clearly state the term of appointment (start and end dates) and also whether the appointee is a full member or an alternate to a specific member. The OD CEO shall have the power to, at any time, remove any member from the AC and fill the resulting vacancy.

24.1.5 Confidentiality

Members are required to treat all information they receive as AC members/alternates as strictly confidential. A confidentiality agreement shall be signed by the member at the start of his/her tenure. Information shall not be divulged without proper and specific authority.

Should a member wish to have anything clarified or explained prior to a scheduled meeting or during circulation of a matter, such query should be referred to the AC Secretary.

All AC records shall be kept securely in the custody of the Secretary of the AC. These records shall not be disclosed without proper approval. Likewise, third party confidential information shall not be disclosed unless required by legislation or a court of law.

24.1.6 Conflict of Interest

Instances may arise when a member of the AC or an alternate has a direct or indirect interest in a particular transaction/project or has been or can be deemed to have been personally involved in the RFX process or business decision which gave rise to a recommendation to the AC. In such cases, he/she shall declare such interest by means of a standard declaration of interest form before the meeting commences and also when the AC deliberates the specific matter. Declaration of a **direct interest** will result in automatic recusal. Should an AC member declare an **indirect interest** in a matter before the AC, he/she must declare his/her interest and the Chairman will determine whether the member should recuse him/herself. The reasons for this decision must be officially recorded and kept on file. This will also apply to circulation ('Round Robin' items).

24.1.7 Meetings / Attendance

The AC shall meet at predetermined intervals. Where there is the need, special meetings may be convened by the Chairperson.

Members are required to attend all meetings of the AC. For this reason, AC meetings shall be scheduled well in advance. Should a member not be able to attend a specific meeting, his/her alternate must attend. Attendance and participation by members should be a SPO or at least a KPI, on the member's performance management scorecard. This should be measured by the Chairperson of the AC.

Should a member be absent for more than three consecutive meetings, the Chairperson shall pursue the matter with the member concerned and may recommend to the CEO that such member vacates his/her position on the AC.

Individuals who are not members or alternates may, at the invitation of the Chairperson, attend a meeting of the AC in an *ex officio* capacity or to provide clarification on a specific matter(s). Such individual(s) shall be informed that the information which they will be providing will be formally recorded as part of the minutes of the meeting.

24.1.8 Quorum

A majority of the members/alternates appointed at any given time shall form a quorum.

Should exceptional circumstances necessitate that, both a member and his/her alternate attend the same proceeding, both votes may be taken into consideration to form a quorum as members. Their alternates shall then be appointed on the AC by virtue of their own specific expertise. The provisions of paragraph 24.1.7 above should however be observed.

24.1.9 Voting and deliberation

The Chairperson shall submit any matter to the vote of the members of the AC in the event of a difference of opinion or when requested to do so by a member of the AC.

In the event of a tie, the Chairperson shall have a casting vote in addition to his/her deliberative vote.

24.1.10 Duties of the AC

a) **Chairperson**

The Chairperson of the AC shall chair the proceedings at the meetings and exercise the powers vested in him in terms of these procedures and any other DoA.

b) **Deputy Chairperson**

In the absence of the Chairperson, the Deputy Chairperson shall act in his/her stead and shall be empowered to perform all the duties and exercise all the powers vested in the Chairperson under the laid-down procedures and any other DOA.

In the absence of, both, the Chairperson and the Deputy Chairperson from a meeting of the AC, a Chairperson shall be elected out of the members/alternates who are present.

c) **Secretary**

The Secretary shall undertake the tasks as imposed upon him/her by the Transnet Supply Chain Policy and Procurement Procedures Manual (PPM) and other relevant directives, or by the Chairperson of the AC or the GISCM Function or the CEO of the OD.

The Secretary is regarded as the "gatekeeper" of the AC and he/she has to be a person with impeccable integrity and honesty, who has the assertiveness to make a positive contribution to the effective functioning of the AC. The Secretary:-

(i) has the duty to act in good faith, duty of care, with skill and diligence and avoid conflicts of interest;

(ii) shall keep a central bid (RFX) register and shall be responsible for the issuing of RFP, RFQ and RFI numbers in respect of all bids issued by the OD to the external market, falling within the monetary ambit of the AC. He/she will report on progress with regards to completion of the process. (Register template available on the iSCM Transnet Intranet);

(iii) shall give impartial advice and act in the best interests of Transnet and hence should not be subject to undue influence by any of the AC Members. The integrity of the Secretary's position must be protected as it is one of the most effective internal controls available in governance;

(iv) shall be the only person, apart from the AC Chairperson, to consider authorising procurement staff to communicate with Bidders in the period between the closing of the bids and the award of the business;

(v) shall keep the AC members abreast of the latest policies and procedures and any amendments thereto;

(vi) shall provide the AC, as a whole and members individually, with comprehensive, practical support and guidance as to how their responsibilities should be properly discharged in the best interest of Transnet;

(vii) has an important role to play in the induction of new or inexperienced members and shall assist the chairperson in determining the annual AC meeting schedule, training plan and administration of other issues relevant to the AC; and

(viii) provides a central source of guidance and advice to bid and contract administrators throughout the OD, end users and the bidding public.

Other responsibilities of the Secretary are to:

(ix) plan and arrange meetings of the AC, formulate and distribute proper agenda packs (submissions in the prescribed format) for the meetings of the AC. (Standardised submission templates are available on the iSCM Transnet Intranet);

(x) ensure that all members attending a specific meeting of the AC are provided with the necessary forms to declare any interest in matters serving before the AC in that meeting;

(xi) ensure that a proper register of these declarations of interest is kept with the minutes of that particular meeting;

(xii) arrange for and securely keep a voice recording of the proceedings and, in writing, record proper minutes of the proceedings, deliberations, decisions and resolutions of the AC. He/she should furthermore obtain the signature of the Chairperson on each individual resolution during or as soon as possible after the meeting, communicate such resolutions to the relevant role-players and securely keep copies thereof for record purposes.

The minutes shall contain -

- an outline of material proceedings and deliberations by the AC; and
- all recommendations, decisions, resolutions, provisional approvals and directives issued by the AC.

A draft copy of the minutes shall be circulated to members of the AC prior to the next scheduled meeting.

Before the next scheduled meeting, a member may request that the draft minutes be amended to include certain specific deliberations, etc. and such proposed amendments shall be included by the Secretary.

The Secretary shall table the draft minutes at the next meeting of the AC, for confirmation by the AC and signature by the Chairperson;

(xiii) ensure that, by means of a proper certificate as per the prescribed format (template, available on the Transnet ISCM Intranet), duly signed by the Secretary and the Chairperson of the AC, that no business is being recommended for award to an entity(ies) or person(s) appearing on Transnet's List of Excluded Bidders/Contractors(Blacklist). Such certificate should be kept and securely filed with the minutes of each meeting of the AC;

(xiv) be responsible for the receipt, opening and stamping of Bids where this duty has been assigned to the AC Secretary. (Refer to Chapter 17 for the rules and procedures pertaining to the bid opening process);

In respect of AC submissions:

(xv) verify the comparative schedule/evaluation, plus all the facts stipulated in submissions to the AC;

(xvi) ensure that authorities for all communication and negotiation are indicated in the submission to the AC, and the outcome of such communication/negotiation is stipulated in detail in the submission;

(xvii) ensure that documentary evidence is available (copies to be kept on AC file) in respect of all facts presented and statements made in the submission;

(xviii) proactively pursue the clarification of uncertainties prior to the meeting, so that matters are not referred back unnecessarily;

(xix) edit* submissions to ensure that all requirements are met before the matter is tabled at the meeting of the AC. (*Submissions are not physically edited but an annexure must reflect all corrections and queries resolved by the Secretary); and

(xx) draft "AC circulars" on behalf of the AC in respect of directives to be issued by the AC.

(xxi) ensure that members are provided with an agenda at least 3 Working Days before any scheduled AC meeting, in order for them the do the necessary preparation before the meeting. Should a member have any queries on a matter on the agenda, he/she should raise these with the Secretary timeously, in order that the Secretary may obtain clarity before the meeting.

24.1.11 **Responsibilities and Obligations of Members**

a) Members take collective and individual responsibility for processes followed, decisions taken and resolutions carried by the AC.

b) In performing their legal duties, each AC member shall -

(i) act honestly and in good faith, whilst taking into account the policies and business objectives of the company with a view to fostering the best interests of Transnet;

(ii) exercise the duty of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(iii) act fairly, impartially and objectively, and not allow prejudice or bias or influence of others to override objectivity; and

(iv) act professionally at all times.

c) Duty of care and diligence:

(i) Members owe a common law duty towards Transnet to act with due care and diligence. Members are consequently liable for any prejudice suffered through such Member's failure to carry on the business with the degree of care and diligence that may reasonably be expected from a person of his/her knowledge and experience. Hence, Members must fully inform themselves of all material information available in the AC Pack so as to ensure that they act with due care in the discharge of their duties.

(ii) Members shall study the AC pack and properly prepare for a meeting of the AC prior to AC meetings to ensure that they familiarise themselves with the matters so that there is optimum participation in deliberation and decision making. They shall also make every effort to attend all meetings of the AC.

d) Members shall:

(i) understand and weigh alternative courses of action;

(ii) weigh benefits versus potential harm when considering specific courses of action; and

(iii) ensure that there is no breakdown in effective corporate governance and no impairment in their ability to carry out their responsibilities.

e) Duty to act honestly, ethically and in good faith:

(i) Members shall always act honestly, ethically and in good faith with a view to the best interests of Transnet. Members shall avoid a conflict between the interest of Transnet and their own and, in particular, shall not derive any personal benefit from matters submitted to the AC for consideration.

(ii) Members shall not act in bad faith due to bad judgement or negligence.

e.g. Members do not act in good faith when they know they are making material decisions without adequate preparation and deliberation and simply do not care if their decisions cause breach of governance principles and promote Fruitless and Wasteful Expenditure and consequent financial loss to Transnet.

24.1.12 **Functions of the AC**

a) To consider all recommendations from the OD with regard to the award of external contracts for the procurement of Goods and Services, or the disposal of scrap metal, where the total value of the business exceeds R2 million (subject to the discretion of the CEO to lower such threshold).

b) To consider all subsequent amendments to material provisions (i.e. which have a cost or risk implication) of contracts exceeding R2 million or where the original value of the contract plus the cumulative value of the amendments will exceed R2 million.

c) To consider and approve the non-award of business against any RFX falling within its ambit.

d) To consider recommendations to approach the market to solicit Bids in respect of a contract with a period of more than two Years, regardless of the value (alternatively RFX to provide for different options).

e) The AC must be proactive and clarify uncertainties emanating from submissions, prior to the meeting. This will ensure that matters are not referred back unnecessarily, causing delays. Under no circumstances should matters be referred back by ACs for trivialities.

f) To consider all recommendations in respect of bids as well as any extension of existing contracts of which the original period, or the original period plus the extension of the period together is/are longer than two Years regardless of monetary value, and all subsequent amendments of material provisions to such contracts.

g) With regard to paragraphs 24.1.12 a) and b) above, ACs or the CEO may at their discretion lower these limits and/or introduce similar structures on local or regional level, to cater for matters falling below the jurisdiction of the AC.

h) To consider and approve the framing of the OD's Lists of Approved Suppliers/Goods, as well as any amendments to such Approved Lists, and to administer such Approved Lists utilised within the OD. This function may not be delegated to Local / Regional ACs.

i) To consider and make recommendations to the Group ISCM regarding all aspects pertaining to Transnet's List of Excluded Bidders. The GISCM shall administer the List on behalf of the Transnet Group.

j) Secondary ACs to refer recommended exclusion matters to the main OD AC (where applicable), which will consider and if supported, refer to Group ISCM for finalisation and onward transmission to the GCFO for approval. Refer to Chapter 23 for Blacklisting procedure.

k) To monitor/administer the opening of all bids irrespective of the value. ACs may at its own discretion and depending on internal structures, delegate the opening of bids under a certain monetary value, to procurement offices or secondary ACs, provided that it has satisfied itself that proper procedures and controls as specified in the PPM are in place and are monitored on an on-going basis.

l) To obtain statistics and review, at regular intervals, details of all transactions falling below the AC's jurisdiction (See template available on the Transnet GISCM Intranet). Any alleged irregularities or trends that may arise out of the purchase, sale, hiring or letting of Goods and the procurement of Services, shall be investigated and corrective measures recommended by the AC if deemed necessary.

m) To refer to the Governance COE, (GISCM) for guidance/direction, any policy and/or legal question/s which arise out of the laid-down procedures or out of a bid, contract or contract amendment.

n) To exercise such powers and perform such duties as may be conferred or imposed by the laid-down procedures.

o) To perform other functions as the BADC, the GCE, the Governance COE (Group ISCM) or the OD CEO may determine or deem necessary from time to time.

Notes:

- Purely income generating contracts fall outside the scope of this document. However, the acquisition of Goods and Services to give effect to such income generating contract, fall within the scope of the PPM.
- The AC may refer a matter back only for reconsideration or re-motivation. It may under no circumstances change a submission or change the award of the business. On receipt of a revised/re-motivated submission the AC will again consider the matter. Refer to paragraph 24.1.16d) below for the procedure to be followed in instances where the AC still does not agree with the revised/re-motivated submission of the Manager/procurement.

24.1.13 **Powers of the AC**

When considering any new transaction or any Material Amendment/s to an existing contract, the AC has the power to, at its discretion:-

a) call for any files or papers dealing with offers, enquiries, the invitation and evaluation of Bids in the procurement of Goods and Services;

b) request any information which any employee may have at his disposal relating to the supply of, and/or payment for Goods or Services;

c) require any employee to provide information/advice or to attend any AC meeting in an advisory capacity;

d) invite any Consultant from the private sector to provide additional skills to the AC when necessary;

e) consider and recommend the condonation of any non-compliance with the laid down policies, procedures or directives for sign-off by the CEO en-route to the GCE or higher in terms of the Transnet DoA Framework;

f) offer comments, or note matters submitted for information;

g) refer any submission back for reconsideration/re-motivation;

h) withdraw an item from the agenda of any meeting of the AC, provided that the reasons for such withdrawal are duly recorded in the minutes of the meeting and communicated to the submitter by the Secretary;

i) report any anomalies, irregularities or non-compliance with laid-down policies, procedures or directives to the CEO (should the AC not be chaired by the CEO himself / herself);

j) exercise a discretion in those instances not explicitly provided in the laid-down procedures or as may be entrusted to it by the relevant policies and procedures or the Board Acquisitions and Disposals Committee, the Governance COE (Group iSCM) or the OD's CEO;

k) refer any matter or issue arising from the exercise of the powers or the performance of the aforementioned duties to the Governance COE (Group iSCM);

l) issue 'AC Circulars' to address any trends or issues arising from matters serving before the AC; and

m) periodically review copies of procurement gift registers.

24.1.14 **AC approvals and provisos**

a) The AC does not possess any executive authority to award external contracts for the procurement of Goods and Services or disposal of assets.

b) All AC approvals are subject to the following provisos:

(i) there is still the need for the purchase, sale, hiring, or letting of Goods and procurement of Services before the non-acceptance/regret letters to the unsuccessful Bidder/s and the acceptance of the winning Bid to the Successful Bidder are communicated by a Manager with the appropriate delegation of authority to sign the contract;

(ii) the financial provision is adequate;

(iii) the best interest of Transnet is being served at the time of concluding the contract, and

(iv) the contract is signed by the Manager with the appropriate delegation of authority.

24.1.15 **Recording of votes via circulation ('Round Robin')**

a) In urgent cases where the OD would be substantially prejudiced if a submission is held over until the next scheduled meeting of the AC, the papers relating to the specific matter may be circulated to the members of the AC. This will be at the discretion of the Chairperson, but subject to the right of any member to demand a meeting. There should be a pre-determined deadline by which all members respond (depending on the urgency). The members who respond by the deadline must record their votes in writing.

(i) Unanimous approval by a quorum of members so made by the stipulated deadline shall be deemed to constitute a resolution of the AC. Such resolution shall be communicated to the recommending officer by the Secretary as soon as possible thereafter.

(ii) The Secretary may extend the deadline should a quorum of votes not be attained by the initial deadline. Alternatively, a special meeting of the AC must be called by the Secretary, with the consent of the Chairperson. Members have the right to cast their vote until the deadline, irrespective of whether a quorum has already been attained.

(iii) If the deadline has lapsed, and a unanimous vote by a quorum of members has been attained, no further votes will be considered.

(iv) A resolution taken in such manner shall be officially noted and recorded in the minutes of the next scheduled meeting of the AC.

b) In exceptional circumstances and only due to the non-availability of members, the votes of a member and alternate may be taken into account in order to attain a quorum. The stipulation contained in paragraph 24.1.7, should, however, be observed.

24.1.16 **Disagreement with a decision of the AC**

a) In the event of a matter being referred back by the AC for reconsideration of the recommendation made by the recommending officer/evaluation panel, the recommending officer/evaluation panel shall:-

b) make a revised submission to the AC; or

c) should he/she disagree with the reasoning of the AC he/she shall, with the concurrence of his/her executive officer, re-motivate the recommendation and resubmit to the AC, whereafter the AC shall reconsider the matter; and

d) should the AC still not concur in the revised recommendation, the recommending officer shall refer the matter to the CEO, who shall rule on the matter.

24.1.17 **Interpretation of PPM and Government Policy**

In cases where the AC requires guidance on Government policy matters and in terms of interpretation of the PPM, guidance must be sought from the GCSCO.

24.1.18 **Submissions to the AC (Précis)**

a) All submissions to the AC shall be in the required format. The Secretariat may provide assistance to draw up a précis. (Refer to SAP CLM and the Transnet Group iSCM Intranet for the generic templates).

b) The Governance Function of Group iSCM is the custodian of all submission templates and any suggested changes thereto must be recommended to that office for consideration and implementation.

c) All submissions to the AC must be accompanied by all the relevant supporting documentation, e.g. original bid documents, authority to communicate or negotiate, etc.

d) All submissions should be submitted to the secretariat well before the scheduled meeting, to afford the secretariat enough time to properly vet the submissions. It is suggested that submissions are handed in by 12h00, seven Working Days before a scheduled meeting of the AC.

24.1.19 **Reporting/Monitoring**

a) The main OD AC reports to the CEO through its chairperson.

b) Secondary ACs report to the main ACs, and are responsible to monitor transactions falling below their minimum thresholds, except for TCP, where the Local ACs act autonomously.

c) Reports of all the ACs must include the following:

(i) statistics required for the compilation of the Group iSCM Governance dashboard;

(ii) updates about the council's activities, as appropriate;

(iii) sensitisation on trends, irregularities and other anomalies or matters that may significantly impact on the management of contracts and bids of the OD or cause reputational harm to Transnet.

d) The performance of the main OD AC shall be monitored by the CEO.

e) Local / Regional ACs' performance will be monitored by the main OD AC.

f) The performance of the individual members and secretariat shall be monitored by the chairperson of the AC.

24.2 TRANSNET ACQUISITION COUNCIL (TAC)

24.2.1 **Role and Functions of the TAC**

The TAC has similar roles and responsibilities to that of the OD main AC's. It will cater for the Group Corporate Head Office requirements, as well as centre led transversal contracts. OD-led transversal contracts will be dealt with by the leading OD main AC. The TAC will have no higher status than the ODs' main AC's.

24.2.2 Refer to section 24.1 regarding the main OD AC as this paragraph is also applicable to the TAC. Any powers assigned to a CEO with regard to the Main AC will apply to the GCFO (or his delegate) as far as the TAC is concerned.

24.2.3 Composition of the TAC

a) The TAC shall consist of senior management members within Group Corporate Head Office who shall be appointed by the GCFO for a specific term:

(i) A Chairperson, who will either be the GCFO or an executive or senior management member appointed by the GCFO;

(ii) A Deputy Chairperson, who shall be one of the members mentioned in paragraph c) hereof;

(iii) Members with alternates, all of whom are Transnet employees in the Group Corporate Head Office, selected by virtue of their specific expertise or business focus. They must be capable of exercising sound, unbiased judgement and offer constructive comment.

(iv) The Heads of Procurement, Legal, Financial Planning, Tax and Risk in the TCC shall be mandatory appointments.

24.3 PROCUREMENT OMBUDSMAN

The Transnet Procurement Ombudsman (the Ombudsman) is appointed to provide Bidders as well as Transnet with a fair, expeditious, and effective dispute resolution process. The Ombudsman acts independently and objectively in resolving disputes and is not influenced by anybody in making his or her decisions.

Below is a short summary of the role of the Ombudsman. For more information, refer to the Terms of Reference of the Procurement Ombudsman, available on the iSCM Transnet Intranet.

24.3.1 The role of the Procurement Ombudsman

a) The role of the Ombudsman is to enhance the integrity and fairness of Transnet's procurement processes by providing an independent and objective assessment of complaints which are lodged by unsuccessful Bidders regarding any aspect of Transnet's bid process.

b) As a general rule, the Ombudsman will only consider complaints pertaining to bids valued at R5 million and above.

c) Complaints involving bids below R5m must be sent to the CPO of the relevant Transnet OD for review.

24.3.2 Powers of the Ombudsman

a) The Ombudsman has the power to conduct a full investigation of a complaint and to make appropriate recommendations to the CPO and the CEO of the relevant OD of Transnet regarding the appropriate remedial measures to be undertaken.

b) Such measures may include, but are not limited to the following:

(i) cancelling a bid if there is a material irregularity;

(ii) referring a bid back for re-evaluation;

(iii) amending a bid decision;

(iv) recommending that letters of censure be sent to any Transnet official; and/or

(v) the institution of disciplinary, civil or criminal proceedings where appropriate.

c) The Ombudsman may also on his own initiative launch a review of any bid award, regardless of whether a formal complaint was received or not.

d) An investigation by the Ombudsman of any bid award may also be initiated by an internal referral.

e) In most instances the Ombudsman will conduct the investigation without the need for a formal, oral hearing. However, in highly exceptional circumstances, the Ombudsman may in his sole discretion conduct an oral hearing if it would assist with the resolution of the matter.

24.3.3 **The obligations of Transnet's Operating Divisions**

a) Transnet's ODs shall:-

(i) immediately refer any complaints received over the threshold referred to in paragraphs 24.3.1b) and 24.3.1c) above to the Ombudsman;

(ii) act within these Terms of Reference;

(iii) expeditiously comply with requests made by the Ombudsman in terms of the Terms of Reference and Operational Procedures;

(iv) provide the Ombudsman with unrestricted access to relevant information, documentation or persons in relation to an investigation; and

(v) abide by the decision of the CPO and the CEO of the relevant OD of Transnet regarding the implementation of the Ombudsman's recommendation.

b) Transnet's ODs shall not:

(i) prevent a Bidder from making use of the services of the Ombudsman;

(ii) provide the Ombudsman with any misleading information; or

(iii) act vindictively toward a Bidder who made use of the services of the Ombudsman.

24.4 CAPITAL INVESTMENT COMMITTEE (CAPIC)

24.4.1 Purpose

The CAPIC shall ensure that the resources that Transnet SOC Ltd (**"the Group"**) invests for the development of capital projects are strategically managed and shall to this end-

a) Ensure that decisions relating to capital expenditure are consistent with the strategic focus of the Group; and

b) Ensure that capital expenditure complies with the budget and business plans approved by the Board.

24.4.2 Composition

CAPIC is constituted as a committee of the Transnet SOC Ltd Group Executive Committee:

- *Chairperson* - GCFO
- *Secretary* - Group Company Secretary

The following shall be members of CAPIC:

- GCFO (Chairperson)

- GCE (*ex officio*)
- Group Executive - Transnet Capital Projects
- Chief Executive Officers - TNPA, TPT, TFR, TRE and Pipelines
- Chief Information Officer
- Group Treasurer
- General Manager - Group Financial Planning
- Group Chief Supply Chain Officer

The GCE may at any time change the composition of this Committee or determine that a person other than the GCFO chair meetings of CAPIC.

The Committee may invite such other officers of the Group as it deems fit to be in attendance at CAPIC meetings.

