TRANSNET

HUMAN RESOURCES

DISCIPLINARY CODE AND PROCEDURE

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1. PURPOSE

1.1 The purpose of this code and procedure is to

- Promote efficient and safe conduct at work,
- Initiate corrective action where an employee's performance and/or conduct is unacceptable to Transnet
- Maintain good employment relations within Transnet
- Encourage employees to respect and adhere to the appropriate standards of conduct required of them
- Regulate discipline in a manner that is both substantively and procedurally fair, and
- Protect employees from arbitrary action while ensuring that Transnet can expect satisfactory conduct and work performance from its employees.

1.2 Wherever possible Transnet will take steps to try and ensure that any misconduct by an employee does not recur and that the employee continues to be a productive part of Transnet. At the same time, the employee recognises that certain forms of misconduct will justify summary dismissal and that where corrective discipline is implemented a repetition of misconduct may justify dismissal

2. SCOPE

2.1 This disciplinary code and procedure forms part of employee's terms and conditions of employment and applies to all employees that fall within the management category in Transnet, whether or not they are still on probation, employed on a fixed term contract of employment or a contract of indefinite duration.

2.2 This code and the procedure applies equally to conduct, off Transnet's premises and outside of working hours, which may have an effect on the employment relationship and the business of Transnet

3. DEFINITIONS

3.1 'Transgression', 'disciplinary offence', 'infringement', and related words includes an alleged breach of this code

3.2 "Management" includes supervisors, managers, senior managers and executives of Transnet for the purposes of this policy

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3.3 Pre-dismissal arbitration" is a disciplinary enquiry conducted in terms of Section 188A of the Labour Relations Act

4. PRINCIPLES

4.1 It is the responsibility of all employees to abide by the rules and standards of Transnet

4.2 The enforcement of discipline is the responsibility of management and wherever possible will be taken at the lowest possible levels of management

4.3 The nature and severity of an employee's transgression determines the nature and extent of the disciplinary action.

4.4 The primary purpose of this code and procedure and the responsibility of Transnet is to

- Ensure the maintenance of satisfactory and acceptable standards of conduct of all employees
- Ensure that employees are treated fairly and consistently and that disciplinary action is only taken for a fair reason and in accordance with a fair procedure and
- Discourage and correct unacceptable conduct by employees

4.5 Transnet will ensure that

- It makes clear standards of conduct or rules required of employees,
- It will apply its standards or rules consistently; and
- It will treat all employees in a fair and just manner

4.6 Transnet will notify the trade union when disciplinary action is taken against a trade union representative or an employee who is an office bearer of a trade union

4.7 Transnet has the right to -

- Decide when an employee's behaviour is unacceptable
- Institute appropriate action where management considers that an employee's behaviour is unacceptable, and
- Lay criminal charges against an employee if Transnet deems it appropriate

4.8 Transnet's obligations are to –

- Maintain fair, just and consistent discipline

- Ensure that all employees are made aware of the standards of behaviour that are required of them; and
- Deal with instances of misconduct by implementing the provisions of this disciplinary code and procedure in a timeous, consistent and fair manner, having due regard to the merits of each case

4.9 The employees obligations are to –

- Adhere to the rules and procedures of Transnet,
- Adhere to Transnet's Code of Ethics,
- Comply with all reasonable and lawful instructions issued to them,
- Uphold the law,
- Conduct themselves in an orderly manner,
- Treat Transnet's property with respect and care, and refrain from using Transnet's property for their own benefit,
- Be respectful and courteous to clients, all other employees and their property
- Abstain from victimising, discriminating against, or intimidating any other employees or clients of Transnet, and
- Carry out their duties in a professional manner and in accordance with the standards required by Transnet.

4.10 The fact that misconduct may result in criminal charges being laid against an employee does not prevent Transnet from holding a disciplinary enquiry in accordance with its procedures

4.11 This policy must be read in conjunction with the Transnet EAP and substance abuse policy

5. POLICY

5 *DISCIPLINARY MEASURES:*

5.1 Responsibility for and authority to take disciplinary action lies with the management of Transnet

5.2 As a general rule and except where exceptional circumstances of an individual case exist an employee shall not be disciplined without first being afforded the opportunity of stating his/her case.

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5.3 Any employee, who commits an act of misconduct or is guilty of an omission that falls short of an acceptable standard of conduct required of the employee may be subject to appropriate disciplinary action. Although the purpose of disciplinary action is corrective the employer is not obliged to give any warnings in respect of misconduct that would justify summary dismissal, provided that the employer may only dismiss an employee after a fair hearing.

5.4 The application of discipline may take any of the following forms, depending upon the circumstances of the particular case, the frequency and/or the severity of the misconduct:

5.4.1 Verbal warning;

5.4.2 Written warning;

5.4.3 Final written warning;

5.4.4 Suspension without pay;

5.4.5 Demotion, and

5.4.6 Dismissal.

5.5 Verbal Warning:

5.5.1 A Transnet manager may give an employee a verbal warning when the employee commits a minor disciplinary transgression of a rule or standard of the workplace.

5.5.2 The purpose of a verbal warning is to inform the employee of the transgression and to correct the employee's conduct by advising him/her of why the behaviour is incorrect and what is required of the employee.

5.5.3 The verbal warning must be recorded on the employee's personnel file and is valid for three (3) months.

5.5.4 A copy of any warning should be kept on the employee's file, even after expiry thereof so as to serve as a record of the employee's disciplinary history.

5.6 Written warning:

5.6.1 When a verbal warning is inappropriate due to the nature of the offence or where previous verbal warnings have not had the desired effect, a Transnet manager may give an employee a written warning.

5.6.2 The written warning must state the disciplinary transgression/s committed by the employee and warn the employee not to repeat the transgression again.

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5.6.3 A written warning must be recorded on the employee's personnel file and is valid for six (6) months

5.6.4 The employee must sign for receipt of the written warning. If the employee refuses to sign for receipt of the warning, the written warning is nevertheless valid and a note that the employee refused to sign for the written warning must be recorded on the warning

5.6.5 A copy of any warning should be kept on the employee's file, even after expiry thereof so as to serve as a record of the employee's disciplinary history

5.7 Final written warning

5.7.1 When a verbal or written warning is inappropriate due to the nature of the offence or where previous warnings have not had the desired effect or where the offence is of such a serious nature, a Transnet manager may give an employee a final written warning

5.7.2 The final written warning must state the disciplinary transgressions committed by the employee and warn the employee not to repeat the transgression again

5.7.3 A final written warning must be recorded on the employee's personnel file and is valid for twelve (12) months

5.7.4 The employee must sign for receipt of the final written warning. If the employee refuses to sign for receipt of the final written warning, the final written warning is nevertheless valid and a note that the employee refused to sign for the written warning must be recorded on the warning

5.7.5 A copy of any warning should be kept on the employee's file, even after expiry thereof so as to serve as a record of the employee's disciplinary history

5.8 Suspension without pay

5.8.1 Suspension without pay is a punitive measure that may be imposed by agreement with the employee as an alternative to dismissal, where a dismissal is justified but where there are mitigating circumstances, which Transnet recognises. The maximum time period for suspension without pay is two (2) weeks, along with a final written warning valid for twelve (12) months

5.9 Demotion

5.9.1 Demotion is a punitive measure that may be imposed by agreement with the employee as an alternative to dismissal, where a dismissal is justified but where there are mitigating circumstances that Transnet recognises

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5.10 Dismissal

5.10.1 Dismissal is the most severe punitive measure that Transnet as the employer may impose if an employee commits an offence for which a final written warning is still valid or if an offence which warrants dismissal in itself is committed

5.10.2 An employee may be dismissed

- Summarily, where Transnet terminates the employee's services immediately or
- On notice, where Transnet terminates the employee's service subject to the written notice in the contract of employment with full pay for the notice period

5.10.3 Transnet may only dismiss an employee after a formal enquiry is held. At such an enquiry and before a decision is taken to dismiss an employee consideration must be given to all relevant aggravating and mitigating circumstances such as the employee's previous disciplinary record, personal circumstances, length of service and the circumstances of the misconduct itself.

5.10.4 Notwithstanding the fact that certain forms of misconduct will ordinarily require a sanction other than dismissal, an employee may be dismissed for accumulated misconduct of a varying nature even though the employee might not otherwise be liable to be dismissed in respect of any one particular category of misconduct. Dismissal may take place if an employee has committed several acts of misconduct and has previous written and final written warnings which are valid notwithstanding the fact that the conduct complained of is unrelated to the previous conduct

6. DISCIPLINARY ACTION

6.1 Suspension Pending a Disciplinary Hearing:

6.1.1 Transnet has the right to suspend an employee on full pay pending a disciplinary enquiry where Transnet believes

- That the employee's presence could cause problems or lead to conflict
- Where the employee's presence could prejudice Transnet's investigation or be detrimental to the employer's activities
- Where there is sufficient reason to doubt the willingness or ability of the employee to work normally until the disciplinary enquiry has been finalised and not to be disruptive
- Where it is in the interest or safety of the employee

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- Where the continued presence of the employee charged with misconduct has the potential of threatening other employees, or
- Where other employees are likely to be intimidated by the employee charged with the misconduct

6.2 **Disciplinary Process:**

6.2.1 A disciplinary hearing must be held as soon as possible after the commission of an alleged offence

6.2.2 Transnet must endeavour to hold the disciplinary enquiry as soon as possible after it has finalised its investigation into the conduct of an employee. While Transnet will make every effort to ensure that discipline is implemented contemporaneously with the offence allegedly committed by the employee, it is recognised that certain investigations may take longer to complete and that it is not always possible to bring disciplinary proceedings contemporaneously

6.2.3 Transnet must give employees a minimum of four (4) working days written notice to attend a disciplinary hearing. The written notice must contain the following

- The personal particulars of the employee
- The nature of the charge or infringement with specific reference to the nature, date or period of time to allow the employee and his/her representative an adequate opportunity to prepare for the inquiry
- The date, time and venue of the hearing
- Notification that the employee may be represented by a fellow employee at the hearing and that it is his/her duty to arrange for such representation. Legal representation is not permitted in disciplinary hearings unless specifically agreed to by Transnet
- Notification that should the employee require an interpreter the employee must notify Transnet accordingly before the enquiry so that Transnet can provide an interpreter;
- Notification that the employee may bring witnesses, if any, to the hearing and that the employee will have the right to call, examine and cross-examine witnesses, subject to the employee arranging for the attendance of any witnesses that the employee requires to give evidence on his/her behalf

- Advise the employee that he/she has the right to state his/her case and defend him/herself both in respect of the allegations of misconduct and in the determination of a sanction.
- Provide the employee with copies of any documents reasonably required for purposes of conducting the hearing and give the employee access to any documents produced as evidence at the hearing.
- Space for acknowledgement of receipt thereof by the employee, failing which space for acknowledgement by a witness that the notice was handed to the employee.

6.2.4 Transnet must ask the employee to sign for receipt of the notice to attend the disciplinary enquiry. If the employee refuses to acknowledge receipt of the notice the person handing the employee the notice, may sign as having witnessed the delivery of the notice upon the employee. Such recordal on the notice will serve as prima facie evidence that the employee received the notice.

6.2.5 If the employee charged with misconduct is also a trade union representative (shop steward), the Transnet manager investigating the charge must notify the trade union of the charge, and consult with the trade union in respect of the disciplinary charges brought against the representative. This also applies in cases where the employee is an office-bearer or official of a trade union.

6.2.6 Where an employee refuses and/or fails to attend the disciplinary enquiry, the enquiry may take place in the employee's absence. Only in exceptional circumstances will Transnet postpone an enquiry and only if sufficient reasons exist and are established to postpone the enquiry. The employee recognises and accepts that his/her failure to attend the hearing may have serious repercussions as the hearing may be held in his/her absence without further notice and a sanction of dismissal may be imposed.

6.2.7 A person appointed or nominated by the employer for that purpose must keep a record of the proceedings and the employee is entitled to a copy of the record. The employee recognises that the record is not a complete record but only a minute of the proceedings.

6.2.8 The disciplinary enquiry shall, where possible take place without any interference. Witnesses who give evidence do so on the basis that there will be no repercussions against them for giving such evidence. Witnesses will only be required to attend an enquiry when called upon to do so.

6.2.9 After hearing all relevant evidence relating to the charges the chairperson of the enquiry must communicate his/her decision in writing within five (5) working days Thereafter or if it is appropriate to do so, at the end of the enquiry the chairperson of the enquiry must hear evidence in aggravation or mitigation for purposes of imposing a sanction

6.2.10 In considering what sanction to impose, the chairperson is entitled to consider other forms of disciplinary action as an alternative to dismissal, including for example suspension without pay or demotion In determining an appropriate sanction, the chairperson must have regard to Transnet's approach to similar conduct in the past and recognise the importance of being consistent in the imposition of any sanction However, employees recognise that the circumstances of each individual case is different and circumstance may justify Transnet from departing from the usual form of sanction applicable to the conduct in question These circumstances may include

- The seriousness of the and particular circumstances surrounding the breach of the standard
- The interests and personal circumstances of the employee including his/her disciplinary or work record and length of service and
- The interests of Transnet.

6.3 Conduct of the Enquiry:

6.3.1 Although the chairperson of the enquiry may depart from these suggestions set out below the inquiry shall at all times be conducted in a fair manner In general and wherever possible the enquiry should be conducted as follows

- The chairperson shall ensure that only those who are entitled to be present at the enquiry are present and that all witnesses are available Witnesses shall be required to wait outside or only attend the proceedings as and when required to give evidence
- The chairperson shall ensure that everyone present at the enquiry introduces themselves and the chairperson shall explain everyone's role in the enquiry including his/her own
- At the commencement of the enquiry, the chairperson shall inform the employee of his/her rights and shall inquire whether the employee has any queries or complaints regarding these rights
- The chairperson shall read out the charges against the employee and outline the nature of the misconduct The chairperson shall then ask the employee if he/she understands

the nature of the offence and the reasons why he/she is being charged and how he/she pleads to each of the charges

- If the employee pleads guilty to the charges the chairperson shall ask questions to determine whether the employee understands the charges If it is clear that the employee understands the charges the chairperson must find the employee guilty and move to hearing evidence in mitigation and aggravation to determine the appropriate sanction to impose
- If the employee pleads not guilty to the charges the chairperson shall then proceed with the hearing which shall commence with the complainant disclosing the full nature of the offence The complainant shall then be entitled to lead evidence regarding the offence by calling witnesses to give evidence and introducing documents as evidence The employee shall be entitled to cross-examine all witnesses and have access to all documents tendered at the enquiry The complainant may re-examine witnesses if necessary
- The employee will then be given an opportunity to state his/her defence and call witnesses to give evidence on his/her behalf Transnet shall be entitled to cross examine witnesses and examine any documents tendered in evidence by the employee The employee shall be entitled to re-examine any witnesses
- The chairperson shall be entitled to ask questions of any witnesses who give evidence The chairperson is entitled to inquire from the person leading the evidence for Transnet or the employee whether they intend leading evidence regarding any matter, which requires clarification
- After all evidence has been led, each party shall be given a chance to summarise his/his/her case after which the enquiry shall be adjourned to allow the chairperson to consider the evidence and decide on whether the employee is guilty or innocent of the misconduct with which he/she has been charged
- If it is convenient to do so prior to the enquiry adjourning evidence in mitigation and aggravation shall be led Alternatively and only if a finding of guilt is made and communicated to the parties the parties shall be required to give evidence in mitigation or aggravation of sentence Such evidence need not take the form of an oral hearing unless one is specifically required or requested and submissions may be made in writing

- After all mitigating and aggravating circumstances have been considered and the complainant has motivated for an appropriate sanction, the chairperson must consider such evidence together with the employee's work record and previous disciplinary record before making a decision on the appropriate sanction.

6.3.2 The chairperson, before imposing the sanction of dismissal must satisfy himself that:

- The employee on a balance of probabilities contravened a rule or standard that governs conduct in or conduct of relevance to the workplace;
- That the employee was aware of the rule or it could reasonably be expected of the employee to have been aware of the rule at the time of the breach;
- That the rule was valid and fair;
- That the rule had been consistently applied (or that there were justifiable reasons for deviations); and
- That dismissal is the appropriate sanction for the misconduct.

6.3.3 The chairperson shall communicate his finding and sanction in writing to the employee together with brief reasons therefore.

6.3.4 In the event that the sanction of dismissal is imposed and as the employee does not have the right of appeal, the employee should be informed of his right to refer the matter to the CCMA or bargaining council with jurisdiction over the dispute, within thirty (30) days of the employee's dismissal.

6.4 Date of Dismissal:

6.4.1 Where an employee is dismissed the dismissal is final and takes effect on the date stipulated by the chairperson in his findings.

6.5 Pre-Dismissal Arbitrations:

6.5.1 Where allegations of misconduct have been raised against an employee which if proven would carry the sanction of dismissal and the employee earns above the prescribed statutory minimum as determined in terms of section 6(3) of the Basic Conditions of Employment Act, no 75 of 1997 as amended[1] Transnet is entitled, at its sole discretion, to decide whether or not to hold an internal disciplinary enquiry or to proceed with a pre-dismissal arbitration as contemplated in Section 188A of the LRA.

[1] This amount is currently R115 572 per annum

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6.5.2 Where an allegation of misconduct has been raised against an employee, who earns below the prescribed statutory threshold, Transnet if it wishes to proceed via the pre-dismissal arbitration procedure, is required to obtain the written consent of the employee after having notified the employee in writing of the allegations levelled against him. If the employee does not wish to submit to that procedure Transnet will convene a disciplinary enquiry as set out in this document.

6.5.3 If Transnet elects to proceed via the pre-dismissal arbitration procedure Transnet will bear the cost of an arbitrator selected by a reputable dispute settlement agency chosen by Transnet.

6.5.4 This disciplinary code and procedures will still apply, however, if Transnet does not elect to proceed via the pre-dismissal arbitration procedure, and in respect of employees who earn less than the prescribed minimum and do not consent to a pre-dismissal arbitration.

6.6 **Types of Misconduct:**

6.6.1 Transnet may take disciplinary action against any employee in circumstances that may justify such action. Transnet expects all employees to refrain from conduct that may give rise to discipline.

6.6.2 Set out below are some examples of disciplinary transgressions for which Transnet may take disciplinary action. This is not an exhaustive list. It is impossible to list in one document every kind of infringement or transgression that may be considered to be unacceptable conduct or misconduct. What will constitute misconduct is often a matter of common sense. However, an important factor in determining whether a particular act or failure to do something (whether done in the workplace or outside) can be considered as unacceptable behaviour, is whether or not that behaviour could be detrimental to the relationship between Transnet and its employees or between employees.

6.6.3 **Primary Offences:** these are offences that are considered serious and may include summary dismissals. Examples include (this list is not exhaustive):

- Failure or refusal to comply with a lawful and reasonable instruction from a superior.
- Gross insubordination or serious disrespect.
- When an employee refuses to carry out an order or instruction from a person who has authority over him the company.
- When an employee at any time acts in a defiant or provocative manner towards a person of authority in the company.

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- Disorderly conduct
- Insulting rude or insolent behaviour
- Threatening violence
- Where an employee incites or intimidates other employees whilst on or off duty
- Assault
- Being under the influence of or being in possession of drugs that have a narcotic effect, at work
- Being under the influence of alcohol at work.
- Damage to Transnet property, the property of other employees clients or other persons with whom Transnet has dealings
- Disruption of Transnet activities
- Misuse of Transnet property
- Unauthorised possession of a weapon on Transnet premises or use, or threatened use of any such weapon
- Intimidation or victimisation
- Disorderly conduct causing bodily injury or damage to property
- Breach of contract
- Accepting or soliciting money or other consideration for performing work or any other favour in order to favour anyone else at Transnet's expense
- Breach of the Transnet Code of Ethics
- Sexual harassment
- Absenteeism for three or more consecutive working days without permission
- Competing with Transnet
- Deliberately using Transnet's time and facilities for the employee's own gain
- Smoking in areas where smoking is prohibited
- Theft
- Abusing a position of authority

- Giving or receiving or any attempt to give or receive bribes or influencing or trying to influence somebody to corruption of any kind
- Submitting false reports or making false entries on documents of Transnet
- Fraud.
- Unlawful possession or removal of Transnet property, the property of another employee or any of Transnet's clients or anyone else with whom it has dealings
- Dishonesty
- Disclosure of confidential Transnet information
- Gross negligence
- Acting in a negligent manner regarding the execution of an employee's duties thereby endangering lives or causing damage to property
- Disclosure of confidential medical information such as the HIV status of an employee without the employee's consent
- A repetition of offences for which written warnings have been issued
- Publication or unauthorised use of confidential information or any conduct endangering the security of Transnet
- Failure to conform to safety standards and procedures
- Contravention of the section 51 (1) of the Public Finance Management Act

6.5.4 **Secondary Offences** these are offences that adversely impact upon Transnet's business or involve conduct that is not acceptable to Transnet. Disciplinary action, which may be associated with these offences are warnings (verbal, written and final written warnings and eventually dismissal for a recurrence during the currency of a final written warning. Examples include (this list is not exhaustive)

- Unsatisfactory attendance at work with or without a valid reason or proof
- Unsatisfactory time keeping, extended or unauthorised breaks during working hours, arriving late and leaving early.
- Unsatisfactory work performance
- Fooling around and/or playing during working hours
- Unauthorised disruption of/or interference in a fellow-employee's work

- Minor incidents of abusive or insulting language, signs or signals
- Non-adherence to Transnet's dress code
- Minor incidents of negligence, or non-adherence to, or failure to comply with Transnet's policies or procedures

6.7 Criminal offences:

6.7.1 Criminal offences committed outside of employment should not automatically be regarded as cause for disciplinary action. The main issues that must be considered are whether or not the offence is one that makes the employee unsuitable for his work or the effect the conviction has on the reputation of Transnet

6. ACCOUNTABILITY

Accountable	CEO and Senior Managers
Responsible	Supervisors, Managers and Senior Managers
Consultation	Affected Employees
Informed	Employees and Other Human Resources departments
Supports	Human Resources
Monitors and maintains	Human Resources

TRANSNET

Annexure A

Written warning

Employee
Position
Department
Date

Dear _____

Written warning in terms of the Disciplinary Code and Procedure

This letter serves as a written warning in that you breached the Disciplinary Code and Procedure in the following respect/s: *(provide date and details of misconduct)*

_____
_____
_____
_____

This notice serves as a written warning valid for six (6) months
This warning will be retained in your personnel file. Should you be found guilty of further offences while this warning is still in force, this warning could influence the penalty that is imposed on you

We regret that this action has been necessary and sincerely hope that your future conduct will make it unnecessary for us to invoke further action to ensure that you maintain acceptable levels of behaviour

Yours sincerely

_____
Manager

TRANSNET

I the undersigned employee hereby acknowledge that I have understood the contents of this letter and have received a copy of such letter

Signature of Employee

Date

Signature of Witness (if necessary)

Date

TRANSNET

Annexure B

Final written warning

Employee
Position
Department
Date

Dear _____

Final written warning in terms of the Disciplinary Code and Procedure

This letter serves as a final written warning in that you breached the Disciplinary Code and Procedure in the following respect(s). (provide date and details of misconduct)

_____

_____

_____

_____

This notice serves as a final written warning valid for twelve (12) months
This warning will be retained in your personnel file. Should you be found guilty of further offences while this warning is still in force, this warning could influence the penalty that is imposed on you

We regret that this action has been necessary and sincerely hope that your future conduct will make it unnecessary for us to invoke further action to ensure that you maintain acceptable levels of behaviour

Yours sincerely

_____
Manager

_____

TRANSNET

I the undersigned employee hereby acknowledge that I have understood the contents of this letter and have received a copy of such letter

Signature of Employee

Date

Signature of Witness [if necessary]

Date

TRANSNET

ANNEXURE C

Suspension from duty

Employee name
Position
Department
Date

Dear _____

Suspension from duty

I refer to our discussions regarding the allegations of misconduct raised against you. In light of the gravity of the matter, I am of the view that your continued presence in the workplace might be prejudicial to the investigation into the alleged misconduct / might endanger the well-being or safety of employees / might endanger the safety of the property of Transnet

(delete whichever is not applicable)

Accordingly, you are suspended from duty with immediate effect without loss of pay or benefits, pending the outcome of the investigation into the allegations leveled against you

You may not enter Transnet's premises during the course of this investigation

You will be notified of the outcome of the investigation when it is finalised If it transpires that there is sufficient evidence to proceed with a disciplinary enquiry Transnet will notified you of the charges and other relevant details in writing as soon as reasonably possible

Depending on the circumstances at that time, Transnet may extend your suspension until the disciplinary enquiry has been finalised Arrangements will be made for you to consult with witnesses who are employees of Transnet, during any extended period of suspension if you wish

Please note that this suspension does not in any way constitute a judgment nor does it any way imply blame in the matter It is merely a precautionary measure in terms of the disciplinary code and procedure

TRANSNET

Yours sincerely

Manager

Date

Employee

Date

Witness [if applicable]

Date

TRANSNET

ANNEXURE D

Notice to Attend a Disciplinary Enquiry

NAME OF EMPLOYEE _____

DATE OF NOTICE. _____

You are hereby notified that a disciplinary hearing will be held on

DATE OF HEARING _____

TIME OF HEARING _____

PLACE OF HEARING _____

The purpose of the enquiry is to consider the following allegations of misconduct committed by you

_____

_____

_____

1. You have the right to be represented at the disciplinary enquiry by a fellow employee. It is your responsibility to arrange for such representation.
2. You have the right to submit documentary evidence, to call witnesses and to cross-examine witnesses called by the employer. You must make the necessary arrangements for your own witnesses to attend the hearing. If any of your witnesses are employees of Transnet you must advise your immediate supervisor of their names and details before the hearing so that the necessary arrangements can be made to release them from duty.
3. If you require an interpreter please advise the person who signed this notice sufficiently in advance of the enquiry so that one may be arranged for you.
4. You will be given the opportunity at the disciplinary enquiry to state your case and defend yourself both in respect of the allegations of misconduct and in the determination of a sanction.

_____

Signature

_____

Title of person signing notice

TRANSNET

Note to employee. By signing this form, you simply acknowledge that you have received the notice of the disciplinary enquiry and it in no way constitutes an admission of guilt

Signature of employee

Date of employee's signature

Signature of witness

Date of witness's signature

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HUMAN RESOURCES

DISCIPLINARY CODE AND PROCEDURE FOR BARGAINING UNIT EMPLOYEES

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Signature	

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1. PURPOSE

1.1 The purpose of this Disciplinary Code and Procedure is to -

1.1.1 promote constructive, orderly and safe conduct,

1.1.2 promote mutual respect amongst employees and between employees and the employer;

1.1.3 regulate discipline in a substantively and procedurally fair manner;

1.1.4 promote fairness, certainty and consistency in the application of discipline;

1.1.5 establish principles, standards and procedures to be followed in order to address any misconduct; and

1.1.6 encourage employees to adhere to the appropriate standards of conduct required of them by providing for progressive and corrective action.

2. SCOPE AND APPLICATION

2.1 This Disciplinary Code and Procedure applies to the bargaining unit employees of Transnet Limited, irrespective of the employee's grade or whether the employee is on probation, employed on a fixed-term contract of employment or a contract of indefinite duration.

3. INTERPRETATION

3.1 This Disciplinary Code and Procedure must be read together with other employee-related policies such as the Substance Abuse Policy.

3.2 In this Disciplinary Code and Procedure, unless the context indicates otherwise -

3.2.1 *"day"* means Monday to Friday excluding public holidays; and

3.2.2 *"trade union"* means a trade union recognized by the employer in terms of the Recognition Agreement.

4. PRINCIPLES

4.1 Disciplinary action is a management function and responsibility.

4.2 Disciplinary action must be implemented in a prompt, fair, consistent and progressive manner without favoritism or unfair discrimination.

4.3 The employer must make employees aware of and understand the workplace rules that must be complied with and the standards required of them.

4.4 The employer must make efforts to correct employee's behavior through a system of graduated measures such as counseling and warnings.

4.5 The nature and severity of the employee's alleged misconduct determines the nature and extent of the disciplinary action. This means that the employer must, where appropriate, correct and improve conduct in the normal course of work, and, where possible, settle complaints at the lowest level. However, if there are more serious infringements or repeated misconduct, formal disciplinary procedures should be invoked.

4.6 Disciplinary procedures must be fair, which means that as a minimum:-

4.6.1 The employee must be notified of the allegations using a form and language that the employee can understand;

4.6.2 The employee must be allowed an opportunity to state a case in response to the allegations, and if the employee is found to have committed misconduct to state a case concerning an appropriate sanction;

4.6.3 Depending on the nature and complexity of the allegations, the employee must be afforded a reasonable time to prepare a response;

4.6.4 During disciplinary processes the employee is entitled to representation as set out in paragraphs 7.1.1 and 7.2.10.1 respectively;

4.6.5 After the hearing, the employer must give the employee written notification of and reasons for the decision.

4.7 Subject to the basic principles of procedural fairness set out in paragraph 4.6, disciplinary procedures should be carried out with the minimum of legal formality.

4.8 In order to give effect to the objective of the prompt and speedy resolution of disciplinary matters, the time periods specified in this Disciplinary Code and Procedure must be adhered to unless there is an exceptional situation and good cause not to do so.

5. TYPES OF MISCONDUCT

5.1 **Misconduct of a Less Serious Nature:** Depending on the nature, circumstances and impact of the misconduct, misconduct of a less serious nature may include -

5.1.1 less serious forms of absence from work without authorisation;

5.1.2 reporting late for work;

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5.1.3 leaving the workplace without authorisation;

5.1.4 failure to report illness or to arrange for illness to be reported to the employee's immediate superior; and

5.1.5 Less serious forms of disregarding a reasonable lawful instruction from a competent authority.

5.2 Depending on the nature, circumstances and impact of the misconduct, misconduct of a less serious nature should, on the whole, be dealt with progressively beginning with corrective counselling or a verbal or written warning and progressing to a formal disciplinary hearing where there are repeated acts of misconduct.

5.3 **Misconduct of a Serious Nature:** Depending on the nature, circumstances and impact of the misconduct, misconduct of a serious nature may include:-

5.3.1 theft;

5.3.2 fraud;

5.3.3 dishonesty,

5.3.4 serious forms of disregarding a reasonable lawful instruction from a competent authority;

5.3.5 intoxication or being under the influence of drugs that have a narcotic effect while on duty;

5.3.6 serious neglect of duty;

5.3.7 assault;

5.3.8 assuming a threatening attitude towards a fellow employee,

5.3.9 sexual harassment, and

5.3.10 serious forms of absences from work without authorisation.

5.4 The employer may issue a written warning or must convene a disciplinary hearing for misconduct of a serious nature if the commission of a misconduct of a serious nature could lead to a final written warning or dismissal.

5.5 **Desertion:** Will be dealt with in terms of paragraph 5.9 of the Transnet Termination Of Employment Policy [1]

[1] Paragraph 5.9 of the Transnet Termination Policy, which is entitled *Desertion or abscondment by employee* states the following

"5.9.1 On desertion or abscondment by the employee, the employee will be deemed to have resigned without notice

6. DISCIPLINARY MEASURES

6.1 Disciplinary Measures for Less Serious Forms of Alleged Misconduct

Corrective counselling, verbal warnings and written warnings are the disciplinary measures available for less serious forms of misconduct.

6.1.1 Corrective Counselling

6.1.1.1 If the misconduct is of a less serious nature, and after considering the employee's or the employee's representative's representations at a meeting, the employee's superior may counsel the employee with a view to correcting the misconduct.

6.1.2 Verbal Warning

6.1.2.1 If the misconduct is of a less serious nature, and after considering the employee's or the employee's representative's representations at a disciplinary meeting, the employee's superior may verbally warn the employee.

6.1.2.2 The purpose of the verbal warning is to:-

6.1.2.2.1 inform the employee of the misconduct and the rule or standard that the employee is required to comply with; and

6.1.2.2.2 correct the employee's conduct.

6.1.2.3 The verbal warning is valid for three (3) months.

6.1.3 Written Warning

6.1.3.1 If a verbal warning has failed or if an incident takes place that appears to require firmer action than a verbal warning, but is not serious enough to warrant a final written warning or dismissal, then the employee's superior may, after considering the employee's or the employee's representative's representations, issue the employee with a written warning, in accordance with Annexure B.

5.9.2 Transnet will assume an intention of not returning to the workplace if the employee fails to tender services, fails to provide an explanation for his/her absence, and fails to contact Transnet within seven (7) days of having abandoned his/her work and Transnet's reasonable efforts to contact the employee are unsuccessful.

5.9.3 Unless good cause is subsequently demonstrated by the employee for the apparent desertion or abscondment, Transnet will accept the above desertion or abscondment as a repudiation of the contract by the employee and the employment contract will terminate on the basis of the employee's repudiation. Transnet's acceptance of the repudiation by the employee will be backdated to the employee's last day of service with Transnet.

5.9.4 Transnet retains its right to recover any monies, including notice pay, due to Transnet but not paid by the absconded employee.

5.9.5 Transnet may recover such monies in circumstances where the employee's whereabouts are unknown and cannot be established by reasonable investigation by setting off any monies Transnet owes to the employee against any monies the employee owes to Transnet."

6.1.3.2 A written warning will remain in effect for either six (6) or nine (9) months from the date of issue.

6.2 Disciplinary Measures for More Serious Forms of Alleged Misconduct

6.2.1 If verbal or written warnings have failed or if an incident takes place that appears to require firmer action, then the employer may convene a formal disciplinary hearing.

6.2.2 Following the disciplinary hearing at which the employee is found guilty, the presiding officer may, after hearing the representations about mitigating and aggravating circumstances:-

6.2.2.1 issue a verbal warning;

6.2.2.2 issue a written warning, which is valid for six (6) or nine (9) months;

6.2.2.3 issue a final written warning in accordance with the provisions of paragraph 6.2.3;

6.2.2.4 suspend the employee without pay in accordance with the provisions of paragraph 6.2.4;

6.2.2.5 demote the employee in accordance with the provisions of paragraph 6.2.5; or

6.2.2.6 dismiss the employee in accordance with the provisions of paragraph 6.2.6.

6.2.3 Final Written Warning

6.2.3.1 A final written warning will remain in effect for twelve (12) months from the date of issue.

6.2.3.2 A copy of the final written warning in accordance with Annexure C must be kept in the employee's personnel file, even after expiry of the warning, in order to serve as a record of the employee's disciplinary history.

6.2.4 Suspension without Pay

6.2.4.1 Suspension without pay is a sanction that may be imposed for between two (2) weeks and two (2) months if:-

6.2.4.1.1 dismissal is justified, but there are mitigating circumstances;

6.2.4.1.2 the employee agrees in writing to this sanction as an alternative to dismissal; and

6.2.4.1.3 together with the suspension the employee is issued with a final written warning valid for twelve (12) months.

6.2.5 Demotion

6.2.5.1 Demotion is a disciplinary sanction that may be imposed if -

6.2.5.1.1 dismissal is justified, but there are mitigating circumstances;

6.2.5.1.2 the employee agrees to this sanction as an alternative to dismissal, the terms and details of which must be reduced to writing;

6.2.5.1.3 demotion is feasible; and

6.2.5.1.4 together with the demotion the employee is issued with a final written warning valid for twelve (12) months.

6.2.5.2 The reduction in grade, remuneration and time period associated with the demotion must be determined at the disciplinary hearing.

6.2.6 Dismissal

6.2.6.1 Dismissal will be imposed if:-

6.2.6.1.1 the misconduct is of such a serious nature that it has resulted in the employment relationship having broken down or its continuation having been rendered intolerable; or

6.2.6.1.2 the misconduct would not ordinarily result in dismissal but when considered together with the employee's previous valid written or final written warnings, irrespective of whether they are related to this latest misconduct, has resulted in the employment relationship having broken down or its continuation having been rendered intolerable.

6.2.6.2 Dismissal may be with or without payment in lieu of notice, depending on the seriousness of the misconduct.

6.3 Expunction of Disciplinary Sanctions

6.3.1 A disciplinary sanction that is no longer valid because it has expired may not be taken into account when deciding upon a new disciplinary sanction.

7 DISCIPLINARY PROCEDURES

7.1 Counselling and Disciplinary Meetings

7.1.1 During the counselling or disciplinary meeting, the employee may be represented by a fellow employee or a shop steward and, in the case of a shop steward who is alleged to have committed misconduct, by a fellow employee, shop steward or union official.

7.1.2 At a counselling or disciplinary meeting, the employee's superior must:-

7.1.2.1 inform the employee and the employee's representative of the misconduct and the rule or standard that the employee is required to comply with;

7.1.2.2 give the employee or the employee's representative an opportunity to respond to the allegation or allegations;

7.1.2.3 if necessary, and after considering the employee's or employee representative's representations, decide on a course of action to correct the misconduct i.e. whether it be counselling, the issuing of a verbal warning or a written warning, and, in the case of a written warning, the period for which the written warning will be valid; and

7.1.2.4 place a note of the corrective counselling or the verbal or written warning arising from this counselling or disciplinary meeting on the employee's personnel file

7.1.3 An employee who is aggrieved with a decision resulting from the counselling or disciplinary meeting may refer an unfair labour practice dispute to the Transnet Bargaining Council in accordance with the provisions of the Labour Relations Act

7.2 Disciplinary Hearings

7.2.1 Although it is recognised that investigations into some forms of misconduct may take longer than others, the employer should:-

7.2.1.1 issue the notice to attend a disciplinary hearing within ten (10) days of completing the investigation; and

7.2.1.2 hold the disciplinary hearing as soon as is reasonably possible after the misconduct was committed.

7.2.2 Notice to Attend a Disciplinary Hearing

7.2.2.1 The employer must give the employee at least four (4) days notice of the disciplinary hearing

7.2.2.2 The notice to attend the disciplinary hearing must be in accordance with Annexure A and must:-

7.2.2.2.1 state the full name of the employee and his or her employee number;

7.2.2.2.2 set out the allegation or allegations of misconduct, describe the essential elements of the incident or incidents and the date when or period within which they occurred The description should provide sufficient detail in order to allow the employee accused of misconduct to prepare for the hearing;

7.2.2.2.3 state the date, time and venue of the hearing; and

7.2.2.2.4 inform the employee accused of misconduct that:-

7.2.2.2.4.1 the employee may be represented by a fellow employee or a shop steward, or the employee's trade union may decide, in more complex cases, whether a trade union official will represent the employee provided that the unavailability of the trade union official is not a cause for the delay of the hearing;

7.2.2.2.4.2 the employee may make use of an interpreter, but if the employee requires one, he or she must notify the employer at least forty eight (48) hours before the hearing takes place of the need for an interpreter and the languages to be interpreted;

7.2.2.2.4.3 the employee may submit documentary evidence and bring witnesses to the hearing. It is the employee's responsibility to arrange for his or her witnesses to attend the hearing. If the employee or the employee's trade union provides the employer with forty eight (48) hours written notice, the employer will release from work the employee's witnesses who work for the employer in order for them to travel to and attend the hearing;

7.2.2.2.4.4 the employee or the employee's representative may cross-examine witnesses that the employer brings to the hearing;

7.2.2.2.4.5 the employee will be given an opportunity to make representations both in respect of his or her defence and, if necessary, the determination of a sanction;

7.2.2.2.4.6 the employer will provide the employee with copies of the documents to be used at the hearing and give access to all relevant documents in accordance with paragraph 7.2.9 of this Code;

7.2.2.2.4.7 the employee is required to sign in the space provided in the Notice to Attend a Disciplinary Hearing acknowledging receipt of the notice; and

7.2.2.2.4.8 if the employee refuses or fails for good reason to attend the disciplinary hearing, the hearing may continue in his or her absence.

7.2.2.3 If the employee accused of misconduct refuses to sign acknowledging receipt of the notice, a person who witnessed the notice being given to the employee must sign indicating that he or she witnessed the service of the notice upon the employee.

7.2.3 Notify and Consult with the Trade Union

7.2.3.1 If the employee accused of misconduct is a shop steward or an office-bearer of a trade union, the employer must notify the trade union and consult with the trade union before instituting disciplinary charges.

7.2.4 Postponement of a Disciplinary Hearing

7.2.4.1 A disciplinary hearing may be postponed by agreement between the initiator and the employee or the employee's representative. The presiding officer must postpone the disciplinary hearing without the parties appearing at the disciplinary hearing if the initiator and the employee or the employee's representative agrees in writing to the postponement.

7.2.4.2 If there is no agreement about the postponement of the disciplinary hearing, the presiding officer may grant the postponement only if there is valid and sufficient reason for the postponement. If the postponement is denied or if either party fails or refuses to attend the disciplinary hearing without good cause shown, then the disciplinary hearing must proceed, even if it is in the absence of one of the parties.

7.2.4.3 If any employee is scheduled to participate in a disciplinary hearing in whatsoever capacity and refuses or fails without good cause shown to attend, the employee may be subjected to disciplinary action.

7.2.5 Record of the Disciplinary Hearing

7.2.5.1 The employer must arrange an electronic recording of the hearing and if this is not possible, it must appoint a person to keep a proper minute of the proceedings.

7.2.5.2 The employee is entitled to a copy of the electronic recording, if an electronic recording was created, or the minute.

7.2.6 The Initiator

7.2.6.1 The employer must appoint an initiator to prosecute the misconduct allegations.

7.2.7 Presiding Officer

7.2.7.1 The employer must appoint a presiding officer.

7.2.7.2 The presiding officer must be impartial and may not:-

7.2.7.2.1 have been involved in the matter beforehand; or

7.2.7.2.2 discuss the merits of the matter with any interested party before the hearing takes place or outside the hearing while the hearing takes place.

7.2.7.3 Unless the employer appoints an external person as the presiding officer, the presiding officer must be employed at least one level higher than the employee who allegedly committed the misconduct.

7.2.7.4 *Despite paragraph 7.2.7.3 the employer may, where appropriate, appoint an external* person to be a presiding officer of a disciplinary hearing.

7.2.7.5 The presiding officer's role is to:-

7.2.7.5.1 chair the disciplinary hearing in a fair manner, granting the parties sufficient opportunity to make their representations;

7.2.7.5.2 make the employee accused of misconduct aware of the misconduct allegations and his or her rights,

7.2.7.5.3 make written findings based on the evidence presented; and

7.2.7.5.4 if necessary:-

7.2.7.5.4.1 afford the employee accused of misconduct and the initiator sufficient opportunity to present mitigating and aggravating circumstances;

7.2.7.5.4.2 decide upon an appropriate sanction;

7.2.7.5.4.3 advise the employee of the sanction; and

7.2.7.5.4.4 complete the necessary documentation

7.2.8 **Human Resources Representative**

7.2.8.1 *A representative of the employer's human resources department may attend the* disciplinary hearing and advise the presiding officer on procedural issues and matters relating to sanction in order to ensure consistency. The Human Resources representative must neither influence nor be party to the presiding officer's decision with regard to the finding

7.2.9 **Disclosure of Documents**

7.2.9.1 *In order to give effect to the speedy resolution of disputes, the initiator and the* employee or the employee's representative must endeavour to exchange any documents they intend relying on at the hearing within a reasonable time before the commencement of the hearing. Where possible, the employer should disclose the documents that it intends relying on when it delivers the notice to attend a disciplinary *hearing to the employee or as soon as possible after the delivery of the notice*. However, this does not preclude the initiator and the employee or the employee's representative from relying on a document that was not exchanged before the commencement of the hearing, if there is a good reason why it was not disclosed timeously and the other party is given an adequate opportunity to consider and prepare *a response to the document*

7.2.9.2 The employer, employee and trade union of which the employee is a member are not required to disclose information or documents containing information:

7.2.9.2.1 that is legally privileged;

7.2.9.2.2 a party cannot disclose without contravening a prohibition imposed on that party by any law or order of court;

7.2.9.2.3 that is confidential and, if disclosed, may cause substantial harm to an employee, the employer or the trade union of which the accused employee is a member;

7.2.9.2.4 that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

7.2.10 Representation for an Employee at a Disciplinary Hearing

7.2.10.1 At a disciplinary hearing an employee may be represented by a fellow employee or a shop steward. The trade union may decide, in more complex cases, if a trade union official will represent the employee provided that the trade union official is not a cause for the delay or postponement of the disciplinary hearing.

7.2.11 Conducting the Hearing

7.2.11.1 The presiding officer must:-

7.2.11.1.1 confirm that the employee accused of misconduct understands his or her rights as set out in the Notice to Attend a Disciplinary Hearing;

7.2.11.1.2 read out the allegation or allegations of misconduct and confirm that the employee understands these allegations;

7.2.11.1.3 grant the employee or his or her representative an opportunity to state whether the employee accepts or rejects all or part of the misconduct allegations; and

7.2.11.1.4 provide the initiator and the employee or the employee's representative -

7.2.11.1.4.1 with sufficient time to motivate their cases, which may include, where appropriate, the calling of witnesses;

7.2.11.1.4.2 an opportunity to question the witnesses; and

7.2.11.1.4.3 the opportunity to summarise their cases at the end of the proceedings.

7.2.11.2 The presiding officer should make his or her findings in writing as soon as possible, but no later than five (5) days after the conclusion of the hearing on the merits of the matter. The *report must summarise the relevant evidence and the grounds on which the findings were* made.

7.2.11.3 In evaluating on a balance of probabilities whether the employee is guilty of the misconduct the presiding officer must consider:-

7.2.11.3.1 whether the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace;

7.2.11.3.2 if the rule or standard was contravened, whether or not:-

7.2.11.3.2.1 the rule was valid or reasonable,

7.2.11.3.2.2 the employee was aware, or could reasonably be expected to have been aware, of the rule or standard; and

7.2.11.3.2.3 the rule or standard has been consistently applied by the employer.

7.2.11.4 If the employee is found guilty of misconduct, the initiator and employee or the employee's representative may lead evidence and make submissions in mitigation or aggravation of the sanction

7.2.11.5 In determining the appropriate sanction, the presiding officer must, in order to ensure consistency, have regard to the employer's approach to discipline in similar matters

7.2.11.6 The presiding officer's decision with regard to the sanction should be made in writing as soon as possible, but no later than two (2) days after the conclusion of the hearing on sanction. The report must briefly summarise the relevant evidence and the reasons for the decision

7.2.11.7 Most disciplinary hearings should be able to be concluded in one (1) working day. The first part of the hearing considers whether or not the employee committed the alleged misconduct. The presiding officer then pronounces on this. If the employee is found guilty, the hearing resumes and considers the issue of sanction, which the presiding officer pronounces upon after considering the parties' submissions, subject to the provisions of paragraph 7.2.11.6

7.2.11.8 If the sanction is dismissal, the employee's date of dismissal is the date upon which the sanction is delivered to the employee

7.2.12 Referral of a Dispute after a Disciplinary Hearing

7.2.12.1 If the employee is aggrieved by the result of a disciplinary hearing or the fairness of the procedure adopted during a disciplinary hearing or both, the employee may refer a dispute to the Transnet Bargaining Council in terms of the Labour Relations Act, 1995 (Act 66 of 1995). A dispute relating to an unfair labour practice or unfair dismissal must

be referred within the time periods specified in section 191 (b) of the Labour Relations Act.[3]

8 PRECAUTIONARY SUSPENSION

8.1 As a precautionary measure, the employer may suspend an employee on full pay before a disciplinary hearing takes place if :-

8.1.1 the employer has, on the face of it, a justifiable reason to believe that the employee has engaged in serious misconduct, which may lead to the employee's dismissal,

8.1.2 the employer has an objectively justifiable reason to deny the employee access to workplace based upon:-

8.1.2.1 the need to protect the integrity of the investigation or disciplinary hearing; or

8.1.2.2 some other relevant factor that would place the investigation, disciplinary hearing or the interests of the affected parties in jeopardy; and

8.1.3 the employee is given a fair opportunity to state a case before the employer makes any final decision to suspend the employee by giving the employee a written notice of intention to suspend which contains the reasons for the proposed suspension in accordance with Annexure D Part 1.

8.1.4 The employee may be sent home pending the outcome of the suspension decision provided that the suspension decision is made within forty eight (48) hours.

8.1.5 Relevant factors may include the safety of employees and other persons, and the possibility of interference with witnesses and electronic or written documents.

8.1.6 A precautionary suspension is valid for up to two (2) months only.

8.1.7 Despite the contents of paragraph 8.1.6 -

8.1.7.1 if a disciplinary hearing has not been convened within two (2) months, the employer may extend the suspension on full pay for a further period of two (2) months after again considering the factors set out in paragraph 8.1.2 and after considering the employee's representations, if any; or

[3] Section 191(1)(b) states that "[a] referral ... must be made within –
(i) 30 days of the date of the dismissal or, if it is a later date, within 30 days of the employer making a final decision to dismiss or uphold the dismissal,
(ii) 90 days of the date of the act or omission which allegedly constitutes an unfair labour practice or, if it is a later date, within 90 days of the date on which the employee became aware of the act or omission."

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8.1.7.2 If a disciplinary hearing has been convened, the chairperson of the disciplinary hearing may extend the suspension on full pay after hearing the representations of the parties and considering the factors set out in paragraph 8.1.2.

8.1.8 An employee placed on precautionary suspension may refer an unfair labour practice dispute about an alleged unfair suspension to the Transnet Bargaining Council.

9 CRIMINAL OFFENCES

9.1 The employer may discipline an employee who has a criminal case pending before the conclusion of the criminal proceedings if the issues giving rise to the criminal proceedings are of relevance to the workplace, prejudices the legitimate business interests of the employer or undermines the relationship of trust and confidence between the employer and employee.

9.2 It is not necessary for the employer to wait for the outcome of any criminal proceedings before commencing disciplinary proceedings in respect of the same offence.

9.3 The employer may continue with a disciplinary hearing if an employee charged with misconduct refuses to testify in a disciplinary hearing for fear that the employee may self-incriminate him or herself in pending criminal proceedings against the employee.

9.4 The employer must make reasonable efforts to give an employee who is in prison awaiting trial an opportunity to state his or her case before dismissing the employee, if the employer cannot reasonably be expected in the circumstances of the particular case to keep the position open until the criminal proceedings have been finalised.

ANNEXURE A – Notice to Attend a Disciplinary Hearing

Name of Employee: _____

Date of Notice: _____

Kindly take note that a disciplinary hearing will take place on -

Date of Hearing: _____

Time of Hearing: _____

Venue: _____

The purpose of the disciplinary hearing is to consider the following allegations of misconduct committed by you:-

_____

_____

_____

Kindly take note that:

1. You may be represented by a fellow employee, a shop steward, or in the circumstances outlined in the Disciplinary Code and Procedure by a union official. It is your responsibility to arrange for a representative.
2. You have the right to an interpreter. It is your responsibility to notify the employer at least forty eight (48) hours before the hearing begins that you require an interpreter and the languages to be interpreted.
3. You may bring witnesses to the hearing and submit documentary evidence. It is your responsibility to arrange for the witnesses to attend the hearing. If the you or your representative provides forty eight (48) hours written notice, the employer will release from

work your witnesses who work for the employer in order for them to travel to and attend the hearing.

4. You will be given an opportunity to cross-examine the witnesses that the employer brings to the hearing.

5. The employer will provide you with copies of the documents to be used at the hearing and give you access to all relevant documents that are not confidential and private or privileged

6. You will be given an opportunity to make representations both in respect of your defence and, if necessary, the determination of a sanction.

_____

Manager

Note to employee. *By signing this form, you simply acknowledge that you have received this notice and you do not admit that you are guilty of the allegations of misconduct.*

_____ _____

Employee Date

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ANNEXURE B – Written Warning

Employee:
Position:
Department:

Date

Dear _____

Written Warning

This letter serves as a written warning that you have breached the Disciplinary Code and Procedure in the following respects *[insert date and details of misconduct]*

_____
_____
_____
_____

This written warning is valid for six (6) / nine (9) *[delete whichever is not applicable]* months. It will be retained in your personnel file. If you are found to have committed further misconduct while this warning is in place, this warning could influence the disciplinary sanction to be imposed upon you.

We hope that you will correct your future conduct that and that further disciplinary action will not be necessary.

Yours faithfully

_____
Manager

I, the undersigned, understand the contents of this letter and acknowledge receipt of it.

_____ _____
Employee Date

ANNEXURE C – Final Written Warning

Employee:
Position:
Department:

Date

Dear _____

Final Written Warning

This letter serves as a final written warning that you have breached the Disciplinary Code and Procedure in the following respects: *[insert date and details of misconduct]*

_____
_____
_____
_____

This final written warning is valid for twelve (12) months. It will be retained in your personnel file. If you are found to have committed further misconduct while this warning is in place, this warning could influence the disciplinary sanction to be imposed upon you, which could include dismissal.

We hope that you will correct your future conduct that and that further disciplinary action will not be necessary.

Yours faithfully

_____
Manager

I, the undersigned, understand the contents of this letter and acknowledge receipt of it

_____ _____
Employee Date

ANNEXURE D: Part 1 – Notice of Intention to Place Employee on Precautionary Suspension

Name of Employee: _____

Date of Notice: _____

Kindly take note that as a precautionary measure, it is the employer's intention to place you on suspension with full pay pending the completion of an investigation and a disciplinary hearing. The investigation and disciplinary hearing will consider

_____.

It is proposed that the conditions attached to your suspension on full pay will be:

_____

_____

The reasons for considering this decision are:

_____

_____

However, before the decision to suspend you is made, the employer requests you to make written submissions regarding your suspension on full pay within forty eight (48) hours of the date of receipt of this notice. Your submissions must be sent to _____

Once the employer has considered your representations, it will inform you in writing whether you have either been placed on suspension on full pay or that you have not been suspended and will remain at work pending the outcome of the disciplinary hearing.

_____
Manager

Note to employee: *By signing this form, you simply acknowledge that you have received this notice and you do not admit that you are guilty of any allegations of misconduct*

_____ _____
Employee Date

ANNEXURE D: Part 2 – Notice of Suspension/Response to representations on suspension ***(delete whichever is not applicable)***

Name of Employee: _____

Date of Notice: _____

The Notice of Intention to place you on Precautionary Suspension dated _____ refers

You were invited in that notice to make representations as to why you should not be suspended pending the finalization of the investigation and subsequent disciplinary process. You have not made any representations/Transnet has now considered your representations *(delete whichever is not applicable)*.

Transnet has decided not to suspend you based on the representations made/ Transnet has now taken the decision to suspend you on full pay pending the finalisation of the investigation and the disciplinary process. You are hereby suspended from duty with immediate effect, without loss of pay or benefits, pending the finalisation of the investigation and outcome of the disciplinary process.

You may not enter Transnet's premises during the course of this investigation.

Please note that this suspension does not in any way constitute a judgment nor does it any way imply blame in the matter. It is merely a precautionary measure in terms of the Disciplinary Code and procedure *(delete whichever is not applicable)*.

You will receive a notification to attend a disciplinary hearing setting out the disciplinary charges against you once the investigation has been finalised

Manager

Note to employee: *By signing this form, you simply acknowledge that you have received this notice and you do <u>not</u> admit that you are guilty of any allegations of misconduct.*

_____ Employee

_____ Date

TRANSNET

TRANSNET POLICY: Disciplinary Code and Procedure for Bargaining Unit Employees

SIGNED AND DATED AT JOHANNESBURG THIS 24th DAY OF MARCH 2011

For and behalf of: 2011-03-24.
TRANSNET LIMITED

Witness

Witness

SIGNED AND DATED AT 23 March 2011 THIS _____ DAY OF MARCH 2011

For and on behalf of:
SATAWU

Witness

Witness

RM L.J

SIGNED AND DATED AT ~~23 March~~ Johannesburg THIS 23rd DAY OF MARCH 2011

For and on behalf of:
UTATU

Witness

Witness

RM L.J.

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EXHIBIT 2

591

TRANSNET

PROCUREMENT PROCEDURES

MANUAL

(PPM)

A MANUAL FOR PROCUREMENT, ACQUISITION COUNCILS AND CONTRACT ADMINISTRATORS

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26 May 2009

PROCUREMENT PROCEDURES MANUAL

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PART 1: PREAMBLE

1. Foreword

1.1 Transnet Strategy

Transnet is a diversified freight transport and logistics company wholly owned by the South African Government. With over 48 000 employees and assets in excess of R100 billion, the Group provides seamless and integrated bulk freight services through its Operating Divisions.

In terms of the Public Finance Management Act (PFMA) the Accounting Authority (i.e. the Transnet Board of Directors) has delegated the powers for the day-to-day running of the business to the Group Chief Executive, who in turn has delegated certain powers to the members of the Group Executive Committee, with the power to sub-delegate such powers. These Procurement Procedures are based on the abovementioned principle. The GM: Strategic Supply Management is the custodian of this document and the only person with the necessary Delegated Powers, working in conjunction with Transnet Group Legal, to effect any amendments thereto in line with governance and legislative changes, ensuring that these support the continued operations of the Operating Divisions. All procurement within Transnet shall be done in line with these Procedures. Non-compliance will result in disciplinary action and, depending on the severity of the non-compliance, possible dismissal.

1.2. Supply Management Strategic Objectives

(i) Transnet's objective when procuring goods or services, or disposing of scrapped or surplus materials is to achieve optimal value and efficiency by adopting best purchasing practices in Supply Management, ensuring where possible that open and fair competition has prevailed. Due regard must be given to the importance of:

(a) The promotion of Transnet's Interdivisional Support Policy;

(b) The promotion, development and support of Broad Based Black Economic Empowerment (BBBEE) initiatives;

(c) The promotion of national and regional local suppliers, who are globally competitive, before considering foreign suppliers; and

(d) The increase of National Value Add (NVA) in terms of promoting local manufacturing as it relates to Transnet's Competitive Supplier Development Programme (CSDP);

(e) The development, promotion and support of Transnet's Code of Ethics on Purchasing, 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.

(ii) Transnet will strive to procure materials and services which contribute to its mission which is to anticipate and satisfy the requirements of its customers for 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 TCO (total cost of ownership).

(iii) Transnet will in the interest of standardization and competitiveness strive to procure commercial off-the-shelf (COTS) commodities instead of commodities unique to Transnet. The practice of drawing up Transnet-specific specifications for articles similar to normal off-the-shelf products has proven to be very costly for Transnet. This is due to the fact that manufacturers have to reset their production lines to manufacture non-standard and sometimes over-specified items. Hence, Procurement Departments and officials must engage on an ongoing basis with their customers and the relevant Engineering or Product Development counterparts to ensure that in no instance known effective COTS solutions are overlooked for one that is customized to Transnet unique specifications, and to ensure that COTS solutions are being tested until approved so that customization can be kept to a minimum.

(iv) Transnet will seek to develop and maintain positive long-term relationships based on mutual performances trust and respect with those suppliers who demonstrate their commitment to Transnet's shared goals.

(v) Transnet will not do business with any agents ("middlemen"), who do not add significant value to the supply chain. In such instances Transnet will endeavour to contract directly with the overseas and / or local OEMs.(Original Equipment Manufacturers). In the case of dealing with overseas OEMs for relevant CSDP targeted commodities such as rolling stock and port equipment, Transnet will negotiate meaningful CSDP localisation initiatives directly with such overseas OEMs as part of their supply agreements to Transnet. Please also refer to the Supplier Development Plan (SDP), copy available on the Transnet Intranet, signed off by the Ministers of Public Enterprises and Trade and Industry in May 2008 for implementation over five years.

(vi) Transnet will also commit itself to being clear in its communication of requirements, professional, courteous, fair, factual and responsive in its business dealings.

(vii) Supporting good corporate governance by ensuring the preservation of the highest standards of integrity, objectivity, fairness, efficiency and professionalism; and

(viii) Promotion of an efficient and effective Procurement Policy and procedures so as to achieve optimal value for money based on life-cycle cost and quality (total cost of ownership) to enhance competitiveness of suppliers through the development of world-class professional procurement mechanisms.

(ix) The purpose of one uniform set of procedures for the whole Group is to achieve the best of both worlds, namely centralization and, where necessary, decentralization and facilitate a uniform interpretation internally as well as externally with Transnet's supplier base, whilst complying with the requirements of Section 51(1) (a) of the PFMA and Section 217 of the Constitution. The procedures also provide clear guidelines on aspects such as:-

(a) Contracting with other organs of State;
(b) Subcontracting with main suppliers prepared to promote BBBEE from their side, and
(c) Preference to BBBEE enterprises in terms of pre-determined qualifying criteria.

(x) **NB: Transnet's Procurement Procedures as encapsulated in this document (PPM), aims to lay down the framework and minimum standards and procedures. Other procedural manuals, either from SSM, or from an Operating Division or Group Function, should be read in conjunction with these procedures. Please refer to the relevant Annexures where stipulated in this document. Below is a non-exhaustive list of procurement (and disposal) related policies and procedures that are available on the Transnet Intranet:-**

Procure to Pay Procedures (P2P Manual)
Reverse Logistics Procedures
Contracting Procedures Manual for Strategic Sourcing
Disposal of redundant / obsolete PC equipment
Disposal of Cell phones, etc.

1.3. Guiding Principles

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

(i) The Constitution of the Republic of South Africa which stipulates, inter alia, that State procurement processes should be fair, equitable, transparent, competitive, and cost-effective and that the imbalances of the past must be redressed.
(ii) The Public Finance Management Act (PFMA) (No. 1 of 1999, as amended).
(iii) Preferential Procurement Policy Framework Act (No. 5 of 2000, as amended).
(iv) The Companies Act (No.61 of 1973, as amended).
(v) The Competitive Supplier Development Programme (CSDP)
(vi) The Framework for the Operationalisation of Government's Procurement Policies in State Owned Enterprises (Dated 31 July 2001).
(vii) The King Reports I & II on Corporate Governance.
(viii) The Electronic Communications and Transaction Act (No. 25 of 2002).
(ix) The Promotion of Access to Information Act (PAIA) (No. 2 of 2000, as amended)

(x) The Broad-Based Black Economic Empowerment Act (No. 53 of 2003, as amended) and the Department of Trade & Industry's Codes of Good Practice.
(xi) The Prevention and Combating of Corrupt Activities Act (No 12 of 2004, as amended).
(xii) The Promotion of Administrative Justice Act (PAJA) (No. 3 of 2000, as amended).
(xiii) The Competition Act (No. 89 of 1998, as amended).
(xiv) The Conventional Penalties Act (No.15 of 1962).
(xv) Transnet's requirements on Interdivisional Support, Preferential Procurement, employment equity, profitability enhancement and social & environmental responsibility.
(xvi) The National Railway Safety Regulator Act (No. 16 of 2002) – also see paragraph 4.4.3 below
(xvii) The National Ports Act (No. 12 of 2005)
(xviii) The Construction Industry Development Board Act (CIDB Act) (Act No. 38 of 2000)

In addition, Transnet actively promotes the development and advancement of persons or categories of persons historically disadvantaged by unfair discrimination. **Transnet would therefore prefer doing business with enterprises that share these values and who are prepared to contribute to meaningful BBBEE initiatives (e.g. subcontracting, JVs etc.) as part of their tender responses. Transnet will accordingly allow a preference in accordance with the 90/10 preference system, as per the PPPFA, to companies who provide a BBBEE Accreditation Certificate. Refer to paragraph 9.2.3.3 below as well as the relevant clause in the different RFX templates.**

1.4 Scope

1.4.1 These Procurement Procedures are applicable to all Transnet Divisions (inclusive of Operating Divisions and Specialist Units). The Procurement Procedures aim to set the minimum standards for compliance, however, CEOs and their duly appointed Acquisition Councils may impose more stringent rules and thresholds than those laid down in the PPM
Transnet businesses such as Freight Dynamics, as well as divisions and businesses which have been privatised (e.g. Autopax (Pty) Ltd), and where Transnet still holds the majority shareholding, will also be regarded as Transnet Divisions in terms of these procedures.

1.4.2 **These procedures are derived from the Transnet Procurement Policy, and should be read in conjunction with delegated contractual powers granted in terms of any Special Delegation of Authority. (e.g. delegated contractual powers of say R5 million do not derogate from the monetary limits or jurisdictions assigned to specific governance structures such as the Divisional Acquisition Council (DAC) whose minimum monetary threshold is say R2million). Refer to paragraph 6.12 regarding Delegated Authority to conclude Contracts as well as the Transnet Group Delegation of Authority (Group Limits of Authority) - Copy available on the Transnet Intranet.**

NB. Non-compliance with these Procedures will be viewed in a serious light, and will lead to disciplinary action as such non-compliance could result in **irregular expenditure and/or fruitless and wasteful expenditure.** This places an obligation on Transnet to take the necessary appropriate action regarding acts of financial misconduct in terms of Section 83 of the PFMA.

1.4.3 These procedures cover the purchasing and supply of all goods, services (tangible and intangible), fixed assets, the appointment of consultants, and also covers the disposal (selling) of all surplus, redundant and obsolete stock and assets, movable and immovable. The aforementioned are in respect of both Operational and Capital expenditure, unless specifically excluded in terms of paragraph 1.4.4 below.

1.4.4 The specific exclusions are as follows:-
(i) Petty cash purchases, subject to such instructions as issued from time to time
(ii) Inspection services in connection with the procurement /sale of goods / assets
(iii) The rendering of inspection services by or to government departments, the SABS, etc. provided that rates charged by such institutions are market related or certified as fair and reasonable;

(iv) Media advertising (excluding campaigns involving professional advertising agencies);
(v) Income generating transactions (i.e. where Transnet's infrastructure, etc. is utilized to provide a service; including instances where cross-divisional support is engaged for strategic or other reasons, **but excluding** procurement for income-generating contracts - see paragraph 2.16);
(vi) 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);
(vii) 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;
(viii) Purchase of goods at auctions;
(ix) Sale of goods at auctions but excluding the appointment of auctioneers;
(x) Letting and hiring of dwellings, and acquisition and alienation of houses or acquisition of land for houses in terms of prescribed housing policy;
(xi) Letting and hiring, and acquisition and alienation of land and fixed property, which are governed by Delegated Powers;
(xii) Sponsorships and donations, which are strictly governed by Delegated Powers;
(xiii) Any such exclusions which a Transnet Division may apply for, through SSM, and which have been duly approved by the Transnet Group Chief Executive (GCE) or the Transnet Group Chief Financial Officer (GCFO); and
(xiv) Disposal of non-core businesses by the Transnet Restructuring Department, which is strictly governed by the Restructuring Committee, which is 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.