24.4.3 Terms of Reference

CAPIC shall:

a) Ensure that investment in respect of capital projects is consistent with the strategic focus of the Group and deals with the business of the Group in an integrated manner;

b) Ensure that capital expenditure is in accordance with the budget and business plans approved by the Board;

c) Determine the factors that shall inform the prioritisation of any capital expenditure project over another;

d) Monitor the implementation of project plans to ensure that approved capital expenditure projects are carried out with minimum delays;

e) Review and amend, subject to the limitations of the Board approved budget, expenditure plans in respect of any project should it, as a result of any unforeseen and unavoidable circumstances, it be necessary to effect such amendment;

f) Ensure that in respect of each capital investment project proposed for consideration by CAPIC, certification is given that there was proper compliance with applicable processes relating to amongst others, risk management and that such projects reflect optimum value for money; and

g) Conduct post-implementation reviews through, amongst others, external auditors, to determine, amongst other things, whether value has indeed been derived by the Group as a result of the relevant capital investment.

24.5 BOARD ACQUISITIONS AND DISPOSALS COMMITTEE (BADC)

24.5.1 Purpose

To ensure that the Board's composition and structure enables it to fulfil the obligations of the Board mandate and advance and maintain the Group's acquisition and disposal policies.

24.5.2 Composition

a) The Group Acquisition and Disposal Committee ("the Committee") is constituted as a committee of the Transnet Limited Board.

b) At least four directors of the Group shall be members of this Committee, the majority of whom must be independent non-executive directors. The GCFO and the GCE shall be ex officio members of the Committee.

c) The members of the Committee will be selected by virtue of their specific expertise or business focus, but with a preference to members with specific experience in procurement practices, law and finance. They must be capable of exercising sound, unbiased judgment in order to fulfil their duties.

d) The Secretary shall be the Group Company Secretary.

e) The remuneration of the Chairperson and Committee members will be determined by the Group Remuneration Committee and approved by the Board in accordance with the fee structure approved by the Shareholder.

The following shall attend by invitation:

a) The Group Chief Supply Chain Officer; and

b) Such other persons determined by the Committee, who may include, where deemed necessary by the Committee, members of senior management and independent acquisition and disposal experts.

24.5.3 Roles and Responsibilities

a) The Committee has an independent role, operating as an overseer of the acquisition and disposal function within Transnet. The Committee will also have the power to consider and approve acquisitions and disposals in terms of its mandate from the Board.

b) The Committee does not assume the functions of management, which remain the responsibility of the executive directors, officers and other members of senior management.

24.5.4 Authority

a) The Committee has authority to:-

(i) have access to any information it needs to fulfil its responsibilities;

(ii) seek independent advice at the Group's expense, subject to Transnet's procurement policies and procedures;

(iii) have direct access to any executive of the Group or its subsidiaries; and

(iv) make amendments to the mandate subject to approval by the Transnet SOC Ltd Board.

b) The Committee may form, and delegate authority to, committees and may delegate authority to one or more designated members of the Committee.

c) The Committee shall make the recommendations to the Board that it deems appropriate on any area within the ambit of its terms of reference where action or improvement is required.

24.5.5 Terms of reference

The Committee shall:

a) Oversee an annual review of Transnet's Procurement Procedures Manual and the Construction Procurement Policy, Processes, Procedures and Methods within Transnet Capital Projects and ratify any amendments thereto;

b) Pre approve bids within its delegated authority up to the maximum of investment decision/budget, before the bids are issued to market. This includes acquisition and disposal of movable and immovable property, capital investments, operational expenditure, the provision and acquisition of Services, maintenance, refurbishment and the establishment of infrastructure, purchasing of fuel, but excludes guarantees, indemnities and securities;

c) Monitor trends in general procurement spend;

d) Monitor trends in SD spend and progress on plan (includes support of National Growth Plan, SD, preferential procurement, and Enterprise development);

e) Monitor compliance with PFMA and related supply chain management norms and standards and advise the Board of potential risks in relation to irregular as well as Fruitless and Wasteful Expenditure emanating from procurement practices;

f) Consider strategic acquisitions and disposals and make recommendations to the Board;

g) Consider, for recommendation to the Board, potential private sector participation models;

h) Approve, where so delegated by the Board of Directors, the award of bids in accordance with the Company's Delegation of Authority Framework. The Committee may approve modifications to bid awards where the cumulative value of the contract plus the modification does not exceed the limits of its delegation of authority as stated in the Delegation of Authority Framework document.

i) In considering the approval of a bid or Confinement, the Committee shall have regard to any recommendation made by the relevant AC or senior official within Transnet.

j) The Committee shall submit a list of all bids falling within its delegated authority and approved by it to the Board for information purposes only. With regards to matters above its maximum threshold, it will consider such matters in the normal manner, and then make a recommendation to the Transnet Board.

k) When considering any Bid or any amendments thereto, the Committee may:-

(i) investigate any activity within its Mandate;

(ii) ask questions and request information or advice from any person;

(iii) request any employee to appear before the Committee;

(iv) refer the submission back for reconsideration;

(v) note matters presented to it for information, and/or offer comments; and

(vi) reserve a decision pending further information or clarification of a specific matter.

l) The Committee shall also approve disposals in line with the Delegation of Authority Framework document.

24.6 INTEGRATED SUPPLY CHAIN MANAGEMENT (ISCM)

24.6.2 Composition

Using best practice principles, and undertaking a collaborative approach across all ODs and Group, an integrated 'one supply chain management (iSCM)' strategy and operating model has been developed with centre led Centres of Excellence (COEs) with cross-functional teams, comprised of divisional and corporate task team members, to deliver value through improved efficiencies and compliance to the regulatory environment. The iSCM Governance hierarchy is depicted in the flow chart below.

iSCM Governance Structure

Figure [40] – iSCM Governance hierarchy

24.6.3 Centres of Excellence

a) Centres of Excellence (COEs) are cross-divisional teams focusing on a particular functional area. They focus on tactical issues relating to the functional area, and are aimed at identifying and leveraging on the areas of excellence in Transnet. Key strategic objectives will be executed through the COEs with a risk mitigation plan supported by Enterprise Risk Management (ERM).

The current COEs within iSCM are as follows (*Figure [41]*):

Figure [41] – Centres of Excellence

24.6.4 Integrated Supply Chain Management (ISCM) Strategic Themes

The following are the key strategic iSCM themes:

Figure [42] – iSCM themes

24.6.5 Group iSCM Governance

The Group iSCM governance function is the author and custodian of the Transnet Supply Chain Policy and the PPM.

Some of its key functions are to:-

a) issue and review the Transnet Supply Chain Policy and PPM (including standard bid documents and templates);

b) monitor correct interpretation/adherence to policies and control measures in collaboration with audit;

c) conduct research and development applicable to compliance;

d) maintain the iSCM Transnet Intranet as well as update the external website in respect of procurement policies, procedures and bid related matters;

e) continuously build capacity at OD level;

f) administer Transnet's List of Excluded Bidders; and

g) provide assistance and expertise on all governance related issues.

24.6.6 Role and Function of Group Chief Supply Chain Officer (GCSCO)

The GCSCO is the head of the Group iSCM Function. He/she is responsible for the whole of the supply chain function within the Transnet Group. Although the OD CPOs report directly to the OD CEOs, collaboration and synergies between the relevant supply chain functions are achieved via the iSCM Council. This forum meets at predetermined intervals and has representation from all the OD CPOs.

Apart from chairing the iSCM Council, the GCSCO is responsible to vet and recommend all supply chain related submissions requiring Group approval (e.g. confinements, condonations, new contracts and amendments exceeding the DoA of the OD CEOs).

24.6.7 Terms of Reference of the iSCM Council

Group iSCM has been mandated to effectively integrate all supply chain management (SCM) activities across Transnet's core businesses, to ensure that the efficiency and effectiveness of doing business in South Africa is drastically improved through SCM best practices. The iSCM Council is a structure set up to ensure that the iSCM mandate is carried out effectively and efficiently.

The Council will develop the Supply Chain Management Strategy for Transnet, based on consolidation of the individual ODs critical paths.

The Council will ensure alignment of all Operating Divisions' SCM functions in terms of:

- Processes and Procedures;
- Systems;
- Human Capital Development;
- Strategic Sourcing;
- Contract and Supplier Management;
- Capital Procurement;
- Warehousing and Logistics Management;
- Policy and Governance; and

- Knowledge Management.

The Council will also ensure a uniform strategy with regard to Broad-Based Black Economic Empowerment. It will drive the implementation of B-BBEE initiatives with regard to Preferential Procurement and Enterprise and Supplier Development in terms of the Government's New Growth Path strategy, to ensure that Transnet's obligations in terms of these important issues are met.

In addition, the Council will be the custodian/guarantor of world class standards in supply management, professionalism, ethics and the proper implementation of related policies and procedures throughout Transnet. It will also identify commodity groups where standardisation across the Transnet Group, or the consolidation of spend on commonly used Goods and Services can lead to financial and other benefits for Transnet as a whole – transversal contracts.

24.6.8 Composition of iSCM Council

The Forum will consist of the following members:

- Group Chief Supply Chain Officer, (Chairperson)
- Executive Manager (Supply Chain)
- Executive Manager (Strategy & Execution)
- Executive Manager (Supplier Development)
- Executive Manager (Strategic Sourcing)
- CPO – Transnet Freight Rail.
- CPO – Transnet Rail Engineering.
- CPO – Transnet Port Terminals.
- CPO – Transnet National Ports Authority.
- CPO – Transnet Pipelines.
- CPO – Transnet Capital Projects.
- CPO - Transnet Properties.
- CPO – Transnet Corporate Centre.

The following Managers will attend meetings of the Forum on an ex officio basis as and when required:

- All COE Leads.
- Manager: Policy, Governance & Standards, iSCM.
- Manager: Compliance & Risk, iSCM
- Manager: Contracts, iSCM.

For the complete iSCM Council Terms of Reference please refer to the Group iSCM Intranet website)

24.6.9 Role and Function of the Chief Procurement Officers (CPOs)

The CPOs of the Transnet ODs are the heads of procurement (see Section A, Chapter 6, for the role's detailed delegation).

He/she is also responsible for the day-to-day procurement activities of the OD. The role of the CPO is also to ensure that the procurement function runs according to accepted world best practice and that optimal value is achieved when procuring Goods/Services for his/her OD.

ANNEXURE PV 7

COMMISSION OF INQUIRY INTO STATE CAPTURE

TRANSNET

delivering freight reliably

INTEGRATED SUPPLY CHAIN MANAGEMENT

TRANSNET PROCUREMENT PROCEDURES MANUAL [PPM]

Incorporating Procedures for General Procurement & Construction Procurement

Version 2
October 2013

COMMISSION OF INQUIRY INTO STATE CAPTURE

PROCUREMENT PROCEDURES MANUAL

SECTION A Background and Context

SECTION B Procurement Planning

SECTION C Go To Market

SECTION D Evaluation and Adjudication

SECTION E Contract Management

SECTION F Governance Structures

Appendices

TABLE OF CONTENTS

SECTION A – BACKGROUND AND CONTEXT 8
1 CHAPTER 1 : INTRODUCTION 8
1.1 NATIONAL OBJECTIVES 9
1.2 INTEGRATED SUPPLY CHAIN MANAGEMENT ("iSCM") PROCUREMENT OBJECTIVES 9
1.3 iSCM CONTROL OBJECTIVES 10
2 CHAPTER 2 : DEFINITIONS, ABBREVIATIONS AND ACRONYMS 12
3 CHAPTER 3 : SCOPE AND EXCLUSIONS 18
3.1 PROCUREMENT PROCEDURES 18
3.2 COMPLIANCE WITH THE PPM 18
3.3 PURCHASING PROCEDURES 18
3.4 CONSTRUCTION PROCUREMENT PROCEDURES 19
3.5 PPM EXCLUSIONS 19
3.6 APPLICATION 20
4 CHAPTER 4 : APPLICABLE LEGISLATION AND POLICIES 21
4.1 CONSTRUCTION-RELATED LEGISLATION 21
4.2 GENERAL LEGISLATION 21
4.3 POLICIES 22
5 CHAPTER 5 : CODE OF ETHICS 28
5.1 SUPPLY CHAIN CODE OF ETHICS 28
5.2 CONFIDENTIAL INFORMATION AND TRADE SECRETS 29
5.3 INTELLECTUAL PROPERTY RIGHTS OF SUPPLIERS/TRANSNET 29
5.4 BIDDERS' PRIOR INVOLVEMENT IN PROCUREMENT 30
5.5 GIFTS AND GRATUITIES 30
5.6 DECLARATION OF INTEREST 32
5.7 FRAUD AND CORRUPTION 34
5.8 SANCTION 34
6 CHAPTER 6 : DELEGATION OF AUTHORITY FOR PROCUREMENT PROCESSES 35
6.1. HOW DELEGATION OF AUTHORITY WORKS 35
TYPICAL PROCUREMENT CYCLE 44
7 CHAPTER 7 : DEMAND PLANNING & DEMAND MANAGEMENT 45
8 CHAPTER 8 : INTERNAL PROCUREMENT/INTERDIVISIONAL SUPPORT 55
8.1 INTERDIVISIONAL RELATIONSHIPS 55
8.2 STRATEGIC SPECIALIST UNITS 55
8.3 ABILITY OF TRANSNET ODS TO PERFORM 56
8.4 COMPULSORY UTILISATION OF SPECIALIST UNITS 56
8.5 INTERDIVISIONAL SUPPORT 56
8.6 MEMORANDA OF UNDERSTANDING 56
8.7 DISPUTES 56
8.8 SERVICE LEVEL AGREEMENT 57
8.9 INTERDIVISIONAL PRICING 57
8.10 NON-CORE BUSINESSES 57

8.11 AC INVOLVEMENT 57
9 CHAPTER 9 : CONTRACT OPTIONS 58
9.1 CHOICE OF CONTRACT 58
9.2 CONTRACTS FOR A PERIOD LONGER THAN TWO YEARS 60
9.3 STANDARD TRANSNET TERMS AND CONDITIONS OF CONTRACT 61
9.4 CONSOLIDATION OF CONTRACTS 61
9.5 CHOICE OF SALES/PURCHASE TERMS FOR IMPORTED GOODS (INCOTERMS) 61
10 CHAPTER 10 : PREFERENTIAL PROCUREMENT APPROACH AND DESIRED OUTCOMES 62
10.1 TARGETS 62
10.2 MECHANISMS 62
10.3 MEASUREMENT OF B-BBEE STATUS 62
10.4 B-BBEE IMPROVEMENT PLAN 65
11 CHAPTER 11 : LOCAL CONTENT 67
11.1 INTRODUCTION. 67
11.2 DESIGNATED SECTORS 67
11.3 NON DESIGNATED SECTORS 68
11.4 DEFINITION OF LC 69
11.5 EVALUATION OF LC 69
11.6 LC VS SD 69
11.7 NATIONAL TREASURY LC REQUIREMENTS 69
12 CHAPTER 12 : DETERMINING SD APPROACH AND DESIRED SD OUTCOMES 71
12.1 SD CATEGORIES 71
12.2 CATEGORISATION OF TRANSACTIONS INTO THE RIGHT SD QUANDRANT 72
12.3 SUPPLIER DEVELOPMENT (SD) MECHANISMS 73
12.4 INCORPORATING SD AS A MATERIAL TERM OF THE CONTRACT 78
13 CHAPTER 13 : DETERMINING BID EVALUATION CRITERIA 79
13.1 TRANSNET'S EVALUATION METHODOLOGY 79
13.2 STAGES OF THE EVALUATION METHODOLOGY 80
13.3 CHOOSING APPROPRIATE EVALUATION CRITERIA 80
13.4 DETERMINING THE PREQUALIFICATION CRITERIA & THRESOLDS 83
13.5 WHEN TO DETERMINE THE EVALUATION METHODOLOGY 84
13.6 CIDB EVALUATION METHODOLOGY 84
14 CHAPTER 14 : MAIN PROCUREMENT MECHANISMS 86
14.1 FACTORS TO CONSIDER WHEN SELECTING THE APPROPRIATE PROCUREMENT MECHANISM 86
14.2 PROHIBITED PRACTICES 88
14.3 THE QUOTATION SYSTEM - REQUEST FOR QUOTATION ("RFQ") /CIDB QUOTATION PROCEDURE 89
14.4 THE OPEN BID PROCESS (RFP)/CIDB OPEN PROCEDURE 92
14.5 APPROVED LIST PURCHASES 94
14.6 TWO-STAGE BIDDING SYSTEM (RFI/RFP PROCESS))/CIDB TWO STAGE PROCEDURE 99
14.7 FRAMEWORK AGREEMENTS 102
14.8 ADDITIONAL MECHANISMS FOR CONSTRUCTION PROCUREMENT 103
15 CHAPTER 15 : SPECIAL CASES 105

15.1 CONFINEMENTS 105
15.2 EMERGENCY PROCUREMENT PROCEDURE 108
15.3 HIGH VALUE TENDER PROCESS (HVTP) 109
15.4 UNSOLICITED BIDS 111
15.5 CONTRACT CONSOLIDATION 112
15.6 ACQUISITIONS ASSOCIATED WITH INCOME GENERATING CONTRACTS 116
16 CHAPTER 16 : BID PREPARATION 118
16.1 COMPILING BIDS - GENERAL 118
16.2 EVALUATION CRITERIA IN BID DOCUMENTS 118
16.3 TIMEFRAMES 120
16.4 VALIDITY PERIOD 121
16.5 ESSENTIAL REQUIREMENTS IN BID DOCUMENT 121
16.6 SIGN-OFF OF BID DOCUMENTATION AND GO-TO-MARKET STRATEGY 123
17 CHAPTER 17 : BID ADMINISTRATION 124
17.1 PHASE 1: ISSUE OF BIDS 124
17.2 PHASE 2: RECEIPT AND SAFEGUARDING OF BIDS 130
17.3 PHASE 3: OPENING OF BIDS 133
17.4 PHASE 4: AMENDMENTS AND COMMUNICATION AFTER CLOSING DATE 134
SECTION D – EVALUATION AND ADJUDICATION 137
18 CHAPTER 18 : EVALUATION AND RECOMMENDATION 138
18.1 TEST FOR ADMINISTRATIVE RESPONSIVENESS 139
18.2 PREPARATION FOR EVALUATION 140
18.3 TEST FOR SUBSTANTIVE RESPONSIVENESS 143
18.4 EVALUATE THE BID AGAINST PRE-DETERMINED CRITERIA 144
18.5 FINAL EVALUATION 148
18.6 TENDER EVALUATION FOR CONSTRUCTION PROCUREMENT 151
18.7 RECOMMENDATION 157
19 CHAPTER 19 : POST TENDER NEGOTIATION 160
19.1 POST TENDER NEGOTIATION (PTN) 160
19.2 AUTHORITY TO ENGAGE IN PTN (transactions falling within AC jurisdiction) 161
19.3 STANDING AUTHORITY TO PTN (transactions falling below AC jurisdiction) 161
19.4 PTN PROCESS 161
19.5 APPROVAL TO AWARD BUSINESS AFTER PTN 162
20 CHAPTER 20 : BID ADJUDICATION 164
20.1 GENERAL PRINCIPLES 164
20.2 THE ROLE OF THE AC DURING ADJUDICATION 164
20.3 RISK EVALUATION 165
20.4 SPLITTING OF BUSINESS 165
20.5 DISAGREEMENT REGARDING AWARD OF BUSINESS 165
20.6 NON AWARD / CANCELLATION OF BIDS 166
20.7 CANCELLATION OF CONSTRUCTION RELATED BIDS 167
SECTION E – CONTRACT MANAGEMENT 168
21 CHAPTER 21 : AWARD OF BUSINESS AND CONTRACTING PROCESS 169

21.1 APPROVAL OF ACCEPTANCE OF BIDS NOT TO BE ANTICIPATED 169
21.2 DECISION TO ACCEPT BIDS OR OFFERS 169
21.3 NOTICES OF ACCEPTANCE AND NON-ACCEPTANCE OF BIDS TO BE FINALISED 169
21.4 APPLICATIONS RECEIVED IN TERMS OF PAIA 170
21.5 DELIVERY OF ACCEPTANCE TO BIDDER 170
21.6 FORMAL WRITTEN CONTRACT 170
21.7 CONTRACTING WITH SECOND-RANKED BIDDER 175
21.8 APPROVAL OF CONTRACTS FOR PERIODS EXCEEDING TWO YEARS 176
22 CHAPTER 22 : POST AWARD CONTRACT MANAGEMENT 177
22.1 WHAT IS CONTRACT MANAGEMENT? 177
22.2 POST-AWARD FUNCTIONS 177
22.3 DELIVERY MANAGEMENT 178
22.4 SUPPLIER RELATIONSHIP MANAGEMENT 184
22.5 CONTRACT ADMINISTRATION 185
22.6 CONTRACT LIFECYCLE MANAGEMENT METHODOLOGY 191
22.7 INDICATIONS OF SUCCESSFUL CONTRACT MANAGEMENT 192
23 CHAPTER 23 : BLACKLISTING PROCEDURES AND GUIDELINES 193
23.1 DEFINITION 193
23.2 GROUNDS FOR BLACKLISTING 193
23.3 WHO MAY BE BLACKLISTED? 194
23.4 FACTORS TO CONSIDER BEFORE TAKING THE DECISION TO BLACKLIST 195
23.5 GUIDELINES FOR DETERMINING AN APPROPRIATE PERIOD FOR BLACKLISTING 196
23.6 BLACKLISTING PROCEDURE 196
23.7 APPEAL AGAINST DECISION TO BLACKLIST 197
23.8 RESCISSION OF A DECISION TO BLACKLIST 197
23.9 ENFORCEMENT OF THE TRANSNET LIST OF EXCLUDED BIDDERS 197
23.10 ANCILLARY ACTIONS 197
SECTION F – GOVERNANCE STRUCTURES 199
24 CHAPTER 24 : FUNCTIONS OF GOVERNANCE STRUCTURES AND DEPARTMENTS 200
24.1 MAIN ACQUISITION COUNCILS (Main AC) 200
24.2 MATTERS FALLING BELOW THE MAIN/SECONDARY AC JURISDICTION 202
24.3 ACQUISITION COUNCIL HIERARCHY 202
24.4 TRANSNET ACQUISITION COUNCIL (TAC) 212
24.5 PROCUREMENT OMBUDSMAN 212
24.6 CAPITAL INVESTMENT COMMITTEE (CAPIC) 214
24.7 BOARD ACQUISITIONS AND DISPOSALS COMMITTEE (BADC) 215
24.6 INTEGRATED SUPPLY CHAIN MANAGEMENT (ISCM) 217

APPENDIX A: BUSINESS CRITICAL ACTIVITIES
APPENDIX B: ROLES & RESPONSIBILITIES
APPENDIX C: ICC INCOTERMS 2010
APPENDIX D: MATRIX FOR APPROVAL OF EMERGENCY PROCEDURES
APPENDIX E: PPM DIRECTIVE 01/2012 – PRINCIPLES & PROCESSES FOR CONDONATIONS
APPENDIX F: PPM DIRECTIVE 02/2012 – APPOINTMENT OF CONSULTANTS
APPENDIX G: VALIDITY OF B-BBEE CERTIFICATES

DOCUMENT CONTROL

Revision History:

Description	Effective Date	Version
Procedures Manual re-written to provide more comprehensive guidance and renamed Procurement Procedures Manual	26 May 2009	0
Procedures Manual re-written to align to approved Supply Chain Policy	01 October 2012	1
Procedures Manual re-written to align to revised Supply Chain Policy and the Preferential Procurement Policy Framework Act. Procedures relating to construction procurement incorporated into the PPM	01 October 2013	2

This document has been reviewed by the relevant governance structures and approved by the Board Acquisitions & Disposals Committee.

Issued by:

Garry Pita
Group Chief Supply Chain Officer
Date: 11/9/13

SECTION A: BACKGROUND AND CONTEXT

Chapter 1: Introduction

Chapter 2: Definitions, Abbreviations and Acronyms

Chapter 3: Scope and Exclusions

Chapter 4: Applicable Legislation and Policies

Chapter 5: Code of Ethics

Chapter 6: Delegation of Authority for Procurement Processes

SECTION B Procurement planning

SECTION C Go to Market

SECTION D Evaluation and Adjudication

SECTION E Contract Management

SECTION F Functions of Governance Structures

Appendices

CHAPTER 1 : INTRODUCTION

Transnet SOC Ltd ("**Transnet**") is fully owned by the South African government and operates as a corporate entity. It is aimed at supporting and contributing to the country's freight logistics network by developing South African industry, reducing the cost of doing business, ensuring efficient and profitable operations, whilst at the same time promoting critical developmental and empowerment objectives.