1.5 Ethics and Governance

1.5.1 Business Ethics within Transnet Entities

Transnet Entities are required to develop trust and a sound interdivisional working relationship with one another in the interest of Transnet. To achieve this, no renegade buying which damages the consolidation and leverage of Transnet spend, will be allowed. Entities undertaking work on behalf of other Transnet Entities should also price and carry out their services in such a way that interdivisional support is promoted and developed.

1.5.2 Transnet's Code of Ethics

Transnet subscribes to the following standards of commercial practice:

a) Transnet insists on honesty and integrity 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.

b) If, in the opinion of Transnet's GCFO or a duly authorised person, a tenderer / 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 tender / contract by following the process that governs the Exclusion of Tenderers. Upon approval by the GCFO or duly authorized delegate, Transnet will be entitled to place any Tenderer / Contractor / Supplier who has contravened the provisions of Transnet's business ethics on its List of Excluded Tenderers. This List will also be distributed to all other State Owned Enterprises and Government Departments.

c) Transnet invites its valued suppliers to report any allegations of fraud, corruption or other unethical activities to Transnet Tip-offs Anonymous, at any of the following addresses / contact numbers:-

- Toll-free anonymous hotline - 0800 003 056
- Email - Transnet@tip-offs.com
- Fax number - 0800 007 788
- Freepost DN 298, Umhlanga Rocks, 4320

Confidentiality is guaranteed.

d) Under no circumstances will Transnet employees be allowed to tender for Transnet's business. Employees who have a competing personal direct or indirect interest in a specific tender, quotation or offer, must declare such interest in writing and recuse themselves from the adjudication or tender evaluation process, as such competing interests can make it difficult for such employee to fulfill his/her duties impartially.
Conflicts of interest may occur in cases where an employee is a shareholder/director of a tendering company or where close relatives of an employee are in any way connected or related to a bidder, hence the requirement that interest be declared in writing.

e) Bidders are required to disclose any commercial interests and / or any business involvement or any personal relationship between any of their Directors or Officers with any Transnet employee in his or her personal capacity when submitting their bid responses. Bidders failing to declare such relationship/s will be disqualified from the tender process. Non-adherence to this rule will be regarded in a very serious light. Contracts concluded without adherence to this rule, will be terminated and disciplinary action will be taken against the relevant Transnet employee(s) and defaulting companies will be placed on Transnet's List of Excluded Tenderers.

f) Transnet reserves the right to exclude a tenderer from further business and/or to cancel all existing contracts, should a tenderer/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 Tenderer. For this purpose, Transnet's List of Excluded Tenderers is displayed on Transnet's website http://www.transnet.net.

1.5.3 Transnet Code of Ethics on Procurement

1.5.3.1 Introduction

Ethical norms form a fundamental pillar of the culture of Transnet; hence a great responsibility rests on every employee to act ethically. The ethical norms and guidelines which follow are only broad principles to serve as guidelines and cannot cover every possible situation. Employees and their Managers should evaluate every situation on its own merits, bearing in mind the following basic principles:-

1.5.3.2 Code of Ethics

Employees of Transnet shall not use their authority or office for personal gain and shall seek to uphold the good name of Transnet by:-

(a) Maintaining unimpeachable honesty and integrity inside and outside the employment relationship;
(b) Fostering the highest standard of professional competence amongst the persons for whom they are responsible;
(c) Optimising the use of resources at their disposal so as to provide the maximum benefit to Transnet and a client-directed quality service.
(d) Complying with: –
  (i) The requirements of the Law (refer to paragraph 7.12).
  (ii) Transnet's Procurement Policy.
  (iii) The guidance which Transnet provides with regard to professional conduct and
  (vi) Contractual obligations.

(e) Repudiating all business practice which is improper and at variance with expected moral and ethical principles, even though some in the business would regard it as "justified".

1.5.3.3 Declaration of interest

When a personal interest in any matter may impinge upon or might be deemed by others to impinge upon the objectivity or conduct of an employee of Transnet, he/she shall declare such interest to his/her Manager, in writing. 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 Acquisition Councils. (Refer to paragraphs 5.8.1 to 5.8.3 and 8.1.10.2).

1.5.3.4 Confidentiality and accuracy of information

All information which is received in connection with Transnet's business shall be handled confidentially and shall not be used for personal gain. No employee may discuss with, or disclose to outsiders, prices which have been quoted or charged to Transnet. All information furnished in the course of duty shall be complete, true and fair and not be intended to mislead. No information shall be disclosed which would have the effect, or be perceived to have the effect of placing a tenderer in a better position than its competitors or Transnet at a disadvantage against tenderers or suppliers. Employees are furthermore required to abide by relevant legal requirements at all times. 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 tender documentation and must be signed by all bidders.

1.5.3.5 Competition and optimal value

While considering the advantages to Transnet of maintaining a continuing relationship with a contractor, any arrangement which might in the long term prevent the effective operation of fair competition or prevent Transnet from obtaining optimal value, must be avoided.

1.5.3.6 Gifts and hospitality

All Transnet procurement representatives should at all times be ethical and be seen to be ethical during the process of the procurement function.

Employees are not permitted to accept gifts except as stipulated below, or buy goods or services at artificially low prices, which are not available to the public at those prices, or accept personal favours and hospitality which might, or might be deemed by others, to impinge upon the employee's sound business judgment. Overseas visits on invitation by, and at the expense of prospective suppliers will under no circumstances be permitted. Should such overseas visits be deemed necessary for the purposes of evaluating the technical capability etc, of the supplier, this should be for Transnet's own account and be fully motivated in terms of normal laid-down procedures for overseas visits.

All decisions and business transactions should be made with uncompromised integrity, honesty and objectivity of judgment. Exchanging modest courtesies as listed below, is a common business practice meant to create goodwill and establish trust in the business relationship.

For the purpose of fostering inter-personal business relations, exceptions of the following nature are allowed, provided that the cost thereof, per incident, will not exceed a value determined in accordance with Transnet's Gift Policy :-

- meals and entertainment;
- advertising material of small intrinsic value such as pens, paper-knives, diaries, calendars etc.
- incidental business hospitality such as business lunches/dinners which Transnet is prepared to reciprocate;

- complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, which the employee must bear. Invitations to official functions should be addressed to the Manager of the particular function or sub-division thereof, who may delegate a representative,
- the occasional gift voucher not exceeding the abovementioned value as determined in accordance with Transnet's Gift Policy. Under no circumstances may cash be accepted as a gift.

The occasional exchange of entertainment and gifts not exceeding R500 in value may be appropriate, as long as such courtesies are not specifically intended to influence any procurement or sales decision and are declared in the Declarations Register. Under no circumstances should gifts be accepted from prospective suppliers during the tender evaluation period as that could be perceived as undue and improper influence of the evaluation process. 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, benefit or services. Such favours will be considered to constitute bribery, which violates South African law and is against all that Transnet stands for. The offer of such "favours" or bribes must immediately be reported to the Manager in charge of the function for appropriate action. Any Transnet employee found guilty of any of the above will face dismissal and criminal or civil action. Transnet is entitled to recover from an employee, all damages suffered as a result of the employee's corrupt or negligent conduct, in accordance with the ordinary principles of delictual liability. Any person who has offered a Transnet employee a bribe may likewise face criminal or civil action and/or exclusion from future Transnet business. All tender advertisements, tender documents and purchase orders **must** contain a provision urging clients & suppliers to report fraud / corruption at Transnet to *Tip-Offs Anonymous* toll free on 0800 003 056.

Managers responsible for departments involved with purchasing and disposal functions within Transnet shall, as an audit trace, keep a proper Gifts register of all such 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, as part of the record.

All Gift Registers should periodically be reviewed by the relevant Acquisition Council (AC) at such intervals as may be determined by the relevant Chief Executive Officer (CEO) or the AC. A Gift Register Template is available on the Transnet Intranet and shall be used at all times to ensure that all the relevant information and signatures of approval are captured.

1.5.3.7 Provisions of the Companies Act, 1973 (Act 61 of 1973)

The following provisions, amongst others, of the Companies Act, are important:-
Sections 234, 250 and 266 - These sections of the Act stipulate, amongst others, that employees of a company shall be guilty of an offence if a personal interest in a contract is not declared, or if documents are falsified, concealed, destroyed etc. with the intent to defraud or deceive. In such instances the company may initiate proceedings against such employee or past employee where the company has suffered financial loss or damages or has been deprived of any benefit as a result of the wrong-doing of such employee.

1.5.3.8 Provisions of the Public Finance Management Act (PFMA) (Act 1 of 1999 as amended)

Section 51(1)(a) of the PFMA is of particular importance to procurement, and reads as follows -

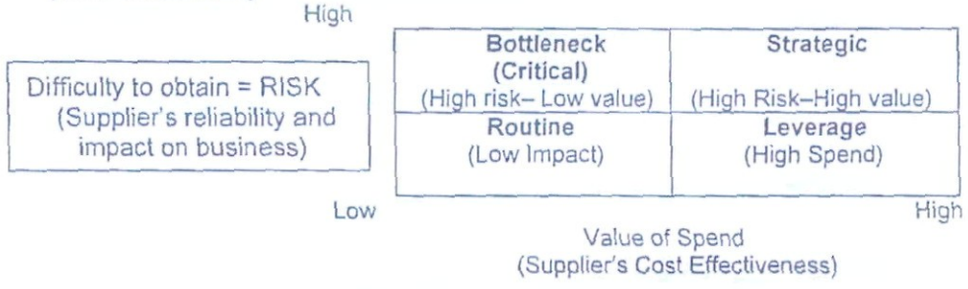
"**51. General responsibilities of accounting authorities**
(1) An accounting authority for a public Entity-
(a) must ensure that that public Entity maintains-

(i) effective, efficient and transparent systems of financial and risk management and internal control;
(ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and
(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
(iv) a system for properly evaluating all major capital projects prior to a final decision on the project. "

PART 2: PROCUREMENT MECHANISMS (PROCUREMENT PATHS)

2. Important Factors to consider in selecting the best suited Procurement Mechanism

Depending in which category of the following four-quadrant matrix a specific commodity or service falls, the following important factors should also be taken into consideration when deciding which of the Procurement Mechanisms available, would be best suited for the particular procurement activity:



Therefore, depending on the circumstances of each requirement for the procurement or sale of goods and procurement of services, any one of, or a combination of the following procurement mechanisms (procurement paths) may be utilised:-
NB. The practice of issuing **tenders or requesting formal** quotes merely for budgeting purposes, or to test the market, is not allowed. See paragraph 2.2.1.8.below

2.1 Interdivisional Support Policy

2.1.1 The following Specialist Units which have been identified as strategically important to the core Divisions **must** be utilised by the core Divisions and **under no circumstances** may the external market be approached for goods and services falling within the strategic Specialist Units' core-competency areas, or provided by a core Division such as Transnet Rail Engineering (TRE). The business relationship between Transnet Divisions and Specialist Units must be governed by a Service Level Agreement (SLA) between the parties.

Transnet Rail Engineering (a specialist core Division)	:	Heavy engineering including locomotive, wagon and coach repairs, upgrades and maintenance.
The other Specialist Units are:-		
Transnet Capital Projects	:	Multi-disciplinary design, project management and construction management services, as well as related rehabilitation, maintenance and emergency services.
Transnet Fuel Solutions (previously known as HSA)	:	Transnet-wide Fuel acquisition, distribution and management.
Transnet Freight Rail School of Rail		Training tailored exclusively for core businesses. e.g. Train drivers, Train Control Officers, as well as software training in general, etc.
Transnet Property		Property management, facilities management, property development, and property valuations / surveying

These Specialist Units and TRE **MUST** be utilised **in all instances** strictly in terms of the terms and conditions set out in the SLA entered into between the Divisions and the Specialist Unit, except where a specific service can be provided "in-house" by the Division itself, e.g.

construction or perway related work carried out by Transnet Freight Rail Infrastructure with its own resources/expertise, and provided that it is not in conflict with any terms and conditions agreed upon in the SLA. The same principle applies to other in-house expertise available in the resident Division such as for example, design work, project management, quantity surveying, contract management etc.

Only if the above strategically important Specialist Unit has indicated in writing that they do not have the capacity to provide the required goods or services, may this be sourced from the external market. Non-core Businesses wishing to utilise the services of the strategic Specialist Units, may do so after entering into the customary SLA with such Specialist Unit.

Such **internal** interdivisional transactions between Transnet Divisions, (core, and non-core until their final exit) and such **strategically important Specialist Units, fall outside** the scope of the DAC (see paragraph 1.3.3.4 above) and are governed by normal Delegated Powers.

2.1.2 All non-core Businesses, such as Freightdynamics and Autopax (Pty) Ltd, etc. will henceforth enjoy **no interdivisional support** from the rest of the Transnet family. Business relationships with these Businesses will be on the following basis:-

2.1.2.1 Existing contractual arrangements, such as for example individual SLA's between a Transnet Division or Business, and such Specialist Unit, will be allowed to continue for the remainder of the contractual period.

2.1.2.2 On expiry of the SLA, continued and exclusive support of such non-strategic business will be the sole prerogative of the Division requiring the service and it will be dealt with in terms of these procedures. Should they wish to "benchmark" such service with the external market, the 3-quote system or open tender process must be employed. However, in such instances no preference whatsoever may be given to the internal Division or Business as that would be regarded as an unfair administrative process, exposing Transnet to the risk of litigation.

2.1.2.3 In certain instances, as part of the disposal agreement of the non-core Business, the parties may agree on Transnet's continued guaranteed business for a specified period. In the case of Viamax Fleet, disposed to the Bidvest Group, such a continued business relationship for a period of 5 years from date of approval by the Competition Board has been agreed upon. In this regard please refer to the SLA, copy of which is available on the Transnet Intranet. Arivia.kom and Transtel/Neotel will also receive precedence in terms of the current SLA with Transnet.

2.1.2.4 Transactions with non-strategic Transnet Businesses (while still in the Transnet family and after their final exit), fall within the scope of these procedures and therefore also within the jurisdiction of the DAC, depending on the value of the transaction.

2.1.3 Transnet Divisions and Businesses already disposed of some time ago, such as Chemical Services, have already enjoyed their "interdivisional" support period as agreed upon as part of the disposal transaction, and these ties may be severed in terms of existing contractual arrangements, i.e. termination dates and / or exit clauses. The said services must henceforth be sourced in terms of the normal Procurement Procedures (e.g. tender or quotation process) and the said entities will be allowed to tender/quote as well, but will receive no preferential treatment whatsoever.

2.1.4 The Transnet relationship with South African Airways (SAA) is addressed by the Transnet Travel Policy, copy of which is available on the Transnet Intranet.

2.1.5 Transnet's Interdivisional Support relationship with Connex and Skotaville/AIM/Khumbula Media Connection has now been terminated.

2.1.6 Whereas the first scenario (paragraph 2.1.1) as well as paragraph 2.1.4, falls outside the ambit of the Divisional Acquisition Council (DAC) see paragraph 1.4.4, the second scenario i.e. paragraphs 2.1.2, 2.1.3 and 2.1.5, should be dealt with in terms of these procedures and where applicable the relevant Acquisition Council approval should be obtained in the normal manner.

2.2 The Open Tender process (RFP)

2.2.1 The open tender system or Request for Proposal (RFP) is the procurement/disposal mechanism best suited to the following circumstances:-

2.2.1.1 The monetary value of the purchases should be in excess of R2 million.

2.2.1.2 When it is an unknown market for the purchaser, it would be advisable to issue a local tender (RFP), even if the value is less than R2 million.

2.2.1.3 When the market is competitive (i.e. many potential suppliers are able to provide the required goods/services).

2.2.1.4 Clear and unambiguous specifications must be available to ensure that all potential suppliers tender for the same product.

2.2.1.5 Enough time should be available - open tenders should ideally be open for 3 to 4 weeks, international tenders even longer.

2.2.1.6 The open tender system is regarded as the procurement mechanism which best ensures open and fair competition. Tenders (RFPs) are invited publicly and any individual or enterprise is granted equal opportunity to tender for Transnet's business. Refer to paragraph 3.1 regarding fees raised for tender documents.

2.2.1.7 All tenders (RFPs) should close at a specified tender box (or e-mail address if electronic tenders are allowed) at a specified date and time. CEO's of Entities will determine the monetary limits for tenders closing at the DAC and Regional Purchasing Offices. In terms of good corporate governance, CEO's will ensure that segregation of duties prevails. A separate and therefore objective office removed from the purchasing department should receive, open and stamp the tenders. Thereafter, the procurement department which invited the tender will be responsible for the subsequent evaluation and/or recommendation of award of business against the said tenders.

2.2.1.8 It is unfair to tenderers if Transnet Entities use the tendering system merely to obtain market related prices for budget or benchmarking purposes. Tenderers' inputs in preparing a tender invariably cost them money and it is unfair to expect them to incur such fruitless expenditure, if Transnet has no intention of awarding any business against such tender invitation. In cases where it is absolutely necessary to obtain test quotes for budget purposes only, the request to prospective contenders 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 invite. Care should, however, be exercised that such budget pricing exercise is not abused merely to give only certain contenders advance notification of a new project in the pipeline. In cases where Transnet's needs / specifications, etc are still too vague to issue a formal tender, the two-stage tender system (RFI) should be followed (Refer to Paragraph 2.10 below).

2.3 Procurement/credit card purchases

2.3.1 Entities may at their CEO's discretion introduce the use of buyer and/or credit cards to facilitate easier purchase of low value day-to-day requirements. A record of all such purchases should be kept by the system for audit purposes. As a control measure, maximum transaction levels and permissible maximum expenditure level should be built into the system in consultation with the card user's manager and/or the financial office.

2.4 The 3-Quote System for values below R 2m (RFQ/RFP)

2.4.1 Procurement of goods and services (or offers received) less than R2 million in value should use the 3-quote system or request for Quotation (RFQ). With regards to Construction Industry

Development Board "CIDB-tenders", kindly note that the CIDB limit of R200 000 for 3-quotes is not applicable to Transnet.

2.4.2 With relatively low value purchases, circumstances may be such that it is just not possible, practical or economically viable to call for open tenders. **A manager who has been granted such specific powers in terms of his/her Special Delegation of Authority may, within his/her level of delegated powers**, grant authority or decide that 3 quotations be obtained where possible, or an offer be considered, where the value of the transaction does not exceed R2 million, but is still within his/her own delegated powers. **This is provided that, in the opinion of the manager, it is in the best interest of Transnet. Should this not be the case, the tendering process, as outlined in paragraph 2.2 above, should be followed.** Three quotes are not required for items that fall within a current existing contract with a preferred supplier (i.e. A new type of stationery item is needed and is supplied by a National supplier of stationery). In such cases the procedures relating to amendments to existing contracts as per paragraph 7.3 should be followed.

2.4.2.1 NB: The 3-quote 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 procurement mechanism is not the most cost-effective and efficient, as the benefit of volume discount is lost, and **may also be regarded as parcelling - see paragraph 6.13.**

In instances of frequent repetition, consideration should rather be given to entering into a fixed term as-and-when-required contract. Alternatively, if market prices of the commodity are too volatile, making it impossible to obtain firm prices for a specific period (even with price review mechanisms included), consideration should be given to short term as-and-when-required contracts. In this way there would be no need to artificially keep the individual orders below the 3-quote threshold. This will not only reduce the number of individual purchase orders, lessening the administrative burden, but will also attract better prices since the order values are larger (economies of scale benefits).

2.4.3 CEO's may at their own discretion and bearing in mind the specific needs and purchasing focus of different managers in the Division's hierarchy (i.e. Procurement and non-procurement), decide to allocate different powers to different managers in terms of their Special Delegation of Authority. For example, a Manager in the Training Department should not have Delegated Powers to invite quotations, or to contract, as a segregation of duties must be maintained at all times to ensure good corporate governance. Hence all purchasing activities should be undertaken by the procurement function, which firstly, is objective since they are not the end-users, and secondly it has the necessary structures in place to ensure proper segregation of duties, i.e. a manager may not draw up the specification / tender document, issue and receive the tenders, evaluate the responses, award the contract and authorise payments. Therefore, the CEO (and ultimately the Chief Procurement Officer (CPO) will delegate specific powers to specific managers in the procurement function for firstly the inviting of quotations up to a certain value, and secondly for the award of the business resulting from such 3-quote system.

2.4.4 Similarly, the CEO at his/her own discretion and within the regulatory frameworks laid down by Group Financial Services, may introduce its own unique control mechanisms for these "low" value transactions (e.g. Petty cash policies, etc). Furthermore, the CEO will, in introducing such procedures, also bear in mind the purchasing focus of the different departments in its Division, for example, what is low for a professional buyer in the locomotive spares section of the procurement department, might be extremely "high-value" for a procurement manager in the stationery section of the same department. Control measures for the different R-value categories falling in this procurement mechanism, i.e. from lowest e.g. say less than R2 500 for telephone quotes to R150k for certain procurement officials (say stationery), up to the high-value quotes say more than R150k to less than R2m reserved only for certain procurement officials involved in high value commodities (such as locomotive spares).
NB Such higher value quotations (say those in excess of R150k) should be regarded as formal quotations i.e. received in a sealed Tender Box by a specified closing time, properly stamped

and recorded on a tender list, etc. (Refer to Part 3 – Issue and Opening of Tenders and Quotations).

2.4.5 It is imperative that BEE Suppliers also be utilised, as this mechanism is considered to be the best avenue to ensure entry levels for prospective BEE entrepreneurs. Optimal value and fairness are important considerations and therefore the practice of channelling all business to one or two BEE suppliers while there are many, should be avoided. In such instances the Division's BEE Database or Content Bureau's Vendor Master should be utilised on a rotational basis. Depending on the number of BEE companies appearing on such list for a specific service or commodity, more than the normal 3 quotes should be invited at a time, so as to give everyone on the list at least one or two opportunities per year to quote.

2.4.6 Please refer to Part 3 for the rules governing the receipt, opening, recording and stamping of tenders and quotations (telephone quotes and electronic tenders excluded).

2.5. Confined enquiries for proposals/quotations invited (or offers received) more than R 2m in value (RFP/RFQ)

2.5. This mechanism is only to be used in circumstances where due to urgency, emergency or a restrictive market, it will not be possible, practical or economically viable to invite open tenders. Depending on the degree of urgency, this procedure makes provision for the following variations:-
- authority to confine, quotations to close at DAC and DAC to approve award - 2.5.1.
- authority to confine, quotes need not close at DAC, but DAC to approve award - 2.5.2.(i)
- authority to confine and award, DAC informed only after award - 2.5.2.(ii)
- emergency – obtain retrospective authority from DAC afterwards - 2.5.2.2.

2.5.1 A deviation from the procedure prescribed for the calling of tenders may be authorized in the following circumstances:-

2.5.1.1 If the value of the transaction exceeds R2 million, the matter must be fully motivated in writing to the CEO or his/her duly authorized delegate for prior written authority to confine. Only if he/she agrees that the reasons advanced for the proposed confinement is in the best interest of Transnet, will the confinement of business to one or more contenders only be authorised.

2.5.1.2 **NB. Should the R-value of the proposed confinement exceed the Delegated Authority of the relevant CEO, the matter should be escalated from the DAC via the CEO to the GM: SSM or higher, depending on the R-value of the proposed confinement. Refer to paragraph 5.4.2 of the Transnet Group Delegation of Authority (Group Limits of Authority) Copy available on the Transnet Intranet, as well as the relevant PPM Circular available on the intranet.**

2.5.1.3 After approval to confine has been obtained the quotations shall close at the designated closing venue for that particular R-value, (see paragraph 3.3.3 below). Once quotations have been obtained and evaluated approval for the award of the business must be obtained from the DAC, or from the person with the necessary delegated authority if in excess of the DAC's (CEO's) jurisdiction, for that amount before business is awarded.

2.5.2 **In exceptional circumstances** where it would be impossible for the quotation to close at the designated venue, the CEO or his delegate may authorise that:-

(i) The quotation close at the local department itself, and/or
(ii) The quotation / offer be accepted without the DAC first having considered the actual award of the business to the successful contender.

This should be fully motivated in the original request for confinement to the CEO, his delegate, or higher authority, (see paragraph 2.5.1.3 above) depending on the R-value of the proposed transaction. Such confinement approval shall be obtained in writing, for the purposes of the necessary audit trail in terms of good corporate governance principles.

2.5.2.1 The matter shall be reported for the information of the relevant authority (or CEO or relevant delegate) immediately after the actual award of the business, indicating full details of the award.

2.5.2.2 **NB:** In emergencies such as derailments the work is performed, and a full motivation submitted only afterwards in the normal manner, to obtain the necessary "retrospective authority for confinement". This is because it would be impossible to obtain the necessary prior authority to confine. The words "in exceptional circumstances" shall be applied judiciously and restrictively. Misuse of this concession as an excuse for bad planning will be regarded as a serious contravention and will be dealt with severely.

2.6 Approved List purchases

2.6.1 This procurement mechanism is ideally suited for the strategic, high-value, high-risk items, non-standard items which are not available "off-the shelf", or where equipment can only be obtained from OEMs (Original Equipment Manufacturers) or limited suppliers.
NB: "Approved Supplier" status can only be attached to a supplier after the process as stipulated below has been followed and DAC approval in terms of this paragraph has been obtained. Approved Supplier status cannot be acquired merely by being on the Division's Vendor Master or on a BBBEE Manager's List of EME or QSEs for a specific commodity or service.

2.6.1.1 A CEO may, at his/her discretion and subject to the concurrence of the DAC, decide that quotations for certain specialised goods/services which are in constant demand and not freely available in the market or which are manufactured solely in accordance with Transnet's own specification, be restricted to only those suppliers who comply with the relevant Transnet requirements, as laid down from time to time and whose products have passed the necessary quality tests. The framing of such lists of approved suppliers is subject to the concurrence of the DAC. The invitation for quotations shall be confined to the suppliers of goods or services appearing on the relevant approved list,

unless

(i) due to specific circumstances it is considered more advantageous for Transnet to call for open tenders in respect of such goods/service. Where the approved list is used, open tenders should not be invited.

(ii) where open tenders are invited, however, suppliers on the approved list should be advised that open tenders are being invited in that particular instance.

2.6.1.2 Depending on the specific market, there are several categories of approved suppliers, over and above the "normal approved supplier" whose product has been tested and whose name has been included on the Approved List after DAC / CEO approval has been obtained (paragraph 2.6.4.2), e.g.:

(a) *Preferred suppliers* are those who have been certified as best suppliers by means of a thorough certification process based on their past performance, price, quality, delivery as well as their innovative and pro-active response to unforeseen events in the market e.g. increase in demand, changes in specification, new technology, improved processes, etc.

(b) *Strategic supplier partnering* is a co-operative and collaborative way in which the specific buyer and his/her key suppliers intensively interact with each other to achieve mutual "win-win" long term benefits. The goods/services purchased from these suppliers are always of strategic importance to Transnet, resulting in long term commitments, confidential information sharing co-operative and continued improvement efforts, all of which facilitate the sharing of risks and rewards. Formal and thorough supplier performance evaluation mechanisms should be in place to ensure that the relationship remains sound and that the set objectives (the continual improvement philosophy) are adhered to.

The process of framing approved lists of these "special category suppliers" is identical to the process outlined in paragraph 2.6.4.2 for normal approved suppliers.

2.6.1.3 **NB**. So as not to constrain market competition, it is imperative that all approved lists be advertised at least every 2 years, 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. A list of all approved lists, with their respective specifications, etc. (but not the names of the present approved suppliers) should also be displayed on the Division's (OD's) Tender Notice Boards as well as electronic websites/tender bulletins, where available, to promote easy access for possible newcomers in those markets. Any possible new applications received outside of the 2 year advertising intervals should be dealt with immediately and not held over until the next advertisement. Should the new application be successful, such approved list should be updated immediately.

2.6.2 **Framing of approved lists**

2.6.2.1 When obtaining the DAC's approval for the framing of an Approved List, an indication should be given as to which of the following three methods have been used:-

(a) By publicly advertising the intention to frame an approved list in a notice requesting all prospective suppliers to formally apply.

(b) By framing an approved list in the light of experience gained and/or tests carried out in the past, in instances where it is possible to frame a sufficiently comprehensive list of preferred suppliers without previously having resorted to (a) above. Suppliers falling in this category would include suppliers with whom "long term joint venture arrangements" have been established over the years in terms of sound best purchasing practices.

(c) By framing a list of aspiring suppliers who applied for inclusion on the approved list, but whose goods or services have not been tested. When suppliers already appearing on the approved list are approached for quotations, the aspiring prospective suppliers may also be invited to submit quotations. If such aspiring applicant is awarded a portion of the contract for evaluation purposes and performs satisfactorily, their name may be placed on the approved list by following the normal process outlined in paragraph 2.6.1 above. This method could be utilized in instances where it is not practical for an applicant to submit his own samples for testing, e.g. overhaul of traction motors; reconditioning of transformers for electric substations, etc.

2.6.3 **Suitability of supplier for inclusion**

2.6.3.1 No name shall be included on any approved list, unless the business in question is suitable to undertake Transnet's contracts and –

(i) is able to manufacture/supply goods or to render services of the magnitude and standard required;

(ii) if so required, has submitted samples or delivered goods which have satisfactorily passed Transnet's tests.

NB: Specifications must be drawn up to promote fair competition as much as possible. Compiling of a specification around one supplier's product should be avoided at all cost. In the interest of cost-effectiveness, Entities must attempt as far as possible to procure off-the-shelf goods as opposed to drawing up its own specifications. Also refer to paragraph 4.16.1 below regarding patented articles.

2.6.4 **Removal of name from the approved list**

2.6.4.1 The name of an enterprise may be removed from an approved list at any time if the enterprise -

(i) Has been convicted of any offence under any law relating to wages hours of work or

other conditions of employment;

(ii) Fails or ceases to comply with the requirements of such approved list;

(iii) Performs unsatisfactorily when measured on any of the following criteria; timeliness, quality, price escalation and service and has been informed accordingly;

(iv) Sublets the whole or any portion of a contract for the supply of goods or the rendering of services in respect of which such list has been framed, to an enterprise or person whose name does not appear on that list, or otherwise acts in a manner which, in the opinion of Transnet, is construed to nullify the object of framing any such approved list;

(v) Has ceased to carry on business under that name and has not informed Transnet of this change;

(vi) Has been dealt with in terms of Transnet's List of Excluded contractors;

(vii) Has shown little interest over a reasonable period to submit quotations when invited to do so or 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 nature of the complaint against it and the intention to remove it from the approved list unless sufficient reasons can be given by it as to why its name should not be removed.

2.6.4.2 **The framing of an approved list or any amendment thereto has to be approved by the Division's CEO upon a recommendation from the DAC, which will also be responsible for the distribution of the List within the Division. Should more than one Division be utilising the same Approved List, the DAC should liaise with SSM which will distribute the said list to the other relevant DACs. The Division which initiated the List will, however, be responsible for the periodic updating thereof.**

2.6.5 **Procedure for the invitation and receipt of quotations in terms of approved lists**

2.6.5.1 Such quotations shall be dealt with in all respects in terms of the normal laid-down procedures (i.e. Parts 3 to 7 – see introductory paragraph, Part 3)

2.6.6 **Representations to the General Manager, SSM**

2.6.6.1 Any person or enterprise whose application for inclusion on the approved list has been refused or whose name has been removed therefrom, may make representations to the relevant CEO. Should it not be satisfied with the CEO's ruling, an appeal may be made to the General Manager, SSM, whose decision shall be final.

2.6.7 **Confidentiality of Approved Lists**

2.6.7.1 Information regarding Transnet's Approved Lists shall be regarded as confidential and may not be disclosed to anyone outside Transnet without the written approval of the General Manager, SSM.

2.6.7.1.1 **NB: The names of Tenderers shall not be read out at public tender openings if an approved list is utilised, nor shall the unsuccessful tenderers be advised of the name (or price) of the successful tenderer who had been awarded the business. This is to prevent the possibility of collusion between a limited number of suppliers appearing on an approved list. In accordance with paragraph 6.3.1, unsuccessful tenderers should merely be advised in which category(ies) they were unsuccessful.**

2.7 Post-tender negotiation

2.7.1 Post-tender negotiation is an effective tool to drive down cost and can be used very effectively in conjunction with any other procurement mechanism. It is important to note that it is reserved for high-value, strategic commodities. Depending on the circumstances, this tool can be used either with all technically compliant tenderers, or a selected short-list, or even with the preferred bidder only (as duly approved by the relevant Acquisition Council), but subject to the following provisos

to ensure good corporate governance. **Refer to paragraph 2.17 regarding post-tender negotiation on CIDB-tenders.**

2.7.2 Where post-tender negotiation is envisaged, the tender document must clearly indicate this intention. The thresholds and evaluation criteria which will be used to control entry into the post tender negotiations must also be disclosed at the outset of the tender process.

2.7.2.1 **Before** post-tender negotiations are conducted with the preferred bidder or short-listed bidders, it must be duly approved by the relevant Acquisition Council. The R-value of the proposed contract to be negotiated will determine within which AC's jurisdiction the matter falls. The submission requesting authority to negotiate should include the following:-

- List of preferred bidders (or bidder) and how it has been determined
- The composition of negotiating team
- The targeted price reduction (say 10% discount)
- BBBEE commitment 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.

2.7.2.1.1 It would also be acceptable, especially on transactions falling below the AC minimum R-thresholds, for certain officials, preferably in Procurement, to be given specific standing delegated powers to conduct or authorise post-tender negotiation, without the necessary prior AC approval as contemplated in paragraph 2.7.2.1 above. This authority must be obtained from the Line Manager or CPO and must be included in the Special Delegation of Authority of the relevant official. The Standing Delegation of Authority must clearly reflect the maximum transaction value for which the official may conduct Post Tender Negotiations. A standing authority to negotiate is distinguishable from a standing authority to communicate (refer to paragraph 3.18 below) and separate authority must be obtained. Standing delegated powers to negotiate will be granted with great circumspection and only to employees who have the necessary negotiation skills' training. A full audit trail of the bidders who have been negotiated with, how this has been determined, including their best-and-final offers should be kept on the appropriate files.

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 negotiated with, details of the agenda that was negotiated, as well as full details of the best-and-final offers (refer to paragraph 2.7.2.5 below), when a recommendation on the final award of the business is made to the relevant AC. Copies of such standing authority must be submitted with the relevant submission to the AC. 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 which is an unfair business practice and such misconduct will not be tolerated.

2.7.2.2 On higher value transactions, the negotiating team to be appointed by the relevant AC, shall comprise of procurement, technical, financial and commercial (marketing) and legal disciplines (where appropriate), to facilitate unity of purpose from Transnet's perspective and to enable the tenderer to deal with all relevant matters before making a final offer. Post-tender negotiation may only be conducted by expert, trained negotiators. Highly skilled negotiators will be drawn from SSM and the various Entities to form part of the multi-disciplinary negotiation team. During post-tender negotiations, prices of one bidder will not be disclosed to others as this is prohibited in terms of Transnet's Code of Ethics. It is also important that all members of post-tender negotiation teams should sign Declarations of Interest and Non-disclosure/confidentiality agreements when appointed to such teams. Such signed forms should be kept on the appropriate contract files.

2.7.2.3 A fixed format must be followed in all negotiations and this format must be made known in advance to all bidders. In terms of fairness, as far as possible the same agenda must be used with all short-listed suppliers to ensure that all suppliers are provided with the same information. The objectives of the negotiating team must be recorded in consultation with the financial

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technical and commercial discipline concerned and duly approved by the relevant AC. The financial advantages, or other objectives sought (e.g. BEE commitment, 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, and the results recorded in writing against the envisaged objectives.

2.7.2.4 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. Under no circumstances should a preferred bidder be informed that "he has been awarded a contract" prior to the post-tender negotiation process, as that would jeopardise Transnet's negotiation power. This is particularly important if one considers that even if the negotiations were not 100% successful i.e. the target price could not be achieved, one would not be able to eliminate the preferred bidder, and award to another contender (say the second-best), unless such bidder was also on the short-list, and therefore part of the post-tender negotiation. In such cases i.e. where post-tender negotiations are to be conducted with a short-list of contenders, the ultimate award of the business, whether awarded to one or more than one contender, should again be presented to the relevant AC which approved the preferred bidder/short-list – refer to paragraph 2.7.2.1 above.

2.7.2.5 Decisions reached during the negotiations with the tenderer must be recorded in concise minutes. This record shall be signed-off by the Negotiation Team Leader and a copy forwarded to the relevant AC to be kept as part of the record..
NB: Where post-tender negotiations 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. 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 subsequent to the negotiation session.

2.8 Contract negotiation

2.8.1 This mechanism is normally used where an oligopolistic or a monopolistic situation exists whether so dictated by market forces or because of legal or proprietary rights such as patents, registered designs or licenses.

2.8.1.1 The prescripts for **Contract negotiation** are exactly the same as those for Post-tender negotiation, except that for post-tender negotiations, authority to negotiate is obtained **after** the evaluation process has been finalised and a preferred bidder(s) has/have been determined, having followed a fair and transparent selection process. When using Contract Negotiation, the relevant authority must be approached **for prior approval before** going to market. (i.e. the sole supplier is engaged). The motivation should include similar details to that in paragraph 2.7.2.1 above.

2.8.1.2 Decisions reached during the negotiations with the sole supplier(s) must be recorded in concise minutes. This record shall be signed-off by the CPO and emailed by the CPO to the lead negotiator and kept as part of the record. Alternatively, all tenderers with whom contract negotiations have been conducted could be requested to tender their negotiated (or better) price by depositing their final bid in the tender box before the set closing date/time.

2.8.1.3 Should exceptional circumstances necessitate a contract being concluded forthwith, e.g. without DAC's approval, the necessary mandate should be obtained from the required authority before negotiations are conducted and a contract concluded. Details of the contract concluded must be submitted to the relevant authority as soon as possible after the contract has been concluded.

2.9 Long-term contracts

2.9.1 This mechanism is used in instances where high value goods of strategic importance to Transnet are purchased and where considerable input is required from the supply market, the cost of which cannot easily be recovered over a relative short period of time. Long term

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contracts will indicate commitment from both contracting parties and will generally realize considerable savings both in the short and long term.

2.9.2 Where more than one supplier is capable of providing the goods or services the open tender process should be followed with the subsequent negotiation process, if deemed appropriate, in order to further drive down costs. **See paragraph 6.14 below- the DAC's prior approval for inviting a tender on a period in excess of 2 years, must be obtained.**

2.9.3 In instances where post-tender negotiations are considered advisable and in view of the long term commitment to such suppliers, it is imperative that all aspects pertaining to such relationships be handled by skilled, multi-functional negotiation teams to ensure best value for money for Transnet. **Refer to paragraph 2.7 above for the prescripts on post-tender negotiations.**

2.10 Two-stage tendering system (RFI/RFP process)

2.10.1 This mechanism is used in assessing the availability of products/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.

2.10.2 In the first stage, which is the pre-qualification stage, prospective bidders are invited by means of an open Request for Information (RFI) to submit their proposals. These RFIs are returnable to the DAC's designated closing venue in the normal manner. It is advisable to request prospective bidders to provide rough ball-park costing estimates during this first stage, otherwise the possibility exists that Transnet may be exploited, especially if only one bidder eventually makes the shortlist.

2.10.3 All the RFIs received are evaluated for suitability in accordance with pre-determined evaluation criteria which have been made available to all contenders in the RFI documentation. After evaluation, a recommendation must be made to the DAC or relevant authority regarding the eligibility of bidders to participate in the second stage. Should the DAC agree with the recommendation made, it effectively "authorises" that the second stage be "confined" only to those selected bidders on the shortlist.

2.10.4 In the second stage, only the selected pre-qualified bidders are invited to tender in the normal manner. After evaluation, a submission is made in the normal manner for DAC consideration.

2.10.5 This RFI process is ideally suited for capital projects such as land or port development projects. This is to prevent prospective tenderers from incurring fruitless expenditure in preparing detailed development studies and cost estimates.

2.11 Fixed period contracts (as-and-when required)

2.11.1 This mechanism is employed where a continuous demand for a particular requirement exists, but actual volumes and scheduled delivery dates cannot be determined accurately at the tender stage. These contracts run over periods of one or more years depending on the commodity. Estimated quantities are merely given as a rough indication of our requirements but cannot be guaranteed to the supplier. This mechanism is ideally suited for off-the-shelf commodities, but may also be used on Approved List purchases. By consolidating the Division's (or Transnet's) buying power, all depots/regions/ports of the Division (or all Divisions i.r.o. a Transnet wide contract - see paragraph 2.12 below) will benefit from the resultant lower price.

2.11.2 Divisions must draw their requirements against these transversal contracts, and may not purchase outside these contracts even if better prices or terms can be obtained locally. Important to note that the TCO is based on total volumes over the full contract duration and maverick purchases could destroy this value

2.11.3 SSM will immediately advise the relevant DACs as well as the CEO and CPO of each Division when such a Transnet-wide national contract has been concluded. The CPO must then ensure

that all buyers in his/her Division are made aware of the existence of such contract and use it to draw their requirements from it.

2.11.4 These contracts can also be concluded by Divisions themselves in respect of unique business-specific needs on a national or a regional basis. Should it be considered advisable to conclude a contract for a period longer than two years, **the DAC's prior approval must be obtained. See paragraph 6.13 below, as well as Paragraph 5.4.4 of the Transnet Group Delegation of Authority (Group Limits of Authority) - available on the Transnet Intranet.**

2.11.5 **NB:** It is unethical and not in Transnet's best interest for Divisions to use such existing contracts as a basis for further negotiation. Purchasing outside such contracts from another supplier (who now undercuts the contract price after having lost the business) will discredit Transnet's tendering system and could lead to legal action against Transnet.

2.12 Transnet-wide / National network contracts

2.12.1 This mechanism is employed by Transnet where goods or services are used by more than one Division and where SSM and the relevant CPO's have agreed on the consolidation of Transnet's buying power by selecting a specific brand or supplier for a specified contract period. This can lead to considerable savings for Transnet as a whole. These commodities can be of a capital nature (e.g. cranes) but can also be consumable goods financed from the different Divisions' operating budgets.

2.12.2 Such consolidation of buying power will be negotiated with and on behalf of all the relevant Transnet Divisions via the SSM cross-functional Strategic Sourcing Teams. No Division may buy outside a national contract, unless the necessary **prior** authority has been obtained from the GM: SSM.

2.12.3 National contracts can also be on an "as-and-when required" basis as contemplated in Paragraph 2.11 above, where the commodities are not of a capital nature, such as fuel, tyres, truck tarpaulins, steel, stationary, etc.

Also refer to paragraphs 2.11.3 – 2.11.5 above as these apply to both fixed period and Transnet-wide contracts.

2.13 Disposal of movable and immovable goods

2.13.1 Disposal of all movable goods must be properly controlled and Divisions must have proper disposal policies/procedures in place for the disposal of such assets. Where the Division does not have the necessary Delegated Powers, the manpower or expertise to dispose of such goods per tender or public auction, Freight Rail Supply Chain Services (Reverse Logistics) should be approached to provide this service at a fee, on behalf of the Division. Refer to the Transnet Group Delegation of Authority (Group Limits of Authority) available on the Transnet Intranet.

2.13.2 There are, however, specific commodities such as ferrous scrap (steel) and non-ferrous scrap, which are disposed of in terms of a single Transnet contract for better control and to curb the theft of those valuable materials. (See Disposal Policy available on the Transnet Intranet for details). Other commodities as issued by the GCE (or Group Executives) from time to time are also addressed and / or appended to this procedural manual, e.g. Disposal of redundant PC equipment, cell phones, etc. Redundant office equipment and furniture must be disposed of in terms of the individual policies/procedures as laid down by each Division. (Refer to paragraph 5.7.1 below)

2.13.3 Disposal of all redundant fixed property falls outside the scope of these procedures. (Refer to Paragraph 1.3.3.4. above for Exclusions) and is subject to prior written approval of the CEO, OPCO, or higher depending on the market value of the property. Refer to Paragraphs 5.1.6 and 5.1.7 of the Transnet Group Delegation of Authority (Group Limits of Authority) - Available on the Transnet Intranet.

2.14 Appointment of consultants

2.14.1 Authority to appoint a consultant and the DAC's involvement

2.14.1.1 Regardless of the value of the business or procurement mechanism used, no person may appoint a consultant without the prior written approval of the CEO or higher. Refer to paragraph 5.4.1 of the Transnet Group Delegation of Authority (Group Limits of Authority) - Available on the Transnet Intranet. Any additional work or extensions to such consultancy contracts exceeding 10% of the original contract value should be regarded as another (new) consultant appointment and subjected to the same approval process. Extension or additions not exceeding 10% in value should be submitted to the relevant DAC for prior approval before such additions / extensions to the contract may be authorised.

2.14.1.2 Transnet entities shall have appropriate and transparent selection procedures for the appointment of consultants.

2.14.1.3 After approval is obtained from the CEO (or higher, depending on the value) for firstly, the appointment of a consultant (i.e. the need) and secondly, the process to be followed (e.g. confinement or open tender), the manager concerned shall deal with the transaction the same as any other i.e. if the value of the transaction falls within the jurisdiction of the DAC, it's prior approval must be obtained before the business is awarded.

2.14.1.4 Tenders should be invited for consulting services where at all possible, but especially where -

(i) there is competition in the market; and/or
(ii) pre-qualification is necessary to establish whether tenderers have the technical, financial and other resources to be able to quote for a second stage tender in respect of a design type of project; or
(iii) an external organisation is party to the appointment of the consultant.

2.14.1.5 If it is not possible to invite open tenders, at least 3 RFPs (if possible) should be obtained.

2.14.2 Definition of a consultant

2.14.2.1 A consultant means a person, partners in a firm, a company or a close corporation who has advanced educational qualifications and who can provide expert or specialised skills. This definition excludes anyone who also carries out the physical work or provides the end product. Such consultancy service normally pertains to a specific project and therefore should be non-repetitive in nature and is usually confined to design work, investigation or advice on management, financial, business or technical matters based on his/her own professional or expert advice.

2.14.2.2 A consultant does not supply the ultimate end product but merely gives a recommendation or supports the implementation of recommendations based on his/her expertise of the best solution to a specific problem.

2.14.2.3 Should the "consultant" design, develop and supply the end product to Transnet, he/she does not act as a consultant but provides a complete "service" and therefore acquires the status of a "contractor".

2.14.2.4 Should a "consultant" in performing his/her functions have to perform physical work for example drilling of test holes in order to provide a sub-surface soil report, he/she actually provides the end-product and should therefore be regarded as a Contractor.

2.14.3 **Cognisance should also be taken of the difference between a labour resource contractor and consultant. Kindly note that the utilisation of labour brokers for the sourcing of temporary employment (e.g. private secretaries, data capturers) does not fall in the category of a consultant and should be regarded as a normal sourcing of services.**

2.14.3.1 **Definition of a labour resource Contractor**

An external service provider required to provide:-

(i) A new skill which Transnet does not have yet.
(ii) A skill which Transnet does not have enough of.
(iii) A skill for a once-off job
(iv) A historic or legacy skill which is not warranted to exist in-house.
(v) (**Deliverables**: Day-to-Day Analytical, Project or Operational capacity)
(vi) **Example:** A SAP specialist employed for a period of 2 years to assist with the implementation of a SAP program throughout Transnet.
(vii) **Attributes**:
  (a) Is a natural person*.
  (b) Is engaged via a normal HR process for a minimum period of 3 months and a maximum period of 3 years.
  (c) Has an employment contract with Transnet, and is paid a salary via the payroll.
  (d) Motivation to HR must include why the required capacity is not available in Transnet.
(viii) Such engagement is not considered to be a procurement matter and falls outside the ambit of this Procedure.

* Should the services of non-SA citizens be utilised, it should first be ascertained whether such individual(s) have the necessary work-permits to be employed in South Africa.

2.14.3.2 **Definition of a labour resource Consultant**

(i) An external advisor required on the basis of his/her expertise, Research and Development, Specialist knowledge, or past experience for
  (a) Operational, Tactical, or Strategic input
  (b) Design
  (c) Problem Solving (Specific).
(ii) (**Deliverables**: Specification, Design, Report, proposal i.e. not the ultimate end-product which still has to be provided in terms of the specification design etc. provided by the consultant.
(iii) **Example**: An Engineering Consultancy firm contracted to prepare the specification and Design Drawings for the construction of a new Ship to Shore Container Handling System.
(iv) **Attributes**:
  (a) Is a Juristic Person, or member of a Juristic Person.
  (b) Is engaged via a standard Procurement Process for Goods and Services (i.e. Specification, Advertisement, Tender, Evaluation, Award, or alternatively Confine, as per standard Procurement Process).
  (c) Is paid via an Invoice.
  (d) Motivation to relevant Authority (refer to paragraph 2.14.1.1 above) must include why the required capacity/expertise is not available in Transnet.

2.14.3.3 **NB:** In order to accommodate emerging "One-Man Businesses", it may be appropriate (and cheaper) in the case of single person CCs, to engage the resource as a Contractor if that is the required skill/contribution. However labour regulations (PAYE, etc) must be adhered to.

2.14.3.4 **Fundamental Principles**

(i) As a broad and all embracing objective, the following fundamental principles will apply with regard to the selection and appointment of consultants.

(a) The utilisation of consultants which merely duplicates management positions/functions should be avoided.
(b) Consultants should have no powers in terms of decision making.
(c) The participation of consultants in project steering committees should be limited and where their involvement is absolutely necessary, it should be formally motivated and the required contributions or inputs defined.
(d) Where applicable there should be skills transfer to Transnet's own staff. A skills transfer programme should be embodied within the consulting contract as part of the delivery mechanism wherever this is practicable.
(e) Appropriate contracts should be negotiated with the consultants and the resulting projects should be managed accordingly. A standard contract document with predefined criteria should be developed and implemented by every division, designed to suit its own unique requirements, but conforming to the general rules of project management.
(f) Consultants employed must have the required skills to ensure that Transnet is not exploited as a training ground. The skills and expertise of consulting personnel to be assigned to the project should be assessed thoroughly both before and after a contract is entered into. Such contracts should also, if applicable, include a professional indemnity clause as well as a confidentiality clause, to safeguard Transnet.
(g) Incidental expenditure such as meals, telephone, local and overseas air travel as well as motor car and accommodation allowances should be in terms of the limits laid-down from time to time by Group Financial Services/Group Human Resources and must be stipulated in such consultancy contracts.
(h) Good corporate governance requires that Transnet avoid using consultancy services that may be provided by our external auditors. Any potential use of these consultants must be reviewed by SSM to ensure proper use of these services.

2.15 e-Procurement Call-offs

E-Procurement is an effective tool to efficiently do call-offs from already approved National- and As-and-when-required contracts, by utilising pre-approved catalogues/hotlists.

2.15.1 Fixed Term e-Contract Suppliers

The following benefits can be achieved by Transnet through the use of fixed–term contracts (whether supported by SAP or an e-Procurement system) and their suppliers -

(i) improved control for standardization, consolidation and leverage of the Transnet spend
(ii) reduces off-contract / maverick buying.
(iii) consolidates volumes for leverage, which reduces item unit prices.
(iv) reduces procurement process costs.
(v) improved procurement governance and strategic sourcing.
(vi) enables the development of best practices that can be shared throughout the Group.

2.15.1.1 Commodities being purchased through the e-Procurement system will therefore be from one or more Contracted E-Suppliers only. These contracted E-Suppliers will have been sourced by the relevant Strategic Sourcing Team of the Division having considered standardization and/or consolidation as far as practically possible. To ensure fairness and transparency, contracted E-Suppliers will only be placed on the system after one of

the normal procurement mechanisms have been utilized **and approval by the relevant Acquisition Council,** if the estimated value expected to emanate from such e-Procurement contract is expected to fall within the jurisdiction of such Council. Consequently, the e-Procurement system will act as a tool to efficiently conduct call-offs against such duly approved contracts.

NB: The e-procurement system to be utilised for this purpose (whether the Supplier's or Transnet's own system) needs the prior approval of the Transnet Chief Information Officer (CIO) Council. Therefore, **before** any e-procurement commodity contract (e.g. stationery) may be concluded, the Group ICT Function must first be approached. The latter office will ensure compliance with Transnet ICT procedures and principles, and will also be responsible for the submission to, and obtaining the approval of the Transnet CIO Council.

2.15.1.2 Individual call-offs against such approved catalogues will not require separate DAC approval but will be regulated by the e-Procurement system itself by means of internal business policies, monetary levels and approval flows built into the system. The relevant Strategic Sourcing Commodity Manager will be responsible for the monitoring of the total spend by the different users, to ensure that the total estimated value of the contract as approved by the Acquisition Council is not exceeded, and that the necessary Acquisition Council approval for the increase of the estimated contract value, or any amendment to the contract (e.g. adding of additional items to the catalogue/hotlist), is obtained timeously.

2.15.2 **Non-catalogue items from Contracted E-Suppliers**

Where approved catalogues for a specific commodity group exist, but a newly required item does not appear on the contracted Suppliers' approved catalogues, the Strategic Sourcing Commodity Manager in charge of the specific contract will source all such items from the contracted supplier of that specific commodity group, by obtaining prices by means of the most appropriate manual procurement mechanism and add the item to the catalogue with the new price and terms, once DAC approval has been obtained in the normal manner in terms of paragraph 7.3 below (i.e. the 10% rule).

2.15.3 NB: The normal principles which guide the Procurement Procedures also apply to e-Procurement.

2.16 Income Generating Contracts [and associated expenditure (procurement) contracts]

2.16.1 Although income generating contracts are in principle excluded from this Procedure Manual, all associated expenditure contracts necessary to fulfil such contracts (i.e. procurement contracts to acquire the necessary goods or services), do fall within the PPM jurisdiction . For example Freight Rail negotiates an income generating contract (i.e. no open tender process) to transport fuel from the Port of Durban to Zimbabwe. This would be a pure income generating contract and although it might require Freight Rail Exco or even Transnet Board of Directors approval, it would fall outside the scope of the PPM and DAC approval would not be necessary. (This is if Freight Rail's existing infrastructure and rolling stock can cope with the contract).

2.16.2 However, if Freight Rail 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 prior DAC approval.

2.16.3 The only exception to this rule would be in circumstances where a Transnet Division, Specialist Unit or Business needs to respond to an external tender invitation (e.g. Rail Engineering responding to a tender issued by Metrorail for the supply of suburban coaches). In such instances the limited time available to respond to such tender invitation would not allow the Transnet Division, Specialist Unit or Business to invite tenders or obtain quotations/authority to confine, etc. in respect of possible portions of the project that need to be outsourced or material that need to be purchased externally. In such cases, irrespective of the monetary value of such

transaction(s), the CEO may authorise such confinements and/or approve the selection of possible joint venture partners/subcontractors, etc, without DAC approval, provided that the matter(s) be reported for the DAC's information as soon as possible after the Transnet Division has lodged its tender. Such transaction(s) reported in detail to the DAC as stated above, need not again be submitted to the DAC, should the Transnet Division be selected as the successful bidder, as this could lead to delays in the execution of such external income generating contract.

2.16.4 On completion of the project, the DAC should be informed of the outcome in detail, e.g. how the selected subcontractors/JV Partners performed, was the project completed on time. etc.

2.17 CIDB-Tenders and NEC Contracts

2.17.1 Scope and Definitions

The Construction Industry Development Board (CIDB) by virtue of the CIDB Act No. 38 of 2000 is empowered to promote efficiency and uniformity in the construction industry. The CIDB implemented the following to give effect to its mandate: -

1. **A Code of Conduct:** To promote uniform and ethical standards, the CIDB published a Code of Conduct for all construction-related procurement, as well as for all participants involved in the construction procurement process. The Code and its requirements are contained in the CIDB Board Notice 127 of 2003. Further information on CIDB requirements is available on the Transnet Intranet.

2. **A Register of Contractors:** As per the CIDB Implementation Program, Transnet is obliged to implement this Register with effect from 30 November 2005. This implies that no construction related contract may be awarded to a contractor, whose name does not appear on the CIDB's Register of Contractors for that particular class of construction works (CE, EE, GB, ME or specialist works) and tender value ranges (Level 1 - ≤R200 000 to Level 9 - ≥R100million). This also implies that the newspaper advert, Notice to Tenderer and Tender Data must indicate that only CIDB Registered Contractors will be considered. To award such a contract to a non-CIDB-registered contractor would be a criminal offence. The alpha-numerics associated with Contractor Grading Designations are depicted on Annexure G of the Standard for Uniformity.

3. **A Register of Projects:** In order for the CIDB to keep track of projects and build a database of contracts, the Register of Projects was introduced. An employer **must** within 21 days of awarding a contract, register the contract on the Register of Projects if the value of the contract exceeds the under mentioned limits as laid down by the Minister by Notice in the Gazette. Presently these values are R200 000 for the public sector (Transnet included) and R3 000 000 for the private sector. The implementation date for the Register of Projects for Transnet is also 30 November 2005.

4. **Standard for Uniformity:** The Standard for Uniformity aims to bring about standardisation and uniformity in construction procurement documentation, practices and procedures. The Standard for Uniformity and its requirements are contained in the CIDB Board Notice 99 of 2005.

   Apart from Best Practice Guidelines issued by the CIDB, it also selected 4 suites of best of breed contract documents (general conditions of contract), all of which are well known and widely used in the construction industry. Transnet decided to standardise on the NEC suite of documents and has introduced the ECC3 (Engineering and Construction Contract). This means that none of the old contract documents may now be used.

   The Standard for Uniformity makes provision for 8 different procurement procedures. These procedures are in line with Transnet's procurement mechanisms and are reflected below for ease of reference.

CIDB Standard Procurement Procedure	Transnet equivalent in terms of PPM, Part 2, Procurement mechanisms
P1. Negotiated procedure	Contract Negotiation PPM 2.8 or Confinement PPM 2.5
P2. Nominated procedure	Approved List PPM 2.6

P3. Open Procedure	Open tendering process : PPM 2.2
P4. Qualified procedure (expression of interest)	Stage 1 of 2 stage tender PPM 2.10 or advertisement for framing of an Approved List PPM. 2.6.2.1.
P5. Quotation procedure	Confined enquiries < R2m : PPM 2.4
P6. Proposal Procedure (Two envelope system)	Not a preferred procedure in Transnet. If justified in specific circumstances, it is suggested that DAC approval be obtained prior to going to market.
P7. Proposal Procedure (Two stage tendering)	Two stage tendering system : PPM 2.10
P8. Shopping procedure	Three quote system for low value purchases <R5000 : PPM 2.4

The CIDB Standard for Uniformity further provides for 4 different methods of evaluating tender submissions, namely:-

Method 1	Financial Offer
Method 2	Financial Offer and Preferences
Method 3	Financial Offer and Quality
Method 4	Financial Offer, Quality and Preferences

The CIDB requires that the tender document (Tender Data) indicate which of the above 4 evaluation methods would be used in a particular tender evaluation. In addition, it is also required that the weightings of the 3 main components be disclosed in the tender document so that tenderers may consider this during preparation of their tender response. For example:-

Financial Offer (Price/TCO)	=	50*
Quality	=	40**
Preference (BBBEE)	=	10 (always 10 in line with PPPFA)
Total	=	100

* The weightings of Financial Offer and Quality may be adjusted depending on the merits of each case, but should always add up to 90. For example, on a specific consultancy service the weighting may be 70 for quality and 20 for price.

** In addition to this, one can also stipulate a minimum cut-off point on quality e.g. 70, which means that any tender scoring less than 70 points on Quality, will automatically be disqualified and regarded as non-responsive.

Extreme care must be taken where Methods 3 or 4 are used. In most instances, the evaluation of quality is inherently subjective. Quality measures must also not promote captive markets and should result in appropriate quality to comply with user requirements as opposed to best quality available. It is recommended that where possible, quality be introduced as eligibility criteria in the Tender Data. It is anticipated that Transnet, in most instances, will be using **Method 2** for evaluation of tenders. Refer to Part 9 for more detail regarding Price / BBBEE evaluation.

Other CIDB prescripts

1. *Prices must be read out at public tender openings*. However, the CIDB has agreed that **Transnet need not read out prices,** as this would compromise the post-tender negotiation process. The requirements of paragraphs 3.11 and 3.13.2 as well as 6.3.1 therefore also apply to CIDB tenders.

2. *The maximum limit for 3-quote system is R200 000*. However, **Transnet, being a Schedule 2 company in terms of the PFMA is exempted from this requirement.** Hence the Transnet limit of R2million for the 3-quote system (Paragraph 2.4) also applies to CIDB tenders.

3. *The validity period (option date) of CIDB tenders may not exceed 8 weeks*. The CIDB agreed that the validity period of bids for mega projects may be longer, provided that it can be justified. However, this is the exception. In general, validity periods should not exceed 8 weeks. Should the award of

business be delayed due to unforeseen circumstances, resulting in validity dates expiring, tenderers may be requested to extend their validity periods. Please, however, refer to paragraph 3.5.2 below for the consequences of extending option dates. Care must also be taken not to award any contract outside the validity period (or extended validity period). After the validity of a tender has expired, no contract can come into existence, as there is no legitimate "offer".

4. *Tenders may not be cancelled and re-issued on the same specification (substantially the same scope) within a period of six months.* This requirement must be complied with for all CIDB tenders.

5. *Tender documents MUST be completed in black ink only.* The CIDB agreed that it is acceptable for tenders to be completed in a dark permanent ink which is legible and which can be clearly photocopied. Tenders completed in pencil may under no circumstances be allowed. This requirement must be clearly stated in the Notice to Tenderer, [over and above the Standard Conditions of Tender (Annexure F of the Standard for Uniformity)].

6. *All late tenders must be returned unopened. In addition, if only one tender had been received and it is the intention to rather cancel and re-issue (in such a case the 6 month requirement per paragraph 4 above would not apply), this will only be allowed if the one tender received is* ***returned unopened.*** Divisions must therefore have procedures in place to ensure that where a single response to a CIDB tender is received, it is not "prematurely" opened.

7. *CIDB tenderers may withdraw their tenders after the closing date, but before business is awarded.* This is different to the norm (See paragraph 7.5.1.1 below) because a CIDB tenderer may have been awarded another contract in the interim and does not have the capacity to undertake both contracts.

8. *Payments to be made within 21 days from date of invoice, otherwise interest at Prime plus 2% will* ***automatically*** *accrue.* Divisions may however stipulate its own payment conditions in the Contract Data of the NEC contract templates utilised. Payment terms, depending on the Division's own payment policies, should as far as possible not be longer than 30 day from date of invoice, since such long payment terms will inevitably have an impact on the prices quoted by prospective tenderers. It is essential that proper procedures be put in place to ensure that payments in respect of CIDB contracts are handled expeditiously. Late payments could be considered as "fruitless and wasteful" expenditure in terms with the PFMA.

9. *Tender prices may not be adjusted due to arithmetical errors made by the tenderer.* This is one of the very strict prescripts of the CIDB and MUST be complied with. If there is an arithmetical error in the calculation of the pricing of a particular item the total will have precedence. The unit rate has to be adjusted. If the tenderer is not prepared to adjust his unit rate to bring it to his tendered total for that item, his/her tender becomes non-responsive. Should an adding error have been made on one of the pages of the price schedule, **the grand total (total tendered price) will take precedence**. The CIDB Standard for Uniformity, however, also allows for the correction of arithmetical errors, **provided that the competitive position does not change**, e.g. the correction may not change the position of the second lowest tenderer to the lowest, or vice versa.

10. *The various monetary limits laid down by the CIDB, as well as the Rand values of the different categories of contractors e.g. the CE 5 : >R3m to ≤ R5m are inclusive of VAT.* This is important since Transnet monetary limits (delegated authorities) are all exclusive of VAT.

11. *All CIDB information relating to BEE still refers to the PPPF Act, which is based on the narrow based principle.* Transnet has decided to embrace the DTI's BBBEE principles as defined in the BBBEE Act and Codes of Good Practice. Tender documents should therefore clearly indicate that **"Preference" would be evaluated and scored in terms of the Broad-based principles.** Refer to Part 9 for more details regarding the implementation of BBBEE.

12. *The CIDB will be administering a list of excluded tenderers (Contractors who have defaulted on any CIDB contract awarded by another public Entity).* This list will be similar to the Transnet List of Excluded Tenderers and will run in conjunction with Transnet's List. This means that if a Contractor's name appears on the CIDB's List of Excluded Tenderers he will not be eligible to be awarded a

contract and his tender will automatically be "non-responsive". For easy reference, the CIDB's List will be published (and updated) in tandem with Transnet's own List of Excluded Tenderers. The GM: SSM will on the merits of each case decide whether such restriction will be applicable to CIDB-tenders only or for non-construction related work as well.

13. The CIDB has now amended legislation to incorporate post-tender negotiations with one or a shortlist of responsive tenderers into its Standards for Uniformity.

14. The CIDB has also exempted Transnet from the CIDB Regulations in respect of Contracts relating only to "construction works involving any installation, repair, maintenance or alteration of **mechanical material handling systems and lifting machinery in relation to the movement of containers and bulk material.** A copy of the CIDB's letter dated 14 September 2007 in this regard is available on the Transnet intranet.

15. As mentioned before Transnet decided to standardise on the NEC suite of documents. The NEC documents, mainly differ from the now defunct E5 document in the following respects:-
    - whereas the E5 aimed to place all the risk on the contractor (which unfortunately comes at a premium), the NEC advocates the principle of risk sharing.
    - similarly, the NEC allows for the speedy and amicable settling of claims and disputes between the two contracting parties without having to resort to expensive and protracted litigation.

    The effect of this is that certain powers which rest with the AC on non-CIDB contracts (See paragraph 7.3 below), is now under the sole discretion and jurisdiction of the **"Project Manager"** and to a lesser degree the **"Supervisor"**. The NEC also grants certain powers to the "Employer", i.e. the CEO or his / her delegate who signs the actual Contract in terms of a proper Special Delegation of Authority document. These Transnet employees or agents are appointed in person and by name for a specific contract.

    Although the initial contract will be approved by the relevant AC and signed by the "Employer" with the appropriate Delegated Powers, the Project Manager and Supervisor will be responsible for the day-to-day administration of the contract, without any further AC approval in terms of their specific delegations, both in their personal capacity (i.e. by virtue of their Special Delegation of Authority), as well as by virtue of their appointment as either Project Manager or Supervisor in terms of the NEC contract.