Section 217 of the Constitution Act 108 of 1996 and section 51(1)(a)(iii) of the Public Finance Management Act 1 of 1999 ("**PFMA**") stipulate that Transnet must have and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

Transnet's Supply Chain Policy and this Procurement Procedures Manual ("**PPM**") give effect to these statutory requirements. The aim of the Supply Chain Policy is to ensure that Transnet gets value for money in the procurement of Goods and Services in order to fulfil its mandate whilst redressing the economic imbalances that have been caused by unfair discrimination in the past. Transnet shall therefore carry out its procurement processes as cost-effectively as possible whilst meeting its commercial, regulatory and socio-economic goals. The Policy ensures a coherent framework within which procurement principles and compliance controls are applied across Transnet.

The PPM seeks to operationalise the objectives of the Supply Chain Policy.

1.1 NATIONAL OBJECTIVES

The Transnet supply chain function should firstly be seen in the national context. Government's economic development policies such as the New Growth Path ("**NGP**"), the New Development Plan ("**NDP**") and the Industrial Policy Action Plan ("**IPAP**") emphasise the role that State Owned Companies ("**SOCs**") should play as key agents in a developmental state to accelerate national development by leveraging their procurement spend to ensure that key goals such as job creation, poverty alleviation, skills transfer and empowerment are achieved. As one of the major State Owned Companies, Transnet has a pivotal role to play in ensuring that Government's economic development policy goals are met.

1.2 INTEGRATED SUPPLY CHAIN MANAGEMENT ("iSCM") PROCUREMENT OBJECTIVES

1.2.1 Transnet's procurement objectives which are aligned to Transnet's objectives, particularly the Market Demand Strategy ("**MDS**"), are ensuring security of supply of goods and services that Transnet requires to fulfil its mandate, and achievement of key socio-economic goals, eg. job creation, empowerment. All Transnet's procurement activities shall be implemented in line with the following best practice principles:

1.2.2 Fairness and Transparency:

- equal treatment of bidders;
- openness and accountability; and
- ethical conduct.

1.2.3 Social Equity:

- Broad-Based Black Economic Empowerment ("B-BBEE"), Preferential Procurement and Enterprise and Supplier Development.

1.2.4 Value for money:

- competitiveness; and
- cost effectiveness.

1.2.5 Due regard must be given to the importance of:

a) the promotion of Interdivisional Procurement as well as the moving of excess stock between Divisions; and

b) the development, promotion and support of Transnet's Supply Chain Code of Ethics, which requires that all commercial conduct be based on ethical and moral values and sound business practice. This value system governs all commercial behaviour within Transnet.

1.2.6 Transnet will strive to procure Goods and Services which contribute to its mission: To anticipate and satisfy the requirements of its customers for a highly responsive and cost-effective transportation Service. In order to achieve this, Transnet is committed to working with suppliers who share its goals of continuous improvement in service, Quality and reduction of Total Cost of Ownership (TCO).

1.2.7 Transnet prefers not to do business with any agents ("middlemen"), who do not add significant value to the supply chain. Transnet would rather contract directly with the overseas and/or local Original Equipment Manufacturers (OEMs). In the case of dealing with overseas OEMs for relevant SD targeted commodities such as rolling stock and port equipment, Transnet will negotiate meaningful SD local capability and capacity building initiatives as part of their supply agreements with Transnet.

1.2.8 Transnet commits to clarity in its communication of requirements. It furthermore commits to being professional, courteous, fair, factual and responsive in its business dealings.

1.2.9 Transnet supports good corporate governance by ensuring the preservation of the highest standards of integrity, objectivity, fairness, efficiency and professionalism.

1.2.10 The purpose of one Supply Chain Policy and a uniform set of procedures for the whole Transnet Group is to facilitate a uniform interpretation internally, whilst complying with the requirements of Section 51(1) (a) of the PFMA and Section 217 of the Constitution.

1.3 iSCM CONTROL OBJECTIVES

Transnet's iSCM function is aimed at achieving the following control objectives:

- To ensure only goods and services required by the organisation are acquired;
- To ensure that demand is appropriately defined and supply is structured/executed in accordance with the needs of the business;
- Tenders enable efficient/economical procurement from appropriate vendors considering legislative requirements;
- To ensure that policies and procedures exist for the Contract Management process and are standardised across Transnet;
- To employ and retain adequately skilled and sufficient contract management resources;
- To ensure that contract management is planned adequately and efficiently to enable Transnet to achieve its business objectives;
- To ensure that all goods and services are properly and efficiently delivered against the agreed standards and targets set out in the contract / SLA;
- To effectively and efficiently manage and maintain all supplier relationships;
- To ensure that all contracts are adequately retained and maintained on SAP or filed manually;
- To ensure that all contracts have been properly approved, finalised and archived.

- To ensure integrity of master data which will enable efficient, effective and economical procurement decision making;
- To ensure that there is appropriate source of supply to meet demand requirements timeously and that accurate and timeous payments are made to correct suppliers;
- Inventory is re-ordered promptly, at an appropriate level, to ensure availability when required. Material items are appropriately defined and set-up with correct specification. Inventory is appropriately safeguarded and secure; and
- To ensure fairness and diligence in the conduct and accounting of all scrap business practices that are adopted and is supported by duly documented, approved and accessible policies and procedures.

NOTE: The detailed Business Critical Activities (BCAs) derived from the above iSCM Control Objectives are attached hereto as Appendix A *(Business Critical Activities)*.

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 2 : DEFINITIONS, ABBREVIATIONS AND ACRONYMS

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Acceptable Bid	Any bid which, in all respects, complies with the specifications and conditions of bid as set out in the bid document
Acquisition Council [AC]	The main Acquisition Council of an Operating Division, Specialist Unit or Business. Unless specifically stated otherwise "AC" also includes sub-Acquisition Councils operating under the auspices of the ACs and which caters for transactions falling below the minimum threshold of the main AC, e.g. Acquisition Councils operating on a local or regional basis, as well as the TAC catering for Corporate Head Office and transversal contracts
Advance Payment Guarantees [APGs]	is a guarantee issued by a financial institution, on behalf of a supplier to a buyer, in relation to any advance payment that is made by the buyer to the supplier to allow the work to commence. The guarantee protects the buyer against the risk of non-performance as the buyer can claim reimbursement of the advance payment against the guarantee in such a case
Advertisement	A public invitation to submit bids for the provision of Goods or Services
Alternative Bid	Is a bid that purports to satisfy a stated need but does not fully comply with the laid down specification of the RFX. Alternative Bids are allowed at the discretion of Transnet
B-BBEE	Broad-Based Black Economic Empowerment
B-BBEE Enterprise	Any supplier or contractor who has been rated anything from a Level 8 (10 % recognition level) to a Level 1 (135% recognition level), as defined in the B-BBEE Act and Codes of Good Practice issued by the DTI
B-BBEE Improvement Plan	A plan requested from bidders/preferred bidders on the extent to which they commit to improving or sustaining their B-BBEE performance over the contract period. These criteria focus on ownership, management control, employment equity, preferential procurement, skills development and enterprise development.
Bid	A written offer in a prescribed form in response to an invitation by Transnet for the provision of Services, works or Goods, through price quotations, advertised open bids, approved lists, confinements or proposals
Bidder	a natural or juristic person or partnership who submits a bid offer or an expression of interest to perform a contract in response to an invitation to do so
Black People	is a generic term which means Africans, Coloureds and Indians
Board Acquisitions & Disposals Committee [BADC]	A sub-committee of the Transnet Board of Directors tasked with providing oversight and approval for acquisitions and disposals falling within its delegation of authority
Board of Directors [BOD]	The Board of Directors of Transnet SOC Ltd
Buyer	Any person in Procurement or iSCM in any Transnet entity, who has the

TERM	DEFINITION, ABBREVIATION OR ACRONYM
	necessary delegated powers to undertake specific procurement functions with regard to transactions falling within his/her DoA, i.e. the R-value of the transaction
Carrier	Any person who, in a contract of carriage of goods, undertakes to perform or to procure the performance of carriage, by rail, road, sea, air, inland waterway or by a combination of such modes (used in definitions of Incoterms)
Centre(s) of Excellence [COE(s)]	Cross-divisional teams strategically focusing on a particular functional area. They focus on tactical issues relating to the functional area, and are aimed at identifying and leveraging on the areas of excellence in Transnet. Key strategic objectives will be executed through the COEs with a risk mitigation plan supported by Enterprise Risk Management (ERM)
Chief Executive Officer [CEO]	The Chief Executive Officer at the head of a Transnet Division with appropriate delegated authorities which are in line with the Transnet Group Delegation of Authority (Group Limits of Authority)
Chief Financial Officer [CFO]	A Chief Financial Officer in an Operating Division of Transnet including Transnet Capital Projects
Construction Industry Development Board [CIDB] bid/contract	Any construction related bid/contract, as defined in, and regulated by the Construction Industry Development Board, by virtue of the CIDB Act. This includes new construction activities as well as the maintenance of existing civil, mechanical or electrical structures
Confinement	A procurement process restricted to one or a limited number of Bidders
Consultant	A person, company or a close corporation that provides expert or specialised advisory skills / services. A consultant does not supply the ultimate end product, but provides a recommendation of the best solution to a specific need based on his/her expertise.
Chief Procurement Officer [CPO]	The Chief Procurement Officer of a Division of Transnet or a Specialist Unit
Cross Functional Evaluation Team [CFET]	A team that is involved in the evaluation of bids regarding transactions of a high value or where the quality / functionality criteria is complex and a simple yes /no answer on technical compliance is not possible or viable.
Cross Functional Sourcing Team [CFST]	A team that is involved in the procurement of transactions of a high value or where the quality / functionality criteria are complex. As they represent various functions, a holistic overview over the process will be ensured.
Delegation of Authority [DoA]	The extent of authority required in order to implement certain actions by or on behalf of the company, including any sub-delegation of authority where permitted. This includes the power to retrospectively authorise, condone or rescind a decision already taken by a sub-delegate.
Exempted Micro Enterprise [EME]	An enterprise with an annual turnover of less than R5 million, as defined by the DTI's Codes of Good Practice
Expression of Interest [EOI]	Means a request for Bidders to register their interest in providing specified Goods or Services and to submit their credentials so they may be invited to submit a Bid should they qualify or are selected to do so.
Enterprise	A trading business (a company, close corporation, partnership or any other

TERM	DEFINITION, ABBREVIATION OR ACRONYM
	form of business) external to Transnet.
Entity	Used in the Transnet context to describe an internal Transnet Operating Division, Specialist Unit, Transnet business or the various Group Functions comprising the Corporate Centre
Fronting	A deliberate circumvention or attempted circumvention of the BBBEE Act and the Codes. Fronting commonly involves reliance on data or claims of compliance based on misrepresentations of facts, whether made by the party claiming compliance or by any other person
Fruitless and Wasteful Expenditure	Expenditure that was made in vain and could have been avoided had reasonable care been taken. The paying of exorbitant prices which are not market related is also regarded as fruitless and wasteful expenditure
Goods	Any physical object or objects which has value, whether raw or processed, movable or immovable
Group	All Operating Divisions, Specialist Units, Businesses as well as the various different Group Functions comprising the Corporate Centre
Group Chief Executive [GCE]	The person in the Corporate Centre appointed as the Transnet Group Chief Executive, duly appointed by the Minister of Public Enterprises, or the person acting in his/her stead, at any given time, in terms of a proper mandate
Group Chief Financial Officer [GCFO]	The Group Chief Financial Officer in the Group Corporate Head Office, who reports directly to the GCE, or the person acting in his/her stead, at any given time, in terms of a proper mandate
Group Chief Supply Chain Officer [GCSCO]	The General Manager who heads up the integrated Supply Chain Management function in the Corporate Head Office, or the person acting in his/her stead, at any given time, in terms of a proper mandate
High Value Tender Process [HVTP]	A process that is used in the procurement of high value goods/services. This process includes a number of gateway reviews during key steps of the tender process, in order to ensure that any flaws in the process are detected timeously
IC^3 Supplier Development Matrix	A framework utilised to categorise SD opportunities on a matrix based on their value, extent of industrial leverage and strategic importance to Transnet. The matrix is adapted from the DPE Supplier Classification Matrix focused on **I**ncreased **C**ompetitiveness, **C**apability and **C**apacity
Imported content	That portion of the Bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry
Incoterms	(ICC Incoterms 2010) means, in relation to international trade (sale and purchase of Goods), the globally accepted purchase terms for Goods, used to indicate the costs to be incurred by the seller and the buyer and the point at which the risk of the Goods passes from the seller to the buyer See Appendix C for detailed definitions of all Incoterms
Integrated Supply Chain Management [iSCM]	The Integrated Supply Chain Management function as a whole including all Operating Divisions and Centres of Excellence

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Irregular Expenditure	Expenditure incurred in contravention of, or that is not in accordance with a requirement of any applicable legislation, including the PFMA
Letter of Award	Is issued when a Bidder is selected as the Successful Bidder. The letter of award informs the Successful Bidder unequivocally that he/she was awarded the business
Letter of Intent (LOI)	Is issued when a Bidder is selected as the Preferred Bidder. The LOI informs the Preferred Bidder of Transnet's intention to negotiate and conclude a contract with it
Local Content (LC)	The portion of the Bid price or quotation which is not included in the Imported Content, provided that local manufacture does take place
Manager	Means any employee in Transnet, by whatever designation he/she is known, who has been delegated certain specific powers in terms of a proper Delegation of Authority
Material Amendment	An amendment which increases the scope, cost or risk of a contract by more than 10% of the original contract value
Market Demand Strategy (MDS)	The Transnet strategy to invest in capital infrastructure in order to meet market demands for increased efficiency and effectiveness in delivery of Transnet's services
Non-Disclosure Agreement [NDA]	A confidentiality agreement between two or more parties
Open Bid	A public request to do business which has been properly advertised and to which any member of the public can submit a Bid
Operating Division [OD]	An operating division of Transnet, namely TFR, TPT, TNPA, TPL and TRE
Parcelling	When the full scope of work is known at a point in time and business is deliberately split into smaller portions to keep the transaction value within one's own Delegation of Authority, or to keep it below the threshold of an AC or a person with higher Delegation of Authority
Parent Company Guarantee	A guarantee by a parent company of a supplier's performance under its contract with a buyer, where the supplier is a subsidiary of the parent company.
Performance Bonds (PBs)	A performance bond from a bank guarantees performance under a contract from commencement to completion. The bank issuing the performance bond undertakes to pay a specified sum of money to the buyer if the supplier does not fulfil its contractual obligations.
Post Tender Negotiation [PTN]	Negotiations between Transnet and one or more shortlisted Bidders after the Bids have been evaluated, but before the business has been awarded
Preferred Bidder	Means a Bidder that has been identified through an evaluation process as the Bidder with whom Transnet intends to conclude a contract subject to the successful completion of contract negotiations
Prequalification Criteria	These are criteria that have to be met for a Bid to be deemed as responsive, e.g. registration with a specific professional body, specific accreditation, etc
Qualifying Small Enterprise [QSE]	An enterprise with a turnover between R5m and R35m, as defined by the DTI's Codes of Good Practice

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Quality (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
Rental or Lease	The use of Goods and/or moveable assets for a period and for consideration (compensation)
Request for Information [RFI]	An invitation to a broad base of potential suppliers to provide written information about their capabilities to meet a stated Transnet need. An RFI is primarily used in instances where Transnet is not clear about the precise specifications and/or scope of work required to meet its needs for specified Goods or Services. The information received through an RFI process is typically used to pre-qualify suppliers for consideration before an RFP for the Goods/Services is issued
Request for Quotation [RFQ]	Request for Quotation is used for transactions <R2m. However, CEOs may at their discretion lower the quotation limit
Request for Proposal [RFP]	Request for Proposal is used on the open Bid process i.e. for transactions > R2 million. However, CEOs may at their discretion lower the minimum threshold for open Bids
Request for ... [RFX]	A generic term which can be used interchangeably with either RFI, RFQ or RFP
Service	The provision of labour or work, including knowledge-based expertise, carried out by hand, or with the assistance of equipment and plant
SOC	State Owned Company
Supplier Development (SD)	Improving the socio-economic environment as required by the NGP by creating competitive local suppliers via Enterprise Development, the Competitive Supplier Development Programme and other initiatives such as Preferential Procurement. This results in a reduction in capital leakage and creates a supply base that can be competitive to market its Goods on the international market leading to increased exports.
Successful Bidder	Means a Bidder that has been identified as the Bidder to which business has been awarded
Tender Evaluation and Recommendation Report [TEAR]	A report that must be submitted by the evaluation team to the AC setting out an overview of the bid evaluation process, evaluation methodology, reasons for elimination of Bidders, a recommendation for the award of the tender as well as all supporting evaluation scorecards
Transnet Acquisition Council [TAC]	Acquisition Council catering for Corporate Head Office procurement and Centre-led transversal procurement
Transnet Capital Projects [TCP]	Transnet Capital Projects - a Specialist Unit of Transnet
Transnet Engineering [TE]	Transnet Engineering - an Operating Division of Transnet
Transnet Freight Rail [TFR]	Transnet Freight Rail - an Operating Division of Transnet

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Transnet National Ports Authority [TNPA]	Transnet National Ports Authority - an Operating Division of Transnet
Transnet Pipelines [TPL]	Transnet Pipelines - an Operating Division of Transnet
Transnet Port Terminals [TPT]	Transnet Port Terminals - an Operating Division of Transnet
Transnet Properties(TP)	Transnet Properties – a Specialist Unit of Transnet
Transnet Corporate Centre [TCC]	The Head Office of Transnet SOC Ltd
Transnet SOC Ltd	Transnet SOC Ltd, Registration No. 1990/000900/30 incorporated in terms of the Companies Act 71 of 2008, as amended which includes all Operating Divisions, Specialist Units and/or subsidiaries
Unsolicited Bid	A unilateral request from a person or enterprise to do business with Transnet without Bids or quotations having been invited by Transnet
Working day	Any day other than a Saturday, Sunday or public holiday
Year	Any defined period of 12 (twelve) consecutive months
"Z" Clause	Refers to any additional clauses/special conditions mentioned in the Contract Data, Part 1 of the NEC3 Suite of Contracts

Notes:

- Words capitalised in the document have been defined in this Chapter.
- The terms "bid" and "bidder" in the context of this Procurement Procedures Manual are synonymous with the terms "tender" and "tenderer" respectively.

CHAPTER 3 : SCOPE AND EXCLUSIONS

The PPM is applicable to all acquisitions across the Transnet Group regardless of the value of the transaction, save for the exclusions mentioned in Table 1 below. The PPM has been aligned to the Construction Industry Development Board (**"CIDB"**) Act and Standard for Uniformity in Construction Procurement (Standard for Uniformity) and applies to all construction procurement across Transnet as indicated in paragraph 3.4. below.

The PPM sets minimum standards for compliance, however, CEOs and their duly appointed Acquisition Councils (**"ACs"**) may impose more stringent rules and thresholds than those laid down in the PPM.

3.1 PROCUREMENT PROCEDURES

Transnet's Procurement Procedures as encapsulated in this document (the **PPM**), aim to establish the framework within which all procurement activities are to be conducted at Transnet. These procedures are derived from the Transnet Supply Chain Policy, and should be read in conjunction with delegated powers granted in terms of the Delegation of Authority Framework. Other formal procedural manuals, directives, circulars or practice notes may be issued from time to time, either from iSCM, or from an Operating Division (**"OD"**), AC or Group Function and these should be read in conjunction with this Manual. However, it must be noted that any directive that changes any substantive principles of the PPM will be issued only on approval from the BADC. Where any conflict arises between such directives and the **PPM**, the **later dated document** shall prevail.

3.2 COMPLIANCE WITH THE PPM

Subject to paragraph 3.5 below, all procurement within Transnet must be conducted by supply chain officials within Transnet in accordance with the PPM.

3.2.1 Non-compliance with the PPM will be regarded in a serious light as it could result in Irregular Expenditure and/or Fruitless and Wasteful Expenditure in terms of the PFMA.

3.2.2 Section 51(1)(e) of the PFMA places an obligation on Transnet to take the necessary appropriate action regarding acts of financial misconduct.

Failure to comply with the provisions of the PPM will lead to disciplinary action and depending on the severity of the non-compliance, possible dismissal and/or legal action. As a general rule, condonation of non compliance with procurement policies and procedures is not permitted in terms of the PPM.

3.3 PURCHASING PROCEDURES

These procedures cover the purchasing and supply of all Goods, Services (tangible and intangible), fixed assets, construction-related procurement and the appointment of consultants. The aforementioned are in respect of both Operational and Capital expenditure.

3.3.1 Ferrous and non-ferrous scrap

The process of appointing contractors for the disposal of ferrous scrap (steel) and non-ferrous scrap is subject to the PPM. Due to the high value income-generating nature of such disposals as well as the high risk of theft, the disposal of scrap is in addition governed by a separate, detailed "Scrap Disposal Policy and Procedures". This policy is available on the Transnet Intranet.

3.4 CONSTRUCTION PROCUREMENT PROCEDURES

This PPM has been aligned to the Construction Industry Development Board ("CIDB") Act and Standard for Uniformity and applies to all construction-related acquisitions across Transnet. In relation to construction procurement, to the extent that there is any conflict between the PPM and legislation related to construction procurement, the legislation shall prevail.

Where different procedures apply to general procurement and construction procurement, the CIDB logo will appear next to the procedures relating to construction procurement only

Other formal procedural manuals, directives, circulars or practice notes relating to Construction Procurement may be issued from time to time and these should be read in conjunction with this Manual.

At the start of every Chapter following this Chapter there will be an indication regarding the applicability of the Chapter to construction procurement.

3.5 PPM EXCLUSIONS

The transactions and processes tabled below are excluded from this Procurement Procedures Manual:

TABLE 1

• Individuals (temporary staff), including contract workers employed by Transnet Human Resources. (However, the appointment of a recruitment agency, Consultant, consultancy firm or a firm providing a Service to Transnet must follow the **PPM**)
• Petty cash purchases, subject to such instructions as issued from time to time
• Inspection Services in connection with the procurement / sale of Goods / assets
• Media advertising (excluding campaigns involving professional advertising agencies)
• Income generating transactions (i.e. where Transnet's infrastructure, etc. is utilised to provide a Service; including instances where cross-divisional support is engaged for strategic or other reasons. However, procurement relating to such income-generating contracts must follow the PPM - see Chapter 9 *(Contract Options)*
• Water and electricity which is supplied to Transnet, including the provision of Services, as well as the relocation of such Services as a result of Transnet's activities (e.g. the relocation of power lines or water mains due to the construction of a new railway line)
• Rates and taxes and other levies raised by local authorities or provincial administrations, both of which are excluded from these procedures, by virtue of the fact that they can only be obtained from the particular local authority, but which are for purposes of good corporate governance, paid by means of blanket orders, or other approved methods
• Purchase of Goods at auctions
• Sale of Goods at auctions but excluding the appointment of auctioneers
• Letting and hiring of dwellings, and acquisition and alienation of houses or acquisition of land for houses in terms of prescribed housing policy
• Letting and hiring, and acquisition and disposal of all immovable assets. Refer to the Transnet Group Delegation of Authority, available on the Transnet Intranet.
• Sponsorships and donations, which are strictly governed by Delegated Powers

• Disposal of non-core businesses by the Transnet Restructuring Department. Such disposals are on the strict proviso that any employee of the Transnet Restructuring Department, a Transnet Board member or a senior Manager (or higher) in the Transnet Group or any of its divisions will be disqualified from the Bidding process for the said non-core businesses for a period of 18 months from the date of his/her exit from Transnet
• The disposal of all movable assets, e.g. the disposal of redundant PC equipment, cell phones, office equipment and furniture must be properly controlled in terms of the individual policies/procedures governing such disposals. These policies and procedures are available on the iSCM Transnet Intranet.
• The provision of degree or diploma certificates by tertiary institutions, attendance of training courses, seminars and conferences which are required on a once-off basis and are under R2 million in value, provided that such transactions are approved by the person with the required DoA. Such quotes must be sourced and processed by the end user department requiring the training.
• Any such exclusions which a Transnet Division may apply for through iSCM and which have been duly approved by the Transnet Group Chief Executive (**"GCE"**) or the Transnet Group Chief Financial Officer (**"GCFO"**) in accordance with guidelines which may be issued from time to time.

3.6 APPLICATION

This version of the PPM applies to all new procurement processes which have been initiated on or after the commencement date of this document. Procurement processes initiated prior to the commencement date must be dealt with in accordance with the rules that were applicable at the time [i.e. the October 2012 version of the PPM in relation to general procurement and the Transnet Capital Projects ("TCP") Construction Procurement Policy, Processes, Procedures and Methods Manual (the Construction Manual), Revision 1 in relation to construction procurement].

CHAPTER 4 : APPLICABLE LEGISLATION AND POLICIES

4.1 CONSTRUCTION-RELATED LEGISLATION

In terms of legislation, Construction procurement must be in compliance with the requirements of the Construction Industry Development Board Act (CIDB Act), 38 of 2000 including the CIDB Regulations and Standard for Uniformity, as amended. With regard to Transnet's policies on Preferential Procurement and Supplier Development, these must be pursued in construction procurement but only to the extent allowed by the CIDB legislation. Construction Procurement methods to support Supplier Development are covered in the methods for evaluation.

4.2 GENERAL LEGISLATION

The Government of the Republic of South Africa, through the Department of Public Enterprise, is the sole shareholder of Transnet. The following legislation has been taken into consideration in the formulation of this document:

TABLE 2

LEGISLATION AND GOVERNMENT POLICY
• The Administrative Adjudication of Road Traffic Offences Act, 46 of 1998
• The Arbitration Act, 42 of 1965
• The Broad-Based Black Economic Empowerment Act, 53 of 2003 as amended, including the Department of Trade & Industry's Codes of Good Practice
• The Companies Act, 71 of 2008 as amended
• The Competition Act, 89 of 1998 as amended
• The Competitive Supplier Development Programme (CSDP)
• The Constitution of the Republic of South Africa Act, 108 of 1996
• The Construction Industry Development Board Act (CIDB Act), 38 of 2000 including the CIDB Regulations and Standard for Uniformity, as amended
• The Conventional Penalties Act, 15 of 1962
• The Copyright Act, 98 of 1978
• The Currency and Exchange Act, 9 of 1933
• The Designs Act, 195 of 1993
• The Electronic Communications and Transaction Act, 25 of 2002
• The Framework for the Operationalisation of Government's Procurement Policies in State Owned Enterprises (dated 31 July 2001)
• The Income Tax Act, 58 of 1962
• The Industrial Policy Action Plan II
• The King III Report on Corporate Governance
• The Local Procurement Accord

LEGISLATION AND GOVERNMENT POLICY
• The National Development Plan (NDP)
• The National Ports Act, 12 of 2005
• The National Railway Safety Regulator Act, 16 of 2002
• The New Growth Path (NGP)
• The Occupational Health and Safety Act, 85 of 1993
• The Patents Act, 57 of 1978
• The Preferential Procurement Policy Framework Act (PPPFA), 5 of 2000 as amended, Regulations of 2011 - effective 7 December 2012
• The Prevention and Combating of Corrupt Activities Act, 12 of 2004 as amended
• The Promotion of Access to Information Act (PAIA), 2 of 2000 as amended
• The Promotion of Administrative Justice Act, 3 of 2000
• Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000
• The Public Finance Management Act (PFMA), 1 of 1999 as amended (Transnet is not bound by the Supply Chain regulations issued in terms of this Act)
• The Promotion of Administrative Justice Act (PAJA), 3 of 2000 as amended
• The Second-Hand Goods Act, 6 of 2009
• The Standards Act, 8 of 2008
• The Trade Marks Act, 194 of 1993
• The Value Added Tax Act, 89 of 1991

4.3 POLICIES

4.3.1 General Overview of Transnet Policies

The following policies and procedures which are available on the Transnet Intranet are supplementary to the PPM and should be taken into consideration, where applicable. Persons using the PPM must apply the most recent edition of the documents listed in Table 3 below

TABLE 3

TRANSNET POLICIES AND PROCEDURES	LOCATION
• Transnet Code of Ethics	Company Secretary Intranet portal
• Cell phone Policy	ICT Intranet Portal
• Contract Management Policy	Policies Intranet Portal
• Counterparty Risk Management Policy	Finance Intranet Portal
• PC Disposal Policy	ICT Intranet Portal
• Declaration of Interest and Related Party Disclosure Policy	Company Secretary Intranet portal
• Delegation of Authority Framework	Company Secretary Intranet portal
• Group Compliance Policy	Group Compliance

TRANSNET POLICIES AND PROCEDURES	LOCATION
	Intranet Portal
• Gifts Policy	Company Secretary Intranet portal
• Supply Chain Policy	iSCM Intranet portal
• Procure to Pay Procedures(P2P)	iSCM Intranet portal
• High Value Tender Process	iSCM Intranet portal
• Records Management Policy	Company Secretary Intranet portal
• Reverse Logistics Procedure	iSCM Intranet portal
• Scrap Policy	iSCM Intranet portal
• Supplier Development Plan	iSCM Intranet portal
• Transnet Broad-Based Black Economic Empowerment Policy	Group Compliance Intranet portal

4.3.2 Preferential Procurement

a) Strategic Intent

Patterns of racial inequality (as well as other forms of social inequality) stubbornly persist almost two decades after the demise of apartheid. There is also a huge disparity in income distribution between social groupings. Transnet will therefore act as a responsible corporate citizen in the context of its B-BBEE endeavours, by utilising various strategies to promote empowerment more vigorously. Such strategies must be applied subject to the discipline of our constitutional framework to ensure that the overall objectives of a non-racial and non-sexist society are achieved. Transnet will also apply these strategies in a manner as to ensure that the constitutional principles of fairness, equity, transparency, competitiveness and cost-effectiveness are not materially undermined.

The strategies referred to above include (but are not limited to) the following:

- allocating either 10 or 20 preference points in accordance with the PPPFA based on the B-BBEE status of an enterprise in terms of its valid B-BBEE scorecard;
- requesting an enterprise to commit to **improving or sustaining its B-BBEE performance** over the contract period in the following areas: ownership, management control, employment equity, preferential procurement and enterprise development (This will be referred to as a B-BBEE Improvement Plan);
- encouraging bidders to form Joint Ventures (JVs) with black owned entities, alternatively to sub contract a minimum percentage of the contract to black owned companies;
- stipulating that an Enterprise will not be awarded points for its B-BBEE status level if it has indicated in its Bid response that it intends sub-contracting more than 25% of the value of the contract to any other Enterprise that does not qualify for at least the points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the sub-contract;
- stipulating that an Enterprise who has been awarded a contract may not sub-contract more than 25% of the value of the contract to any other Enterprise that does not have an equal or higher BBBEE status level than the Enterprise concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the sub-contract;

- stipulating that an Enterprise awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- Requiring winning bidders to take steps to ensure:
  - management and daily operational involvement by Black professionals and managers as prescribed in the different sector charters;
  - skills transfer and training; and
  - employment creation and employment equity.

The underlying objective of the Preferential Procurement methodology is to create an enabling environment for B-BBEE Enterprises to access available procurement opportunities within Transnet and to add value to the supply chain. B-BBEE Enterprises will therefore be engaged as:

- principal contractors;
- joint venture partners;
- professional service providers;
- subcontractors, suppliers and/or manufacturers.

b) Scope and applicability

(i) Transnet's approach to Preferential Procurement applies to all purchases of Goods and Services and will apply to all QSEs, EMEs as well as to large enterprises.

(ii) The approach shall apply to and impact on all levels (Rand value) and types of Bids. It will also apply to the acquisition or granting of any right for and on behalf of Transnet. The objective is to design innovative ways to promote Black Economic Empowerment. This will be dealt with in terms of the legislation and policies applicable to that area of Transnet's operation.

(iii) Bid documents must specifically state that B-BBEE preference in terms of the DTI Codes of Good Practice and/or other relevant Charters will apply.

c) Objectives

(i) Transnet encourages and will recognise all improvement in current and future supplier ratings.

(ii) Transnet will encourage value–adding joint ventures with B-BBEE Enterprises. Bidders may develop joint ventures in order to comply with Transnet's B-BBEE requirements. The following documents shall form part of their submission:

- ownership documents showing the status of the partners to the joint venture;
- Joint Venture Agreement;
- Joint Venture Declaration Form; and
- any other documents as may be required by Transnet.

(iii) Transnet accepts that bidders often create JVs for a specific project, on the basis that the JV will only be formalised if they are successful in winning the business and a contract is awarded to them. This is known as an unincorporated JV. A JV will qualify for points as an unincorporated entity provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated scorecard is prepared for every separate tender. The Bidders must also submit a Joint Venture Agreement for the unincorporated JV.

d) Preferential procurement targets and reporting

(i) To promote preference in the procurement of Goods and Services, targets will be set by the B-BBEE Forum and implemented by all the ODs.

(ii) The overriding principle in the setting of such targets is that a sectoral approach will be adopted. Thus for sectors where there is a high probability of finding B-BBEE Enterprises or where there is a need to accelerate transformation, the target may be set higher.

Transnet's approach to preferential procurement is dealt with in more detail in Chapter 10.

4.3.3 Supplier Development – Strategic Intent

a) Background

Government economic development policies such as the New Growth Path (NGP) and IPAP II have increased the focus on how procurement at SOCs such as Transnet can be leveraged to achieve the national goals of reducing unemployment, ensuring industrialisation and developing local suppliers.

Transnet strives to provide a competitive Service, while at the same time, creating opportunities for new entrants to the market and stimulating job creation through the implementation of its SD mission.

Transnet's mission is to transform its supplier base by engaging in targeted SD or B-BBEE initiatives to support local capability and capacity building and industrialisation whilst providing meaningful opportunities for South Africans with particular emphasis on:

- Black youth;
- Black women;
- small businesses;
- people with disabilities; and/or
- rural integration, upliftment and development.

Leveraging procurement to influence the development of the local supplier industry is key to realising Government's objectives relating to growth, employment creation and equality. Achieving SD objectives will provide the following key benefits for Transnet and the broader South African society:

- Acceleration of local capability and capacity building and transformation of local business by promoting technology transfer, skills development and job creation;
- Focused regional development and upliftment of rural communities;
- Increase in Local Content – security of supply, reduced cycle times, reduced exposure to foreign currency and reduction of supply chain costs (over time);
- Transformation of supplier dominance from large international or national monopolies in order to create more opportunities for locally owned and/or Black owned suppliers; and
- Improved B-BBEE rating for Transnet.

A Transnet SD strategy and SD plan forms the framework within which Transnet will implement its SD initiatives.

b) Applicability

All transactions involving SD should be evaluated against the IC^3 Supplier Development Matrix. This matrix (*Figure [1]* below) categorises transactions according to three principles:

- **Value leverage** refers to transactions where the financial scale of the transaction allows the buyer the opportunity to negotiate SD.
- **Industrial leverage** refers to transactions whereby the nature of the procurement is such that the scale and the industrial complexity of the item being purchased allow for local supply chain development around a particular industry.
- **Strategic importance** to Transnet refers to the extent to which the Goods to be procured has an impact on Transnet's core business.

Figure [1] – IC³ SD Classification Matrix

The IC³ Supplier Development Classification Matrix (refer Figure [I] above) assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet.

Once opportunities are identified it will be possible to identify the tools that should be implemented to maximise the full supplier development potential from these opportunities.

Based on the classification of a specific transaction, there will be certain SD objectives that Transnet will strive to meet. These objectives are all aligned to national objectives, and explained in more detail in Chapter 12 *(Determining SD Approach and Desired Outcomes).*

4.3.4 Enterprise Development - Strategic Intent

a) Background

Enterprise Development (ED) is an element of the B-BBEE scorecard aimed at supporting government socio-economic initiatives and has a strong link with procurement. ED is achieved by leveraging government procurement and other government projects e.g. state owned companies procurement programs.

Enterprise development is defined as a program of developing Small and Medium enterprises, called beneficiaries, by investing time, money, and capital in order to contribute to the development, sustainability, financial independence, and operational independence of those beneficiaries. Enterprise Development Contributions consist of initiatives in favour of a beneficiary by a measured entity in these forms i.e. Monetary: money; Non-Monetary: time and capital; recoverable and non-recoverable.

There are two categories of beneficiaries i.e.

- Category A: Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or black woman owned.

- Category B: Any other entities that are 50% black owned or black woman owned, or 25% black owned or black woman owned with a B-BBEE Status of between Level One and Level Six.

When implementing Enterprise Development Transnet will achieve the following objectives:

- Enable or accelerate the development of a beneficiary;
- Achieve beneficiary sustainability;
- Achieve beneficiary financial independence; and
- Achieve beneficiary operational independence.

Transnet's ED approach will address both financial and non-financial ED initiatives which provide ED beneficiaries with, inter alia, support as listed below:

- Mentorship support
  - Business Development
  - Tendering skills support
  - Technical support
  - Business compliance
- Capacity Building
  - Building and finance (Shorter payment terms)
  - On site mentoring
  - Learnership through Transnet School of Academy

b) **Applicability**

Unless a particular Enterprise Development initiative involves the procurement of goods or services, Enterprise Development initiatives fall outside the ambit of the PPM.

CHAPTER 5 : CODE OF ETHICS

This Chapter is applicable in totality to construction procurement and general procurement activities. Please refer to paragraph 5.4. regarding the difference between bidders' prior involvement in general procurement and construction procurement.

5.1 SUPPLY CHAIN CODE OF ETHICS

5.1.1 Transnet's Code of Ethics sets ethical standards for business practice and individual business conduct. It assists all Transnet stakeholders with their ethical deliberations and decisions. The objective of the Code of Ethics as it relates specifically to the Supply Chain environment is to set the standard by which all Transnet Board members and employees (including employees employed on fixed term contracts and temporary employees) are expected to act when engaging in any supply chain related activities. This will earn Transnet the reputation of being:

a) transparent and fair in all dealings and disclosures;
b) politically unbiased;
c) committed to providing Quality Goods and Services;
d) committed to transformation and empowerment;
e) proud of its integrity and credibility;
f) consistent in honouring its social, legal and moral obligations;
g) responsible and accountable; and
h) reliable and aware of the need to foster loyalty and long enduring relationships with all its stakeholders.

5.1.2 All Transnet employees should uphold the following key values:

a) act with integrity and professionalism at all times;
b) be honest;
c) be committed and dedicated to high Quality performance;
d) be customer orientated;
e) respect and maintain the confidentiality of sensitive information gained through association with Transnet;
f) maintain accurate, honest and complete records in appropriate detail;
g) protect Transnet's assets;
h) treat all suppliers with respect and dignity and foster a productive environment free of harassment, intimidation and discrimination;
i) refrain from using a position of authority and / or facilities provided by Transnet to further their own interests or that of friends and relatives;
j) desist from allowing personal interests to influence business decisions or tasks and disclose any actual or potential conflict of interest;
k) honour the content and spirit of all business transactions and not abuse Transnet's name; and
l) maintain an attitude of zero tolerance toward any form of bribery, corruption and inducements.

5.1.3 While considering the advantages of maintaining a continuing relationship with a supplier, Transnet iSCM must avoid any arrangement which in the long term might compromise fair competition or prevent Transnet from achieving optimal value.

5.1.4 No sale to or purchase from a Transnet employee is permitted under any circumstances. This excludes sales by auction or such other exceptions as may be authorised by management from time to time.

5.1.5 Former employees of Transnet shall not be restricted from doing business with Transnet unless they have been restricted from doing so in terms of paragraph 5.1.6 below. Due diligence should be exercised by evaluation teams to determine whether any undue influence/unfair advantage could have been possible between any Transnet employees and the former employee. This should be brought to the AC's attention, and should be stated clearly in submissions to the AC or to the delegated Manager for transactions falling below the AC's jurisdiction.

5.1.6 Former employees of Transnet who were dismissed following disciplinary action or who had resigned to circumvent disciplinary action following charges relating to dishonesty (e.g. bribery, corruption, theft, etc.) shall be formally excluded from future business dealings with Transnet. They will be blacklisted for a specific period and their names shall appear on Transnet's List of Excluded Bidders (see Chapter 23 on *Blacklisting*).

5.2 CONFIDENTIAL INFORMATION AND TRADE SECRETS

5.2.1 Employees have access to information related to Transnet's business strategies and contractual relationships with third parties. This information must be regarded as trade secrets. It includes intellectual property, know-how, processes, techniques, technical detail, methods of operating, cost and source of material, pricing and purchasing policies, systems design and development information. It also includes the contractual and financial arrangements between Transnet and its customers and suppliers. In this regard, all employees have a duty of trust and confidence and a duty to act at all times in the best interests of Transnet. The disclosure of trade secrets or any other confidential information could cause serious damage to Transnet, and possibly claims of damages for breach of contract against Transnet.

5.2.2 No employee may discuss or disclose prices which have been quoted or charged to Transnet.

5.2.3 No employee may disclose information which would, or could be perceived to place a Bidder in a better position than its competitors, or which would put Transnet at a disadvantage against Bidders or suppliers.

5.2.4 Where it is necessary to disclose confidential information to potential suppliers in order to solicit Bids, Non-Disclosure Agreements ("NDAs") must form part of the bid documentation. The NDAs must be signed by all Bidders.

5.3 INTELLECTUAL PROPERTY RIGHTS OF SUPPLIERS/TRANSNET

5.3.1 Transnet will acknowledge and respect suppliers' intellectual property (IP) rights. Transnet will also seek to promote fair competition.

5.3.2 It is recommended that in cases where the IP of suppliers is at stake, Transnet should hold clarification sessions with potential Bidders in order to clarify the position regarding IP rights. Furthermore, before concluding a contract, Transnet should ensure that all issues of IP are properly addressed in the contract and that both parties understand the nature of the agreement.

5.3.3 Depending on the merits of each case, one of the following approaches will be followed and must be stipulated upfront in the Request for Proposal ("RFP") document:-

a) Transnet may choose to pay the supplier outright for its IP in the Goods and purchase the Goods with its IP. In such instances, the supplier relinquishes its rights to the IP and Transnet acquires all rights to the Goods. This applies to all specifications, drawings and/or prototypes. Transnet will disclose this at RFP stage and all aspects pertaining to IP will be negotiated and captured in the contract between the parties. Transnet shall have the right to procure its

future requirements via an Open Bid process and the original designer/developer will be free to participate.

b) Transnet may choose to share the IP with the supplier where Goods were jointly developed by Transnet and the supplier. In this scenario, Transnet shares the IP and the royalties emanating from the development of the Goods. This must be clearly set out in the contract between the parties.

c) Where an existing patented article is required by Transnet, it is preferable that Transnet issue an Open Bid stating that the patented item or "anything similar" is required. Alternatively, Transnet may choose to confine the tender to the manufacturer concerned. In this instance the supplier remains the owner of the IP in respect of the article.

5.4 BIDDERS' PRIOR INVOLVEMENT IN PROCUREMENT

As a general rule, service providers or contractors that were involved in the preparation of a scope of work or in prior stages of a particular procurement project shall be precluded from submitting bid offers for that procurement project. This is due to the unfair advantage they may gain as a result of prior knowledge of the project. This rule applies unless there are grounds for confinement as indicated in paragraph 15.1.2 of the PPM. It does not apply to a 2-stage RFX process.

cidb

South African National Standard (SANS) 294:2004 on Construction Procurement Processes, Methods and Procedures, paragraph 6.1.1 (which is incorporated in the best practice guidelines published by the CIDB and the Standard for Uniformity in Construction Procurement) states that as a general rule, agents and contractors that are commissioned to prepare a scope of work for a particular procurement shall be precluded from submitting tender offers for that procurement. The Note to this paragraph, however, states the following: "*Agents and contractors who prepare the scope of work for engineering and construction works contracts where the design and build contracting strategy is adopted, may submit tender offers to perform such work*".

Contractors who prepare a procurement document or part thereof for engineering and construction works contracts may submit a bid for work associated with such documents provided that:

a) Transet states in the tender data that such a contractor is a potential bidder;

b) all the information which was made available to, and the advice provided by, that contractor which is relevant to the tender, will equally be made available to all potential bidders upon request, if not already included in the scope of work;

c) the relevant CPO is satisfied that the bid document is objective and unbiased having regard to the role and recommendations of that contractor; and

d) the contractor has signed a declaration of interest.

5.5 GIFTS AND GRATUITIES

5.5.1 All business decisions and transactions must be made with uncompromised integrity, honesty and objective judgment. Transnet does recognise that in executing its business and applying industry norms, employees may be required to

accept or give gifts as a token of appreciation. The Transnet Gifts Policy regulates and controls the acceptance and giving of gifts.

5.5.2 The acceptance and giving of gifts exceeding the value (currently R750.00) stipulated in the Transnet Gifts Policy, as amended from time to time is prohibited.

5.5.3 The occasional exchange of gifts not exceeding this value may be accepted, provided that such gifts are not specifically intended to influence any procurement or sales decisions and are:

a) Declared to the employee's immediate Manager; and

b) Recorded in a Declaration of Gifts Register.

5.5.4 Under no circumstances should gifts be accepted from prospective suppliers, regardless of value, during any bid evaluation period including a period of 12 months after such bid has been awarded. This may be perceived as undue and improper influence over the bid process.

5.5.5 Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefits or Services. Such favours will be considered bribery. This is unlawful and the appropriate criminal / civil action will be enforced. If a supplier or employee offers or accepts such "favours" or bribes, it must immediately be reported to the Manager in charge of the function for appropriate action. In accordance with the ordinary principles of delictual liability, Transnet is entitled to recover all damages suffered as a result of the employee's corrupt or negligent conduct from that employee. Any person who has offered a bribe to a Transnet employee may also face criminal or civil action and/or exclusion from future Transnet business.

5.5.6 Employees are not permitted to accept gifts or buy Goods or Services at artificially low prices, not available to the public. Employees are also not allowed to accept personal favours and hospitality which might be deemed by others, to impinge upon the employee's sound business judgment.

5.5.7 Overseas visits on invitation by and at the expense of prospective suppliers will under no circumstances be permitted. Should an overseas visit be deemed necessary for the purposes of evaluating the supplier, this should be for Transnet's own account. All overseas visits have to be fully motivated in terms of the normal procedures for overseas visits. If current suppliers offer to pay for Transnet employees to travel to their offices or plants overseas, these requests need to be properly motivated and approved by the GCE or the relevant divisional CEO or Group Executive.

5.5.8 The following business courtesies are allowed, provided that the cost per instance does not exceed the amount as stipulated in the Gifts Policy:

a) entertainment;

b) advertising material of small intrinsic value such as pens, paper-knives (letter opener), diaries, calendars, etc.

5.5.9 A monetary limit will not be placed on the following:

a) business meals; and

b) hospitality packages to sports, arts and culture events held in the Republic of South Africa, with the objective of enhancing business relationships. Gifts received while on overseas business trips and from foreign delegates, which exceed the limit set in the Transnet Gifts Policy, should be accepted, entered into the gifts register and submitted to the Group Company Secretariat for disposal in terms of the Gifts Policy.

5.5.10 In addition to the procedure for accepting gifts set out in the Gifts Policy, Supply Chain staff may only accept gifts after approval from their Manager. Supply Chain staff must declare all gifts irrespective of value. Supply Chain Managers must keep a proper gift register of all gifts and hospitality offered to their employees by

suppliers and contractors, and vice versa. Unauthorised gifts that have not been accepted (e.g. exceeding the abovementioned limit) should also be entered into the gift register with an indication that they have been returned to the supplier or surrendered to Transnet or any other appropriate action that may have been taken.

5.5.11 All Supply Chain gift registers must be submitted to the relevant AC Chairperson for review on a quarterly basis. A Gift Register Template is attached to the Transnet Gifts Policy and must be used at all times to ensure that all relevant information and signatures of approval are captured.