    All such powers exercised in terms of the contract and which entails a material amendment to the contract, shall be reported for information to the relevant AC as soon as practicable after the event. For example, the raising of penalties for the late completion of the project or one stage of the project is not a material amendment. However the issuing of a Compensation Event (Variation Order in E5 terminology) constitutes an amendment to the contract and will have to be reported to the AC. Certain compensation events (e.g. additional work >10% of the initial contract value at non-scheduled rates (refer to Paragraph 7.3 below) may require prior AC approval, before such compensation event may be signed off by the Project Manager.

PART 3: ISSUING AND RECEIPT OF TENDERS AND QUOTATIONS (RFXs)

3. Drafting of RFXs

NB: **Chapters 3 to 9 will apply to all the procurement paths mentioned in Part 2, unless otherwise stated. The Tender documents should be compiled strictly in terms of laid-down guidelines. Refer to the various standard forms and templates and the Contracting Procedures Manuals for Transversal tenders and Division-specific tenders, available on the Transnet Intranet.**

ISSUING

3.1 **All notices and adverts calling for tenders / quotations shall be issued in the name of Transnet Limited**

3.1.1 Notices and the appropriate forms and draft agreements for tenders and quotations shall be issued in the name of Transnet Limited and shall be published (advertised) in the Republic of South Africa and abroad, if necessary. The name of the relevant division shall be indicated supplementary to the name of Transnet Limited, e.g. Transnet Freight Rail, a Division of Transnet Limited (Reg. No. 1990/000900/06). Refer to the various media advert templates available on the Transnet Intranet.

3.1.2 The rationale for issuing such notices in the name of Transnet Limited is that every legal document has to reflect the registered company name i.e. the legal persona of the company which will be contracted with. The tender advertisement is a legal document as in legal terms this becomes the request to offer to which any interested party can respond by submitting an "offer".

3.2 **Notices and adverts inviting tenders or quotations should reflect all important information pertaining to the collecting and lodging of such documents**

3.2.1 Notices and advertisements calling for tenders shall include the following:-

- the tender number,
- a brief description of the commodity / service required,
- where the prescribed forms may be obtained and the cost to purchase them (if any),
- the closing date, the time and the place where tenders must be lodged,
- information pertaining to site inspections or pre-tender briefing sessions,
- the contact person's address and telephone/fax number, and
- particulars of Transnet's fraud line.

3.2.2 The advert should be as short as possible but nevertheless contain all relevant information. This is to enable prospective tenderers to plan properly taking into account the time required to fulfil all the abovementioned obligations. **(See paragraph 2.17 above for requirements for CIDB tenders)**
Employees listed in tender notices as contact persons should ensure that they are available to answer queries. Care should also be taken when responding to enquiries from potential bidders, not to reveal additional information not in the tender document, to one contender and not to the others. In such an event, in the interest of fairness, a proper addendum to the tender should be issued to all tenderers who drew tender documents. Communication with potential bidders during the open period of a tender (i.e. before the closing date) should be handled with circumspection so as not to favour one tenderer above the other. Refer to paragraph 3.15.2 below for the rules pertaining to site inspections and tender briefing sessions,

3.2.3 The notice / advert shall be duly published on or before the day of issuing of the tenders. Tenders may be published in trade magazines, newspapers which are distributed locally or wider, in electronic tender bulletins, other media which specifically targets specific markets or small business enterprises, whichever is best suited to reach the potential tenderers. The office responsible for placing the adverts shall retain copies of all adverts as placed by the relevant media, for audit purposes.

3.2.4 With regard to BEE, special effort should be made to advertise through media and publications which will reach the required target area e.g. Sowetan, Enterprise, Pace as well as the Transnet database. Copies of the notice and prescribed forms shall be furnished to the AC secretariat where the tender or quotation can reasonably be expected to fall within the jurisdiction of such Council i.e. over the laid-down limit or longer than 2 years or where there is uncertainty as to whether it will fall within the jurisdiction of a manager. Any subsequent amendments to notices inviting tenders e.g. extension of closing date shall be communicated to the AC (Secretariat) timeously.

3.3 Closing dates of tenders and quotations should be clearly specified and should be as soon as practicable after the issue date, considering the circumstances of each case

3.3.1 The closing date for the submission of tenders or quotations shall be as soon as possible after the date on which tenders or quotations are invited but must be long enough to allow prospective tenderers sufficient time to prepare and submit a tender. For off-the-shelf type of purchases a minimum of two weeks should be allowed, if possible. For more complex tenders such as construction works which involve quantity surveying etc, a minimum of 3 weeks should be allowed. The period shall be considered reasonable if the response is sufficient, considering the specific market. Allowance must also be made for the time required to make delivery of tender documents from other regions.

3.3.2 Tender closing dates should be scheduled to ensure that a particular tender box is only opened once a week where at all possible. This is to eliminate the possibility of tampering with tenders already in the box prior to the official closing date. When the closing date inadvertently falls on a Saturday, Sunday or a public holiday, tenders or quotations shall be received up to 10:00 of the next working day.

3.3.3 The closing venue should likewise be clearly stipulated. Divisions and/or ACs are responsible for the opening and receipt of all tenders issued by the Division. Depending on the structures and locations of regional offices and/or regional Acquisition Councils, the CEO/AC may decide to delegate the closing of lower value tenders and quotations to regional offices/local tender committees provided that it complies with the minimum requirements as laid down in this Procedure Manual.

3.4 All tenders and quotations shall be given a business unique consecutive number plus a cryptic description, and all pages shall be indexed and numbered

3.4.1 The issue of Tender / Quotation numbers should be controlled by a responsible person, to also ensure the correctness of all tender adverts before they go out to market. Each tender / quotation which is issued shall be given a consecutive number. This number shall clearly indicate whether it was an open tender or a quotation, as well as identify the division which issued it e.g. TENDER NO. TPT/IT/01/04. Following the unique number, a cryptic (short) description of the requirement should be added, e.g. "SUPPLY OF PRINTER CARTRIDGES TO TRANSNET PORT TERMINALS FOR A PERIOD OF TWO YEARS". Where practicable all pages of the tender documents shall be indexed and numbered consecutively in order that both tenderer and contract administrator can easily check the completeness of the tender document.

3.4.2 In view of the various differences between normal tenders and CIDB-tenders as outlined in Paragraph 2.17 above, it is suggested that ODs allocate a unique prefix to the Tender Number to indicate that it is a CIDB-tender. Similarly a specific digit or character can be allocated to indicate whether such tender will close at the AC or at Regional/depot level e.g TPT/M/01/06/D/cidb.

3.5 Validity periods should allow ample time for evaluation, drafting of the recommendation as well as approval by all the necessary governing structures necessary for that particular contract and contract value

3.5.1 Unless circumstances require a longer or shorter period to be fixed, tender documents must state that the tenders or quotations must hold good for **at least** 30 days from the closing date thereof. If an unavoidable delay occurs with adjudication, it must be arranged to extend the validity period. This is subject to the necessary authority to communicate having been obtained **(Refer to paragraph 2.17 above for specific requirements on validity periods for CIDB-tenders)**

3.5.2 **NB:** The extension of a validity date effectively "opens the tender up" again and a tenderer has the right to amend his price or any other tender condition. Transnet will have no option but to

accept increased prices or less favourable tender conditions, should such tender still be the most acceptable bid. Therefore every effort should be made to avoid delays.

3.6 **Tenderers may be allowed to only tender for certain items or portions of the total project, where deemed advisable**

3.6.1 Tender documents may allow for tenderers to tender for one or more items or for a part of one or more items but Transnet reserves the right to accept a complete tender or quotation even if it is not the lowest provided it is in the best interest of Transnet. Tender documents must be specific as certain contracts will require that the whole contract be completed by the same contractor in order to establish responsibility.

3.7 **The raising of a non-refundable charge for tender documents is at the discretion of the Manager concerned**

3.7.1 A manager with the necessary Delegated Authority for the monetary value of the particular contract, may decide at his/her own discretion that a **non-refundable** charge be raised for tender forms, plans, specifications and samples depending on the nature, magnitude and value of technical information or samples supplied.

3.7.2 This mechanism may also be utilised where it is deemed necessary to eliminate "fly-by-night" tenderers. However, this should be done with great circumspection so as not to unnecessarily and unfairly eliminate QSE/EME companies.

The following guidelines (though not prescriptive) may be used to determine a fee for tender documents:-

<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)

Where a fee for a tender (RFP) document is to be charged, the advert should clearly state the payment method. Due to the risks involved in having large amounts of cash in hand, the sale of tender documents at site meetings, especially in remote areas, 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 as part of the record.

3.7.3. Should cash payment be one of the chosen payment methods, tender documents must clearly stipulate that payments be made to the finance office (or another office independent from the office that issued the tender). The finance office must ensure that the Tender Number is clearly reflected on the receipt. Tender documents may only be issued to bidders producing a valid original receipt clearly indicating the relevant tender 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 tender file as part of the record. The following important information pertaining to all tender documents issued must be entered into the RFX Issue Register, i.e. Tender Number and description, receipt number, document number e.g. copy no.3 of tender document, name and contact particulars of person who collected documents, the bidder's (company) name and date of purchase. At the tender opening, the number of responses received must be checked against the number of payments received.

LODGING

3.8 **Tenders are to be lodged and kept in a controlled environment at all times**

3.8.1 All tenders/quotations falling within the jurisdiction of the DAC should clearly indicate the physical (and courier address, if not the same), and postal address of the DAC where such tenders will be received.

3.8.2 Where the tender/quotation price is reasonably expected to fall within the jurisdiction of a Manager (i.e. below the jurisdiction of the DAC), the tender document must clearly indicate how tenders are to be addressed. Tenders anticipated to fall below the DAC's jurisdiction, and upon receipt found to be falling within the DAC jurisdiction, must be referred to the DAC for consideration in the normal manner, with an explanation as to why the tender did not close at the DAC as laid down. Under no circumstances should such tenders be cancelled and re-issued with the correct closing venue as that would discredit the whole tendering system. Tenders anticipated to fall within the DAC threshold, and which consequently closed at the DAC, and upon receipt found to be below the DAC threshold, may be dealt with by the AC (or the Manager if it also falls below the AC jurisdiction), provided that the matter is reported to the DAC for information and records.

3.8.3 Tenders/quotations must be submitted by the tenderer in a sealed envelope. The envelope must indicate the tender/quotation number, the subject and closing date, time and venue so that there is no need to open the document and risk the possibility of tender prices being leaked.

3.8.4 The tenderer or his agent shall immediately place the unopened tender/quotation in a locked tender box for safekeeping until the specified closing date and time.

3.8.5 The tender box shall be fitted with 2 locks and the keys kept separately by two nominated officials. No single person shall 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.

3.9 Tenders received open or without the relevant information on the envelope shall be re-sealed immediately

3.9.1 If a tender/quotation is received open or without the relevant information on the envelope, the contents shall be ascertained and then sealed with a note made on the envelope indicating –

(a) the date of receipt and by whom (name, designation and contact number);
(b) the state in which the tender parcel had been received;
(c) the tender/quotation number and description in respect of which the documents are submitted; and
(d) the correct closing date, time and venue.

It will then be placed in the correct tender box for opening at the appropriate closing time.

3.9.2 When finally opened, such envelopes shall be kept on the appropriate files as an audit trail. The tender list compiled by the officer responsible for the tender opening should also indicate that such tender was received open, so that the evaluating team can consider possible malpractices. However, such tenders should not be summarily disqualified.

3.10 Fax and e-mail tenders/quotations, and tenders/quotations lodged through an electronic tendering system will be considered only if the tender document specifically provides for it

3.10.1 No tender or quotation received by e-mail or fax will be considered unless the tender document specifically provides for it.

3.10.2 Where the tender document specifically provides for e-mail, fax or electronic reply, provision must be made in the tender document for Transnet to be indemnified against any and all claims which may arise as a result of the tenderer not being able to communicate with Transnet electronically for any reason whatsoever before the closing time.

3.10.3 If at all possible the tender document should be arranged so that the critical information is listed on one or two pages for the convenience of tenderers so as not overload fax machines.

3.10.4 There should be strict control measures over such fax machines. Fax or e-mail tenders received should immediately be endorsed "subject to confirmation", placed in an envelope, sealed and

deposited in the relevant tender box, if physical (hard copy) tendering is allowed in conjunction with electronic tenders. Should e-mail tenders only be allowed in specific circumstances, these need to be received in a controlled environment and only be down-loaded from the system after the stipulated closing time.

3.10.5 Such tender/quotation shall be stamped and recorded with the others received provided that;-

(a) the e-mail or fax is received before the closing time;
(b) at least the name of the tenderer, the tender number, description of goods / service tendered for, the price (separately or as a lump sum as required) and discounts (if any) are clearly mentioned in the e-mail or fax tender;
(c) the tender/quotation is confirmed per letter or by means of the official tender form duly completed which is delivered at the closing venue within a reasonable period after the closing time or forwarded by courier service and received within a reasonable period thereafter to allow due adjudication thereof; and
(d) adequate proof of the requirements in (c) above is furnished to the person in charge of such delegated office responsible for the receipt of tenders/quotations falling within its jurisdiction.
(e) The abovementioned requirements do not apply where tenders/quotations are submitted by means of an electronic tendering system where all tender information and prices are kept confidential and secure in the electronic tendering system until the closing time of the tender.

OPENING

3.11 Tenders/quotations shall be opened as soon as possible after the closing date

3.11.1 All tenders shall be opened in public (if required by prospective tenderers) as soon as possible after the expiry of the advertised closing time and date. At such public tender openings only the names of the tenderers are read out but not the prices. **This also applies to CIDB tenders – see paragraph 2.17 above.**
All quotations i.e. responses received in terms of procurement mechanisms 2.6, 2.7, 2.8, 2.9 (second stage), 2.11, 2.12 (second stage) and 2.13 and 2.14 if applicable, are excluded from public tender openings. When such quotations are opened, the names of contenders who responded are therefore not read out, nor are their prices disclosed. This is to prevent collusion between a limited number of contenders or in the event of one supplier only, the creation of a monopolistic situation.

3.11.2 A register reflecting the names of the tenderer's representative(s) attending the public opening the company's name and the tender number shall be kept on the tender file as part of the record.

3.11.3 Tenders/quotations shall be opened by a duly authorised senior employee in the presence of at least one other employee. Neither of them shall have a personal interest in the tender/quotation nor be involved in the issuing evaluation or adjudication thereof. See paragraph 5.8.1 below for procedure to be followed should a tender opening official have an interest in any tender dealt with at a particular tender opening session.

3.12 Tenderers shall delete items which they do not wish to tender for on the price list

3.12.1 Where tenderers insert prices on price lists supplied by Transnet, they shall delete items for which they did not tender. If the price has been included elsewhere in the price list, it should be indicated. After tenders/quotations have been opened, tenderers may not supplement their original offer which was incomplete. Where prices have not been inserted in all the relevant spaces on the forms and such items have not been deleted by tenderers, such spaces shall be stamped 'no price" by the employee who opens the tenders/quotations

3.13 Tenders are to be stamped and the names of the tenderers read out as they are opened

3.13.1 Should tenderers insist on a public tender opening, as each tender is opened (not quotations) the name of the tenderer shall be read out. An employee shall date-stamp the tender or quotation and all enclosures which indicate the prices, delivery periods and special conditions. Tenders/quotations shall be numbered in the sequence in which they have been opened and the words "and last" shall be endorsed on the last tender/quotation. Where only one tender has been received, the words "and only" shall be endorsed on such tender. The employee in charge of the tender opening will record particulars of all tenders received in duplicate. The original list of tenders received must accompany the original tender documents. The name and signature of the person collecting the tenders must be obtained and the duplicate list with the signature will be kept by the tender opening office, either on the appropriate file or in a register, as part of the record.

3.13.2 **NB. It is Transnet's policy not to disclose tender prices.** With regard to quotations, names of tenderers should not be read out. (See paragraph 3.11.1 above).

3.14 Late tenders will not be considered

3.14.1 Tenders/quotations arriving after the specified closing time shall not be considered and will where practicable not be opened but kept sealed in the envelopes. A letter explaining the circumstances will be sent to all "late tenderers" and such tenderers may then make arrangements for the collection of their late tender if they so wish. Tender documents must emphasise to the tenderers the importance of ensuring the correct closing venue, as tenders delivered at the wrong tender box will not be considered if received at the correct closing address after the closing time.

3.14.2 Where it is necessary to open a late tender/quotation to obtain the name and address of the sender, each page of the document shall be stamped "late tender" before the tender is placed on the appropriate files. The envelope must be stamped and initialled and be retained for record purposes on the appropriate files.

3.14.3 **NB:** Late tenders that are not considered must be retained for a period of at least 6 months before being destroyed (Record of destruction to be recorded on the relevant file). Tenderers may be allowed to collect their late tenders if they so wish. **In exceptional circumstances the Chairman of the DAC has the discretion to decide whether a late tender may be considered. Refer to paragraph 2.17 regarding late CIDB tenders. This should be done with great circumspection and all documentary evidence leading to such decisions, plus proof of the decision itself, should be kept on the appropriate files as part of the record.**

3.15 Amendments before the closing date are permitted provided all tenderers are informed

3.15.1 Transnet is entitled to amend any tender condition, validity period, specification or plan, or extend the closing date **before** the closing date, or in the case of a compulsory tender briefing session, **before** the scheduled session. However, a minimum of 3 working days before the scheduled date, such amendments or extension must be advertised and/or all tenderers who obtained tender documents must be advised in writing per fax or e-mail of such amendment or extension. The new closing date and time must be clearly reflected. For this reason, employees issuing tenders shall keep a record of the names and contact particulars of the persons or enterprises to which tender documents have been issued.

3.15.2 Where a compulsory site inspection/briefing session has been stipulated in the Tender Notice, under no circumstances may an additional session be arranged merely to accommodate tenderers who failed to attend a scheduled compulsory session. Such tenders must be disqualified, and Tender Notices must clearly indicate this. Should a tenderer arrive late, he/she should be allowed to enter but under no circumstances will Transnet repeat issues already addressed prior to his late arrival. This **must** be stated clearly in the tender documents. Should the tenderer wish to address any issue after the meeting, he/she may do so and all tenderers especially those who arrived on time, should be invited to stay behind if they wish, to ensure that

the same information is disclosed to all tenderers – Refer to the relevant PPM Circular available on the Transnet Intranet.

3.16 Tenders and quotations already received, and of which the closing date has been extended, shall be kept unopened in the tender box

3.16.1 Where the closing date of a tender/quotation is extended, the notice which makes the extension known shall also state that tenders/quotations already received, will be retained unopened in the tender box and be duly considered after the expiry of the extended period. However, the tenderer may request that such tender/quotation be returned to him/her or the tenderer may cancel it by submitting a later dated tender/quotation before the extended closing date.

3.17 Amendments after the closing date are permitted provided that all tenderers are informed

3.17.1 Transnet is entitled to amend any tender condition, validity period, specification or plan **after** the closing date of a tender. However, all parties who obtained tender documents and submitted valid tenders must be advised thereof in writing by registered post or fax and be given the opportunity of tendering/quoting on the amended basis by an extended closing date and time. Tenderers who, for example submitted their tenders late, or who did not attend the compulsory tender briefing session/site inspection, did not in fact submit valid tenders and cannot participate in the extended invitation. Authority for such communication is to be dealt with in terms of paragraph 3.18.below. In the event of a significant change to the specification to which other new tenderers could possibly respond, a fresh tender would be required. Paragraph 5.6 below stipulates that DAC approval should be obtained in such instances.

3.18 Communication with tenderers during the evaluation period is not permitted unless prior authority has been obtained

3.18.1 In all cases a **tenderer** may only communicate with the person listed on the tender document on any matter regarding his tender/quotation **prior to the closing date** of the tender/quotation. In the interest of fairness and transparency, any additional information made available to one tenderer (in response to a query) should also be made available to the other tenderers. After the closing date a tenderer may only communicate with the Chairman of the relevant DAC.

3.18.2 No communication between a tenderer or any other party who has an interest in a tender and **any employee** of Transnet is allowed after the closing date, i.e. during the period between the closing date for the receipt of the tender/quotation and the date of notification of the successful tenderer of acceptance of his tender/quotation, except as provided for in paragraph 3.18.3 below. Every case of unauthorised communication shall forthwith be reported to the Chairman of the DAC. If unauthorised communication has occurred, that tender/quotation may be disqualified.

3.18.3 The Chairman, Deputy Chairman or the Secretary of the DAC, or the CEO of a Division, or his delegate, **who has been delegated such specific powers in terms of his/her Special Delegation of Authority**, may subject to the provisions of paragraphs 3.18.4 and 3.18.5 below, authorise an employee, in writing (including by fax or e-mail) to communicate with a tenderer during the period mentioned in paragraph 3.18.2 above for the purpose of:-

3.18.3.1 Explaining and verification of declarations made in tender response.
3.18.3.2 Confirming that a quoted price is correct **(Refer to paragraph 2.17 above re arithmetical errors on CIDB tenders)**;
3.18.3.3 Confirming technical particulars and the compliance thereof with specifications.
3.18.3.4 Determining whether there will be any change in price if only a portion of the work is awarded to a tenderer.
3.18.3.5 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. **(Please note that this is not an opportunity to re-tender)**
3.18.3.6 Clarifying delivery times/quantities
3.18.3.7 Extending the validity period of a tender quotation or offer

3.18.3.8 Amending any tender condition, validity period, specification etc. after the closing date in terms of Paragraph 3.17 above;
3.18.3.9 Clarifying any other commercial aspect; and
3.18.3.10 Carrying out of site inspections of the tenderer's premises.

NB: **The abovementioned communication issues do not include post-tender negotiation. This is covered in paragraph 2.7 above.**

3.18.4 Where the tender/quotation is managed by a Specialist Unit with a specific strategic focus on behalf of the user Division, the Specialist Unit shall coordinate all communication of a technical, financial or commercial nature between Transnet and the tenderer to promote unity of purpose and to obtain maximum advantage for Transnet.

3.18.5 In all cases where authority to communicate with tenderers has been granted in terms of 3.18.3 above, the submission to the AC should 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 (tenderer's response) should be kept on the appropriate files, as part of the record.

PART 4: EVALUATION

4.1 **All tenders/quotations received must be recorded on a comparative list and forwarded for evaluation to the employee concerned as soon as possible after the tender opening**

4.1.1 After all the tenders/quotations have been opened and recorded on a comparative list; it shall be forwarded to the manager in the Division concerned. After the tenders/quotations have been entered on a comparative list and evaluated, the manager shall return the tender documents together with a recommendation to the DAC for consideration. If other Specialist Units call for tenders/quotations on behalf of a Division, the recommendation of the user department shall, if necessary, be obtained before the manager concerned or his delegate submits his recommendation to the DAC. The consumer's recommendation, or in instances where other criteria (other than price) are a prerequisite, a memorandum motivating how the relevant selection criteria can best be met, shall also be submitted to the DAC. The criteria used during the evaluation process may not include any additional criteria which have not been disclosed at the outset in the tender document.

4.1.2 Paragraph 4.1.1 also applies to tenders/quotations falling outside the DAC's jurisdiction, except for the requirement to make a recommendation to the Council. If necessary, the tenders and comparative list shall be submitted to the end user concerned for his report, and be returned together with his recommendation. Upon receipt of this recommendation, the manager in the procurement/Specialist Unit, who has the necessary contractual powers in terms of his/her Special Delegation of Authority, shall indicate his decision on the comparative list or the memorandum motivating how the selection criteria can best be met, before the contract is concluded.

4.1.3 The comparative list which is submitted for adjudication shall also indicate the price and quantity of the same goods or service on an existing contract (if any) or details of price, quantity, delivery and date of similar previous purchases, sales or services (if any), together with appropriate benchmarking information, such as price index shift or rate of exchange fluctuation during the full duration of the contract.

4.1.4 It is not a requirement that Tender Evaluation Committees be appointed for each and every tender. In cases where a properly appointed multi-disciplinary evaluation team might be an "overkill", due to there being very limited criteria for consideration due to the absence of complexity, there is no real requirement for the constitution of such committees. However, in instances where a number of technical criteria are evaluated on a weighted point system method an evaluation committee would be a requirement. Refer to paragraph 9.4.1 below for tender evaluation with regard to BBBEE and the use of the BBBEE Calculator as a tool to evaluate tenders in terms of the 90/10 point preference system.

Also refer to the Manual for Evaluation of Tenders, available on the Transnet Intranet.

4.2 **Tender prices must be recorded on a comparative list and be converted to a common basis to facilitate a fair comparative analysis.**

4.2.1 In order to facilitate fair comparison between the tenders/quotations, all bids shall be converted to a common basis (which should have been developed during the tender development process) on the comparative list (paragraph 4.1 above) taking the following into account:-

(a) Tender price preference points, as determined from time to time, e.g. the BBBEE Preference - see Part 9) must be allocated to the total scores where applicable.

(b) Railage
Should a tenderer have tendered a free on rail price (FOR), the railage calculated at the public tariff applicable from the point where the goods have been offered or the port of entry to the place where the goods shall be delivered shall be added to the tender price. (Refer to paragraph 5.3.1.9 below for instances where the tenderer has specifically stated that the railage costs will be for his own account, i.e. not FOR).

(c) Other costs in respect of goods from abroad to be added to tender price. Inspection costs, the freight and insurance from the place where the goods have been offered to the destination where it shall be delivered, landing charges, wharfage, the applicable import levies as stipulated by the Government from time to time in respect of the imported goods or that which forms part of the goods produced or made in the Republic of South Africa. (Refer to paragraph 4.15.1 below re Incoterms)

(d) Commercial discounts to be subtracted from the tender price.

(e) Other factors such as price adjustment conditions, exchange rate fluctuations, etc. that affect the prices over the full period of the contract i.e. an apparent lower price at tender evaluation stage may become the highest, due to unexpected exchange rate fluctuations during the course of the contract. (see directive on Embedded Derivatives available on the Transnet website)

(f) Any other incidental costs which may arise from the acceptance of an offer.

(g) Differences in quality which can be expressed in monetary value.

(h) Time value of money where cash flows differ.

4.2.2 The comparative list should, where applicable, show the comparison of prices under the following headings:

(a) Tendered prices.

(b) Comparative prices (sub-paragraph (4.2.1)(a), (b), (c) and (d)).

(c) Future anticipated prices (sub-paragraph (4.2.1)(a), (b), (c), (d), (e), (f) and (g)).

(d) Nett Present value (sub-paragraph (4.2.1)(h)).

4.3 **The Department of Public Enterprises' Competitive Supplier Development Programme**

4.3.1 Transnet is exempted from the Department of Trade and Industry's (DTI's) National Industrial Participation Programme (NIPP), which relates to importation of goods in excess of $10 million. In terms of NIPP, overseas suppliers are liable for a NIPP obligation amounting to 30% of the imported content.

Transnet has instead implemented, with effect from February 2007, a Competitive Supplier Development Programme (CSDP) as an alternative means of achieving the aims of the NIPP. Tenders which have been issued prior to this implementation date, or after this date, and which are still in the adjudication / negotiation stage, may be re-negotiated on the CSDP principles, provided that details of such cases are reported to the GM: SSM so that the DTI and the DPE may be informed accordingly.

4.3.2 The goals of the CSDP are to increase the competitiveness, capacity and capability of the local supply base. Therefore, in all tenders where overseas tenderers will be responding, these goals will be taken into consideration when tenders are adjudicated, and overseas tenderers should be requested to include proposals in this regard in their tenders.

4.3.3 Foreign suppliers are therefore requested to consider, as part of their tender response, to commit themselves to mutually acceptable initiatives which will be contributing towards sustainable industrial development and job creation in South Africa by means of direct and indirect investments into South Africa.

4.3.4 One of the evaluation criteria of such tenders issued to foreign suppliers will therefore be the extent to which the foreign suppliers provide option(s) for possible Foreign Direct Investment (FDI) in local manufacturing, supplier partnerships with local firms, sustained skills development programmes and other interventions aimed at strengthening local suppliers, with the aim of working towards global competitiveness.

Refer to the Supplier Development Plan, available on the Transnet intranet, for more details regarding Transnet's CSDP programme.

4.4 **Transnet supports local industry by utilising SABS (including SANS) specifications, where possible**

4.4.1 Where it is in the interest of Transnet, it supports South African industrial and commercial undertakings when purchasing goods and to this end it uses SABS (South African Bureau of Standards) including SANS (South African National Standards), and CKS-specifications (Central Standardisation Committee), as far as possible in the preparation of tender documents. Other specifications must be drawn up in consultation with local industrialists in order that maximum competition may be achieved.

4.4.2 If one industrialist is contracted to develop a specification in collaboration with Transnet, it must be arranged in terms of a development contract which effectively controls development costs. The agreement must be on the clear understanding that the specification/products so developed shall remain the property of Transnet which retains the right to call for tenders for the supply of the goods in terms of that specification.

4.4.3 In terms of the National Railway Safety Regulator Act, consideration **must** be given to safety during the procurement of goods and services for the Rail sector. Transnet contracts must therefore impose specific duties upon suppliers to ensure compliance with safety requirements/standards prior to and on delivery of their products/services to Transnet. The contracts must also include penalties for non-compliance. Furthermore, if a supplier is required to provide a permit as per the Regulations, Transnet may not accept such goods/services without such permit being made available. It is important to note that Transnet thereafter bears the onus of ensuring that the safety requirements are upheld for the rest of the lifecycle of that product. Transnet must therefore implement mechanisms for the periodic measurement of performance, monitoring, review of deliverables, reporting on non-adherence to the agreed standards as well as proposed remedial action. Refer to the various standard tender and contract templates available on the Transnet Intranet.

4.5 **Transnet supports local industry by considering the local content portion of the tendered price**

4.5.1 Tenderers shall indicate in the tender documents against each item tendered for, the amount included in the tendered price which constitutes the local content portion of the tendered price.

4.5.2 If any doubt exists regarding the bona fide production, manufacture or assembly of the tendered goods in the Republic of South Africa, the employee who shall compare the prices may after having obtained the necessary authority to communicate -

(a) call for documentary proof from the tenderer to substantiate any information furnished by the tenderer, or
(b) take such steps as he may deem necessary to verify any information before he makes a recommendation to the AC.

4.5.3 Where business is awarded as a result of its local content, the amount due in terms of the contract for the quantity of goods supplied, shall not be paid to the contractor unless and until he has furnished an affidavit or auditor's certificate to the effect that the amounts stated in sub-paragraph (a) above, are correct and constitute the local content portion which has been included in the tendered price of each item tendered for.

4.6 Preference will be given to tenderers nearest to the place of delivery if all other things are equal

4.6.1 If all other things are equal (e.g. price, BBBEE, delivery lead times, technical compliance), preference will be given to tenderers nearest to the centres at which the goods must be delivered.

4.6.2 Where the tenders/quotations are equal in all respects including 4.6.1 above, the award shall be determined by the drawing of lots at a meeting of the AC, or in cases where the value of the tender falls outside the AC's jurisdiction or sub/regional tender committee (if applicable), the manager concerned shall draw lots in the presence of two other employees.

4.7 Tenderers who submit incorrect or false information in their tender documents, will be dealt with severely

4.7.1 Where a tender/quotation has been accepted because of certain commitments made by the tenderer at tender stage and it is thereafter established to Transnet's satisfaction that the criterion were not met or were less than originally tendered, the loss/damage suffered by Transnet as a result, shall be recovered from the contractor without prejudice to any right which Transnet may have to repudiate the contract, in so far as it has not yet been completed. Consideration can also be given to placing such contractor on Transnet's List of Excluded Tenderers (See paragraph 7.5 below).

4.7.2 The amount representing any loss, damage or penalty referred to in paragraph 4.7.1 above may be recovered by deduction from moneys owing by Transnet to the contractor, whether under the specific contract or through any other cause or by action in any competent court or partly by one and partly by the other of these methods.

4.7.3 For the purposes of paragraph 4.7.1 above, Transnet shall be deemed to have incurred loss/damage only where it can be shown that, if the degree to which the selection criteria had been met, had been offered at tender stage, the contract would **not** have been awarded to the contractor. The amount of recoverable loss/damage shall be the amount by which the contractor's tender price or quotation exceeds the price that would have been payable to the tenderer to whom the contract or order would probably have been allocated. In determining the price that would have been payable to the other tenderer as aforementioned, account shall be taken of any incidental costs and charges (over and above the tender price) which would have been borne by Transnet in the normal course of business.

4.8 Goods manufactured locally should where possible be marked "Manufactured in South Africa" or "Proudly South African"

4.8.1 Goods of South African manufacture purchased by Transnet shall, if possible, be marked by the supplier/manufacturer to indicate that they have been manufactured in South Africa, primarily to ensure that the local product is not substituted for an imported product, but also to promote local manufacture by openly displaying Transnet's support of local manufactured goods. Similarly goods entitled to use the "Proudly South African" mark should be marked as such.

4.9 The experience, equipment, financial standing and previous performance of tenderers, will be taken into consideration in the evaluation process

4.9.1 A tender/quotation shall not be recommended for acceptance if based on reasonable grounds there is any doubt as to whether the tenderer is sufficiently experienced equipped and of sufficiently sound financial standing to satisfactorily carry out the contract.

4.9.2 Tenderers for services shall indicate their experience by submitting a schedule of work which they have previously / recently undertaken.

4.9.3 A tender/quotation shall not be recommended for acceptance if the tenderer's previous performance based on timeous performance, quality, price escalation and service was not satisfactory and he has been informed accordingly.

4.9.4 So as not to expose Transnet to unreasonably high-risk situations, it is imperative to obtain and verify the Company Registration Documents, etc or the personal Tax Clearance Certificates in the case of individuals, from companies and/or individuals unknown to Transnet.

4.9.5 This, however, does not derogate from Transnet's BBBEE policy. Therefore BEEs unknown to Transnet but who have been identified as potential suppliers should be assisted where possible in terms of the aforementioned policy.

4.10 Tenders/quotations shall be carefully checked for compliance with Transnet's specifications or requirements

4.10.1 All tenders/quotations received shall be carefully perused for compliance with Transnet's requirements and specifications. Provided other tenderers are not prejudiced thereby, any deviations from the specifications or prescribed conditions, or new conditions stipulated by the tenderer which are acceptable to Transnet, should be incorporated in the contract. This is to ensure that all tenderers are treated fairly and that "apples are compared with apples" in accordance with the same specification. Also refer to paragraph 5.2.

4.11 Tender documents should indicate the approximate quantities required at each centre

4.11.1 When goods are to be distributed throughout the RSA, the tender forms shall, as far as possible, indicate the approximate quantities required at each centre and not merely the total quantity required. This is to enable tenderers to suitably price their tenders taking into account transport costs but also to ensure that goods purchased are not transported unnecessarily.

4.12 Goods imported from abroad shall be shipped to the closest port of discharge

4.12.1 Goods from abroad shall be shipped to the airports or ports in the RSA most advantageously situated in relation to the point at which the goods are required, taking into account the availability of transport modes and facilities.

4.13 Perishable goods shall be purchased locally and as close as possible to the centre where it is required

4.13.1 Purchases of goods of a perishable nature shall as far as possible and justifiable be made at or near the centre where the goods are required.

4.14 Goods/services may be imported if local suppliers' products are not acceptable

4.14.1 When it is considered that the prices of goods/services from within the RSA or from abroad through local representatives are too high, or the quality or service is unsatisfactory, or when acceptable tenders cannot be obtained in the RSA or the goods/services are not available in the RSA, such goods/services may be obtained from abroad in terms of the normal procedures.

4.15 Tender documents should, where applicable, contain conditions regarding shipping

4.15.1 Where possible tender documents should stipulate a "Delivered" price basis since this places the responsibility and cost of import on the supplier as well as the risk of possible late deliveries. If deemed more advantageous for Transnet to import direct from the overseas manufacturer, tender documents shall contain appropriate conditions to ensure fulfilment of the terms of any shipping freight agreement or customs and clearing agents to which Transnet is a party. Refer to

Definitions: Part 10 for the various Incoterms. Tender documents should stipulate that Transnet reserves the right to undertake its own clearing, shipping or insurance should the tenderers' prices be found to be unreasonably high.

4.16 Proprietary articles shall not be used to limit competition

4.16.1 When a patented article is used as a sample or when the name of a manufacturer or of a certain trade mark or brand is quoted, it shall only be to indicate the type or quality of the article required and not to limit competition to that article. Tender documents or enquiries must specify not only the patented article or the name of the manufacturer or trade mark or brand but also mention that goods of a similar kind or quality will be considered (in order to obtain optimal value). The same principle also applies where Transnet specifications are drawn up – See paragraph 2.6.3.1. above. Should it, for example, be prudent to specify a specific standard for warranty purposes (e.g. GEC electric traction motor spares), strenuous efforts should be made to obtain quotations from the OEM, as well as various agents / distributors and retailers.

4.16.2 Transnet will acknowledge and respect the intellectual property (IP) rights of suppliers. However, Transnet also needs to be seen to promote fair competition where at all possible. Therefore it will strive to strike a fine balance between fair competition and protecting the intellectual property rights of suppliers. Depending on the merits of each case, one or a combination of the following approaches will be followed:-

(i) Transnet may choose to pay the supplier outright for its IP in that product and purchase the product with its IP. This applies to all specifications, drawings and/or prototypes. The supplier relinquishes its rights to the IP completely and Transnet will own all rights in that development. As far as possible, Transnet will disclose this at RFP stage, and all aspects pertaining to IP will be negotiated and captured in the contract between the parties. Compensation for the supplier's design inputs, etc., may be in the form of awarding a significant order or by outright payment for design / development costs and the supply of the relevant drawings, specifications and/or prototypes. Transnet shall have the right to procure its future requirements via a tender process and the original designer/developer will be free to participate. The IP-value in these cases will normally be of lesser significance and therefore a patent/licence will not be registered.

(ii) Transnet may choose to share the IP with the supplier where it jointly developed the product. Both parties shall share the IP and royalties emanating from the use/licencing of the particular product in such cases, and this will be clearly set out in the contract between them. The IP-value in these cases will normally be of more significance and a patent/licence will be registered jointly in the names of both parties.

(iii) Where a product has been developed exclusively by a supplier for Transnet, such IP shall vest in Transnet. Although such product(s) could have been developed solely by the supplier, it(they) may not be patented by a supplier without Transnet's consent as this could jeopardize the fairness of the procurement process for Transnet's future needs. Such consent will not be unreasonably withheld.

(iv) Where an existing patented article is required by Transnet, and depending on the specific product and availability of similar products in the market, (whether patented or not), Transnet may choose to either confine the purchase of the patented article only or issue an open tender clearly specifying that the patented article or "anything similar" will be considered.

4.17 Transnet will not accept liability for the cost or delivery of samples made from Transnet's material

4.17.1 Samples made from material supplied by Transnet will not be returned to the tenderer and Transnet will not necessarily accept any liability for the cost of the manufacture of such samples

4.18 Transnet will deal with samples supplied by tenderers, as follows:-

4.18.1 Transnet reserves the right to retain samples which tenderers are required to furnish in compliance with the tender conditions.

4.18.2 Transnet will not pay for samples submitted by the successful tenderers and it may retain the samples for the purpose of determining the quality and workmanship of the goods delivered in execution of the contract.

4.18.3 If the samples of unsuccessful tenderers are retained and such tenderers require payment for them, Transnet will make payment at the tendered price of the article. If Transnet does not want to retain such samples and the tenderers require their return, Transnet will accept liability for their return to any place within the RSA.

4.18.4 Transnet is not liable for samples furnished by tenderers on their own initiative. If tenderers desire the return of such samples, these will be returned at the tenderer's risk and cost.

4.18.5 Prospective suppliers who fail to furnish samples when specifically required to do so, may be disqualified.

PART 5: RECOMMENDATION

5.1 A memorandum of reasons for awarding business (fulfilling the criteria) should accompany the recommendation (précis) to the AC.

5.1.1 Where tenders/quotations are invited and selection criteria other than price alone will be a deciding factor, e.g. environmental impact, local community involvement, job creation, BBBEE involvement, a memorandum motivating how all the relevant selection criteria can best be met, should form part of the submission (précis) to the relevant AC, or in cases falling below the AC's jurisdiction, to the Manager with the necessary delegated powers.

5.2 Tenders which do not comply with tender/enquiry conditions should as a general rule be rejected

5.2.1 Tenders/quotations which do not comply with the tender/enquiry conditions, or which are incomplete should, as a general rule, be rejected. Such tenders/quotations may only be taken into consideration if other contenders are not prejudiced thereby, and it is regarded to be in the best interest of Transnet. When the documents are returned to the Chairman (or manager in respect of those tenders falling below the AC's jurisdiction) the recommending officer shall submit a certificate giving details of any aspect of the tender conditions which has not been complied with but which is nevertheless recommended for acceptance. – Also see paragraph 4.10.above.

5.3 Transnet is not obliged to accept the lowest, or any bid

5.3.1 The lowest, or any tender/quotation, shall not necessarily be recommended for acceptance. Refer to paragraph 5.6 below, should none of the tenders received, be acceptable. The acceptance of the whole or part of any tender/quotation, or in the event of a number of items being tendered for, any item or part thereof may be recommended, provided that this was a tender condition. Suppliers, who in conflict with the tender conditions, qualify their bids on the basis that the whole tender/quotation should be accepted, must be advised that the restriction must be withdrawn before their tender/quotation can be considered.

5.3.1.1 Price

As Transnet is operating in a competitive transport market, price is a very important factor as it ensures optimal value for money and reflects directly on Transnet's bottom line. However,

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unless cost will be the determining factor on whether a project will go ahead or not, price should not be regarded as the only factor. Generally, all tenderers are to be scored using a pre-determined scoring matrix reflecting the relevant selection criteria and their weightings. PRICE and BEE should be kept separate from technical / quality / service related criteria so as not to dilute their importance as will be noted from the BEE scoring matrix – See Part 9.

Price should therefore not be the main or only criteria for selecting the successful tenderer, especially if there are other equally or more important criterion. Depending on the circumstances and merits of the case, any one (or more) of the following criteria can have a larger or lesser impact, or may even be the single deciding factor for the award of the business.

5.3.1.2 Total Cost of Ownership (TCO)

In terms of open and fair competition, as far as possible specifications are not written around specific products but drawn up to accommodate as many acceptable products as possible. When different products are compared, other aspects such as guarantee periods, expected lifespan, cost and availability of spare parts/components, after sales service, etc should be taken into consideration to ensure that the TCO is compared and not merely the tendered price in isolation.

5.3.1.3 Service and supply chain reliability

In order to reduce inventory levels and the high cost associated with stockholding, i.e. warehouse space, staff, inventory control systems, etc a reliable supply chain with the shortest possible lead times for delivery will have a direct influence on the eventual TCO of the product.

Transnet may at its own discretion prefer not to keep high-value emergency spares/components in stock due to the negative impact it will have on inventory levels. The supplier may therefore be required to keep such stock and supply to Transnet on very short notice (e.g. traction motors, container crane components) in which case this would either become a tender condition or a very important evaluation criteria.

5.3.1.4 Quality

As Transnet's reputation as a safe transport provider is dependent upon the quality of its service, the quality of the goods and products utilized to provide that service cannot be compromised. However, one should guard against "over-specification" (i.e. specifying more than the minimum requirement to do the job). One should strike a balance between optimal cost and quality.

Quality will be crucial when it cannot be compromised without endangering human lives or Transnet's service levels, e.g. train signaling equipment or rolling stock equipment.

5.3.1.5 Local community involvement

A project may be identified and set aside specifically as a community upliftment programme where the success of the project is dependent upon the support and recognition of the local community, e.g. the erection of a day-care centre for employees' children.

5.3.1.6 BBBEE

Transnet has aligned the measurement of BBEEE to the DTI Generic Scorecard and will accept BBBEE scorecards issued by Verification Agencies accredited by SANAS and who are using the latest Codes of Good Practice. Refer to Part 9 for a full description of the BBBEE methodology and the 90/10 preference point system utilized by Transnet as well as the relevant BBBEE Circular and RFX clause available on the Transnet Intranet.

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5.3.1.7 Utilising local labour force

On high-tech, high-value construction contracts, there is always some unskilled or labour intensive work that could possibly be outsourced to the local community. The main contractor takes responsibility for the project in totality and is responsible for training and skills transfer to the local community labour force. In such instances, the tender documents should stipulate that it is either a pre-condition or a favourable consideration that the successful tenderer make use of the local workforce for the labour component of the contract.

5.3.1.8 Environmental impact

5.3.1.8.1 The importance of environmental conservation as an evaluation criterion cannot be over-emphasised. This does not only cover construction type contracts which may have a direct impact on the surrounding environment but also include any other indirectly related matters such as manufacturing processes where the raw materials or products used are not environmentally friendly.

5.3.1.8.2 This category is relevant where the feasibility of a project is dependent upon the environmental impact it will have on the surrounding properties (e.g. harbour developments adjacent to a nature conservation area or where the disposal of a product at the end of its life-span will have a cost implication, e.g. nuclear waste disposal).

5.3.1.9 Reciprocal Business

Since Transnet's focus is to provide a world-class multimodal transport service, prospective tenderers should be encouraged to utilise such services to transport their raw materials and/or finished products. Therefore, depending on the commodity being purchased and the applicability of utilising Transnet's services, reciprocal business may be one of the important evaluation criteria and stipulated as such in the tender document.

5.3.1.10 Transnet's public image

5.3.1.10.1 Transnet, a public company, with its sole shareholder being Government should always be aware of the image it portrays to the public. Its tendering processes should therefore always be seen to be fair, open and transparent. Business transactions and dealings with service providers who do not share these same goals should be avoided.

5.3.1.10.2 This category as an evaluation criteria will be applicable where Transnet's public image is at stake and will be the deciding factor e.g. in an advertising or marketing campaign.

5.3.1.11 **NB:** The abovementioned are merely some examples of selection criteria and it is not intended to be limited to only these. So as not to create false expectations with tenderers, it is important that the selection criteria, not necessarily in order of importance, and without any reference to the individual weightings, be clearly stated in tender documents.

5.4 Reasons for recommendation must be clearly stated in the recommendation to the DAC and where applicable should be accompanied by the relevant certificates.

5.4.1 The reasons for recommending tenders/quotations shall be clearly stated by recommending officers.

5.4.2 When only one technically acceptable tender/quotation 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. previous prices etc).

5.4.3 If a tender/quotation other than the lowest is recommended, the recommending officer shall certify with reasons that this represents optimal value and is in the best interest of Transnet. The AC shall furnish reasons should it not be satisfied with a recommended tender/quotation. In both instances such reasons shall be recorded in the DAC minutes.

5.4.4 When business is awarded to a supplier (who is not the lowest tenderer) because of his ability to best meet the selection criteria, this must be clearly indicated in the recommendation to the AC/manager together with an indication of the cost-premium payable by Transnet.

5.5 Disagreement between recommending officers shall be referred to higher authority within the division, or to the DAC

5.5.1 Where the decision of the manager who may conclude the contract conflicts with the recommendation of the consumer, the dispute shall be settled by the employees concerned having regard to technical and commercial considerations. If it is not resolved it shall be referred to higher authority within the division concerned or to the DAC for a decision.

5.5.2 Should a dispute arise between the recommending officer and the DAC regarding a submission made to the AC, consensus should be sought from the CEO of that Division on business matters, or from the Group Supply Management Function on policy and procedural matters. Should consensus not be reached (i.e. if the CEO/Group Supply Management also agrees with the DAC), the recommending officer may escalate the matter to the GM: SSM for a decision and, if still not settled, to the Transnet GCFO, whose decision shall be final and binding on all parties.

5.5.3 **NB: As the DACs are governance structures instituted by Transnet Executive Committee and appointed by the CEO of the Division, nobody other than the CEO (in cases where the CEO him/herself is not the Chairman of the AC), may "overrule" a AC decision. (See paragraph 8.1.11.2 below for more details)**

5.6 Non-award of business shall be submitted to the DAC for consideration

5.6.1 Non-award of business (as a result of Transnet's bad planning) should for obvious reasons be minimised as far as possible as tenderers inadvertently incur expenses in preparing and lodging tenders. In such cases, consideration should be given to refunding the tender document charge if tender documents were sold. When no tender/quotation can be recommended for acceptance, the manager concerned shall submit the non-acceptance with reasons as well as an indication of how the required goods/service will now be met for DAC consideration.

5.6.2 The same principle shall apply if part of a tender, or certain items, is not awarded.

5.6.3 If the award of business as approved by the DAC is not awarded the matter must be motivated and submitted for DAC consideration. Transactions falling below the DAC's jurisdiction (or regional / local DAC) should be dealt with similarly, except that the Manager concerned will consider such non-award.

5.7 Sales to or purchases from employees to Transnet will not be permitted.

5.7.1 No sale to or purchase from a Transnet employee shall be permitted under any circumstances. This procedure does not apply to sales by auction or such other exceptions as may be authorised by Management from time to time.

5.8 Employees who may have an interest in a tender shall declare such interest and recuse themselves.

5.8.1 Employees who may have a competing direct or indirect personal interest in a specific tender, quotation or offer, must declare such interest and recuse themselves as such competing interests can make it difficult to fulfill his/her duties impartially. The employee must declare such interest in writing to his/her superior and recuse him/herself from the receipt, evaluation, adjudication or acceptance of the tender/quotation/offer. Declarations of interest in any business must be kept in a proper register with the relevant Head of Department for audit purposes. In addition all employees involved in any way in the tender process must sign a Declaration of Interest Certificate and indicate whether or not they have an interest in the tender. This record must be kept on the appropriate tender file for the record

5.8.2 A direct interest in a tender includes the following:-
The employee:-
- Being a shareholder / member / director of a tenderer;
- Being a shareholder / member / director of the holding company of a tenderer; and
- Being a shareholder / member / director of a subsidiary of a tenderer.

or

a direct family member as defined in paragraph 5.8.4. below, or a close friend:-
- Being a shareholder / member / director of a tenderer;
- Being a shareholder / member / director of the holding company of a tenderer; and
- Being a shareholder / member / director of a subsidiary of a tenderer

5.8.3 Likewise, any indirect interest of an employee in a tender/quotation or offer should also be declared. The Manager will rule whether he/she should recuse him/herself and the reasons should be minuted and kept on file for the record. Indirect interests may be, but are not limited to:-

- Having been involved with the drafting of the specification or tender documents, or the issue / advertising thereof;
- Having been involved in the evaluation/adjudication of the said tenders (applicable to members / alternates serving on the relevant DAC).

5.8.4 Tender documents must always contain a clause for prospective tenderers to declare any possible direct family relationship with a Transnet employee. Direct family relationship includes husband/wife, children (own and step), parents and grand parents (own and in-law), brothers and sisters (own, step and in-laws). Although business with such enterprises is not forbidden, it is imperative that it be properly declared, and explicitly pointed out in the submission to the AC in order that the AC may consider all the relevant facts and decide whether such involvement by a Transnet employee could be regarded as fair or whether other prospective tenderers will be prejudiced or may be perceived to have been prejudiced thereby.

5.9 Ex-employees shall not be restricted from doing business with Transnet

5.9.1 Ex-employees of Transnet shall not be restricted from doing business with Transnet unless a Restriction of Trade Agreement concluded at their time of departure from Transnet exists. Due diligence should however be exercised by evaluation teams to determine whether any undue influence/unfair advantage could have been possible between any Transnet employees and the ex-employee. This should be stated clearly in submissions to the AC or to the delegated manager for transactions falling below the AC's jurisdiction. NB This is not applicable to the disposal of non-core business of Transnet - refer to paragraph 1.3.3.4. (xiv) above.

5.9.2 In terms of Transnet's Social Plan, ex-employees who have been retrenched may be assisted to establish entrepreneurial ventures through the Transnet Development Agency. Such commitments from Transnet's side should be formally approved in terms of Transnet's Social Plan. Such ex-employees (or groups of ex-employees) will obviously not be restricted from doing business with Transnet – in fact, once the terms of the TDA and the way in which it will function has been agreed upon with the unions, it might even be decided to give such entrepreneurial ventures some sort of preference.

PART 6: CONTRACT ACCEPTANCE

6.1 Employees shall not anticipate approval of acceptance of tenders and prematurely inform the recommended tenderer of the acceptance of a tender

6.1.1 No employee shall anticipate the approval of acceptance of tenders/quotations and shall not enter into contracts verbally or in writing or place orders before the prescribed procedure has

been performed and authority has been duly granted therefor by a manager with the appropriate Special Delegation of Authority.

6.2 The decision to accept tenders/quotations may only be communicated once all the provisos have been adhered to

6.2.1 A manager may only communicate the acceptance of a tender/quotation i.e. conclude the contract if the following provisos have been adhered to:-

6.2.1.1 he has complied with all internal Policies and Procedures and if applicable obtained the DAC's concurrence by means of an approved DAC minute;

6.2.1.2 the value of business awarded is within the level of his/her powers to contract in terms of his Special Delegation of Authority; or where the value exceeds his/her powers, he/she shall obtain a mandate from higher authority to conclude and administer the contract; and

6.2.1.3 where the value of business exceeds the relevant CEO's delegated powers to contract, a mandate in favour of a nominated manager shall be obtained from the relevant higher authority (e.g. Transnet GCFO or GCE, depending on the value of the contract) to conclude the contract with one or more specified contractors for a specific amount, and to administer such contract.

6.3 Notices of non-acceptance to unsuccessful tenderers, and conclusion of a contract(s) with the successful tenderer(s) shall be finalised as soon as possible after approval has been received

6.3.1 **As soon as possible** after approval to award a contract has been received the OD which invited the tender/quotation shall arrange to conclude the contract i.e. to inform the successful tenderer of the acceptance of his tender/quotation. This notice may only be communicated by a person with the necessary Special Delegation of Authority, or a person with a written mandate for a specific contract. Unsuccessful tenderers shall be advised in writing of the name of the successful tenderer **but not the value of the contract** as it is Transnet's policy not to disclose tender prices. The disclosing of the successful tenderer's name does not apply to business which was confined to one or more contenders, Approved List purchases included. On award of business to the successful contender all unsuccessful tenderers, including those who responded on confined enquiries and quotations, will be informed of the reason as to why their tenders had been unsuccessful, e.g. price, delivery period, quality, BEE or any other reason.
Details on how tenderers responded to the relevant evaluation criteria should also not be disclosed (See Paragraph 5.3.1.1 and 3.11 above).

6.4 Applications received in terms of the Promotion of Access to Information Act (PAIA)

6.4.1 Should an application be received in terms of PAIA, the "requestor" should be referred to the Transnet Limited Information Manual. The purpose of this Manual is to set out the procedures to be followed and criteria that have to be met for anyone (the "requester") to request access to records in the possession or under the control of Transnet Limited and its Entities.

6.4.2 As the Transnet GCE is automatically designated the Chief Information Officer, requesters are required to address all requests to the relevant Deputy Information Officer of Transnet as per the Manual. It is important to note that all requests received in terms of PAIA must be dealt with immediately as there are deadlines within which to respond to the requester.

6.5 The SA Post Office and/or Telkom SA Ltd shall be regarded as the Agent of the Tenderer if delivery of acceptance to the tenderer is communicated by means of a telegram or letter

6.5.1 When a tenderer has been advised by telegram or letter of the acceptance of his tender/quotation the South African Post Office Limited and/or Telkom SA Limited shall be regarded as the agent of the tenderer and delivery of such notice of acceptance to the above-mentioned offices shall be considered as delivery to the tenderer.

6.5.2 Where a tenderer has been informed per fax of the acceptance of his tender/quotation, the acknowledgement of receipt transmitted by his fax machine shall be regarded as proof of delivery to the tenderer.

6.6 Types of contracts

6.6.1 The contracts of Transnet may be for, but not limited to:-

6.6.1.1 a specific service based upon a lump sum price or on a priced schedule of approximate quantities;

6.6.1.2 a definite quantity of goods at an agreed price,

6.6.1.3 the supply of an estimated quantity of goods or rendering of a service at an agreed price, during a fixed period, provided that the estimated quantity of goods to be supplied or service to be rendered may be increased or decreased by ten per cent if allowed for in the contract.

6.6.1.4 the supply of an unspecified quantity of goods or rendering of a service at an agreed price, during a specified period, provided that details furnished of similar goods supplied or services rendered during a previous period or of possible future requirements are for the information of the tenderer only and shall not be binding;

6.6.1.5 lease for a specified period at an agreed rental, with or without the options of renewal or for an unspecified period, but provided that normally six months' notice of termination may be given.

6.7 A formal written contract shall be entered into with the successful tenderer

6.7.1 A formal written contract shall be entered into with the successful tenderer unless the goods or services are for immediate delivery or execution, or in cases where a duly approved procurement/credit card is utilised (refer to paragraph 2.3). In all instances where a formal contract is not concluded, the acceptance in writing of a tender/quotation, setting forth all the material terms agreed upon (i.e. exchange of letters agreement, a purchase order, letter of intent, etc), shall be sufficient compliance with this directive. No payments shall be made in the absence of documentary proof of a contractual commitment existing on the part of Transnet as well as the conditions pertaining thereto. This is to ensure that Transnet is suitably covered should it become necessary for Transnet to resort to litigation for any reason. The rules governing safe custody of contracts (refer to paragraph 6.9.1 below) equally apply to "contracts" of this nature.

6.8 Formal contracts are to be entered into in the name of Transnet Limited

6.8.1 All contracts shall be concluded, as soon as possible after the award of the business to the successful tenderer, in the name of Transnet Limited, according to guidelines issued and shall be signed for and on behalf of Transnet by a manager with the appropriate Special Delegation of Authority.

6.8.2 Internal contracts (SLA's) between Operating Divisions 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 Acquisition Council approval. Since all ACs are governed by the same rules, it is immaterial whether the client's or the Specialist Unit's AC is utilised. This aspect may be stipulated and agreed upon between the two parties when formalising the Service Level Agreement. Since the SLA per se, does not require specific AC approval, the contractual limits laid down in terms of a manager's Special Delegation of Authority may be used as a guideline to determine the level of approval for such SLA's.

6.9 Divisions shall arrange for the safe custody of all their contracts and contract files

6.9.1 Every division shall arrange for the safe custody of contracts at a suitable, approved centralised or regional location which is acceptable to the CEO. Similarly, all related documents and correspondence relating to a specific tender/contract should be kept for audit purposes.

Related documents which should be kept on contract files as part of the record include, but are not limited to, documents such as, for example, Request to Purchase (requisition), the going to market strategy, tender advertisements(unless kept by a central tender issuing office), authorisations to confine, minutes and score-sheets as well as declaration of interest documents signed by members of evaluation teams and post-tender negotiation teams, certificates authorising communication with tenderers, minutes of tender briefing sessions, agendas and minutes of post-tender negotiation meetings, correspondence with tenderers, etc. Refer to the Transnet Intranet for the checklist template of documents and signoffs which should be kept on contract files.

The following may be used as guidelines as to how long different documentation / correspondence should be kept in safe custody:-

- Unsuccessful tenders must be kept for 3 years after completion of the contract, and thereafter it may be destroyed.
- Successful tenderer's tender / 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, thereafter may be archived in an off-site archiving facility in terms of normal archiving procedures.

These files should be properly archived and tracked by means of a proper register so that they can be easily traced when required for audit investigations and/or litigation purposes.

6.10 Where deemed advisable for the fulfilment of the contract, Transnet may insist on a suitable security/guarantee

6.10.1 When security has to be provided by successful tenderers 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 division concerned which shall keep a register thereof and shall ensure that the security does not lapse before the contract is completed.

6.10.2 Cash deposits or a "guarantee" in the personal name of an official of a bank or other institution is not acceptable.

6.10.2.1 On construction/engineering related contracts, and provided that the contract document allows for that, one can also revert to the practice of retaining part of the payment as retention money. Retention money, 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 moneys are only refunded after completion of the guarantee period (normally 6 to 12 months, depending on the risk of latent defects).

6.10.3 Depending on the risk to Transnet, these measures may be relaxed to facilitate Transnet's BBBEE Development Program, as provided in Part 9 hereof.

6.11 In the event of the successful tenderer failing to sign the contract, Transnet may, subject to certain provisos, decide to award the contract to the next favourable tenderer

6.11.1 When a successful tenderer, after having been informed of the acceptance of his tender fails to sign a contract within a reasonable period after being called upon to do so, or to provide the necessary security if any and it is not practical within the time available to call for fresh tenders, the acceptance of the next most favourable tender/quotation shall be considered if that tenderer is prepared to enter into a contract on this basis. In the case of tenders/quotations which fall

within the DAC's jurisdiction, the matter shall be referred to the DAC with a recommendation from the manager of the division concerned.

6.11.2 In the case of tenders/quotations originally accepted by a manager and the value thereof still does not fall within the DAC's jurisdiction, the manager shall, on the same lines as above, decide on the acceptance of the next most favourable tender if it also falls within his delegated power and not within the DAC's jurisdiction.

6.12 Transnet may decide to divide the total requirement between two or more tenderers

6.12.1 When it is considered in Transnet's best interest to divide the total requirement of a tender between two or more tenderers (e.g. in order to draw from the most convenient or nearest source, or to ensure continued competition or to optimise available resources or to support a BEE Company) a supply or service may be divided amongst several tenderers, and contracts can be placed accordingly, provided that this was a tender condition. The total value of the business to be awarded, and not the individual contracts, will however determine whether such tender falls within the AC's jurisdiction or not. Once approval for the award of the business has been obtained from the AC, the individual contracts may be signed by the person with the necessary contractual powers for the individual contracts.

6.13 No person may communicate the acceptance of a tender, quotation or offer without the necessary delegated powers

6.13.1 No person may communicate the acceptance of a tender/quotation to a tenderer (that is to conclude a contract) unless;-

(a) he/she has been duly authorised thereto by a valid Special Delegation of Authority, and
(b) he/she has complied with the internal Policies and Procedures (e.g. used approved procurement paths, obtained DAC approval if falling within its jurisdiction etc).

6.13.2 **NB: A manager may not delegate more than he/she has been authorised to and no person may parcel the total quantity required for particular goods/services to bring the amount within an employee's delegated powers to contract, or below the DAC's jurisdiction.**

6.13.3 Should it be decided to divide the total requirement or project between more than one tenderer, the total value of the business and not the individual contracts shall determine the level of approval required. Only after the necessary approval has been obtained, may the individual contracts be signed by the manager with the necessary delegated contractual powers. If a project is divided into smaller manageable portions for the sake of BEE, the total value of the individual small contracts (e.g. NEC Short Form of Contract) should likewise determine whether or not DAC approval is required.

6.13.4 The same principle also applies when determining whether a matter falls within the jurisdiction of the DAC, within the Delegated Powers of the CEO, or relevant higher authorities.

6.14 No contract may be entered into for periods longer than two years without the DAC's approval (Non-core businesses only one year)

6.14.1 No contract shall be entered into for a period **longer than two years (non-core businesses one year)** without the DAC's written approval, except for large construction contracts where the period allowed will be the completion period of the project. Property leases are also excluded from these Procedures and approval levels are determined by means of the Special Delegation of Authority of those employees, CEO's and higher authorities of the relevant property divisions.

6.14.2 If it is the intention to enter into a contract initially for a period longer than two years, or to extend an existing contract on the same terms and conditions, or on terms and conditions which are more favourable to Transnet than those in the existing contract, so that the original period and the extension of the period(s) together are longer than two years, the DAC's prior written approval of the recommendation in respect of the tender/quotation or extension of the period

shall be obtained. A detailed motivation must be given as to whether the proposed contract or extension of the period of the existing contract is the best value for money in the market place, and how this has been determined. Alternatively, instead of obtaining the DAC's prior approval, tender documents may be structured to require prices on different periods depending on the particular market and price drivers. Documents should, however, clearly stipulate that Transnet has the sole discretion to decide which contract period will be most advantageous to it.

6.14.3 When it is the intention to stipulate in a contract, an option to extend or renew the contract period, firstly the tender document should stipulate that, and secondly, if such contract falls within the DAC's jurisdiction, the initial recommendation to the DAC in respect of the tender/quotation must include particulars of the proposed option.

6.14.4 Should it be decided to exercise the option during the course of the contract, the recommendation to exercise the option shall be submitted to the DAC 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.

PART 7: CONTRACT ADMINISTRATION

(Refer to the Contracts Management Manual available on the Transnet Intranet)

7.1 All goods are to be delivered strictly in accordance with the contract, and contractors will not be allowed to supply substitute goods

7.1.1 When a contract is placed for South African goods, the supplier shall not be permitted to substitute imported goods without the DAC's written approval. For tenders/quotations below the DAC's jurisdiction, the manager concerned shall decide whether imported goods may be substituted; provided that where the successful tenderer has secured the business by reason of the local content offered he shall not be allowed to substitute imported goods for those that were to have been supplied from South African sources, except where the supply from the SA source has become absolutely impossible due to reasons beyond the contractor's control.

7.1.2 Employees responsible for the inspection and/or receipt of delivered goods must ensure that all goods are provided:-

i) strictly in terms of the contract – i.e. the delivery note may differ from what was required in terms of the contract or purchase order, and
ii) that the goods delivered corresponds 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 and the delivery note clearly endorsed as such.

7.2 Timeous arrangements shall be made for the inspection of shipments and deliveries in terms of the contract, where applicable

7.2.1 In the case of imported goods, the contractor shall notify Transnet's agents as to when consignments are ready for inspection 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 its destination.

7.2.2 In the case of locally manufactured goods, where quality is not assured by means of SABS (including SANS) or ISO 9000 or similar standards, other suitable quality assurance mechanisms must be provided for in the contract e.g. inspections during manufacturing process, inspections at point of despatch or delivery. 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 according to specification.

7.3 No material amendments to a contract shall be effected without the necessary written approval

7.3.1 No material provisions of any contract which arises out of a tender/quotation which falls within the DAC's jurisdiction, irrespective of whether the DAC considered the initial award of the business or whether it was merely submitted for information in view of exceptional circumstances, (paragraph 2.5) shall be amended in any way without the concurrence of the relevant DAC, except as stipulated in paragraph 7.3.1.1, 7.3.1.2 and 7.3.2 hereof.
NB: Note the Definition of "material provisions" in Part 10. Extension or termination of Contracts, additional work, increase in quantities, price amendments not in terms of the contract, cession and assignments, waiving of penalties, etc., are all defined as material amendments to contracts and need to be dealt with in terms of this paragraph. Also refer to the relevant PPM Circular available on the Transnet Intranet for more information regarding amendments to contracts and the implementation of the 10% rule.