5.6 DECLARATION OF INTEREST

5.6.1 In terms of the Companies Act 71 of 2008, directors or officers of a company have a duty to disclose their interests in contracts.

5.6.2 For the purposes of the Transnet Declaration of Interest and Related Party Disclosure Policy the requirement to disclose interests in contracts is extended to include all employees.

5.6.3 The Transnet Declaration of Interest and Related Party Disclosure Policy defines a conflict of interest to include inter alia, a situation in which:

- "An Employee has a personal financial interest;
- An employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his/her judgment in acting in the best interests of Transnet, or could corrupt the employee's motivation for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism;
- An employee uses his/her position, or privileges or information obtained while acting in the capacity as an employee for:
  - Private gain or advancement; or
  - The expectation of private gain, or advancement, or any other advantage accruing to the employee or any member of his/her family, or friends or business associates."

5.6.4 The Transnet Declaration of Interest and Related Party Disclosure Policy places a duty on all employees who have an interest, either directly or indirectly, in any new or existing contracts with an entity external to Transnet which may conduct, or does conduct business with Transnet, to declare such interest.

5.6.5 A direct interest in a bid includes the following:

a) Where the employee or Transnet Board member is a shareholder, member or director of -
   (i) a bidding enterprise;
   (ii) the holding company of a bidding enterprise; or
   (iii) a subsidiary of a bidding enterprise.

b) Where the employee or Transnet Board member is related (as defined in the Declaration of Interest and Related Party Disclosures Policy) to a person who is a shareholder, member or director of -
   (i) a bidding enterprise;
   (ii) the holding company of a bidding enterprise; or
   (iii) a subsidiary of a bidding enterprise.

5.6.6 Declaration of a direct interest will result in automatic recusal of an employee.

5.6.7 An indirect interest may include, but is not limited to:

a) being involved with the drafting of the specification or bid documents;

b) being involved with issuing / advertising of the bid; or

c) being involved in the evaluation, and subsequently being involved in the adjudication of the bid (applicable to members and/or alternates serving on the relevant AC).

5.6.8 Any indirect interest of an employee in a bid or offer must be declared and the Manager concerned will determine whether the employee should recuse him/herself. The reasons for this decision must be officially recorded and kept on file.

5.6.9 Bid documents must always contain a clause for prospective Bidders to declare any possible direct family or business relationship with a Transnet employee. Direct family or business relationships includes husband/wife, children (own and step), parents and grandparents (own and in-law), brothers and sisters (own, step and in-laws) and business associates.

5.6.10 Although business with Enterprises that have relationships with Transnet employees in terms of 5.6.9 above is not prohibited, it is imperative that it be properly declared and explicitly pointed out in the submission to the AC. This will allow the AC to consider all relevant facts and decide whether such involvement by a Transnet employee could be regarded as fair or whether other prospective Bidders will be prejudiced or may be perceived to have been prejudiced thereby. Bidders failing to declare such relationship(s) will be disqualified from the bid process. Contracts concluded without adherence to this rule, will be terminated and disciplinary action will be taken against the relevant Transnet employee(s). The company or companies involved will be placed on Transnet's List of Excluded Bidders.

5.6.11 All Transnet employees / board members involved in procurement activities are under a duty to declare their interests as soon as they become aware that they have a direct or indirect interest in a particular matter. If any doubt arises as to whether an interest should be declared or not, the employee concerned shall seek guidance from the office of the Company Secretary. The following must be noted with regard to the duty to declare interests:

a) in terms of the "Declaration of Interest and Related Party Disclosures Policy" all employees are required to submit an annual declaration of interest. These declarations are kept by the Group Company Secretary for employees at Group. Depending on the specific OD, declarations are kept by the OD Company Secretary, Compliance officer or the Legal department in respect of OD employees;

b) in addition to annual declarations, all employees involved in procurement should make a quarterly declaration of interest which must be kept by the relevant Manager;

c) all employees involved in the evaluation, Post Tender Negotiation ("PTN") or adjudication of Bids must sign a declaration of interest certificate indicating whether or not they have an interest in the matter at hand. This declaration must be placed on the relevant bid file; and

d) employees involved in procurement activities other than evaluation, post tender negotiation, or adjudication (such as buyers) will only be required to declare an interest if they in fact have an interest in a particular matter. Should such an employee not make any declaration in a particular matter, he/she will be deemed not to have an interest in the matter. If it is later discovered that an employee did have an interest which he/she failed to declare, such

employee will be found to have failed to comply with the duty to declare conflicts of interests.

e) A proper register of Declarations of Interest should also be kept by Managers responsible for departments involved in purchasing and disposal functions as well as by the Secretariats of the relevant ACs.

5.7 FRAUD AND CORRUPTION

5.7.1 Transnet insists on honesty, integrity and acting beyond reproach at all times and will not tolerate any form of improper influencing, bribery, corruption, fraud or any other unethical conduct on the part of Bidders / Transnet employees.

5.7.2 If Transnet's GCFO (or a duly authorised person) has determined that a Bidder / contractor / supplier has or has caused to be promised, offered or given to any Transnet employee, any bribe, commission, or any unauthorized gift, loan, advantage or other consideration, Transnet shall be entitled to revoke the bid / contract by following the process that governs the Exclusion of Bidders. Upon approval by the GCFO or duly authorized delegate, Transnet will be entitled to place any Bidder / contractor / supplier who has contravened the provisions of Transnet's business ethics on its List of Excluded Bidders. Furthermore, in terms of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2001, Transnet will refer all matters of suspected corruption to the South African Police Services (SAPS) for further investigation.

5.7.3 Transnet reserves the right to exclude a Bidder from further business and/or to cancel all existing contracts, should a Bidder/supplier be found to have acted in bad faith or engaged in misconduct towards Transnet. Furthermore, no part of a contract may be subcontracted to an Excluded Bidder.

5.7.4 Bid documents should always contain a clause indicating that any suspected fraud, corruption or other unethical activities should be reported to Transnet Tip-offs Anonymous at any of the following addresses and contact numbers. Confidentiality is guaranteed at all times.

- *Toll-free anonymous hotline : 0800 003 056*
- *Email : Transnet@tip-offs.com*
- *Fax number : 0800 007 788*
- *Freepost DN 298, Umhlanga Rocks, 4320*

5.8 SANCTION

Non-compliance with the Code of Ethics is considered to be misconduct and employees may be subject to disciplinary procedures that could lead to dismissal as well as criminal and/or civil action.

CHAPTER 6 : DELEGATION OF AUTHORITY FOR PROCUREMENT PROCESSES

cidb

This Chapter is applicable in totality to construction procurement and general procurement activities.

6.1. HOW DELEGATION OF AUTHORITY WORKS

Figure 2 below explains how authority is delegated from the Minister of Public Enterprise to the various structures and persons within Transnet via a series of sub-delegations:

How Delegation of Authority works within the context of Procurement

Step 1	The Transnet Board acquires it Delegation of Authority from its appointment as the accounting authority of Transnet by the Minister of Public Enterprises in terms section 49 of the PFMA
Step 2	The Transnet Board sub-delegates certain powers to: 1) The BADC 2) The Group Chief Executive (GCE)
Step 3	The GCE sub-delegates certain powers to: 1) The Group CFO 2) The CEOs of ODs and Specialist Units 3) Group EXCO members
Step 4	The CEO sub-delegates certain powers to his/her CPO
Step 5	The CPO sub-delegates certain powers to his/her Executive/Senior Managers in Procurement
Step 6	Executive / Senior Managers sub-delegate certain powers to Category Managers
Step 7	Category Managers sub-delegate certain powers to Commodity Managers
Step 8	Commodity Managers sub-delegate certain powers to Senior Buyers and buyers etc.

Figure [2] – Delegation of Authority

6.2. DELEGATION OF AUTHORITY FRAMEWORK

The Transnet Delegation of Authority (DoA) Framework sets out the powers delegated to certain officials (e.g. GCE, GCFO, OD CEO, etc) to perform specified tasks in relation to various areas of operation (e.g. finance, treasury, procurement, etc). The following powers, depicted in Table 4 below, are derived from the Transnet Delegation of Authority Framework effective 1 June 2013. **However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.**

TABLE 4

APPROVAL AUTHORITY	PROCUREMENT DELEGATION					
	Approval to approach the market			Management's intervention to address non-compliance with procurement policies & procedures	Enter into & signing of contracts & award of business (including scrap sales)	Procurement process (governance structure) approval
	Open tenders	Confined tenders	Consultants			
Transnet Board	>R 2 000m	>R 1000m	>R300m	>R 1000m	>R 2 000m	>R 2 000m
BADC	≤R 2 000m	≤R 1000m	≤R300m	≤R 1000m	≤R2 000m	≤R2 000m
Group EXCO	Nil	Nil	≤R200m	Nil	Nil	Nil
GCE	≤R1 000m	≤R250m	≤R200m	≤R50m	≤R1 000m	Nil
GCFO	≤R750 m	Nil	≤R50m	Nil	≤R750m	Nil
GCSCO	≤R525 m	Nil	Nil	Nil	≤R525m	Nil
OD CE (including TCP)	≤R450 m	Nil	≤R25m (per annum)	Nil	≤R450m	Nil
OD/SU Main AC	Nil	Nil	Nil	Nil	Nil	≤R450m
CEO/ HOD (budget owner) of Specialist Unit, excl. TCP	≤R75 m	Nil	Nil	Nil	≤R5m subject to the contract period not exceeding 5 Years	Nil
Group Exco Members (Specialist Units, excl.TCP)	Nil	Nil	≤R10m	Nil	≤R30m	Nil

6.3. POWERS VESTED IN TRANSNET OFFICIALS

It is important to bear in mind that not all powers vested in Transnet officials are contained in the DoA Framework. In the procurement context, certain powers are also vested in officials in terms of this PPM whilst other powers are inherent to the job function e.g. the day to day running of the procurement function. Figure 3 below explains the powers vested in Transnet officials in terms of the DoA Framework, the PPM and their job function, respectively:

Delegatee	From Whom	Delegation in terms of Transnet DoA Framework	Powers acquired in terms of the PPM	Delegation in terms of a "general blanket" delegation
GCE	Transnet Board	•Approve Confinements ≤R250m •Consultants ≤R200m •Condonations ≤ R50m •Going to market on open tender & sign contracts ≤ R1 000m	Final arbiter for appeals on blacklisting	Responsible for the day-to-day running of Transnet
GCFO	GCE	•Consultants ≤R50m •Going to market on open tender & sign contracts ≤ R750m	Approve decision to blacklist	N/A to procurement
OD CEOs	GCE	•Approve consultants ≤ R25m p.a •Going to market on open tenders & sign contracts ≤ R450m	Approve OD Approved Lists Appoint AC & Chair/ members Mediate disagreements between AC and line/procurement, etc.	Responsible for the day-to-day running of the operating division
CPO	OD CEO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CEO	Delegate powers to CFSTs, CFET & PTN teams, empower procurement to utilise quotation system & emergency purchases and initiate blacklisting proceedings	Responsible for the day-to-day running of the OD procurement function
Procurement	OD CPO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CPO	Facilitate CFSTs, CFET & PTN teams Utilise quotation system and emergency purchases, issue open tenders and initiate blacklisting cases	Responsible for the day-to-day procurement tasks and functions

Figure [3] – Types of Delegated Authorities

6.4. DOA SUMMARY

Figures 4 to 10 below collectively represent a summary of the Delegations of Authority required for various procurement approval processes and thresholds effective 1 June 2013. However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.

Procurement approval processes at Transnet

Figure [4] – Procurement approval processes

The thresholds applicable to the various approval steps are depicted in the diagrams below.

(a) Approval to approach the market for open tenders

Approving the approach to market strategy involves approving the sourcing strategy as well as the critical aspects of what will be contained in the bid document i.e. the evaluation methodology and at a high level, the evaluation criteria and weightings.

*In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [5] – Approval to approach the market for open tenders

(b) Approval to approach the market for confined tenders

In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [6] – Approval to approach the market for confined tenders

(c) Appointment of consultants

**NB: Approval limits are cumulative per annum
*In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [7] – Appointment of consultants

(d) Procurement Process Approval

Procurement process approval involves a validation of the entire procurement process followed before contract sign off can take place. Approval of the procurement process involves scrutiny of the fairness, transparency, legality and general commerciality of the tender award.

NOTE: Should any approval body not agree with the recommendation, the matter must be referred back to the recommending officer(s) for reconsideration or remotivation
Recommendations: The RAC, main AC and the BADC will support the recommendation for transactions above their thresholds. Local/Regional AC normally only consider transactions <R2m but OD CEOs may at their discretion increase these thresholds.
* In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion of the value of Transnet's asset base as per the 2013/2014 version of the Shareholder's compact) before proceeding with the acquisition

Figure [8] – Thresholds for governance structure approval of process

(e) Enter into and signing of contracts/agreements and award of business

Contract sign off approval involves the final award of business based on a Procurement Process Approval. This approval carries with it the power to sign and enter into contracts on behalf of Transnet for procurement transactions.

In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [9] – Thresholds for contract sign off / award of business

(i) **Contracts greater than R500 million**

Prior to entering into a high value (greater than R500m) / highly complex contract (especially for Transnet's top 60% value opex items as dealt with by Transnet iSCM Strategic Sourcing commodity teams), any authorised official must first liaise with a multi-disciplinary team of experts at Transnet Corporate Office, who should each sign off on the following parts of any agreement/contract or other binding document:

- Group Legal Services - entire document
- Transnet GCFO to sign-off after sign-off from the finance departments (Group Finance/Reporting, Financial Planning, Tax and Treasury).
- Contracts less than R450m within the OD's limit of authority, require a similar process as set out above to be followed by the relevant OD.

(ii) **International Contracts/Agreements (all contracts)**

Approval to enter into an agreement/contract or other binding document involving foreign currency (FX) exposure (including international agreements) may not be sub-delegated lower than to the Chief Procurement Officer (CPO) of an OD. Approval of the divisional CFO is required to enter into the contracts that may result in foreign currency exposure.

The duly authorised official must obtain prior written approval in respect of foreign exchange agreements above R50m from Group Legal, Group Treasury, Group Tax and Group Reporting, both where the contract will be concluded in foreign currency and especially in such cases where foreign contracts will be concluded in South African Rand, as this may expose Transnet to, *inter alia*, an embedded derivative. All FX agreements above R100m must apart from the above also obtain written approval from the GCFO.

(f) Management's intervention to address non-compliance with procurement policies and procedures (Condonations)

Figure [10] – Management's intervention to address non-compliance with procurement policies & procedures

Background and Context

SECTION B: PROCUREMENT PLANNING

Chapter 7: Demand Planning & Demand Management

Chapter 8: Internal Procurement / Interdivisional Support

Chapter 9: Contract Options

Chapter 10: Preferential Procurement Approach

Chapter 11: Local Content

Chapter 12: Supplier Development Approach

Chapter 13: Determining Evaluation Criteria

Chapter 14: Main Procurement Mechanisms

Chapter 15: Special Cases

Go to Market

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

TYPICAL PROCUREMENT CYCLE

Figure 11 below depicts a typical procurement cycle. Comprehensive guidance on each of these steps is dealt with in the Chapters that follow:

Figure [11] – The Procurement Cycle

CHAPTER 7 : DEMAND PLANNING & DEMAND MANAGEMENT

cidb

This Chapter is equally applicable in construction procurement and general procurement activities. For all construction projects a procurement package plan (PPP) is required. A procurement package plan is a collection of procurement events from a project. This package plan requires approval prior to commencement of a go to market strategy.

7.1. PREFACE

7.1.1. Demand is a business requirement for Goods/Services raised by the business/OD and received by the procurement department for further processing, such as sourcing and payment. There are 2 areas of demand i.e. demand planning and demand management.

7.1.2. Demand Planning is the first step in the procurement process, where:

7.1.2.1. the business needs are assessed in order to ensure that the required Goods/Services are procured so as to meet the business requirements of Transnet;

7.1.2.2. specifications are precisely determined;

7.1.2.3. requirements are linked to budget; and

7.1.2.4. the supplying industry has been analysed and constraints identified and assessed.

7.1.3. Demand planning is a medium term and cross functional planning process supported by a series of meetings that promote alignment, decision making and coordinated action towards achievement of financial budgets and organizational strategy.

7.1.4. Demand management is about understanding the factors that drive demand for Goods/Services and about using this knowledge to identify and implement new and innovative ways to eliminate, reduce or serve demand more efficiently and to support robust demand planning – and in so doing optimise value and quality by enabling suppliers to have a forward looking view of requirements expected of them and adequately plan production and by enabling the procurement department to adequately prepare itself and work more efficiently and effectively. Demand management therefore involves the reviewing, monitoring and improving of demand.

7.1.5. Demand review is a strategic decision process ensuring that all stakeholders are fully aware and agree to the Goods/Services that are to be procured, why it is to be procured, how it is to be procured, and the cost.

7.1.6. Demand monitoring is a tactical process ensuring that only the required quantity and Quality of Goods/Services are sourced from the right suppliers.

7.1.7. Demand improvement is a strategic and a tactical process ensuring that the quality of demand improves continuously as the demand management

process matures, with initiatives such as reducing the demand and rationalising the Goods/Service portfolio.

7.1.8. Therefore, the purpose of demand planning and management is to ensure that the resources required to fulfil the requirements identified in Transnet's Corporate Plan are delivered at the correct price, time and place and that the delivered quantity and quality will satisfy those requirements.

7.1.9. The intention of demand planning is to:

7.1.9.1. to have a clear view of the demand requirements for major strategic commodities;

7.1.9.2. to ensure that end-users and the procurement department are brought closer together in order to enhance efficiency and achieve value for money; and

7.1.9.3. to foster an improved working relationship of openness between Transnet and its suppliers and/or service providers.

7.2. DEMAND LEVERS

A demand consists of various demand levers that are managed by the demand planning and management process. These levers are:

TABLE 5

SOURCE	The origin of the demand such as the initiating department or OD
REASON	The motivation for the demand such as why these Goods/Services need to be sourced
QUANTITY	Review the number/scope of the Goods/Services required
SPECIFICATION	Opportunity to simplify/standardise specifications
TIMEFRAME	Reduce demand frequency
COST	The indicative cost of the Goods/Services that need to be sourced
PREFERRED SUPPLIER	The preferred supplier (if any) for the requested Goods/Services Other potential suppliers who could also be in a position to supply the same Goods/Services

7.3. ROLE OF PROCUREMENT IN MANAGING DEMAND

Procurement needs to manage the demand for Goods/Services by:

- analysing demand levers and sourcing data that will enable a more accurate view/prediction of demand;;
- identifying opportunities for improvement of the entire demand management function;
- short-listing and prioritising improvement initiatives;
- developing and implementing an action plan for identified initiatives;
- monitoring the progress of improvement of the initiatives; and
- conducting regular assessment of the effectiveness and relevance of improvement initiatives.

7.4. DEMAND PROCESS

Figure 12 below gives an outline of the main steps in the demand management process.

Figure [12] – Demand Steps

For sourcing events falling within the threshold for High Value Tenders, refer to the "High Value Tender Process (HVTP)" available on the iSCM Transnet Intranet.

OPERATIONS (end users) are responsible for completing STEP 1

7.4.1. STEP 1 : Identify, approve and communicate demand

a) Definition of business need

The end users in the business (operations) need to follow the steps outlined below, in order to ensure that there is a clearly defined need in the business:-

(i) conduct a needs analysis to establish requirements relating to the business, taking into account all required capital acquisitions, planned maintenance, and other operational needs – this will be informed by both future requirements (based upon Transnet's Corporate Plan); as well as market demand forecasts (based upon Transnet's current client base demand and/or commitments made by Transnet's sales department);

(ii) establish and consolidate the reasons for the need;

(iii) ratify the need irrespective of whether it is a CAPEX or OPEX acquisition and apply for and obtain budget approval; and

(iv) draw up an annual procurement plan.

b) Compilation of demand document (per transaction)

The end users in the business (operations) are responsible to provide procurement with a detailed demand requisition. This should provide a clear description of the function, required specifications, drawings, and where applicable it should:-

(i) indicate the quantities required;
(ii) indicate the frequencies required;
(iii) indicate the quality required;
(iv) indicate the unit of measure;
(v) indicate packaging, if applicable;
(vi) attach the relevant specification/drawing, where applicable;
(vii) provide previous price or estimated costs and budgetary requirements;
(viii) indicate the expected delivery date(s) and delivery address(es);
(ix) indicate any logistical and/or storage requirements;
(x) any material obsolescence risks; and
(xi) suggest potential source/s of supply and a brief analysis of the supplier industry landscape, if available.

The demand document should first be approved at an operational level. Once that is completed, it should be submitted to procurement. Operations should submit this document timeously, and allow sufficient time to acquire the Goods/Services, given lead times and governance processes.

PROCUREMENT is responsible for completing STEP 2 and STEP 3

Process demand
Validate and prioritise demand
Review nature and quantity required
Reduce demand frequency
Consider alternative ways of filling demand

7.4.2. **STEP 2 : Processing Demand**

a) **Validate and prioritise demand**

Procurement shall establish the following:

(i) Is the demand document/requisition duly approved by operations?
(ii) Is this a critical demand? ("Critical" is defined as having an impact on the Service provided by Transnet or the profit made by Transnet).
(iii) What would be the impact on operations if the procurement did not occur?

b) **Review nature and quantity required**

Procurement shall establish and review the following:

(i) Establish whether this is a requirement for Goods or a Service?
(ii) If Goods are required, whether the demand will be on-going or once-off?
(iii) If Goods are required, determine how many types of items and quantity of each item are required in total by operations at present

time and going forward? What are the options (if any) for reducing volume?

(iv) If a Service is required, determine for what length of time the Service is required? (Indicate length of Transnet's previous use (if any) of the specific Service). Could this be reduced or extended?

(v) Determine the estimated value of the sourcing event (if not provided by operations) to establish which sourcing process must be followed:

- if below R2 million, or lower threshold set by the OD CEO for Open Bids, use the quotation system (see Chapter 14);
- if over R2 million use an "open RFX", approach (see Chapter 14); and
- if within the threshold for High Value Tenders, use the High Value Tender process (see iSCM Transnet Intranet portal).

c) **Reduce demand frequency**

Procurement shall establish and review the following:-

(i) If the Goods to be purchased will require additional purchases going forward, is it reasonable for an "as- and-when call off" contract to be established? State reasons either for or against an "as-and-when call off" contract.

(ii) If a Service is required, what is the length of the anticipated contract? Explain rationale for this time period.

d) **Consider alternative ways of fulfilling demand**

Procurement shall establish and review the following whether:-

(i) the required Goods can be re-engineered or reclaimed from existing assets or Goods;

(ii) any other OD can manufacture the required Goods or provide the required Service;

(iii) the Goods are currently available in another OD with spare capacity;

(iv) this is a stock item; or

(v) this item is available on a current contract– even if it is potentially at another OD.

7.4.3. **STEP 3 : Establish a Cross Functional Sourcing Team ("CFST") in the case of acquisitions greater than R5 million or where the quality criteria must be determined**

a) **Rationale for the formation of a CFST**

Demand management shall be a cross-functional exercise with a view to ensuring that end users, procurement and all stakeholders are brought together in order to enhance efficiency and achieve value.

b) **Composition of the CFST**

Procurement shall establish a CFST, consisting of at least the following roles: Procurement, operations (end users/technical), SD (including B-BBEE) and risk/compliance. Other possible representatives are finance, treasury, maintenance, logistics/warehousing, disposal and legal or governance.

In instances where the sourcing event is uncomplicated and the risk to Transnet is low, the CFST can be comprised of only procurement and Quality (technical) representatives.

Procurement must ensure that the CFST consists of the relevant expertise; and that the size of the team is not of such a nature that it cannot function effectively. Nonetheless, in all instances, procurement and operations must reach agreement on the composition of the CFST.

In order for the CFST to be effective, consistent attendance by the same members is required for continuity.

c) **Functions of the CFST**

(i) Determining specifications:-

"Specification" is the terminology used to describe the requirement for goods.

If Goods are being sourced, consider whether there is any opportunity to purchase standard "off-the-shelf" Goods.