7.3.1.1 Where a contract or a portion of a contract is based on -

(i) **a lump sum price**, with or without a list of quantities or prices which comprises the lump sum price, or
(ii) scheduled rates, for approximate quantities but
- the **scheduled rate has to be adjusted**, or
- **a new scheduled rate has to be included**,
(iii) **estimated quantities** at tendered unit prices in respect of "as-and-when required" purchase or service contracts, or
(iv) **fixed quantities** at tendered unit prices in respect of purchase or service contracts, or
(v) **specific quantities** at tendered **unit prices** over a **fixed period** contract,

a manager may approve any increases or decreases in quantities or additions or additional work of which the total value **does not exceed** 10 per cent of the original value of the contract, and **inform** the DAC accordingly. Note that this does not include **price increases**, i.e. the same work or the same quantities are provided but at an increased price. Such matters should be presented to the DAC for prior approval in terms of paragraph 7.3.4 below.

Such amendments on Engineering / Construction (NEC) contracts only, **exceeding** the laid-down limit of 10%, must be submitted for the relevant Acquisition Council's consideration in terms of sub-paragraph 7.3.4 hereof, **before** such amendments **at non-scheduled rates** are ordered, **unless due to exceptional circumstances** and at the discretion of the Project Manager or Engineer in charge of the contract and the concurrence of his line manager or CEO it would not be in Transnet's best interest to stop the work to first obtain the AC's approval. Full details and a motivation of the exceptional circumstances should be furnished for the relevant DAC's information as soon as possible after the additional work has been ordered.

Note: Scheduled and non-scheduled rates must be calculated separately in calculating the 10 % deviation.

7.3.1.2 Where a contract or a portion of a contract consists of **scheduled rates** which are based on estimated quantities as the exact quantities can only be determined once the works have been opened up –

a manager may **increase or decrease** such quantities at the same scheduled rates provided that when the cumulative value of such amendment/s **exceed** 10 per cent of the original value of the contract the reasons for such amendments must be submitted for **information** of the DAC as soon as possible after such increase or decrease (at scheduled rates) has been ordered or determined by measurement, or on completion of the contract.

7.3.1.3. Notes:

(i) A scheduled rate is a unit price for a labour or service related component of a bigger engineering project, the total extent or quantity of which is unpredictable and cannot be accurately determined at tender stage. When a scheduled rate is tendered at tender stage, that rate is based on an estimated quantity only, as the exact quantity is dependent on site conditions such as underground soil conditions, rock formations etc. which can only be determined once the situation has been opened up or as the work progresses e.g. additional land filling as a result of subsidence or washaways.

(ii) Construction work composed of prefabricated, dimensionally pre-determinable building commodities e.g. brick, prefabricated walling, roof covering, etc., are not regarded as scheduled rates and the lump sum method, with or without a bill of quantities should be adopted in these instances (sub-paragraph 7.3.1.1(i)).

(iii) Purchase contracts based on estimated quantities (as-and-when required contracts) fall within sub-paragraph 7.3.1.1(iii) hereof, and purchase contracts for fixed quantities within sub-paragraph 7.3.1.1(iv).

(iv) Service related type contracts where the quantities may be increased/decreased due to emergencies or changed requirements e.g. a security contract where additional ad-hoc guards are required for a specific period or where the number of guards need to be reduced as a result of say the closing of a station or the reducing of the number of trains on a specific section of line, fall within sub-paragraph 7.3.1.1(v).

7.3.2 Where the original value of the contract falls below the DAC's jurisdiction, a manager may approve additions, increases or decreases provided the total value of the contract is still within his delegated powers and does not fall within the DAC's jurisdiction.

7.3.3 Should the value of the contract be within the DAC's jurisdiction, a manager may approve the amendment of **non-material provisions**, or new provisions not in conflict with the existing provisions or these procedures, provided that such amendment or addition shall be reported for the information of the AC as soon as possible.

7.3.4 Where the additions, amendments, increases or decreases do not fall within paragraphs 7.3.1.1, 7.3.1.2 or 7.3.2 and/or 7.3.3 or 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 a certification that the proposed amendment to the contract is in the best interest of Transnet and that it represents the optimal value for Transnet, and how this has been determined.

7.4 **A tenderer who fails to perform, may be held liable for all additional expenses incurred by Transnet**

7.4.1 Provision shall be made in the tender documents (as well as in the eventual contract) for the tenderer to undertake that if, after he has been notified of the acceptance of his tender or quotation, he fails to perform, whether by not entering into a contract or to undertake any steps when requested to do so within a period stipulated in the tender conditions or within such extended period as Transnet may allow, he will be held liable for any additional expense which Transnet may incur in having to call for tenders or quotations afresh and/or accepting any less favourable tender or quotation to complete the whole or remaining portion of the contract. In addition, consideration can also be given to placing such contractor on Transnet's List of Excluded Tenderers (See paragraph 7.5 below).

7.4.2 Where the contractor commenced the work but delivered/completed it only after the contractual completion date and this was a tender condition, the penalty clause may be invoked in terms of extant instructions in this regard – See relevant PPM Circular available on the Transnet Intranet for more details in this regard.

7.5 **Transnet may at its discretion decide to exclude a tenderer from further business**

7.5.1 If any person/enterprise which has submitted a tender/quotation, concluded a contract, or

in the capacity of agent or subcontractor, has been associated with such tender or contract:-

7.5.1.1 has withdrawn such tender/quotation after the advertised closing date and hour for the receipt of tenders (Refer to paragraph 2.17 above re the exception with regards to CIDB-tenders); or

7.5.1.2 has, after being notified of the acceptance of his tender, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the tender documents; or

7.5.1.3 has carried out any contract resulting from such tender in an unsatisfactory manner or has breached any condition of the contract; or

7.5.1.4 has offered, promised or given a bribe in relation to the obtaining or execution of the contract; or

7.5.1.5 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; or

7.5.1.6 has made any incorrect statement in the affidavit or certificate with regard to the local content of his goods or his BEE involvement 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; or
(iii) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor,

7.5.1.7 has litigated against Transnet in bad faith. 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 an entity 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:

7.5.1.7.1 Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;

7.5.1.7.2 Perjury. Where a supplier commits perjury either in giving evidence or on affidavit,

7.5.1.7.3 Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.

7.5.1.7.4 Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a tender process.

The Transnet GCFO or his delegate may upon a recommendation by the relevant DAC and the GM: SSM decide that no tender/quotation from that person or enterprise be considered/accepted or any new contracts concluded for a specified period as may be determined. Depending on the seriousness of the wrongdoing the Transnet GCFO or his delegate may decide, after consultation will all the role-players, to also terminate all existing contracts between the said enterprise and other Transnet Entities. In cases of fraud and corruption (involving Transnet employees), consideration should also be given to the exclusion of the "internal accomplices". This is to prevent the possibility of Transnet employees being dismissed (or resigning) as a result of their wrongdoings, opening up new businesses in order to continue doing business with Transnet.

7.5.2 Exclusion of a company does not necessarily mean that all existing contracts with the contractor should automatically be terminated. All contracts will remain operational until their normal expiry date, or until they have been terminated by following the necessary due processes, bearing in mind that:-

(i) there must be valid reasons for terminating a specific contract,

(ii) the termination procedure as specified in the specific contract document must be followed and DAC approval must be obtained for termination of contract in terms of paragraph 7.3.4 above, and

(iii) the contractor must be informed and given the customary 14 days notice period mentioned in paragraph 7.6.4 below, to also have the opportunity to make written representations as to why existing contracts should not be terminated, in addition to the intention to place its name on the Transnet List of Excluded Tenderers.

7.5.3 All tender documents and ensuing contracts **must** state that Transnet reserves the right to exclude a tenderer from further business and/or to cancel all existing contracts and the grounds upon which such action may be taken. Furthermore, it must be stated that a contractor may not subcontract any part of a contract to an excluded tenderer. For this purpose, Transnet's List of Excluded Tenderers will be displayed on the Transnet website for tenderers' information so as to ensure that they do not sub-contract to Excluded Tenderers. This should be conveyed to prospective tenderers by means of a suitable clause in all "Notice to Tenderer" documents.

7.6 Divisions shall immediately report all cases of apparent unlawful conduct by tenderers/ contractors

7.6.1 Any case that may appear to fall within these provisions must be immediately reported in writing to the DAC irrespective of whether the tender amount falls within the DAC's jurisdiction or not. Most cases will inevitably emanate from Internal Audit investigations. However, it is imperative that Internal Audit be informed of, and where appropriate, involved in all matters, even those exposed by means of the Division's own internal processes - See paragraph 7.6.4.1 below.

7.6.2 The AC shall consider the OD's recommendation as soon as possible (by calling a special meeting if required) and if in agreement, notify the GM: SSM via e-mail/fax. All relevant documentation including supporting documentation must be provided.

7.6.3 The GM: SSM shall promptly provide the relevant DAC the go-ahead to inform the person/enterprise concerned, per registered mail, of Transnet's intention to exclude him/her/it, as well as associated companies, from further business, and the reason(s) therefor. The enterprise/person, as well as associated companies, must be afforded the opportunity to furnish reasons as to why he/she/it should not be excluded from further business. Before the letter is signed by the Chairman of the DAC, it has to be vetted by the Division's legal department or Group Legal.

7.6.4 The person/enterprise concerned, as well as associated companies must be given 14 days to respond. During this period:-

7.6.4.1 Should details of associated companies not be available as yet, Internal Audit should be requested to do the necessary ITC searches to determine associated links between the enterprise/person(s) to be excluded and other enterprises, ID numbers of directors, etc; . Immediately this information becomes available, the said associated companies should be informed of Transnet's intention as detailed in paragraph 7.6.3 above.

7.6.4.2 the Division is to determine whether it intends (or can afford operationally) to terminate all existing contracts as well, or whether the restriction will only apply to future new business.

7.6.4.3 As soon as the 14 day period(s) has(have) lapsed the DAC must consider the tenderer's response (if any). However, before presenting the matter to the DAC, the Secretary should send

a copy of the précis as well as a copy of the tenderer's (and associated companies') response to the GM: SSM, for prior perusal.

7.7 The Transnet GCFO shall make the final decision based on a recommendation from the DAC and the GM: SSM

7.7.1 After the DAC has formally considered the matter at a meeting and concurred in the recommendation to exclude the enterprise, it has to promptly present its recommendation to the GM: SSM for consideration and presentation to the Transnet GCFO, or his delegate for **exclusion of the enterprise, its directors/owners/partners, as well as associated enterprises.**

7.7.2 Upon approval by the Transnet GCFO or his delegate, the List of Excluded Tenderers will be updated by the GM: SSM who will also be responsible for notifying the relevant company(ies) and its directors/owners/partners, as well as associated companies, per registered mail of Transnet's decision to place them on its List of Excluded Tenderers for a specific period.

7.8 Rescinding of a decision taken may only be considered by the Transnet GCFO

7.8.1 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.

7.9 The extent of exclusion shall be determined by the Transnet GCFO

7.9.1 Any restriction imposed upon any person/enterprise shall, unless the Transnet GCFO, or duly authorised delegate, determines otherwise apply to any other associated enterprise/s under the same or different name. However, the associated enterprise must also be afforded the opportunity to make representations as to why it should not be excluded from business with Transnet. Any such exclusion may also be applied to an agent or employee of the person/enterprise concerned, or his/her spouse who may be doing business under a different name.

7.10 SSM shall be responsible for the updating and distribution of the List of Excluded Tenderers

7.10.1 Any decision taken by the Transnet GCFO, or duly authorised delegate, in terms of these directives on exclusion or any rescission or modification of any such decision shall be reported to the GM: SSM who will notify all the Transnet Entities.
As stated in paragraph 2.17 above, the CIDB will also be administering a similar list. (Contractors who have defaulted on any CIDB contract awarded by another public entity) This list will be similar to the Transnet List of Excluded Tenderers and will run in conjunction with Transnet's List. This means that if a Contractor's name appears on the CIDB's List of Restricted Tenderers, he will not be eligible to be awarded a contract and his tender will automatically be "non-responsive". The GM: SSM will notify Transnet entities as and when the CIDB list is updated, and will, on the merits of each case decide whether such restriction will be applicable to CIDB-tenders only or for non-construction related work as well.

7.11 Representations re exclusions may be made to the GCE whose decision shall be final

7.11.1 Any person/enterprise against whom a decision with regard to exclusion from further business has been given may make representations to the GCE whose decision shall be final.

7.12 The Law of the Republic of South Africa shall govern all contracts

7.12.1 The law of the Republic of South Africa shall govern the contract created by acceptance of a tender/quotation. The address for the serving of notices shall be a place in the RSA to be specified by the tenderer in his tender/quotation, at which all legal documents may be served on the tenderer who shall agree to submit to the jurisdiction of the courts of the RSA. Tenderers

from abroad shall, therefore, state in their tender/quotation the name of their accredited agent in the RSA who is empowered to sign a contract in the event of their tender/quotation being accepted and to act on their behalf in all matters relating to the contract.

7.12.2 Where the risks involved in direct purchases from or direct sales to tenderers abroad are reasonable in relation to the savings or advantages which could be brought about as a result of this method of purchase or sale, such transactions may be arranged direct with tenderers abroad, provided that the contract clearly indicates which country's law will apply, taking into consideration the cost which may be involved in the participation in any legal steps.

NOTE: Before agreeing on another foreign jurisdiction's law, the legal department's opinion and consent must first be obtained. A Division must use its own internal legal department or Group Legal if it does not have its own.

PART 8: DETAILED FUNCTIONS OF GOVERNANCE STRUCTURES

8.1 DIVISIONAL ACQUISITION COUNCILS (DACs)

Each Division will have its own DAC which will consider and approve all expenditure contracts as well as the sale of goods falling within its jurisdiction [i.e. above the minimum threshold as determined by the CEO - See paragraph 8.1.3.1(iv)below], and within the CEO's Delegated Powers. Transactions exceeding the CEO's delegated powers will likewise be considered by the DAC and if it concurs with the recommendation, refer the matter to the relevant person in the hierarchy with the appropriate delegated powers for the particular R-value of the transaction. [Refer to Paragraph 5.4.4 of the Transnet Group Delegation of Authority (Group Limits of Authority)]

A Transnet Acquisition Council (TAC) with similar roles and responsibilities to that of the DAC's, will cater for the Group Corporate Head Office requirements. The TAC will have no higher status than the DAC's, and therefore any matters handled by the DAC which exceed the jurisdiction of the DAC (i.e. the Delegated Powers of the CEO of the particular Division), will not be referred to, or via the TAC, but directly to the person with the necessary Delegated Powers for the relevant R-value of that particular transaction. For more details regarding the role, function and composition of the TAC, please refer to Paragraph 8.2 below.

8.1.1 Composition of the DAC

8.1.1.1 The DAC shall consist of senior management members/Divisional Exco members within the Division who shall be appointed by the CEO of the Division for a specific term.

(i) A Chairman who will either be the CEO, or an executive or senior management member appointed by the CEO, preferably the Chief Financial Officer (CFO) of the division.

(ii) A Deputy Chairman, who shall be one of the members mentioned in paragraph (iii) hereof.

(iii) Members with alternates, all of whom are Transnet employees in the particular division, selected by virtue of their specific expertise or business focus. They must be capable of exercising sound, unbiased judgement and offer constructive comment. It is a minimum requirement for members to complete Level 2 of the Certificate in Purchasing and Supply. The Chief Procurement Officer (CPO) should also be a member.

8.1.1.2 Members, by virtue of their expertise, are required to attend all meetings if at all possible. For this reason, DAC meetings should be scheduled well in advance. Should a member not be able to attend a specific meeting, his/her alternate should then attend so that that particular expertise will not be lost at that particular meeting. Ideally, attendance and participation by members and alternates should be one of their KPIs measured by the Chairman of the DAC.

8.1.1.3 Members are required to treat all information they receive as DAC members as strictly confidential. 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 Secretary.

8.1.2 Meetings

8.1.2.1 The DAC shall meet at such intervals and on such special occasions as may be determined by it, provided that the CEO may instruct that a meeting of the DAC be called at any time.

8.1.3 Functions of the DAC: Expenditure contracts

8.1.3.1 The functions of the DAC are:-

(i) To consider all recommendations from its division with regard to the award of external contracts for the procurement of goods and services, or sale of surplus goods, where the total value of the business exceeds R2 million.

(ii) 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 value of the amendments will exceed R2 million (Refer to Paragraph 7.3 below).

(iii) To consider all recommendations in respect of tenders/quotations as well as any extension of existing contracts of which the original period, or the original period and the extension of the period together is/are longer than 2 years regardless of value, and all subsequent amendments of material provisions of such contracts. Should it be the intention to invite tenders/quotations for contracts longer than a period of 2 years, the DAC's prior written approval should be obtained.
NB. For non-core businesses this limit is one year – refer to CEO's Delegated Authority as stipulated in the Transnet Group Delegation of Authority (Group Limits of Authority)- Available on the Transnet Intranet.

(iv) **With regard to (i), (ii) and (iii) above, DACs may at their own discretion decide to lower these limits and/or introduce similar structures on local or regional level, to cater for matters falling below the jurisdiction of the DAC. All such "deviations" from the laid down thresholds must be clearly stipulated in the Terms of Reference of the respective DACs. It is also advisable that the Divisional Delegated Power Matrix, similar to the Transnet Matrix be included as part of the relevant DAC's Terms of Reference so as to ensure that there is no uncertainty as to the approval thresholds.**

(v) When considering any tender/quotation or any amendments thereto, the DAC may -
- (a) ask questions and request information or advice from any person;
- (b) request any Transnet employee to appear before the DAC;
- (c) refer the submission back for reconsideration;
- (d) offer comments, or note matters submitted for information only;
- (e) condone the non-compliance with the laid down policies and directives provided such non-compliance is submitted via the relevant line manager of the employee in the particular Division. The DAC may at its own discretion decide to report any non-compliance with laid-down policies and directives to the CEO (should the DAC not be Chaired by the CEO him / herself);
- (f) reserve a decision pending further information or clarification of a specific matter; and/or
- (g) withdraw an item from the agenda of any meeting of the DAC;

(vi) To consider and approve the Division's Lists of Approved Suppliers/Products, as well as all aspects pertaining to such Approved Lists, and to administer such lists utilised in its division. This function may not be delegated to Local / Regional DACs.

(vii) To consider and make recommendations to the GM: SSM regarding all aspects pertaining to Transnet's List of Excluded Tenderers. The GM: SSM will administer the List.

(viii) To monitor/administer the opening of all tenders/quotations irrespective of the value. DACs may at its own discretion and depending on internal structures, delegate the opening of tenders/quotations under a certain monetary value to regional Procurement

offices/local sub-tender committees, provided that it has satisfied itself that proper procedures as specified in this Procedures Manual, are in place and are monitored from time to time.

(ix) To obtain statistics and review at regular intervals, details of all transactions falling below the DAC's jurisdiction (See template available on the Transnet Intranet). Any alleged irregularities or trends that may arise out of the purchase, sale, hire or letting of goods and the procurement of services, must be investigated and corrective measures taken if deemed necessary.

(x) To refer to the GM: SSM for directives all policy and legal questions which arise out of the laid-down procedures or out of a tender/quotation, contract or contract amendment;

(xi) To exercise such powers and perform such duties as may be conferred or imposed by the laid-down procedures;

(xii) To perform other functions as the GM: SSM; CEO or CFO may determine or deem necessary.

(xiii) **NB**: Submissions by divisions to their Divisional Exco's, Transnet Exco or to the Board of Directors regarding income generating contracts do not derogate from the DAC's jurisdiction in respect of **possible associated expenditure (procurement)contracts** as the latter falls within the DAC's jurisdiction. (Refer to paragraph 2.16 above).

(xiv) **NB:** It is imperative that DACs (specifically the Secretary) be pro-active and clarify uncertainties before the meeting, so that matters are not referred back unnecessarily, thus inevitably causing delays. Under no circumstances should matters be referred back by DACs for trivialities.
NB: The DAC may only refer a matter back for reconsideration or remotivation. It may under no circumstances change a submission or change the award of the business. On receipt of a revised / remotivated submission the DAC will again consider the matter. Refer to paragraph 8.1.11 above for the procedure to be followed in instances where the DAC still does not agree with the revised / remotivated submission of the line manager.

8.1.4 DAC Approvals: Provisos

8.1.4.1 All DAC approvals are subject to the Manager concerned being satisfied that -

(i) there is still the need for the purchase, sale, hiring or letting of goods and procurement of services **before** the acceptance of the tender/quotation is communicated to the tenderer (i.e. the contract is concluded) by a manager with the appropriate Special Delegation of Authority;

(ii) the financial provision is adequate; and

(iii) the best interest of Transnet is still being served at the time of concluding the contract.

8.1.5 Functions of Deputy Chairman

8.1.5.1 In the absence of the Chairman, the Deputy Chairman shall act for him/her and shall be empowered to perform all the duties and exercise all the powers held by the Chairman under the laid-down procedures.

8.1.6 Absence of Chairman and Deputy Chairman

8.1.6.1 In the absence of the Chairman and the Deputy Chairman from a meeting of the DAC a Chairman shall be elected out of the members who are present.

8.1.7 Quorum

8.1.7.1 Fifty percent plus one of the members appointed at any given time shall form a quorum.

8.1.7.2 Should exceptional circumstances necessitate that a member and his alternate attend the same proceeding both votes may be taken into consideration to form a quorum as members and their alternates are appointed on the DAC by virtue of their own specific expertise. The stipulation contained in paragraph 8.1.8.2 below should however be observed.

8.1.8 Voting and deliberation

8.1.8.1 Where a member of the DAC or his alternate has a direct or indirect personal interest in a tender or has been or can be deemed to have been personally involved in the business decision which gave rise to a recommendation to the DAC, he/she shall declare that by means of a standard Declaration of Interest Affidavit before the meeting commences and also when the DAC deliberates the specific matter. The Chairman shall decide whether or not such member shall be recused or not. This shall be minuted and kept on the appropriate file as part of the record.

8.1.8.2 The Chairman shall submit any matter to the vote of the members of the DAC in the event of a difference of opinion or when requested to do so by a member of the DAC.

8.1.8.3 In the event of an equality of votes, the Chairman shall have a casting vote in addition to his deliberative vote.

8.1.9 Record of votes by circulation

8.1.9.1 In urgent cases where the Division would be substantially prejudiced if a tender/quotation, contract or contract amendment must be held over until the next scheduled meeting of the DAC, and at the discretion of the Chairman, but subject to the right of any member to demand a meeting, the papers which relate to any matter may be circulated to the members of the DAC. The members who respond by the deadline must record their votes in writing in connection with the matter presented for decision in such papers. A **unanimous** approval by a quorum of members so made by the stipulated deadline shall be deemed to be a resolution of the DAC.

8.1.9.2 A resolution taken in such manner shall be officially recorded in the minutes of the next DAC meeting.

8.1.9.3 In exceptional circumstances due to the non-availability of members, the votes of a member and/or alternate may be taken into account in order to obtain a quorum. The stipulation contained in paragraph 8.1.8.2 above should however be observed.

8.1.10 Duties of Secretary

8.1.10.1 An employee of the Division is appointed as Secretary to the DAC who will undertake tasks as imposed upon him by the Transnet Procurement Policy and Procedures and other directives, or by the Chairman of the DAC, or SSM Function or the CEO.

8.1.10.2 The Secretary shall:-

- plan and arrange meetings of the DAC, formulate and distribute proper agenda packs (submissions to the required format) for the meetings of the DAC;
- ensure that all members attending a meeting of the DAC are provided the means of declaring any interest in matters serving before the DAC;
- ensure that a proper register of such declarations of interest be kept with the Minutes of that particular meeting.
- keep proper minutes of the proceedings and resolutions of the DAC, keep copies thereof for auditing purposes and communicate such resolutions to the relevant internal role-players.
- ensure that, by means of a proper certificate, duly signed by the Secretary and the Chairman of the DAC, that no business is awarded to companies or persons appearing on Transnet's List of Excluded Tenderers. Such certificate should be kept and filed with the Minutes of each scheduled meeting of the DAC.
- be responsible for the receipt, opening and stamping of tenders where this duty has been assigned to the DAC Secretary.

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8.1.11 Disagreement with a decision of the DAC

8.1.11.1 In the event of a matter being referred back by the DAC for reconsideration of the recommendation made by the division, the manager shall -

(i) make a revised submission to the DAC; or
(ii) if he does not agree with the reasoning of the DAC he shall, with the concurrence of his executive officer, re-motivate his original submission to the DAC, whereafter the DAC shall reconsider the matter; or
(iii) if the DAC still does not agree with the recommendation, the CEO shall make a ruling on the matter.

8.1.11.2 **NB: As the DACs are governance instruments appointed by the CEO, only the CEO (if he/she is not the Chairman of the DAC), may "overrule" a DAC decision. In the event of a Manager seriously disagreeing with a decision made by the CEO, he/she may refer such matter to the GM: SSM who will make a recommendation to the Transnet GCFO, whose decision shall be final and binding on all the parties. Also refer to paragraph 5.5.2 above.**

8.1.12 Application of Government Policy

8.1.12.1 In cases where Government policy is involved and, in terms of directives, a decision must be obtained regarding its application, the DAC shall submit a recommendation to the GM: SSM.

8.1.13 Format of Submissions (Précis)

8.1.13.1 All submissions to the DAC shall be in the required format and in English. The Secretariat may provide assistance to draw up a précis. Refer to Annexure B for examples of generic templates.

8.1.13.2 All submissions to the DAC must be accompanied by the relevant documentation, e.g. Tender documents, authority to communicate or negotiate etc.

8.1.13.3 All submissions should be handed in by at the latest 12h00, the preceding weekday, for inclusion in the agenda for the meeting a week later.

8.1.14 Project Approval Process

8.1.14.1 All major new projects, in terms of the CEO's Delegated Authority, has to be subject to an approval process to determine the economic viability (Return on Investment-ROI) of the project itself, before tenders may be invited (depending on the estimated total cost thereof, may include the Divisional Exco, OPCO, CAPIC, Transnet EXCO, or even the Transnet Board of Directors). However, the actual award of the resultant contract, falls within the domain of these procedures and is governed by the Delegated Powers. Refer to paragraph 5.4.4 of the delegated Powers framework Matrix - available on the Transnet Intranet, as well as paragraph 5.1.3 of the framework matrix which governs the increase in estimated total cost (ETC) of existing, already approved projects in excess of R100 million. This procedure is supplementary to the DAC approval as stipulated in paragraph 7.3 above.
Therefore in cases where the R-value of the contact to be concluded, exceeds that of the CEO of the Division, the abovementioned structures which were involved in the ROI approval in principle of the project will not again be involved in the entering into of the resultant contract as the Delegated Powers to Contract lies either with the CEO, the GM. SSM, the Transnet GCFO or the GCE, depending on the R-value of the resultant contract to be entered into.

8.2 TRANSNET ACQUISITION COUNCIL (TAC)

8.2 Role and Functions of the TAC

Similar to the roles, functions and responsibilities of the DAC covered in Paragraph 8.1 above the TAC will cater for the Group Corporate Head Office requirements.

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The TAC will therefore have no higher status than the DACs, and therefore any matters handled by the DAC, which exceed the jurisdiction of the DAC (i.e. the Delegated Powers of the CEO of the particular operating division), will not be referred to or via the TAC, but directly to the person with the necessary Delegated Powers for the relevant R-value of that particular transaction.

8.2.1 Composition of the TAC

8.2.1.1 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 Chairman, who will either be the GCFO or an executive or senior management member appointed by the GCFO;

(ii) A Deputy Chairman, who shall be one of the members mentioned in paragraph (iii) hereof;

(iii) Members with alternates with a designation of at least a General Manager, 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. It is a minimum requirement for members to complete Level 2 of the Certificate in Purchasing and Supply. The General Manager: SSM should also be a member.

8.2.1.2 Members, by virtue of their expertise, are required to attend all meetings if at all possible. For this reason, TAC meetings should be scheduled well in advance. Should a member not be able to attend a specific meeting, his/her alternate should then attend so that that particular expertise will not be lost at that particular meeting. Ideally, attendance and participation by members and alternates should be one of their KPIs measured by the Chairman of the TAC.

8.2.2 Meetings

8.2.2.1 The TAC shall meet at such intervals and on such special occasions as may be determined by it, provided that the GCFO may instruct that a meeting of the TAC be called at any time.

Refer to paragraphs 8.1.3 – 8.1.14 regarding the DAC as these are also applicable to the TAC. Any powers assigned to a CEO with regard to the DAC will apply to the GCFO (or his delegate) as far as the TAC is concerned.

8.3 SUPPLY MANAGEMENT GOVERNANCE COMMITTEE (SMGC)

8.3 Role and Functions of the SMGC

As detailed in its specific Terms of Reference, the SMGC with similar roles and responsibilities to that of the DAC, will consider the strategic principles relating to the sourcing of commodities engaged in by the Transnet Transversal Strategic Sourcing Programme run by the Manager, Strategic Sourcing, SSM. This does not include "mega capital projects" handled on behalf of Divisions by, or in conjunction with Transnet Capital Projects, which falls under the Transnet GCFO. (Refer to paragraph 5.4.4 of the of the Transnet Group Delegation of Authority (Group Limits of Authority)

NB: It is imperative that the SMGC (specifically the Secretary) be pro-active and clarifies uncertainties before the meeting, so that matters are not referred back unnecessarily inevitably causing delays. Under no circumstances should matters be referred back by the SMGC for trivialities.

8.3.1 Composition of SMGC

8.3.1.1 The SMGC shall consist of senior management members from Policy and Governance, SSM headed by the Manager of Policy and Governance. The Secretariat shall also be from the ranks of Policy and Governance, SSM.
All members and alternates are selected by virtue of their specific expertise or business focus. They must be capable of exercising sound unbiased judgement and offer constructive

comment. It is a minimum requirement for members to complete Level 2 of the Certificate in Purchasing and Supply.

8.3.1.2 Members, by virtue of their expertise, are required to attend all meetings if at all possible.

8.3.2 Meetings

8.3.2.1 The SMGC shall meet at such intervals and on such special occasions as may be determined by it, provided that the GCFO may instruct that a meeting of the SMGC may be called at any time.

8.3.3 Functions of the SMGC: Expenditure contracts

8.3.3.1 The functions of the SMGC are similar to those of the DACs as outlined in Paragraph 8.1 and as outlined in more detail in its Terms of Reference.

Refer to paragraphs 8.1.4 – 8.1.14 above regarding the DAC as these are also applicable to the SMGC. Any powers assigned to a CEO with regard to the DAC will apply to the GCFO (or his delegate) as far as the SMGC is concerned.

As Strategic Sourcing Commodities are limited to the Top 60% Value Spend Commodities, said contracts will be signed off by the Transnet GCFO, or higher depending on the contract value.

8.4 CAPITAL INVESTMENT COMMITTEE (CAPIC)

8.4.1 Purpose

The CAPIC shall ensure that the resources that Transnet Limited ("the Group") invests for the development of capital projects are strategically managed and shall to this end-

- Ensure that decisions relating to capital expenditure are consistent with the strategic focus of the Group; and
- Ensure that capital expenditure complies with the budget and business plans approved by the Board.

8.4.2 Composition

CAPIC is constituted as a committee of the Transnet Limited Group Executive Committee.

The Chairman will be the Group Chief Financial Officer.
The Secretary shall be the Group Company Secretary

The following shall be members of CAPIC:-

The Group Chief Financial Officer (Chairman);
The Group Chief Executive (ex officio);
The Group Chief Operating Officer;
The Group Executive: Transnet Projects;
The Chief Executive Officers: TNPA, TPT, TFR, TRE and Pipelines
The Chief Information Officer.
The Group Treasurer;
The General Manager: Group Financial Planning and
The General Manager: Group Strategic Supply Management.

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.

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8.4.3 Quorum

The quorum will be six members.

8.4.4 Term

The GCE shall have the power, at all times, to remove any member from the Committee and to fill any vacancies created by such removal.

8.4.5 Reporting responsibilities

CAPIC shall report to the Group EXCO through its Chairman.

8.4.6 Terms of reference

CAPIC shall-

8.4.6.1 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;

8.4.6.2 Ensure that capital expenditure is in accordance with the budget and business plans approved by the Board;

8.4.6.3 Determine the factors that shall inform the prioritization of any capital expenditure project over another;

8.4.6.4 Monitor the implementation of project plans to ensure that approved capital expenditure projects are carried out with minimum delays;

8.4.6.5 Review and amend, subject to the limitations of the Board approved budget, expenditure plans in respect of any project should, as a result of any unforeseen and unavoidable circumstances, it be necessary to effect such amendment;

8.4.6.6 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 value-for-money; and

8.4.6.7 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.