If there are technical specifications:-

- these must be compiled with a view to promoting the broadest possible competition, whilst still assuring that critical elements of performance or other requirements are achieved;
- ascertain whether similar (albeit not identical) Goods are currently in use elsewhere in Transnet, which could enable standardisation;
- interrogate the specification, i.e. determine whether it is possible to provide a functional/performance-based specification rather than a detailed specification;
- determine whether the specification has been over-engineered; and
- verify that the specification is not biased in favour of a particular brand or type of Goods.
- If a functional specification is the chosen option, the following must be observed and described in detail:
- functions and characteristics;
- desired performance and/or result parameters, based on both inputs and outputs;
- method statement templates on how outputs will be reached; and
- inclusion of relevant KPIs.

If a detailed specification will be issued, ensure that the latest specification is used, and that the quality standards (e.g. SANS, ISO) are included where applicable. In addition, ensure that the drawings are up to date and that detailed descriptions of manufacturing processes, workmanship and/or materials are indicated.

The following must be observed and indicated in the RFX in respect of functional as well as detailed specifications:

- the location(s) of required provision;
- details of qualifications required where appropriate;
- details of the conditions in which the Goods must operate;
- environmental and safety features;
- packaging, marking and labelling requirements;
- inspection or testing requirements;
- documentation required, i.e. manuals, user guides, licenses, test certificates, etc.;
- size/dimensions;
- integration with other Goods/Services;
- security requirements;
- health, safety, electrical, environmental requirements;
- training requirements, if applicable;
- timing considerations; and
- interfaces with other systems.

(ii) Determining Terms of Reference

"Terms of Reference" (ToR) is the terminology used to describe the requirement for services.

The following must be observed and indicated in respect of the ToR:

- project title;
- background;
- objective of the project
- expected outcomes/deliverables;
- competency and expertise requirements;
- timeframes;
- reporting requirements;
- whether a site inspection or information session are required with date, time and venue stated;
- available documentation; and
- minimum requirements.

(iii) Reduce portfolio or range complexity:

- Options for rationalisation of the range of Goods/Services must be considered.
- Implications for users if choice options are reduced must be considered.

(iv) Identify and mitigate risks:

- All risks to Transnet associated with the demand must be identified and addressed in the eventual RFX;
- It should be ascertained whether suitable skills are available within procurement to address the demand and its management process.

(v) Establish the evaluation methodology to be employed – See Chapter 13 on Determining bid Evaluation Criteria.

(vi) Establish evaluation criteria and weightings – See Chapter 13 on Determining Evaluation Criteria. Clear evaluation criteria must be established, as bids may only be evaluated according to the criteria stipulated in the bid documents.

(vii) Oversee preparation and sign off of the bid documentation – See Chapter 16 on Bid Preparation.

(viii) Determine who should serve on the evaluation committee – See Chapter 18 on Evaluation.

(ix) Handover the sourcing event to procurement

7.5. CHECKLIST FOR DEMAND PLANNING & MANAGEMENT

The following checklist could be used as a template to identify the progress with respect to the Demand Management process:

TABLE 6

Demand Planning & Management Focus	Responsible
Is there a business case and approval of the demand?	Business
Has the demand been identified in the annual Procurement Plan? (The Procurement plan forms the basis of demand management)	Business & Procurement
Is there a budget allocated for this demand?	Business
Is there an approval as per the associated DoA?	Business
Have the options of fulfilling the demand (such as existing contracts and critical items) been assessed?	Business & Procurement
What is the outcome of reviewing the quantity required (i.e. are the Goods/Services required on an on-going or once-off basis)?	Procurement
Has the possibility of reducing the demand frequency, such as further purchasing or call-off, been assessed?	Business & Procurement
Have the options of alternate ways of fulfilling this demand, such as whether other Transnet ODs could manufacture these Goods, been assessed?	Procurement
Have the options of re-use been assessed? (e.g. re-engineered	Business & Procurement

Demand Planning & Management Focus	Responsible
Goods from existing Goods or whether the Goods are available from other Transnet ODs) Have the 3 Rs (Reduce-Reuse-Recycle) been considered?	
Has the possibility of standardising the Goods and its specifications, such as off-the-shelf and customised, been assessed?	Business
Has the opportunity of reducing the Goods portfolio, such costing and risk implications associated with it, been identified?	Procurement
Have the strategic risks associated with this demand, such as strategic nature of this demand been identified?	Business
Has internal availability been assessed, i.e. • Can the needed Goods be re-engineered / reclaimed from existing assets/Goods? • Can any OD of Transnet manufacture the required Goods or provide the required Service? • Are these Goods currently available in another OD with spare capacity? • Is this a stock item? • Is this item available on a current contract?	 Business & Procurement Business & Procurement Business & Procurement Business & Procurement Business & Procurement
Was the CFST properly constituted?	Procurement
Have the risks associated with the CFST working on this demand, such as capacity and capability not available within the Transnet been identified?	Procurement
Does the CFST represent all the necessary disciplines for identifying the risks associated with the event?	Procurement
Did the CFST members sign confidentiality agreements and declarations of interest?	CFST
Did the CFST properly interrogate the specification?	CFST
Were all risks identified and included in the RFX?	CFST
Has it been considered whether this should be a transversal event in the interests of Transnet as a whole?	CFST
Has an 'As-and When' contract option been investigated, in order to cater for future demand?	CFST
Was the appropriate evaluation method chosen?	CFST
Were thresholds set for SD and Quality/Functionality?	CFST
Were proper evaluation criteria set for: • SD • Functionality • Preference • Price / TCO?	CFST
Were appropriate weightings allocated to each criterion?	CFST

7.6. SOURCING STRATEGY

Once a CFST has been established, the next step is to determine the sourcing strategy. The methodology for determining a sourcing strategy is depicted in the figure below. Please refer to the Strategic Sourcing Standard Operating Procedures (SOP) which provides detailed guidance on the strategic sourcing process. The SOP can be downloaded from the iSCM Transnet Intranet.

METHODOLOGY FOR DEVELOPING A SOURCING STRATEGY

Figure [13] – Methodology for developing a sourcing strategy

CHAPTER 8 : INTERNAL PROCUREMENT/INTERDIVISIONAL SUPPORT

This Chapter is equally applicable in construction procurement and general procurement activities.

8.1 INTERDIVISIONAL RELATIONSHIPS

Transnet Entities are required to develop trust and a sound interdivisional working relationship with one another in the interest of Transnet. To achieve this, such entities **must** be afforded the right of first refusal in the procurement of Goods and Services.

8.2 STRATEGIC SPECIALIST UNITS

The following Specialist Units have been identified as strategically important to the Transnet Group:

TABLE 7

Division / Specialist Unit	Goods and/or Services Provided
Transnet Engineering (**"TE"**, a specialist core Division)	TE is responsible for: • heavy engineering including locomotive, wagon and coach repairs, upgrades and maintenance • component manufacture, locomotive manufacture and assembly • port equipment, and is being positioned for maintenance and repairs thereof
Transnet Capital Projects (**"TCP"**)	TCP is responsible for: • multi-disciplinary design Services • project management and construction management Services Construction projects >R300 million **must** be carried out by TCP. In the case of construction related projects <R300 million, the following rules apply: • The project may be carried out by the OD itself if the OD has the necessary in-house resources according to the requirements of the NEC3 suite of contracts and the CIDB Standard for Uniformity in Construction Procurement; and • If the OD decides not to run the project itself, TCP must be given the first right of refusal before the external market can be approached
Transnet Fuel Solutions (TFS, previously known as HSA)	TFS is responsible for: • Transnet-wide fuel acquisition, distribution and management
Transnet Freight Rail (**"TFR"**) School of Rail	TFR School of Rail is responsible for: • training tailored exclusively for core businesses, e.g.

Division / Specialist Unit	Goods and/or Services Provided
	School of Rail, train drivers, train control officers, • software training in general, etc.
Transnet National Ports Authority ("**TNPA**") School of Ports	TNPA School of Ports is responsible for: • Facilitation of knowledge transfer as the provider of marine training programmes in South Africa • Planning to position itself as Africa's training leader in Marine Operations, Port Management and Port Engineering.
Transnet Property (TP)	TP is responsible for: • Property management • Facilities management • Property development • Property valuations • Property surveying

8.3 ABILITY OF TRANSNET ODS TO PERFORM

Before considering which procurement mechanism would be most appropriate, it is important that the end-user and procurement department consider whether another Transnet OD is able to provide the required Goods or Services.

8.4 COMPULSORY UTILISATION OF SPECIALIST UNITS

The Specialist Units mentioned above must be utilised by other Transnet Entities for required Goods and Services falling within their scope. The external market may not be approached for Goods and Services falling within the strategic Specialist Units' or Division's core-competency areas. This would also include specialist services that are required which may be performed by a particular internal functional area e.g. Group Treasury and Group Tax. The only exception to this rule is if the Specialised Unit indicates in writing that they do not have the ability or capacity to provide the required Goods or Services.

8.5 INTERDIVISIONAL SUPPORT

Internal contracts (Memoranda of Understanding) between ODs and Specialist Units are dealt with in the terms of the Delegation of Authority Framework. Such contracts do not require AC approval. However, any external contracts which may be required by the internal Specialist Unit are subject to these procedures and require AC approval.

8.6 MEMORANDA OF UNDERSTANDING

The business relationship between Transnet Divisions and Specialist Units must be governed by an overarching Memorandum of Understanding (MOU) between the parties. The MOU must be signed by the CEs of the relevant ODs or Specialist Units and Service Level Agreements should be signed where appropriate.

8.7 DISPUTES

Any disputes must be resolved in terms of the agreed MOU. If the OD CEs are unable to resolve the dispute, the matter must be escalated to the GCE who shall make a final decision on the matter.

8.8 SERVICE LEVEL AGREEMENT

ODs will need to enter into a project-specific agreement (SLA) in relation to each individual project. This agreement will set out in details the rights, duties and obligations of each OD in that specific project. Contracts between divisions such as SLAs and project specific agreements may be entered into between OD CEs in terms of paragraph 5.5.4 of the DoA Framework.

8.9 INTERDIVISIONAL PRICING

Transnet entities undertaking work on behalf of other entities should reciprocate by pricing and carrying out their Services in a way that promotes and develops a culture of interdivisional support. The pricing must be based on appropriate market analysis to benchmark fair and reasonable prices. Should there be a dispute regarding pricing, the matter is to be escalated to the CEs of the relevant Divisions for resolution. Should the CEs not reach consensus, the matter must be escalated to the GCE who shall make a final decision on the matter.

8.10 NON-CORE BUSINESSES

Non-core businesses which have already exited Transnet, such as Freightdynamics and Autopax (Pty) Ltd will enjoy no interdivisional support.

8.11 AC INVOLVEMENT

Interdivisional transactions between Transnet Entities and Specialist Units fall outside the scope of the AC. However, in any case where the external market is approached, normal procurement procedures must be followed, and if relevant, the AC must approve the transaction.

CHAPTER 9 : CONTRACT OPTIONS

This Chapter applies to both general procurement and construction procurement. Table 9 below provides a summary of the types of contracts available for construction-related procurement.

9.1 CHOICE OF CONTRACT

This chapter contains a list of contractual choices and options available. The following factors, amongst others, will assist in determining the appropriate type of contract:

- the duration of the contract;
- the type of Goods, Services or Works to be acquired;
- the frequency of demand; and
- the availability of the Goods or Services.

Table 8 below outlines the various contract options for general procurement and provides a guideline as to when those options may best be utilised. Table 9 provides a summary of the types of contracts available for construction-related procurement.

TABLE 8

Ref	Contract Options	Description	Characteristics	Best Suited For
1	"As and When" contracts	Short or medium-term contracts entered into for a fixed period against which call-offs are made as and when required by the customer	• Shorter contract periods (1-2 Years) • Estimated quantities • Specific period/volume/value ceiling or a combination.	• Continuous but unpredictacle and irregular demand for Goods/Services • Volumes cannot be accurately determined upfront • Demand cannot be anticipated • Generally off-the-shelf items
2	Fixed quantity contracts	Contracts entered into for once-off purchases	• Demand is known • Once-off purchase • Once-off or staggered delivery	• Planned programmes
3	Long-term contracts	Contracts entered into for a fixed period typically for five-Years or more	• Long term demand signal • Emphasis on SD • Suppliers' recoupment of investment is long-term • Restricts other market players for a period of time	• Purchase of high value Goods/Services • Goods/Services of strategic importance • Goods with long lead time

Ref	Contract Options	Description	Characteristics	Best Suited For
4	Transversal contracts	A contract that services more than one internal consumer (an internal shared service arrangement) entered into for a fixed period. A transversal contract may be entered into for the benefit of the entire Group, a particular OD and/or just a region. Below is a list of the types of Transversal contract options:	• Emanates from a formal strategic sourcing event • Fixed-contract period Optimising economies of scale through consolidation of demand/purchasing power	
		• Group-wide Transversal contracts		Consolidation of Goods / Services used Group wide
		• Transversal between ODs/Corporate		Consolidation of Goods / Services used between ODs
		• OD-wide Transversal contracts		Consolidation of Goods / Services used within an OD
		• Regional Transversal contracts		Consolidation of Goods / Services used within a region by one or more than one OD
5	Lease/Rental contracts for movable assets	Lease contract for the use of moveable assets entered into for a fixed period	• Specified/unspecified period • Agreed Rental • Option of renewal	• Goods/Services where it would be more economically viable to lease than to purchase
6	Inter-Divisional Memoranda of Understanding (MOUs)	A 'contract' to govern the service performance agreed between ODs	• Not a formal contract • It governs the internal relationship between the ODs	• Governing the performance as agreed between the ODs
7	Income-generating (revenue) contracts	Although excluded from the PPM, associated procurements fall within the ambit of the PPM (See paragraph 15.6)	• Listed as a process excluded from PPM • Associated procurement must follow the PPM	• As per OD requirements

**Any of the above-mentioned contract options can originate from any of the defined general procurement mechanisms and/or special mechanisms for procurement.*

TABLE 9 TYPES OF CONTRACTS FOR CONSTRUCTION PROCUREMENT

cidb

Table 9 below provides a summary of the types of contracts available for construction-related procurement.

Contract Option	Best suited for
Engineering and Construction Contract (ECC)	Is used for the appointment of a Contractor for Engineering and Construction work, including any level of design responsibility.
Professional Services Contract (PSC)	Is used for the appointment of a Consultant to provide professional services.
Term Service Contract (TSC)	This contract should be used for the appointment of a Service Provider for a fixed term to manage and provide a service.
Supply Contract (SC)	This contract should be used for local and international procurement of high-value goods and related services including design.
Engineering and Construction Short Contract (ECSC)	This contract is an alternative to the ECC and is for use with contracts which do not require sophisticated management techniques, comprise straightforward work and impose only low risks
Supply Short Contract (SSC)	This contract should be used for local and international procurement of goods under a single order or on a batch order basis and is for use with contracts which do not require sophisticated management techniques, and impose only low risks on both the Purchaser and the Supplier.
Framework Contract	This contract should be used for the appointment of one or more Suppliers to carry out Construction work or to provide design and advisory services on an "as instructed" basis over a set term.
Adjudicator's Contract	This contract should be used for the appointment of an Adjudicator to decide disputes under the NEC3 family of contracts. It may also be used for the appointment of an Adjudicator under other forms of contract.

**Any of the above-mentioned contract options can originate from any of the CIDB procurement mechanisms. These contract options are available for use for construction procurement and any procurement associated with the construction industry e.g. Professional services related to construction projects.*

9.2 CONTRACTS FOR A PERIOD LONGER THAN TWO YEARS

Contracts for a period longer than two Years require prior AC approval. However, if the RFP provides for a number of bid options including a period of up to two Years and more than two Years, prior AC approval is not required. (Also see paragraph 21.8). Irrespective of which of the two options above is followed, the award of the business has to be approved by the relevant AC in the normal manner.

9.3 STANDARD TRANSNET TERMS AND CONDITIONS OF CONTRACT

Standard templates must be used unless there are cogent reasons why such standard agreements cannot be used in a particular instance. Refer to the Standardised Transnet Templates available on the iSCM Transnet Intranet, including but not limited to:

- Standard Terms and Conditions of Contract
- Master Agreements

Any additions or deletions from the above-mentioned templates must be contained in a Special Conditions Schedule. (Also see paragraph 21.6.2)

9.4 CONSOLIDATION OF CONTRACTS

Refer to paragraph 15.5 for the process to be followed when there is an opportunity to consolidate two or more existing contracts in the best interest of Transnet rather than engaging the market anew.

9.5 CHOICE OF SALES/PURCHASE TERMS FOR IMPORTED GOODS (INCOTERMS)

The Incoterms rules or International Commercial terms are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) widely used in international commercial transactions. A series of three-letter trade terms related to common sales practices, the Incoterms rules are intended primarily to clearly communicate the responsibilities, costs and risks associated with the transportation and delivery of Goods. The Incoterms rules are accepted by governments, legal authorities and practitioners worldwide for the interpretation of most commonly used terms in international trade. They are intended to reduce or remove uncertainties arising from different interpretation of the rules in different countries. First published in 1936, the Incoterms rules have been periodically updated, with the eighth version (Incoterms 2010) having been published and made effective on January 1, 2011. "**Incoterms**" is a registered trademark of the ICC[1].

Refer to Appendix C for a detailed explanation of all Incoterms.

[1] *Source: Wikipedia*

CHAPTER 10 : PREFERENTIAL PROCUREMENT APPROACH AND DESIRED OUTCOMES

cidb

This Chapter applies to both general procurement and construction procurement. This is dealt with in more detail in paragraphs 10.3.2 of this Chapter.

10.1 TARGETS

In accordance with its vision of being a significant agent of empowerment within the South African society, Transnet has adopted the following plan to achieve its B-BBEE targets. These targets are more ambitious than those prescribed in the DTI Code of Good Practice:

TABLE 10

Sub Element	DTI Generic Targets	Transnet Target 2013/2014
B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	70%	90%
B-BBEE procurement spend from QSEs or from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend.	10%	17.5%
B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: • Suppliers who are more than 50% Black-owned (3 out of 5 points); and	Consolidated target of 15% for both	17.5%
• Suppliers who are more than 30% Black women-owned (2 out of 5 points)		8%

10.2 MECHANISMS

Transnet must apply the provisions of the PPPFA regulations in determining its preferential procurement framework.

Transnet conducts an assessment of bidders' B-BBEE performance based on the following:

- bidders' past B-BBEE performance based on the B-BBEE scorecard as required in terms of the PPPFA.

10.3 MEASUREMENT OF B-BBEE STATUS

10.3.1 Measurement as per scorecard

Bid documents must specifically state that all Suppliers will be measured in accordance with the DTI Generic Scorecard provided for in the Codes of Good Practice or the applicable Sector Code.

Transnet prefers doing business with enterprises that share its values, and are prepared to contribute to meaningful B-BBEE initiatives (e.g. subcontracting, JV's etc.) as part of their Bid responses. Transnet will accordingly allow a preference to companies who provide a B-BBEE Verification Certificate.

Transnet requires prospective Bidders to have themselves verified by any verification agency accredited by the South African National Accreditation System ("SANAS") or Registered Auditors approved by the Independent Regulatory Board of Auditors ("IRBA") in accordance with the approval granted by the Department of Trade and Industry. Please refer to Appendix G regarding determining the validity of B-BBEE cerificates. Enterprises will be rated by verification agencies/registered auditors based on the following:

TABLE 11

Type of Enterprise	Annual Turnover	Number of Elements Scored on the B-BBEE Generic Scorecard
Large	In excess of R35 million	All 7 elements
Qualifying Small Enterprise (QSE)	Between R5 million and R35 million	Any 4 elements (equal weighting of 25% each)
Exempted Micro Enterprise (EME)	R5 million or less	Deemed to be 100% compliant. Automatic Level 4 rating irrespective of race of ownership

a) Exempted Micro Enterprises (EMEs) are defined by the Codes as companies with an annual total turnover of R5 million or less. EMEs enjoy a deemed BBBEE recognition of a Level 4 contributor. EMEs which are more than 50% Black owned are promoted to a Level 3 contributor.

b) Sufficient evidence of qualification as an EME is an auditor's certificate (auditors need not meet the prerequisite for Independent Regulatory Board of Auditors ("IRBA") approval to provide B-BBEE assurance services for the purpose of conducting verification and issuing EME B-BBEE certificates), a certificate issued by an accounting officer as contemplated in the Closed Corporations Act 69 of 1984, or a certificate issued by a Verification Agency accredited by SANAS. The certificate issued by an auditor or accounting officer to an EME may be in the form of a letter.

10.3.2 Construction Industry B-BBEE requirements

cidb

Construction Sector Codes Targets thresholds differ from the general codes, The table below illustrates the construction sector thresholds for EMEs, QSEs and Large Enterprises:

TABLE 12

Type of Enterprise	Annual Turnover Contractor	Annual Turnover Built Environment Professional (BEP)	Number of Elements Scored on the B-BBEE Generic Scorecard
Large	In excess of R35 million	Larger than R11.5 million	All 7 elements
Qualifying Small Enterprise (QSE)	Between R5 million and R35 million	Larger than R1,5 million and equal to or less than R11,5 million	Any 4 elements (equal weighting of 25% each)
Exempted Micro Enterprise (EME)	R5 million or less	R1.5 million rand or less	Deemed to be 100% compliant. Automatic Level 4 rating irrespective of race of ownership

10.3.3 In addition to the above, Bidders who wish to enter into a Joint Venture or sub-contract portions of the contract to B-BBEE companies, must state in their bids the percentage of the total contract value that will be allocated to such B-BBEE companies should they be successful in being awarded any business. A rating certificate in respect of such B-BBEE JV-partners and / or sub-contractor/s, as well as a breakdown of the distribution of the aforementioned percentage must also be furnished. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.

10.3.4 Public entities and tertiary institutions must also submit B-BBEE Status Level Verification Certificates together with their bids.

10.3.5 Verification certificates are only valid for one Year from the date of issue. Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims. A B-BBEE certificate will be regarded as valid provided that the closing date of the bid falls within the expiry date of the certificate.

If the RFP specifically requires the bidder to provide a valid B-BBEE certificate, it will be incumbent upon the bidder to do so, failing which the non compliant bidder/s will score zero for B-BBEE. However, if Transnet officials are aware of the fact that Transnet is currently in possession of a valid B-BBEE certificate from the bidder that was obtained for the purpose of establishing the database of possible suppliers for price quotations or that was submitted together with another bid, it is not necessary to obtain a new B-BBEE Status Level Verification Certificate each time a bid is submitted from the specific bidder, provided that the B-BBEE certificate remains valid at the closing date and time of the bid.

10.3.6 In terms of the PPPFA regulations, based on the overall performance of a supplier in terms of its B-BBEE verification, it receives a B-BBEE status and a point out of 10 or 20 is awarded therefor depending on the value of the transaction. This is in accordance with the preference point systems stipulated in the PPPFA regulations. The 80/20 preference point system is applicable to bids up to R1 million in value (all applicable taxes included). The 90/10 preference point system is applicable to bids above R1 million in value (all applicable taxes included). In terms of the PPPFA, the estimated costs and the appropriate preference point system (i.e. 80/20 or 90/10) must be determined upfront prior to advertising a bid and must be stipulated in the invitation to bid. It is important to note that the thresholds for petty cash, the quotation system and open bid process is not affected by the thresholds mentioned above.

10.3.7 Points must be awarded to bidders based on their B-BBEE status as indicated in Figure [14] below:

BEE Status	Qualification	Recognition level	Twenty Preference Points based on scorecard for transactions below R1 million	Ten Preference Points based on scorecard for transactions above R1 million
Level **One** Contributor	≥100 points on the Generic Scorecard	135%	20	10
Level **Two** Contributor	≥85 but <100 points on the Generic Scorecard	125%	18	9
Level **Three** Contributor	≥75 but <85 on the Generic Scorecard	110%	16	8
Level **Four** Contributor	≥65 but <75 on the Generic Scorecard	100%	12	5
Level **Five** Contributor	≥55 but <65 on the Generic Scorecard	80%	8	4
Level **Six** Contributor	≥45 but <55 on the Generic Scorecard	60%	6	3
Level **Seven** Contributor	≥40 but <45 on the Generic Scorecard	50%	4	2
Level **Eight** Contributor	≥30 but <40 on the Generic Scorecard	10%	2	1
Non-Compliant Contributor	<30 on the Generic Scorecard	0%	0	0

Figure [14] – B-BBEE Scorecard

10.3.8 B-BBEE points must be claimed by Bidders utilising the B-BBEE Preference Points Claim Form. This Claim Form must be listed as a returnable document. Please refer to the iSCM Intranet Portal for a copy of the B-BBEE Preference Points Claim Form.

10.3.9 Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for BBBEE but should not be disqualified from the bidding process. They will score zero (0) points out of 10 or 20 for B-BBEE.

10.4 B-BBEE IMPROVEMENT PLAN

10.4.1 Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Transnet may request that prospective bidders submit a B-BBEE Improvement Plan with their bid submission. Bidders will be requested to indicate the extent to which their ownership, management control, employment equity, preferential procurement, skills development and enterprise development will be maintained or improved over the contract period. The B-BBEE Improvement Plan

will not be requested as a mandatory or essential returnable document but as an additional document. The B-BBEE Improvement Plan will not be evaluated and bidders will not be disqualified for failure to submit the Plan.

10.4.2 Should the preferred bidder/s submit a B-BBEE Improvement Plan, the final details of the Improvement Plan will be negotiated at contract negotiation phase. Even if an Improvement Plan is not requested at the bid stage or the preferred bidder does not submit a Plan at bid stage, preferred bidders may be requested to submit a B-BBEE improvement plan at contract negotiation stage, where appropriate. In instances where the Improvement plan has been negotiated and agreed upon, the contract concluded with the successful bidder will incorporate its B-BBEE improvement commitments as a material term of the contract.

10.4.3 In addition, the contract with the Successful Bidder must contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the preference targets in the contract. Please refer to paragraph 22.3.9 regarding penalties.

10.4.4 Furthermore, failure to achieve the Improvement Plan targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract. Milestones in terms of achievement of Improvement Plan targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.

10.4.5 Monitoring and evaluation will be conducted by the SD department as a standard requirement to ensure tracking and successful delivery of the commitments. Refer to the iSCM Intranet portal for the template for a B-BBEE Improvement Plan.

CHAPTER 11 : LOCAL CONTENT

Should construction procurement include a minimum local content threshold, either in terms of the designation of a sector or in non designated sectors, the requirements of this Chapter and any Instruction Notes issued by National Treasury must be adhered to.

11.1 INTRODUCTION

11.1.1 Increased Local Production and Content ("LC") forms an integral component of Transnet's Supply Chain Strategy. This is aligned to Government's vision as articulated in IPAP 2 and the NGP as well as Transnet's Supply Chain Policy. Transnet Entities are therefore required to actively promote local content and production in their bidding processes.

11.2 DESIGNATED SECTORS

11.2.1 The PPPFA Regulations, 2011 which came into effect on 7 December 2011, prescribe how Local Production and Content is to be measured in public sector Bids. In accordance with Regulation 9(1), when issuing bids involving "designated sectors" Transnet must advertise such bids with a specific Bid condition that only locally produced goods, services or works which meet a **stipulated minimum threshold** for Local Production and Content will be considered.

11.2.2 Designated sectors are those sectors which have been designated by the Department of Trade and Industry ("DTI") for Local Production and Content. National Treasury has issued Instruction Notes in terms of how to implement the designation of the sectors for Local Content. The Instruction Notes issued by National Treasury on designated sectors must always be strictly adhered to when tenders related to designated sectors are issued. The following table indicates the designated sectors and minimum threshold for local content as determined by the Department of Trade and Industry and National Treasury:

TABLE 13

Sector	Minimum threshold for local content
Buses (Bus Body)	70% – 80%
Textile, Clothing, Leather and Footwear	100%
Steel Power Pylons & substations	100%
Canned / Processed Vegetables	80%
Furniture Products	
Office Furniture	85%
School Furniture	100%
Base and mattress	90%
Rail Rolling Stock	
Diesel locomotives	55%
Electric locomotives	60%
Electric Multiple Units (EMUs)	65%
Wagons	80%
Set Top Boxes (STB)	30%
Electrical and Telecom Cable Products	90%
Solar Water Heater Components	70%

11.2.3 Further to the overall designations mentioned in the table above, please refer to the Instruction Notes issued by NT as certain sectors have designated sub-sectors/components in addition to the overall thresholds.

11.2.4 Please refer to National Treasury's website for an up-to-date list of designated sectors on: http://www.treasury.gov.za/divisions/sf/sc/PracticeNotes/default.aspx.

11.3 NON DESIGNATED SECTORS

11.3.1 Organs of state are allowed to impose similar conditions for local content when issuing tenders in sectors that have not been designated by DTI, but this must be done in accordance with specific directives issued by National Treasury. National Treasury is still in the process of finalizing such directives. Please note that until such time as the directives are issued, bid documents should not include a minimum threshold for local content in respect of non-designated sectors. Paragraphs 11.3.2 and 11.3.3 will apply once National Treasury issues such directives.

11.3.2 When issuing bids in sectors that have not been specifically designated for Local Production and Content ("non designated sectors"), Transnet will actively promote Local Production and Content where possible. Therefore, before approaching the

market, Transnet Entities are required to conduct proper market analysis to determine on a case by case basis whether opportunities for Local Production and Content exist. Where opportunities do exist, this must be reflected in the procurement strategy. Furthermore, in accordance with Regulation 9(3), the RFP must reflect the minimum threshold for LC that must be met by bidders to qualify for further consideration. Bidders who fail to achieve the set minimum thresholds will be disqualified from the bidding process.

11.3.3 In this regard Transnet must consciously look for ways to incorporate local content in its tenders, where appropriate, particularly where the tender falls within one of the sectors clusters identified in IPAP II. These sector clusters are as follows in terms of the IPAP 2012/2013 – 2014/2015:

a) Cluster 1 Qualitatively New Areas of Focus

- Metal fabrication, capital and transport equipment sectors;
- Oil and gas sectors;
- 'Green' and energy saving industries;
- Agro-processing linked to food pricing and security; and
- Boatbuilding.

b) Cluster 2 Scaled up and Broadened Interventions in Existing IPAP Sectors

- Automotive products and components;
- Plastics, pharmaceuticals and chemicals;
- Biofuels;
- Forestry, paper, pulp and furniture;
- Strengthening of links between cultural industries and tourism; and
- Business processing.

c) Cluster 3 Sectors with Potential for Long Term Advanced Capabilities

- Nuclear;
- Advanced Materials; and
- Aerospace.

11.4 DEFINITION OF LC

11.4.1 Local Content is defined as that portion of the Bid price which is not included in the Imported Content, provided that local manufacture actually does take place. Local Production and Content is therefore determined as a percentage of the Bid price. For example, if the stipulated minimum threshold for Local Production and Content is 60%, this means that 60% of the Bid price must be spent on Local Production and Content (i.e. everything that is not included in Imported Content.) "Imported Content" has a specific meaning in the regulations: It means "*that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry.*"

11.5 EVALUATION OF LC

11.5.1 The calculation of LC can therefore be expressed in the following simple formula:

Bid price-value of Imported Content (cost of components, parts & materials)
= value of Local Production & Content

The value of the Local Content must be reflected as a percentage of the bid price to determine whether it meets the stipulated minimum threshold.

11.5.2 National Treasury requires that the value of Local Production and Content be calculated according to the following formula:

$$LC = \left(1 - \frac{x}{y}\right) \times 100$$

Where

x imported content

y bid price excluding VAT

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank at 12:00p.m on the date, one week (7 calendar days) prior to the closing date of the Bid.

11.6 LC VS SD

It is important to note that LC does not form part of SD evaluation and must be evaluated as the first threshold in the evaluation process. The evaluation of LC must not overlap or be duplicated in the evaluation of "local capability and capacity building" which forms part of the SD evaluation. LC is purely concerned with the percentage of the bid price that will be spent locally. "Local capability and capacity building" on the other hand also takes non monetary measurements into account, such as the number of local suppliers to be utilised, etc.

11.7 NATIONAL TREASURY LC REQUIREMENTS

It is a requirement of National Treasury that the Declaration Certificate for Local Content (SBD 6.2) form part of the RFP, whenever a minimum threshold for LC is required. In such instances, SBD 6.2 must be listed as a compulsory returnable document. Please refer to the iSCM Intranet portal for a full suite of RFX templates to be used for bids involving Local Content and Production including a copy of SBD 6.2.

Note: LC will always be the first threshold – i.e. LC will always be evaluated as a first step, to determine whether bids comply with the minimum stipulated threshold for that particular designated sector or non designated sector where Transnet intends to set a minimum threshold for LC. Bidders that do not meet the set minimum threshold for LC must be rejected at this stage.

CHAPTER 12 : DETERMINING SD APPROACH AND DESIRED SD OUTCOMES

This Chapter is applicable to both general procurement and construction procurement.

SD (including CSDP and/or B-BBEE) should form an integral part of the procurement strategy in every procurement transaction. The nature and extent of the SD opportunities will depend on the nature of the transaction.

Increased Competitiveness, Capability and Capacity (IC^3) matrix:

Transnet's SD approach is to leverage the MDS infrastructure programme to foster economic growth and promote transformation

Figure [15] – SD Approach

The Figure referred to above, categorises SD opportunities based on their value, extent of industrial leverage and strategic importance to Transnet.

12.1 SD CATEGORIES

All transactions involving SD should be evaluated against the IC^3 Supplier Development Matrix. The IC^3 Supplier Development Classification Matrix assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet. Once opportunities are identified it will be possible to identify the tools that should be implemented to maximise the full SD potential from these opportunities.

The categories of SD identified in the Matrix are as follows:

12.1.1 Programmatic

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet's balance sheet. They are identified either in IPAP II or through Transnet as a strategic fleet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructural development and industrialisation are attained through joint support and in some cases public spending.

Investment is focused in plant, technology and skills in both intermediate and advanced capabilities to develop competitive advantage. An example is the Transnet locomotives fleet.

12.1.2 Strategic

Strategic initiatives follow a 3 to 5 Year planning horizon, involving investment in technology and/or skills in intermediate capabilities to achieve local capability and capacity building. This ensures that multinational corporations, original equipment manufacturers (OEMs) and service providers develop a certain percentage of their Goods locally. Strategic initiatives can therefore be used to achieve local capability and capacity building objectives by increasing the competitiveness, capability and efficiency of local suppliers. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require government support to develop local capability.

12.1.3 Focused

Focused initiatives include all medium to high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium term contracts that can be leveraged to encourage supplier and product development. The focus on investment in technology or skills enhances existing local industrial capability and/or the ability to supply strategic Services. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local suppliers. It furthers the objectives of empowerment, transformation, regional development and rural upliftment.

12.1.4 Small Enterprise Development

Small Enterprise Development transactions are typically of low value and have no industrial leverage as it is characterised by low complexity Goods and high competition. These initiatives concentrate on increasing the capability of small local suppliers and are targeted toward previously disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of financial and non-financial Services that help entrepreneurs to start new businesses and to grow existing ones.

12.2 CATEGORISATION OF TRANSACTIONS INTO THE RIGHT SD QUANDRANT

Transnet has designed a focused four-step process for identifying high value generating SD opportunities (see *Figure [16]* below). The process takes Transnet's CAPEX and OPEX spend and then filters specific commodities by value to identify significant spend items. Significant spend items are likely to have the most leverage for SD opportunities. The industrial leverage analysis provides a view on the risk and the complexity of the commodity to understand the risk to the supplier and to Transnet. The process needs to be conducted in its entirety in order to determine the true nature of the opportunity as there are various elements which impact on the categorisation of opportunities. Each transaction must be analysed on a "case

by case" basis, taking cognisance of the nature and complexity that is involved in that particular SD activity.

Figure [16] – 4 Step Process

This process is briefly described above, but a detailed description can be obtained in the Transnet Supplier Development Plan.

12.3 SUPPLIER DEVELOPMENT (SD) MECHANISMS

If a specific commodity has been earmarked as a SD commodity, SD should be included either as a threshold or prequalification criteria or both if it is justified that further value will be extracted using a combination of these two mechanisms. A rigid "one size fits all" approach cannot be implemented as each procurement transaction will need to be evaluated on its own merits based on the nature of the transaction with specific focus areas. The assistance and guidance of the SD COE must always be sought when developing SD criteria.

Depending on the supplier market and what is feasible and achievable on a specific bid, SD criteria will differ on a case by case basis. For example, in one case local manufacture, local assembly, industrialisation may be feasible, whilst in another the focus may fall on skills transfer, job creation/preservation and skills development (*Figure [17]* below).

The IC³ framework developed by the DPE was adopted to assist in the prioritisation of SD opportunities and includes transformation

Figure [17] – SD Criteria

The table below serves as a guideline to determine the opportunities for SD and transformation based on the value of a particular transaction and the duration of the contract:

TABLE 14

Transaction value and contract duration	SD	B-BBEE Improvement Plan	BBBEE certificate
▪ **R0 – R1 million** ▪ Contract **duration more than** one (1) year	**Applicable through the B-BBEE scorecard**	**Applicable**	**Applicable**

▪ Greater than R1million – but less than R2million ▪ Contract **duration (Once-off and less than one year)**	**Applicable through the B-BBEE scorecard**	**Not Applicable**	**Applicable**
▪ Greater than R2 million ▪ Contract **duration more than** one (1) year	**Applicable as per paragraphs 12.3.1, 12.3.2 and 12.3.3 below**	**Applicable**	**Applicable**

The SD criteria that were developed during the planning phase, should be broken down into specific measurable components and incorporated in the bid documents. This is shown in the table below:

TABLE 15

SD criteria	Measurable areas	Further explanation
Industrialisation	• Value of investment in plant • Reduction in import leakage • Potential increase in export content	• Quantification of the monetary value invested in machinery, equipment, buildings • A percentage indication of the increase in locally supplied Goods and therefore the resultant decrease in imports as a result of the contract • The % increase in exports that will result from increased industrial capability developed in relation to the award of the contract
Capability & capacity building	• % Local parts • Value of local parts in relation to the bill of materials • Value spent on local suppliers • Number of local suppliers in the supply chain of the Bidder	• Planned use of local parts as a percentage of the total contracted items • Planned monetary value of the parts utilised in the bill of materials (as a percentage of the total spend) • Planned percentage monetary value spend on procurement of Goods and Services procured from SA suppliers • Number of South African suppliers that are to be utilised in the fulfilment of the contract
Technology transfer and sustainability	• Technology transfer including: ○ Methods of manufacturing ○ Introduction of new technologies ○ IP transfer (no.	• Introduction of a new/improved method of manufacturing ○ Provision of new technologies ○ For processes ○ ICT ○ The transfer of patents, trademarks and

SD criteria	Measurable areas	Further explanation
	and value)	copyrights
Skills development	• Number company employees to be trained including: ○ Number of artisans ○ Number of technicians ○ Number of Black People ○ Total number of people • Number of downstream individuals to be trained, including ○ Number of artisans ○ Number of technicians ○ Number of Black People ○ Total number of people • Certified training • Rand value on training to be spent in the industry • Number of bursaries / scholarships (specify field of study) • Number of apprentices (specify industry) • Investment in schools in specific sectors (e.g. engineering)	• No. of individuals within the company (in South Africa) that the supplier plans to train over the contract period; training undertaken in the previous Year will not be taken into account as past employee training appears in the skills development pillar of the BBBEE scorecard; criteria broken down as for industry training above • No. of individuals that the supplier plans to train in the industry over the contract period; training undertaken in the previous Year will be taken into account to make allowance for suppliers who have just completed a training drive within the industry • What percentage of training for 1 and 2 above complies with local and/or international skills accreditation • Total planned monetary value spend (as a % of contract value) on skills development/training for the contract period within the industry; money spent in the previous Year will be included in Year 1 to make allowance for suppliers who have just completed a training drive within the industry • The number of higher education bursaries/scholarships provided in the previous Year and planned for the duration of the contract • The number of apprentices that the company plans to enlist during the course of the contract • The monetary value that the supplier is prepared to invest in the development and running of schools to increase technical skills development
Small business promotion	• % of planned procurement from QSEs • % of planned procurement from EMEs • % of planned procurement from start-ups • Non-financial support provided to small business • Joint ED initiatives with Transnet	• Refers to the planned procurement from small business as a % of the total planned procurement spend • Suppliers will be given a point for each non-financial ED support that they are planning to give to small business e.g. Professional support; employee time allocated to assisting small business • Suppliers will be given a point for each financial ED support initiative that they are planning to undertake during the contract period e.g. Shorter payment terms; interest free loans • The number of ED initiatives that the supplier

SD criteria	Measurable areas	Further explanation
		will jointly run with Transnet: • That are aligned to Transnet's objectives • That are financial or non-financial in nature
Local Economic Development (Rural/Regional Development)	• Number of local employees • Value spent on local business • Proximity of business to operations • Number of rural businesses to be developed • CSI spend	• Number of people to be employed from within the town / city of operation • Monetary value to be spent on business within the town / city of operation • The locality of the bidder's business in relation to operations. Preference is given to regional (provincial) locality • The monetary value of CSI to be spent on rural community development projects

12.3.1 SD as a threshold

The use of SD as a threshold involves scoring bidders against pre-determined criteria (e.g. job creation, job preservation, skills transfer, small business promotion, rural development and localisation) stipulated in the RFX. The threshold which bidders are required to meet must also be clearly communicated in the RFX document e.g. an overall SD score of 60%. SD will be utilised as a threshold only where market analysis on SD opportunities justifies it. Bidders failing to achieve the set threshold will be excluded from the bid process, whilst bidders who meet this requirement will be evaluated in terms of the PPPFA methodology. It is important to note that different SD thresholds may be set for Large Enterprises on the one hand and QSEs / EMEs on the other provided that there is an underlying justification for the differentiation. For example Large Enterprises may be required to meet a 60% threshold for SD while EMEs and QSEs may only be expected to meet a 40% threshold. It is reasonable to expect Large Enterprises to do more to promote SD as opposed to QSEs and EMEs, many of whom are themselves in need of development and upliftment.

12.3.2 SD as a prequalification criterion

SD will be incorporated as a prequalification criterion when the market analysis indicates that it is not viable to include SD as a threshold. Where SD is used as a prequalification criterion, bidders will not be scored for SD but will instead be requested to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than a certain stipulated percentage of the contract value e.g. bidders may be asked to provide an undertaking that no less than 20% of contract value will be spent on SD initiatives. The percentage stipulated must be informed by market analysis in order to ensure that it is not set at an unreasonably low or high level. Bidders failing to provide this undertaking will be excluded from the bid process, whilst bidders who meet this requirement will be evaluated in terms of the PPPFA methodology. In addition, Bidders may be required to provide a minimum commitment in relation to specific SD criteria e.g. job creation or skills development. It is important to note that different pre-qualification criteria may be set for Large Enterprises (LEs), QSEs and EMEs provided that there is an underlying justification for the differentiation.

12.3.3 Threshold versus prequalification criterion

It is advisable that where possible, SD be incorporated as a threshold rather than a pre-qualification criterion. This is because the setting of a threshold will involve a detailed assessment of the bidders' SD commitments whereas a set prequalification criterion will be assessed simply based on whether the bidders agree to the stipulated percentage SD

commitment required. It is therefore critical that the SD department be involved at the pre-procurement / demand stage so that a proper market analysis can be conducted and maximum SD value derived from a particular procurement process. As indicated in paragraph 12.3 above, it is also possible to utilise a combination of a threshold as well as prequalification criteria if it is justified that further value will be extracted as a result thereof.

Irrespective of whether SD is to be included in a bid as a threshold or a prequalification criterion, bidders must be requested to complete an SD plan and value summary as part of their bid submission. The SD Plan represents additional detail in relation to the SD Plan providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to deliver during the term of the contract.

SD must not be incorporated as part of weighted evaluation criteria. In terms of the PPPFA, bids must be evaluated on the basis of Price and Preference only. SD must only be used as a prequalification criterion, a threshold or both.

12.4 INCORPORATING SD AS A MATERIAL TERM OF THE CONTRACT

During contract negotiations, SD may be further negotiated with the preferred bidder/s. Specific milestones, timelines and targets will be recorded to ensure that the SD Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.

The contract concluded with the successful bidder will incorporate the final SD plan as a material term of the contract. The contract must also contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the SD targets in the contract. It is important to note that such penalties must be reasonable and not out of proportion to the prejudice suffered. In terms of the Conventional Penalties Act 15 of 1962, a court may reduce a penalty if it is unreasonable, disproportionate and inequitable. Different penalties may be imposed on LEs as opposed to QSEs and EMEs for failure to achieve SD initiatives. For example, a penalty of 10% of undelivered SD value be imposed on LEs, 5% on QSEs and 2.5% on EMEs. Please refer to paragraph 22.3.9 for more information on when penalties may be imposed.

Furthermore, failure to achieve SD targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract with the successful bidder or implement other remedial measures. Milestones in terms of achievement of SD targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.

Monitoring and evaluation will be conducted by the SD department as a standard requirement to ensure tracking and successful delivery of the commitments.

CHAPTER 13 : DETERMINING BID EVALUATION CRITERIA

The CIDB prescribes 4 standard evaluation methods for construction procurement. In the Transnet context, historically Method 2 and 4 were utilised. However, Method 4 is not aligned to the requirements of the PPPFA. As a result, only Method 2 of the CIDB methods is to be utilised until further notice. CIDB Method 2 is dealt with in detail in paragraph 13.6 below.

13.1 TRANSNET'S EVALUATION METHODOLOGY

Transnet's evaluation methodology is aligned to the prescripts of the Preferential Procurement Regulations, 2011. It is also designed to achieve Transnet's SD objectives. The methodology follows a two-stage evauation process where minimum thresholds are set for Local Content (where applicable – designated sectors), SD and Quality/Functionality. Only those bidders that meet (or exceed) the relevant minimum thresholds, advance to the next evaluation phase (step 6 in diagram below, where Price/TCO, and B-BBEE scorecard are scored using either the 80/20 or 90/10 preference point system depending on the value of the transaction. Figure 18 below depicts the evaluation methodology:

* Indicative stipulated minimum threshold as prescribed by National Treasury (if applicable). If the sector is not designated localisation must be incorporated into SD

** Indicative threshold , not prescribed (if applicable)

*** Point system dependent on value of transaction

Figure [18]: Transnet's evaluation methodology

13.2 STAGES OF THE EVALUATION METHODOLOGY

13.2.1 Prequalification

Bidders are required to meet the requirements of the administrative responsiveness and substantive responsiveness tests in order to be considered further. Administrative responsiveness will be tested based on returnable documents submitted and signatures on the Bid documents. Substantive responsiveness will be tested against whether a Bid conforms to all the terms, conditions, scope and/or specifications of the bid documents without material deviation or qualification. This will include an assessment of whether all pre-qualification eligibility criteria set, either Functionality or SD related, have been met.

13.2.2 Stage 1

A minimum threshold must be set for Local content, SD and Quality/Functionality (where applicable). These are separate thresholds, and the Bidder must meet the minimum criteria for all of these in order to proceed to stage two.

13.2.3 Stage 2

The bidders who meet the minimum threshold for Local content, SD and/or Quality (Stage 1) will then be evaluated against each other using only price and B-BBEE scorecard based on the applicable preference point system. In terms of the preference point system, proposals will be evaluated on price which will be allocated 80 or 90 points and preference which will be allocated 20 or 10 points, dependent on the value of the Goods. The 80/20 preference point system applies where the acquisition of the Goods, Services or Works will be less than R1 000 000.00. The 90/10 preference point system applies where the acquisition of the Goods will exceed R1 000 000.00.

13.3 CHOOSING APPROPRIATE EVALUATION CRITERIA

13.3.1 General principles

Evaluation criteria must be:

- **Unambiguous.** The bid documents must provide a complete explanation of the scope of work as well as the criteria and sub-criteria that will be used in the evaluation of bids. Care should be taken to ensure that the RFP does not contain any contradictory clauses. Where drawings are included as part of the RFP, such drawings must be completely aligned to the written description of the Goods or Services required.
- **Rational and justifiable.** Evaluation criteria must be rationally linked to the projected procurement outcomes.
- **Quantifiable.** If a criterion cannot be measured, it should not be included as an evaluation criterion.
- **Predetermined.** Evaluation criteria must be stated upfront in the RFP document. No evaluation criteria should be used in the evaluation process that were not stipulated in the RFP document.
- **Objective.** Evaluation criteria should not be written with a specific product in mind, but should rather describe functional (as opposed to product specific) characteristics.

13.3.2 Functional criteria

Should functionality be included in a bid as a threshold, the bid documents must clearly state the minimum score to be achieved if bidders are to be further evaluated on price and preference. Only those bidders who achieve the minimum threshold for functionality must be further evaluated for price and preference. Functionality may only be included as a threshold but not as an evaluation criterion.

Please note that not all bids have to include functionality as a threshold. Bids involving low value and low technical requirements (e.g. bottled water) do not have to include functionality and should be decided on the basis of price and preference only.

Functional/Quality criteria must be determined taking into account the needs and expectations of the end user with regard to functional outcomes of Goods or Service, i.e. conformance to stated requirements. It is important to note that only necessary quality/technical criteria must be included as evaluation criteria. Quality evaluation criteria must not be drafted in an exclusionary manner e.g. requesting 10 years experience in an industry when actually 5 years experience would suffice. In developing Quality criteria, it is necessary to consider how these items are to be measured, verified and evaluated in Bid submissions.

a) Quality criteria may include criteria such as[2]:-

(i) technical merit;
(ii) aesthetic and functional characteristics;
(iii) safety characteristics;
(iv) environmental characteristics (including green economy, energy conservation and climate control);
(v) quality control practices;
(vi) reliability;
(vii) durability;
(viii) method statement (including organization, logistics and support resources) relevant to the scope of work;
(ix) qualifications and demonstrated experience of key staff in relation to the scope of work;
(x) demonstrated experience of the Bidder with regard to specific aspects of the project/comparable projects;
(xi) running costs;
(xii) after sales Service and technical assistance;
(xiii) delivery date;
(xiv) delivery period or period of completion;
(xv) inspection or testing requirements;
(xvi) integration with other Goods / Services; and
(xvii) training requirements.

b) Additional Quality considerations in construction procurement is as follows:

[2] *This section on quality is largely based on clause 4.3 of the CIDB Standard For Uniformity in Construction Procurement*

cidb

Quality criteria shall not include:

(i) social considerations, such as the composition of workforces in terms of race, gender;
(ii) or disability; or
(iii) matters relating to the basic capability or capacity of the tendering entity to execute the contract.

c) Where Functionality/Quality is of critical importance, at least 2 persons of the CFST who are conversant with the technical aspects of the bid shall set the evaluation criteria and weightings. These persons shall also determine the prompts or qualitative indicators for judgment, with fixed scores assigned to each prompt. Quality must be scored in terms of such prompts for judgment, individually and then averaged, subject to moderation.

d) It should also be determined whether a due diligence exercise, interviews, site visits and presentations should form part of the scoring, and if so, the relative weights assigned to each of these must be determined. These aspects must be clearly dealt with in the RFP. It is important to note that due diligence, interviews, site visits and presentations should only form part of the scoring if there are aspects of the bid that cannot be evaluated based on the responses to the RFP document or if the due diligence, interviews, site visits and/or presentations are required to validate the responses to the RFP document. If interviews, presentations or site visits are required in order to assess Quality, this should be stated in the RFP. The specific purpose and outcomes of the interviews, presentations or site visits and the associated scoring should also be included. It is permissible to set two separate thresholds for functionality in this regard i.e. one threshold for the desktop assessment and another for the interview, site visit or presentation.

e) The evaluation of bids shall be based only on the information contained in Bid submissions, and where relevant from a due diligence exercise, interviews, presentations and site visits.

13.3.3 Price criteria

a) Price will be evaluated strictly in terms of the prescripts of the PPPFA. When dealing with more complex bids, the evaluation of price must involve an evaluation of the Total Cost of Ownership (TCO). In such cases, Bidders must be requested to provide all information relevant to the evaluation of TCO. It is recommended that Bidders be provided with a comprehensive pricing schedule to ensure that they all follow a standardised approach with pricing. This will facilitate uniformity in the evaluation of price. The evaluation of TCO includes, but is not limited to, factors such as:

- Installation costs;
- Warranties;
- Service and maintenance costs;
- Operating supplies;
- Storage costs;
- Commercial discounts;
- Incoterms;
- Price adjustment conditions; and

- Exchange rate fluctuations.

b) When calculating prices, only discounts which have been made unconditionally must be taken into account during evaluation. However, where a discount is made conditionally, such discount must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

13.3.4 Preference criteria

All Bids should be evaluated against the applicable preference point system as prescribed in the Preferential Procurement Regulations, 2011. The preference criteria, as set out in Chapter 10, should be included in the bid document.

13.3.5 Supplier development (SD) criteria

If a specific commodity has been earmarked as a SD commodity, then SD should be included in the bid either as a threshold or prequalification criteria or a combination of these 2 mechanisms. The SD criteria, as developed in Chapter 12, should be included in the bid document.

13.3.6 Evaluation of counter party risk

Depending on the type of Goods/Services being procured, it may be important that the counter party risk of Bidders be assessed based on one or all of the following:

- their audited financial statements;
- key financial ratios. For example: Current Ratio, Turnover/Contract Value, Interest cover, Gearing and financial performance of bidder relative to peers;
- perform media searches of bidders to identify any key risks that have not been disclosed in bid submissions. For example: Poor financial results which impacts the going concern of the customer / supplier;
- review analyst reports and gauge overall market sentiment of bidders;
- review geographical, political and economic risks based on the location of the bidder;
- review the bidders business continuity plans; and or
- Perform a review of the security / collateral by reviewing parent company guarantees and/or performance bonds (if applicable).

Depending on the importance of the financial stability of the successful Bidder/s, financial stability may either be included as a pre-qualification criterion or a due diligence exercise may be performed on the preferred bidders at the end of the evaluation process prior to recommendation. It is important to note that the evaluation of financial stability will not feature in every bid, particularly those which seek to advance Start-up and emerging enterprises. Financial stability may also be evaluated at the discretion of the AC in terms of paragraph 20.3.

13.4 DETERMINING THE PREQUALIFICATION CRITERIA & THRESHOLDS

13.4.1 Prequalification criteria

Prequalification criteria may be set in respect of Functionality, SD and financial stability. Such criteria must be determined with circumspection as bidders may not be considered further should they fail to meet any of the set prequalification criteria. Furthermore, prequalification criteria must not be set in an exclusionary manner and must prescribe the

minimum requirements that Transnet requires particularly with regard to Functionality and financial stability.

13.4.2 Thresholds

While the Local Content threshold in designated sectors is prescribed, the determination of thresholds for Functionality and SD must be considered on a case by case basis as each procurement event will differ. It is important that these thresholds be determined upfront and included in the RFX document. Once included in the RFX document one cannot deviate from that and the evaluation has to be done strictly in accordance with what was stated in the RFX document.

Ideally, the thresholds set must be based on Transnet's minimum requirements i.e. the minimum Transnet requires in order to satisfy its needs/objectives. It, however, sometimes transpires that despite this exercise, all the responses received do not meet the set threshold/s. Transnet may decide that if no Bidders pass the SD and/or Functionality threshold, it will reserve the right to lower the threshold by a certain pre-determined percentage. The decision to utilise such a disclaimer must be carefully considered. The disclaimer must be clearly specified in the RFP, provided it is in Transnet's best interests to do so and there is concurrence between the end user and Procurement. In addition, with regard to the SD threshold, concurrence is also required from the SD Department. The use of this disclaimer is designed to mitigate the risk of a bid requiring cancellation even though there was an adequate response from the market.

The weighting of the Functionality/Quality threshold as a whole, as well as the sub-requirements within this threshold, need to be carefully determined to ensure that the end product/service is optimal and fit for purpose.

Similarly, as indicated in Chapter 12, the setting of the SD threshold must be based on market analysis of the SD opportunities in a particular sector.

13.5 WHEN TO DETERMINE THE EVALUATION METHODOLOGY

All of the above should be carefully considered by the CFST and included in the sourcing strategy, the RFX and RFX sign-off template prior to issuing the RFX to the market, as neither the evaluation criteria, nor the weightings may be changed during the evaluation phase.

13.6 CIDB EVALUATION METHODOLOGY

cidb

13.6.1 The CIDB register of contractors shall be applied in all construction works contracts. The manner in which the CIDB register of contractors is to be applied is established in the CIDB Regulations which are issued in terms of the CIDB Act and the CIDB Standard for Uniformity in Construction Procurement.

Determining the correct CIDB grading:

- Step 1: Identify preferably one, but not more than two class(es) of construction works that best describes the works to be performed.
- Step 2: Estimate the tender value including value added tax and identify the tender value range designation within which this value falls. Where the estimated value is not more than 20 percent above the lower limit of a tender value range, base the contractor grading designation on the tender value range immediately below the tender value range within which the estimate falls.

- NOTE: Invitations to tenderers should indicate as accurately as possible the registration requirements and not be misleading; hence the requirement in the regulations to base the estimate on the lower designation in borderline circumstances.
- In certain cases, where the contract for construction works takes place over several years (term contract), the contractor grading designation may be based on the annual estimated value of the contract.
- Step 3: Determine the approximate contractor grading designation and, where applicable, the alternative designation, based on the class(es) of construction works selected in Step 1 and the tender value range identified in Step 2. Where the employer has a targeted development programme in place that provides the necessary support to enable the contractor to successfully execute the contract, contractors who are registered as potentially emerging contractors in one designation lower than required, may also be permitted to submit tender offers.
- Step 4: State the requirements for contractor grading designation in the Tender Data in the form of eligibility criteria in using the wording prescribed in the Standard for Uniformity in Construction Procurement.

13.6.2 Pre-qualification criteria may be used as eligibility criterion in the bid. The framing of quality criteria as eligibility criteria is a simple, yet effective, means of ensuring that only those bidders who are likely to deliver the required quality submit bids and compete for the award of a contract.

Example 1: An engineering and construction works contract may contain the following eligibility criteria:

Where the works required involves the removal and disposal of asbestos cement sheeting, the eligibility criteria should state that the contractor must be a Registered Asbestos Contractor with the Department of Labour.

Example 2: A professional service contract may contain the following eligibility criteria:

The eligibility criteria for bidders are that they complete the Competent Persons Declaration and have in their full time employ a person satisfying the relevant requirements for a competent person for the required service.

13.6.3 As indicated above, only CIDB Method 2 is to be utilised within Transnet until further notice. Method 2 is explained in more detail below:

CIDB Method 2: Financial offer and preferences

Firstly, Quality/Technical is to be evaluated as a prequalification criterion.

a) Reduce each responsive tender offer to a comparative offer. A comparative offer is defined under F.1.3.3 of the CIDB Standard Conditions of Tender as contained in Annex F of the Standard for Uniformity in Construction Procurement.

b) Score bid evaluation points for financial offer.

c) Confirm that tenderers are eligible for the preferences claimed and if so, score bid evaluation points for preferencing

d) Calculate total bid evaluation points.

e) Rank bid offers from the highest number of bid evaluation points to the lowest.

f) Recommend bidder with the highest number of bid evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

CHAPTER 14 : MAIN PROCUREMENT MECHANISMS

This Chapter applies to both general and construction procurement. Additional CIDB procurement mechanisms are detailed in paragraph 14.8 below.

14.1 FACTORS TO CONSIDER WHEN SELECTING THE APPROPRIATE PROCUREMENT MECHANISM

Sourcing/procurement strategies are closely linked to the strategic importance and value of the Goods/Services. The first step is to classify Goods/Services on a risk/value matrix. In order to determine the importance of Goods/Services to Transnet as well as the appropriate procurement mechanism to be used, the commodity should be plotted on the four quadrant matrix below:

Figure [19] – Risk / Value Matrix

The following guidelines will assist in determining the correct procurement mechanism to use depending on where in the matrix particular the Goods/Services are placed:

TABLE 16

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
Routine/ Tactical Transactional	• Low risk; low spend • Non-critical items • Many suppliers in the market • Objective is to minimise spending significant time and effort on obtaining these Goods / Services through 'as	• Open Bid • Quotation system (only when non repetitive and under R2 million)	• "As and when" contract for short and medium term • Transversal contract

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
	and when' contracts		
Leverage	• Low risk; high spend • Non-critical items • Many suppliers in the market • Objective is to leverage economies of scale	• Open Bid	• Transversal contract • "As and when" contract for short and medium term
Bottleneck/ Development	• High risk; low spend • Limited suppliers • These are items that Transnet must have but which are difficult to obtain • Critical items • Includes specialised equipment, instrumentation or software from proprietary suppliers • Objective is to secure supply	• Two stage bidding system • Approved list • Confinement • Framework Agreement	• "As and when" contract for medium term • Fixed quantity
Strategic	• High risk; high spend • These are items that are critical to Transnet's business	• Open Bid • Two stage bidding system • Approved list • Confinement • Framework Agreement	• Medium to long term contract • Transversal contract

Depending on the circumstances of each requirement for the procurement of Goods or Services, any one of the following main procurement mechanisms or procurement paths may be utilised:

* Known market - suppliers are listed on the vendor database
** Limited market - only a restricted number of suppliers exist eg. Original Equipment Manufacturers, limited suppliers or a sole supplier
*** Competitive market - many suppliers exist in the market
**** Unknown market - there is no clear specification of requirements and/or the availability of the goods/services is unknown

Figure [20] – Procurement Mechanisms

14.2 PROHIBITED PRACTICES

14.2.1 As a general rule, the quotation / bidding system must not be used merely to obtain market related prices for budget or benchmarking purposes.

14.2.2 In cases where it is absolutely necessary to obtain test bids for budget purposes only, the request to the market must clearly and unambiguously state that the request for a quote is for budget purposes only and that no business will be awarded against this invitation. Care should, however, be exercised that such budget pricing exercise is not abused merely to give certain contenders advance notification of a new project in the pipeline. It would be advisable to rather obtain test quotes from more than one, or even better, all the known suppliers so as not to run the risk of being perceived to have given only one contender advance notification.

14.2.3 When the full scope of work is known at a point in time, requirements may not be deliberately split into parts or items of lesser value in order to keep the transaction value within a particular Delegation of Authority level or to keep it below the threshold of an AC or a person with higher Delegation of Authority. This is considered to be Parcelling and will be regarded in a serious light as it amounts to non compliance with procurement procedures.

14.2.4 Specifications should be functional and fit for purpose, rather than brand- or product-specific. Specifications must not include any exclusionary terms. Compiling a specification around one supplier's product is unfair and not allowed. Where it is necessary to specify a particular brand or product, the RFX document must request the particular brand/product "or similar".

14.3 THE QUOTATION SYSTEM - REQUEST FOR QUOTATION ("RFQ") / CIDB QUOTATION PROCEDURE

- Only used for transactions below R2 million in value
- The Goods or Services must be required on a non-repetitive basis
- The market should be known
- A minimum of three quotes must be obtained, where possible

14.3.1 Definition

The quotation system is a procurement system used for transactions below R2 million that are required on a non-repetitive basis.

14.3.2 When to use the quotation system

b) The quotation system is intended for non-frequent purchases of fairly low value. It should not be used on a continual / repetitive basis for the same commodity i.e. instances where the same commodity is purchased (sometimes even from the same supplier), but on different purchase orders/requisitions. This will be regarded as Parcelling.

c) The quotation system is best suited in the following circumstances where:

(i) transactions are valued at less than R2 million;

(ii) the purchase is not required on a repetitive basis. Where the same purchase is regularly made, consider a fixed term as-and-when-required contract. If market prices of the commodity are volatile and it is impossible to obtain firm prices for a specific period (even with price review mechanisms included), consider a short term as-and-when-required contract. Such a contract may be concluded following either an open tender process or a quotation process;

(iii) the value of the transaction would make it impossible, impractical or economically unviable to call for Open Bids; or

(iv) there are opportunities to develop suppliers in order to achieve transformational objectives. This mechanism is considered to be the best avenue to facilitate entry to the market for emerging small B-BBEE companies.

14.3.3 Advantages and disadvantages of the quotation system

Advantages	Disadvantages
Quick turn-around times in the case of non-repetitive purchases	• This procurement mechanism is not the most cost-effective as the benefit of volume discount is lost • Turnaround time is longer when using the quotation system as opposed to an 'as and when' contract, in the case of repetitive purchases • Risk of limiting competition to only certain service providers

14.3.4 The authority to obtain quotes

CEOs may at their own discretion decide to allocate different levels of authority to different Managers in terms of their Delegation of Authority. The CEO [and ultimately the Chief Procurement Officer (**"CPO"**)] will delegate specific powers to specific Managers in the procurement function to invite quotations up to a certain value and secondly for the award of the business resulting from the quotation system.

Furthermore, the CEO of a Division may at his/her own discretion and within the Transnet DoA framework, introduce OD specific control mechanisms for these "low" value transactions (e.g. Petty Cash policies, etc).

Depending on the value of transactions falling within the quotation system, appropriate control measures must be implemented from low value quotes to high value quotes:

TABLE 17

Transaction value	Mechanism for obtaining quote	No. of quotes
Less than R5 000.00	Fax/email quotes	1
R5 000.00 – R50 000.00	Fax/email quotes	2
Greater than R50 000.00 – R250 000.00	Fax/email quotes	3
Greater than R250 000.00 – R1000 000.00	Short form RFQ request (receipt of bids at the tender box)	3 or more
Greater than R1000 000.00 – R2 000 000.00	Formal RFQ process (receipt of bids at the tender box)	3 or more

14.3.5 Number of quotes to be requested

a) As a general rule, a minimum of three quotations should be requested. However, a buyer may request more than three quotes if necessary.

b) Where it is impossible to request three quotes e.g. patented articles, OEM spares etc., one or two quotes will suffice. However, a submission must be prepared with the reasons for not being able to request at least three quotations. This must be approved by the CPO or his/her delegate, depending on the value of the transaction and the delegated authority of the procurement

official. Since OEM spares and components will in all probability be required on a regular basis, consideration should be given to either the framing of an Approved List, or the conclusion of an "As-and-when required" term contract.

c) It is important to note that once a request for quotations has been made to prospective Bidders, a buyer cannot subsequently request further quotes if only some Bidders approached have responded to the request by the closing date. This rule applies even where a Bidder has responded to the RFQ with a "no quote".

14.3.6 Transnet Vendor Portal

a) An automated Transnet wide Vendor Portal (TVP) has been created for all potential suppliers wishing to do business with Transnet to register and update their company profiles. The web address is https://vendorportal.transnet.net.

b) Potential suppliers should provide full details of the Goods/Services on offer, their tax clearance certificate, their BBBEE level, including % Black ownership and area of operation. Suppliers will be classified accordingly on the TVP.

c) Buyers who wish to obtain quotations must proceed to search the TVP and/or the OD's own vendor database for potential Bidders.

d) The TVP should ultimately have the functionality to invite quotes from potential suppliers on a rotational system to ensure an equitable spread of opportunities among all potential suppliers.

14.3.7 Process

a) As indicated above, the buyer will request quotes from at least 3 or more potential Bidders on the TVP where possible.

b) For relatively low value, simple Goods/Services, the RFQ should ideally be open for 3 to 4 Working Days in order to afford Bidders a reasonable opportunity to respond. For higher value, more complex Goods/Services, the RFQ should be open for a minimum of seven Working Days.

c) The bids must be received in a controlled environment, e.g. a dedicated email address, dedicated fax number or a tender box.

d) As a general rule, quotations are to be evaluated on the basis of price and B-BBEE. Where there are opportunities to include SD either as a threshold or prequalification criterion or a combination of both, SD should also be included in the bid. In the event that technical evaluation is also necessary, the technical evaluation criteria must be pre-determined and included in the RFQ document. The highest scoring Bidder is to be selected as the Successful Bidder unless there is objective criteria justify the award to another bidder.

e) In instances where quotes are invited from potential new bidders, the prices quoted should, where possible, be benchmarked against previous prices paid, to ensure that Transnet obtains optimal value for money, whilst achieving its social obligation.

f) As indicated in paragraph 14.3.6 (d) above, quotations should be invited from potential bidders on the TVP on a rotational basis so as to ensure an equitable spread of opportunity among all potential suppliers.

g) Please refer to paragraph 17.2.1 (d) regarding matters that were anticipated to fall below the AC's threshold but when quotes are received they are over R2 million in value. Furthermore, please refer to paragraph 22.5.7 (a) regarding contract amendments in this regard.

Figure [21] – Quotation Process

14.4 THE OPEN BID PROCESS (RFP)/CIDB OPEN PROCEDURE

- Generally used for transactions greater than R2 million in value
- There must be a competitive market and a clear detailed specification available to which many prospective Bidders are able to respond
- Bids may be advertised in local, national and / or international media as well as the Transnet website depending on the market
- Note that for construction procurement, the advertisement must, in addition be placed on the CIDB web site using the CIDB's i-Tender@cidb service at least 10 working days before the closing date for tenders and at least 5 working days before any compulsory site meeting.

14.4.1 Definition

The Open Bid Process (RFP) is a competitive process where the general public is approached with an invitation to bid that is published in the media. All interested parties are granted an equal opportunity to bid for Transnet's business. Once the bid has closed, the winning Bid is selected by means of a transparent evaluation, recommendation and adjudication process.

14.4.2 When to use the open bid process

The Open Bid system is the procurement/disposal mechanism best suited to the following circumstances:

a) the monetary value of the purchases is in excess of R2 million;

b) even if the bid value is less than R2 million, an Open Bid should be issued if the market is not known or the Goods or Services are required on a repetitive basis;

c) the market is competitive (i.e. many potential suppliers are able to provide the required Goods/Services);

d) there are clear and unambiguous specifications to ensure that all potential suppliers bid for the same product;

e) there is enough time available;

f) the value of the transaction must warrant the cost, time and effort taken to use an Open Bid process; and

g) in cases where Transnet's needs / specifications etc. are still too vague to issue a formal bid, the two-stage Bid system (RFI) should be followed.

14.4.3 Advantages and disadvantages of the open bid process

Advantages	Disadvantages
The Open Bid system is regarded as the procurement mechanism which best ensures open and fair competition.	The Open Bid process is time consuming. In order to ensure that Goods / Services are delivered to the business when they are needed, the need for the Goods / Services needs to be anticipated well in advance. Requires significant resources (cost, time, etc.)

14.4.4 Process

a) Before any bid document may be issued to the market, the person with the necessary delegated authority must provide written authority to approach the market. This must include approval of the evaluation methodology, evaluation criteria and the availability of funds. The evaluation team is also to be decided on at this point.

b) The bid document should be compiled according to the guidelines set out in Chapter 16 *(Bid Preparation)*.

c) Bids may be advertised in local, national and / or international media as well as the Transnet internet website depending on the market and value of the bid. Note that for construction procurement, the advertisement must, in addition be placed on the CIDB web site using the CIDB's i-Tender@cidb service at least 10 working days before the closing date for tenders and at least 5 working days before any compulsory site meeting.

d) Bids should be kept open for a reasonable period. Refer to paragraph 16.3 for more detail.

e) Bids are to be finalised as soon as possible after the closing date of the bid.

See process below to be followed in the case of an Open Bid process

Figure [22] – Open Bid Process

14.5 APPROVED LIST PURCHASES

14.5.1 Definition

An approved list is essentially a "standing authority to confine" and may be framed and utilised either where:

- Goods or Services are required according to unique specifications, on a continual ("as and when required") basis and from a limited number of suppliers; or
- In a competitive market there is a need to prequalify suppliers, as well as to limit the need to continuously evaluate large numbers of bids.

14.5.2 General principles

a) In order to qualify for inclusion on any approved list a supplier must be able to supply Goods or Services of the quantity and quality required. Furthermore, if so required, the supplier must have submitted samples or delivered Goods which have satisfactorily passed Transnet's quality tests.

b) Approved supplier status cannot be acquired merely by being on a Division's Vendor Master or on a B-BBEE Manager's List of EMEs or QSEs for specific Goods or Services. Approved supplier status can only be obtained after following the process stipulated below.

c) Specifications must be drawn up to promote fair competition.

d) ODs and Specialist Units must attempt as far as possible to procure off-the-shelf Goods as opposed to drawing up their own specifications.