8.4.7 Meetings

8.4.7.1 A minimum of 12 scheduled meetings a year subject to review from time to time.

8.4.7.2 Informal or *ad hoc* meetings may be convened as and when required by the Group Company Secretary.

8.4.7.3 Papers for consideration by the Committee will be submitted in the normal course at least 5 days before the meeting to enable members to study the documentation and allow adequate opportunity for formal and informal discussions.

8.5 **Strategic Supply Management**, being the author and custodian of the PPM is responsible for the correct and uniform application and interpretation of the Transnet Procurement Policy and the PPM in conjunction with Internal Audit. Listed below are some of the most important functions of SSM:-

(a) Issue and maintain Transnet's Procurement Policy, as well as the Transnet Procurement Procedures (PPM) (including standard tender forms and contract documents

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(b) Monitor correct interpretation/adherence to policies in collaboration with audit;
(c) Research and development (especially BBBEE focus);
(d) BBBEE Reporting;
(e) Reporting to the GCFO on all Transnet's purchasing expenditure and tendencies;
(f) Maintenance of the Transnet internal Intranet as well as the updating of the external internet website as far as procurement policies and procedures are concerned;
(g) Continuous capacity building at Divisional level;
(h) Administer Transnet's List of Excluded Tenderers;
(i) Provide assistance and expertise through Sourcing Teams on the transversal and other projects/commodities identified, and
(j) CSDP.

8.5.1 **Strategic Supply Management (SSM) Strategic Objectives**

SSM's vision is to become an integrated, value added professional partner to its stakeholders, providing a reliable, cost-effective and customer-focused service. SSM aims to provide this by ensuring that all transactions are fair and transparent and that employees in all fields of the supply chain are motivated and empowered to deliver an effective supply management service to their stakeholders. The objective of procurement professionals within SSM is therefore to contribute positively to achieve optimal value for Transnet through the creation of effective deals and implementation of International procurement best practices, whilst at the same time maintaining the fine balance between Transnet's business objectives (optimal profit realisation) whilst making its contribution to the national programme of BBBEE.

8.5.2 To achieve the above, the procurement function has to add value to the processes by:

8.5.2.1 Drafting a user-friendly and all-encompassing procurement policy and procedures which make provision for the uniqueness of all Transnet Entities and allows them to conduct their activities in a fair, equitable, transparent, competitive and cost-effective fashion as required by the Constitution of the Republic of South Africa whilst adhering to Transnet's and its shareholder's requirements;

8.5.2.2 Creating an enabling environment for the development of Transnet's SSM operators, its governance structures and the tendering fraternity at large on how to conduct business with Transnet.

PART 9: BROAD-BASED BLACK ECONOMIC EMPOWERMENT (BBBEE)

9.1 Legal requirements

9.1.1 The Constitution provides that in order to promote the achievement of equality, measures designed to protect or advance persons/categories of persons disadvantaged by unfair discrimination may be taken. In terms of the Constitution, Transnet may implement a policy/policies and implementation procedures providing for categories of preference in the allocation of contracts; and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination.

9.1.4 The BBBEE Act was then enacted in 2004 with one of its objectives being to establish a legislative framework for the promotion of BEE.

9.1.5 Section 11 of the BBBEE Act requires that:

a The Minister (*of Trade and Industry*) must issue a BEE Strategy. The Minister is further empowered to change or replace this strategy.
b The strategy should provide for an integrated uniform approach to BEE by ***all organs of state*** and other stakeholders

c. The strategy should also provide a system for organs of state, public entities and other enterprises, to prepare broad-based black economic empowerment plans and to report on compliance with those plans.

9.2. Statement of Intent

9.2.1 It is Transnet's intent to:-

- Promote its role as a responsible corporate citizen in the context of BBBEE and Preferential Procurement.
- Facilitate the development of BEE enterprises by making opportunities available throughout Transnet.
- Assist in the development of EME's and QSE's.

9.2.2 The purpose of this BBBEE Document

9.2.2.1 The purpose of this document is to set forth Transnet's approach with respect to BBBEE. It forms the basis for implementation procedures for the preferential procurement from BBBEE enterprises (as defined in the definitions section of this document).

9.2.2.2 This BBBEE document presents the minimum standard which Transnet staff and suppliers are expected to achieve in their implementation of a BBBEE and preferential procurement process. It will be reviewed and updated in order to continuously achieve the objectives of Transnet.

9.2.3 Scope and applicability

9.2.3.1. This BBBEE document applies to all purchases of goods and services and will apply to all QSE's and EME's, as well as large suppliers with sophisticated financial, technical and managerial capacity.

9.2.3.2 It shall apply to and impact on all levels (R-value) and types of tenders. It will also apply to any disposal, letting or leasing of assets, the acquisition or granting of any right for and on behalf of Transnet. The objective is to design innovative ways to employ preferential procurement.

9.2.3.3 Tender documents must specifically state that BBBEE preference in terms of the DTI Codes of Good Practice will apply. A supplier's BBBEE status in terms of the DTI's Generic Scorecard will determine the degree of preference which will be acknowledged and in terms of the PPPFA's 90/10 system for all contracts in excess of R30 000. Contracts below R30 000 will as far as possible be earmarked for EMEs. See BBBEE Circular and RFX Clause available on the Transnet Intranet.

9.2.4 Objectives

9.2.4.1 The successful implementation of the Transnet BBBEE approach will be evaluated against the achievement of spend targets as outlined by the DTI and as set by the GM SSM.

9.2.4.2 All sourcing documentation must emphasise preferential procurement and local supplier development as key differentiators (i.e. selection criteria)

9.2.4.3 The underlying objective of the BBBEE methodology is to create an enabling environment for BBBEE enterprises (as defined) to access available procurement opportunities within Transnet. BEE enterprises will therefore be engaged as

- principal contractors
- joint venture partners
- professional service providers
- sub-contractors, suppliers and or manufacturers

Their engagement should add real value to the supply chain

9.2.5 Strategic Intent

9.2.5.1 Transnet encourages and will recognise all improvement in current and future supplier ratings.

9.2.5.2 In appropriate circumstances Transnet will set BEE participation pre-tender conditions. This may include but is not limited to specifying to potential suppliers:

- The rand value or percentage of the tender that should be fulfilled by the participation of Broad-Based black enterprises, QSE's and EME's.
- The minimum black equity ownership that should be fulfilled as a precondition to participating in the tender process, as per the sector charters.
- Management and operational involvement by black professionals and managers as prescribed in the different sector charters.
- Skills transfer and training.
- Employment creation and employment equity.

9.2.5.3 Transnet will encourage "value–adding" joint ventures between non-contributors to empowerment and local suppliers (preferably empowered QSE's and EME's).

Bidders may develop joint ventures in order to comply with Transnet BEE 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.

9.2.6 Preferential procurement targets and Reporting

9.2.6.1 To promote BBBEE in the procurement of goods and services, targets will be set and agreed to by all the ODs and approved by Transnet's GCFO.
Targets will be reviewed on an annual basis with the approval of GM: SSM, however monthly progress reports against the set targets will be compiled for submission to the GM: SSM.
The overriding principle in the setting of such targets is that:

- A sectoral approach will be adopted and for sectors where there is a high probability of finding BEE enterprises, (as defined) the target may be set higher.
- Each Division's contribution towards the set target will be proportionate to that Division's budget allocation.

9.2.7 Enterprise Development Model

9.2.7.1 Enterprise Development, being one of the DTI's BBBEE pillars of empowerment, places an obligation on Transnet as a State Owned Enterprise ("SOE"), to also contribute in a significant way towards the growth and development of emerging black entrepreneurs, who would ultimately be the beneficiaries of this support initiative. Transnet has a further responsibility as a major spender in the sector to ensure that opportunities and growth in the industry include emerging black entrepreneurs through policy, procedures and "spend trends" and do not exclude them.

9.2.7.2 Enterprise Development can comprise one or a combination of the following interventions -

- Facilitation of training, mentoring, counselling and professional support for selected companies.
- Access to "short-term" flexible payment methods, e.g. for selected / deserving EME's say payment within 14 days, at the Division's own discretion.
- Facilitating access to finance either by a mere referral, or by any other innovative ways that will assist the enterprise.
- Any other support that is deemed necessary to strengthen and grow the selected company such as on-the-job supervision / skills transfer, etc.
- Enterprise Development will be addressed in a coordinated manner through the CSDP initiative - refer to paragraph 4.3 above.

9.2.7.3 The Main objectives of Enterprise Development are:-

- To develop a globally competitive supply base for Transnet and other SOEs.
- To support and strengthen the participation of black emerging entrepreneurs in the Transport and related sectors.
- To ensure that adequate investment in local small business is maintained in a meaningful way thus supporting a definite shift away from importing. towards localization of product sourcing.
- To be a leader amongst SOEs in the commitment to BEE as "not merely a social responsibility" but also a business strategy to ensure that BEE is economically beneficial as it reaches the majority of South Africans and is committed to making a difference and growing the economy.

9.2.7.4 Transnet recognises that QSEs and EMEs have an economic role to fulfil in the future of South Africa. They contribute to job creation and the country's national productivity through the provision of goods and services to consumers and/or other enterprises etc. As a major role player in the SA economy, Transnet will strive to heavily involve QSEs and EMEs in its procurement activities. In pursuit of creating opportunities for QSEs and EMEs, Transnet may:

- Consider where appropriate, splitting large non-strategic contracts into small components, for instance per province/item to enable QSEs and EMEs to participate. The total value of the business to be awarded and not the individual contracts will determine whether the tender falls within the DAC's jurisdiction or not. (Also refer to paragraphs 6.11 and 6.12).
- Where appropriate, Transnet will identify some tenders in part or in whole for the exclusive participation of QSEs and EMEs.
- Encourage value-adding Joint Ventures between large established suppliers and QSEs and EMEs giving the latter access to latest technologies and skills.
- With appropriate institutions and government agencies, co-ordinate capacity building programmes for QSEs and EMEs.
- Provide tender advice to QSEs and EMEs.

9.2.8 Supplier Compliance to BEE

9.2.8.1 Transnet encourages its suppliers to promote BEE in their own companies. Suppliers will be expected to comply with all Transnet's BEE requirements when submitting tenders. As a pre-condition to selection, tenderers shall submit a signed BBBEE certificate and any other documents that may be required by Transnet. These shall form one of the critical criteria in the evaluation of BEE requirements. In addition, in instances where Transnet has set other BEE pre-conditions, these shall form part of the tender evaluation and be incorporated into the contract.

9.3 Interim implementation

9.3.1 Suppliers must be measured in accordance with the DTI Generic Scorecard provided for in the Codes of Good Practice.

9.3.2 Existing suppliers must be made aware of Transnet s policy and efforts made to encourage these suppliers to embark on BBBEE initiatives. All suppliers shall be informed that Transnet fully endorses and supports Government's BBBEE Programme.

9.3.3 Transnet would therefore prefer doing business with enterprises that share the same values with it and are prepared to contribute to meaningful BBBEE initiatives (e.g. subcontracting, JV's etc.) as part of their tender responses. Transnet will accordingly allow a preference in accordance with the 90/10 preference system, as per the PPPFA, to companies who provide a BBBEE Accreditation Certificate. Transnet requires prospective tenderers to have themselves accredited by any of the SANAS Accreditation Agencies that do their BBBEE ratings in accordance with the latest Codes i.e. those promulgated on 9 February 2007. Verifications are only valid for one year. Also refer to the BBBEE Circular and RFX Clause available on the Transnet Intranet.

Enterprises will be rated by such agencies based on the following -

Type of Enterprise	Annual Turnover	Number of Elements Scored on of the BBBEE 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.

NB. EMEs with Black ownership >50% or Black Women ownership >30% automatically qualify as Level 3 BBBEE, i.e. 110% BBBEE recognition.

EME's need only provide documentary proof of annual turnover (i.e. audited financials) plus proof of Black ownership if Black ownership >50% or Black Women ownership >30%.

In addition to the above, tenderers who wish to enter into a Joint Venture or sub-contract portions of the contract to BBBEE companies, must state in their tenders the percentage of the total contract value that will be allocated to such BBBEE companies should they be successful in being awarded any business. A rating certificate in respect of such BBBEE JV-partners and / or sub-contractor/s, as well as a breakdown of the distribution of the aforementioned percentage must also be furnished.

Refer to the new BBBEE clause to be included in all Tender documents, which is available on the Transnet Intranet and which is already included in the various RFX templates.

9.4 BBBEE evaluation process

Following the enactment of the BBBEE Act and Codes of Good Practice, it is now incumbent upon Transnet to align its internal policies to ensure alignment to the national framework. The PPPFA is not applicable to Transnet as a Schedule 2 company in terms of the PFMA.

The attainment of BEE objectives through preferential procurement is not a simple process, even when a well developed implementation methodology guides the implementation thereof. The endorsement and support of all stakeholders within the organization is essential. This section of the document aims to provide guidance for interim implementation of the process.

Although the BBBEE Act has been promulgated on 19 March 2003, the Regulations to govern the implementation of the Act have only been promulgated in their final form on 9 February 2007. Transnet has decided to implement the BBBEE principles with effect from 28 November 2006 as an interim BBBEE implementation methodology, despite the fact that the Codes provided for a transition period until 31 August 2008.
Contrary to the PPPFA, which primarily focused on black shareholding as the only empowerment tool, the BBBEE approach will have a much wider focus. It will not only assist black entrepreneurs who already own and run their own successful businesses, but will also accommodate those in need of skills training, employment or development opportunities.

9.4.1 Tender Evaluation

The following guidelines are to be followed with regard to the evaluation of tenders -
Accreditation agencies (See paragraph 9.3.3 above) will use Table 1 to accredit all suppliers and will issue the prospective tenderer with a BBBEE Rating certificate which will indicate its Level of Contribution (Table 2) a certified copy of which must be included in its tender response as a "returnable document".

Table 1:

Scorecard element	Generic weighting
Ownership	20%
Management	10%

Employment Equity	15%
Skills Development	15%
Preferential Procurement	20%
Enterprise Development	15%
Social Investment / Other	5%
TOTAL SCORE measured out of:	100%

Table 2:

BEE Status	Qualification	Recognition Level (Multiplier)
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥85 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥75 but <85 on the Generic Scorecard	110%
Level Four Contributor	≥65 but <75 on the Generic Scorecard, or any micro enterprise	100%
Level Five Contributor	≥55 but <65 on the Generic Scorecard	80%
Level Six Contributor	≥45 but <55 on the Generic Scorecard	60%
Level Seven Contributor	≥40 but <45 on the Generic Scorecard	50%
Level Eight Contributor	≥30 but <40 on the Generic Scorecard	10%
Non-Compliant Contributor	<30 on the Generic Scorecard	0%

The BBBEE rating certificate included in the tender response will therefore merely indicate the contender's **level of contribution**.

After technical compliance has been determined, all technically compliant bids are merely ranked from highest score to lowest score, using the following method:

SAMPLE 1:

Where technical compliance is either a "yes" or a "no" – (or all equal)

By using the "Excel Spreadsheet BBBEE-calculator", which is available on the Transnet Intranet, the spreadsheet will automatically calculate a point out of 90 for price, by merely entering the **comparative*** tender prices from lowest to highest on the spread sheet. The lowest technically acceptable price will score the full 90 points. Upon entering the BBBEE status as determined in Table 3 i.e. the point out of 10, the "BBBEE calculator" will calculate a point out of 100. This total out of 100 will then determine the preferred bidder which will be recommended for acceptance to the relevant DAC.

It should be noted that this system is used during the evaluation process to determine a fair and transparent BBBEE preference (i.e. to determine the preferred bidder), and not to justify the paying of automatic premiums. Post-tender negotiations (strictly in terms of paragraph 2.7 above) should be conducted once DAC approval of the preferred bidder has been obtained. Unethical practices such as horse-trading and price-matching are however not allowed.

NB. On sales tenders (e.g. the disposal of scrapped assets), the tendered prices are entered on the relevant Excel spreadsheet from highest to lowest, and the highest tendered price will score the full 90 points for price.

* Refer to Paragraphs 4.1 and 4.2 above for the procedure to be followed to adjust tender prices to a common comparative basis. Note that this comparative price does not include BBBEE preferences at this stage. After entering the comparative price in the relevant column of the BBBEE calculator, and the BBBEE status and preference in terms of Table 3, the BBBEE Calculator will calculate the relevant score out of 100 for price and BBBEE.

Table 3:

BEE STATUS	BEE PREFERENCE 90/10 Max 10%
Level One Contributor	10%
Level Two Contributor	9%
Level Three Contributor	8%
Level Four Contributor	7%
Level Five Contributor	6%
Level Six Contributor	5%
Level Seven Contributor	4%
Level Eight Contributor	2%
Non-Contributor	0%

Table 4:

Tenderer & ranking on price	Tender Price	Point out of 90 for price	BBBEE contribution level	BBBEE Point out of 10	Total out of 100 (BBBEE 10 & price 90)	Final Ranking (Price and BBBEE)
X - N/A	R965 000	Tech. non-compliant	N/A	N/A	N/A	N/A
A - 1	R2 300 000	90	Level 8	2	92	2
B - 2	R2 400 000	86.09	Level 3	8	94.09	1
C - 3	R2 500 000	82.17	Level 7	4	86.17	4
D - 4	R2 550 000	80.22	Level 1	10	90.22	3

From Table 4 above, Tenderer B becomes the preferred bidder as he has attained the highest score out of 100. The recommendation to the DAC will therefore be in favour of B (and not Tenderer D although D has the highest BBBEE contribution level). In terms of the guidelines on Post-tender negotiation, the DAC will when approving the preferred bidder also grant the necessary authority to conduct further price negotiation with him/her. If one succeeds in driving his price down, to say R 2 350 000, the price premium of R50 000 will be minimal (2.18%) = R2,35m as compared to the lowest tender of R2,3m. For the purposes of reporting BBBEE spend, one would again refer to Table 2. Tenderer B, being a level 3 contributor, would entitle Transnet to report 110% of the contract value as BBBEE procurement spend, i.e. R2 350 000 X 1.10% = R2 585 000.

SAMPLE 2:

Evaluation where "Technical Compliance" or "quality" also needs to be factored into the scoring matrix

The scoring system for Price and BBBEE as explained in Sample 1 above, is based on the 90/10 Price / BBBEE principle. Where appropriate to also include technical or quality in the weighting out of 100, this inevitably means that the weighting of 90 for price will be diluted.

For example	Price	50
	Quality/Technical	40
	BBBEE	10
	Total	100

There is however a real risk in including "technical" in the equation (e.g. 50/40/10) and in so doing diluting the weighting of price, as will be noted from the following two Tables

Table 5:

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PROCUREMENT PROCEDURES MANUAL

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BASIS FOR COMPARATIVE OFFER :
PRICE AND BBBEE (90 / 10)

Name of Tenderer : Ranked highest to lowest	Financial Offer (P)	Comparative Offer (Pm)	Points for Financial Offer	BBBEE Level of Contribution (Level 1 to 9)	BBBEE Point out of 10 (90/10)	Total point out of 100: Price 90 & BBBEE 10	Ranked Tech-nical, price and BBBEE	% Premium payable	Premium payable in Rands
TENDERER F	NON RESPONSIVE								
TENDERER G	NON RESPONSIVE								
TENDERER H	NON RESPONSIVE								
Tenderer A	3,700,000	3,700,000	90.00	Level 9	0	90.00	1	0	R 0
Tenderer B	4,535,000	3,700,000	69.69	Level 7	4	73.69	2	23	835,000
Tenderer C	5,500,000	3,700,000	46.22	Level 1	10	56.22	3	49	1,800,000
Tenderer D	6,400,000	3,700,000	24.32	Level 4	7	31.32	4	73	2,700,000
Tenderer E	7,100,000	3,700,000	7.30	Level 1	10	17.30	5	92	3,400,000

Table 6:

BASIS FOR COMPARATIVE OFFER :
PRICE, TECHNICAL AND BBBEE (50 / 40 / 10)

Name of Tenderer : Ranked highest to lowest	Financial Offer (P)	Comparative Offer (Pm)	Tech-nical Score Max 40	Points for Financial Offer	BBBEE Level of Contribution (Level 1 to 9)	BBBEE Point out of 10 (90/10)	Total point out of 100: Price 90 & BBBEE 10	Ranked Tech-nical, price and BBBEE	% Premium payable	Premium payable in Rands
TENDERER F	NON RESPONSIVE									
TENDERER G	NON RESPONSIVE									
TENDERER H	NON RESPONSIVE									
Tenderer A	3,700,000	3,700,000	20	50.00	Level 9	0	70.00	2	0	R 0
Tenderer B	4,535,000	3,700,000	25	38.72	Level 7	4	67.71	3	23	R085m
Tenderer C	5,500,000	3,700,000	35	25.68	Level 1	10	70.67	1	49	R1,8m
Tenderer D	6,400,000	3,700,000	40	13.51	Level 4	7	60.51	4	73	R2,7m
Tenderer E	7,100,000	3,700,000	30	4.05	Level 1	10	44.05	5	92	R3,4m

Note that whilst using the same tender prices and BBBEE levels/scores in both Tables 5 and 6, in Table 5 Tenderer A wins the business whereas in Table 6 Tenderer C wins the business at 49% i.e. R1,8 more. The use of Table 6 as part of the tender evaluation criteria should therefore be made with great circumspection.

This however does not mean that the latter method (Table 6) should never be used. Where the best quality is crucial (e.g. a consultancy service or the development of a sophisticated system) this method may be selected and indicated upfront in the Tender Document.

To be open, fair and transparent to all prospective tenderers, and to prevent the possibility of manipulation of the technical weighting during the evaluation phase, the weightings of the three main evaluation criteria (Price, BBBEE and Technical/Quality) **must** be disclosed in the tender documents i.e. before the tender is issued. As stated in paragraph 5.3.1.11 above the actual individual weightings of the different components of "Technical" should not be disclosed. It need only be listed not necessarily in

order of importance, to ensure that tenderers submit their best offers on **all** the technical criteria and not only those which carry a relatively high weighting.

It must also be stressed that quality need not be sacrificed by **not** choosing the Table 6 approach and instead electing the Table 5. An alternative method that can be used where technical compliance is important, but not at all cost, is the following method :-

Step I: As a first step, determine whether there are any disqualifying criteria, for example:-

- Does the company's name appear on Transnet's List of Excluded Tenderers? (or on the CIDB's List of Excluded tenderers if a CIDB Construction related tender)
- Has the company produced a valid Tax Clearance Certificate?
- On CIDB-tenders – Does the company's name appear on the CIDB's Register of Contractors for the required category?
- Is the company VAT registered, and has it produced a valid VAT Registration Certificate? (if its annual turnover qualifies it for VAT Registration i.e.>R300 000 p.a.)

Step 2: Evaluate all qualifying tenders in terms of the technical evaluation criteria, after having determined a minimum threshold for technical compliance. All tenderers who exceed the minimum threshold then proceed to the next round i.e. Price and BBBEE evaluation in terms of Table 5 above. It is important to note that all tenderers who exceed the minimum cut-off point are then regarded as equally compliant, irrespective of the margin by which they exceed the minimum threshold (e.g. A BMW pool-car scoring 99 on technical and a VW Polo scoring 77 points will be equally compliant since they both exceed the minimum threshold of 70). To, at this stage, factor their technical scores into a Table 6 scenario where a score is again allocated to technical against a diluted weighting for price will result in a higher overall score for the more expensive BMW as compared to the VW Polo.

Step 3: The tenderer with the highest total score as per Table 5 (Price and BBBEE only) will become the preferred bidder and will be recommended to the DAC for award of the business.
In terms of the post-tender negotiations procedure (paragraph 2.7 above), the DAC may be approached for authority to undertake post-tender negotiations with more than one preferred bidder if the scores attained by the various contenders as per Tables 5 or 6 above are very close.

PART 10: DEFINITIONS

10. Definitions

10.1 In these Procurement Procedures:-

10.1.1 **"Board of Directors"** means the Board of Directors of Transnet Limited;

10.1.2 **"Chairman"** means the person who is appointed as Chairman of one of the Acquisition Councils or his alternate.

10.1.3 **"CEO"** means the Chief Executive Officer at the head of a Transnet Division (core or non-core) with appropriate delegated authorities which are in line with the Transnet Group Delegation of Authority (Group Limits of Authority) - Annexure H1. With regard to Corporate Head Office, roles and responsibilities assigned to the "CEO" in terms of this document (PPM), will likewise also apply to Heads of the relevant Group Functions, who in terms of their individual Special Delegation of Authority have been delegated similar powers.

10.1.4 **"CFO"** means a Chief Financial Officer in an Operating Division of Transnet, whilst **Transnet GCFO** means the Group Chief Financial Officer in the Group Corporate Head Office, who reports directly to the Group Chief Executive (GCE).

10.1.5 **"CPO"** means the Chief Procurement Officer of a Division of Transnet, or Specialist Unit, or core or non-core businesses). In smaller Transnet Divisions which do not have a designated CPO, powers assigned to the CPO in terms of this document will be vested in the CEO of that Division

personally. With regards to the Corporate Head Office, the GM, Strategic Supply Management will be regarded as the "CPO" for the purposes of this document (PPM)

10.1.6 **"contender"** means any person who has submitted a **quotation**, as opposed to "tenderer"

10.1.7 **"BBBEE enterprise"** means 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 BBBEE Act and Codes of Good Practice issued by the DTI.

10.1.8 **"CIDB-tender"** means any construction related 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.

10.1.9 **"DAC"** means the Divisional Acquisition Council of an Operating Division, Specialist Unit or Business. Unless specifically stated otherwise "DAC" also includes sub-acquisition councils operating under the auspices of the DACs and which caters for transactions falling below the minimum threshold of the DAC, e.g. Acquisition Councils operating on a local or regional basis, as well as the TAC and SMGC catering for Corporate Head Office and transversal procurement respectively.

10.1.10 **"delegated powers"** means the extent of authorities 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.

10.1.11 **"Division"** means any Transnet Operating Division, Specialist Unit, as well as Group Functions and Transnet Businesses within the entire Transnet Group.

10.1.12 **"Group"** means all Transnet Divisions where Transnet still holds the majority share. This include Operating Divisions, Specialist Units, Businesses as well as the different Group Functions comprising the Corporate Head Office

10.1.13 **"enterprise"** means amongst others a company, close corporation, partnership or any other form of business;

10.1.14 **"fairness"** means being objective, reasonable and even-handed. Being fair does not mean satisfying everyone. It can be unfortunate, but not unfair, that people may be adversely affected by procurement decisions;

10.1.15 **"fronting"** means the deliberate circumvention or attempted circumvention of the BBBEE Act and the Codes. This could, for example, be in the form of the misrepresentation of shareholding/ownership status in order to achieve an advantageous BEE recognition level, or the deliberate non-honouring of BBBEE commitments made at tender stage with regards to subcontracting or JV initiatives, for the purposes of securing business. Unless such non-honouring has been duly reported to Transnet and considered to be beyond the control of the main contractor / JV partner, such actions will also be regarded as deliberate misrepresentation and fronting.

10.1.16 **"fruitless and wasteful expenditure"** means expenditure that was made in vain and could have been avoided had reasonable care been taken;

10.1.17 **"goods"** means any physical object or objects whether raw or processed material, movable or immovable, which has value;

10.1.18 **"Group Chief Executive"** means 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

10.1.19 **"GM: Strategic Supply Management"** means the General Manager who heads up the Strategic Supply Management Function (GM. SSM) in the Corporate Head Office, or the person acting in his/her stead, at any given time, in terms of a proper Mandate;

10.1.20 **"imported content"** means that portion of the tender price or quotation which represents the landed cost at factory (as defined herein) in the Republic of South Africa of components, parts or materials which are to be used in the manufacture, production or assembly of supplies tendered for and which have been or are still to be imported whether by the tenderer or his supplier or sub-contractors;

10.1.21 **"incoterms"** being the collective term for any of the following types of import / export payment cost structures (in the case of Transnet mostly the importer):-

"EXW" – Ex Works – the seller has delivered the cargo, the cost, and the risks, when they place the cargo at the disposal of the buyer at seller's premises, not loaded onto any collecting vehicle and not cleared through Customs. If at another local named place then not unloaded.

"FCA" – Free Carrier – the seller has delivered the cargo, the cost and the risks, when they have done EXW plus they have loaded onto any collecting vehicle and have cleared cargo through Customs.

"FAS" – Free Alongside Ship – The seller has delivered the cargo, the cost and the risks, when they have done FCA plus they have taken the cargo to the port and placed it alongside the vessel and have paid any port taxes.

"FOB" – Free on Board – The seller has delivered the cargo, the cost and the risks when they have done FAS plus they have taken the cargo passed the ship's rail.

"CFR" – Cost & Freight – The seller has delivered the cargo and the cost, when they have done FOB plus they have paid for the freight to the port of destination. Risk still delivered at FOB.

"CIF" – Cost, Insurance and Freight – The seller has delivered the cargo and the cost, when they have done CFR plus they have paid for the insurance to the port of destination. Risk still delivered at FOB.

"DES" – Delivered Ex Ship – The seller has delivered the cargo, the cost and the risk, when they have done CIF plus they have to keep the risk of CIF to DES.

"DEQ" – Delivered Ex Quay – The seller has delivered the cargo, the cost and the risk when they have done DES plus off load the cargo at the destination port.

"DDU" – Delivered Duty Unpaid – The seller has delivered the cargo, the cost and the risk when they have done DEQ plus taken the cargo to the final destination but not pay any import customs charges.

"DDP" – Delivered Duty Paid – The seller has delivered the cargo the cost and the risk when they have done DDU plus paid any import customs charges.

"CPT" – Carriage Paid To – The seller has delivered the cargo and the cost when they have done FCA plus handed over cargo and only pay the freight to a carrier that will take the cargo to the final destination. Risk is delivered when the cargo is handed over to the carrier.

"CIP" – Carriage and Insurance Paid To – The seller has delivered the cargo the cost and the risk when they have done CPT plus paid for insurance to the final destination. Risk is delivered the same as CPT.

"DAF" – Delivered at Frontier – The seller has delivered the cargo, the cost and the risk when they have done FCA plus deliver the cargo to a place at any frontier (border) but not at the buyers frontier and not unloaded.

10.1.22 **"indent"** means a purchase direct from an overseas supplier or manufacturer without the involvement of a local agent or representative.

10.1.23 **"irregular expenditure"** means expenditure incurred in contravention of, or that is not in accordance with a requirement of any applicable legislation, including the PFMA;

10.1.24 **"landed cost at factory"** means the overseas cost plus direct importation costs such as freight, all landing charges, dock dues, import duties and the like, at the South African port of entry, as well as inward transportation and handling costs to the factory in the Republic of South Africa where the goods tendered or quoted for, will be manufactured or assembled;

10.1.25 **"local content"** means that portion of the tender price or quotation which is not included in the "imported content" as defined above;

10.1.26 **"manager"** means, with regard to Transnet, a person who is a chief executive of a Division of Transnet, by whatever designation he is known and whether or not he is a director of Transnet, or his delegatee or any subsequent delegatee in terms of a proper Special Delegation of Authority;

10.1.27 **"material provisions"** means amongst others a provision which has a bearing on the parties to the contract, the particular performance (eg. sale/purchase, service and hire/lease), price (including alleged pricing errors), time for performance, cession and/or assignment, new provisions, waiving of penalties, extension of time, exercising of options, quantities, place/manner of delivery, impossibility of performance, appointment of a new contractor for the uncompleted portion of a contract and refund of retention money before the completion date, etc., **and which may entail additional costs or risks**;

10.1.28 **"non-material provisions"** means amongst others a provision which has a bearing on the place/manner of delivery, place/time/manner of payment, name of the manufacturer, or any other amendment/change **and which does not entail additional costs or affect the creditworthiness of the contractor**;

10.1.29 **"notice"** means in respect of tenders, the usual brief press notice and regarding quotations, a letter with similar purport;

10.1.30 **"offer"** means a unilateral request from a person or enterprise to do business with Transnet without tenders or quotations having been invited by Transnet.

10.1.31 **"parcelling"** means 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 Acquisition Council.

10.1.32 **"project"** means a proposal which in its entirety has been approved by the Board of Directors, for the provision of an asset or group of assets with a common purpose for Transnet, normally having an asset life of longer than twelve months.

10.1.33 **"quotation"** means a request to do business which is restricted to certain tenderers who alone can submit a price, or such price which is submitted.

10.1.34 **"QSE and EME"** means Qualifying Small Enterprise and Exempted Micro Enterprise as defined in the DTI's BBBEE Act.

10.1.35 **"rental"** or **"lease"** means the use of goods for a period and for consideration (compensation).

10.1.36 **"Republic of South Africa"** means the territory of the Republic of South Africa unless the

contrary appears from the context and the word "South African" refers to the same territory, unless the contrary appears from the context;

10.1.37 **"RFX"** is the collective noun for anyone of the following:-

RFI – Request for Information (mostly used as the 1st phase of the Two-stage tender system - normally prices are not tendered at RFI stage **therefore no business may be concluded against a RFI).**

RFQ – Request for Quotation (mostly used for transactions <R2m. See paragraph 2.4. above. However CEO's may at their discretion lower the "3 quote limit" see paragraph 8.1.3. (iv) above - Since prices are tendered on a RFQ, **business may be awarded on a RFQ)**

RFP – Request for Proposal (mostly used on the open tender process i.e. for transactions > R2million, However, CEO's may at their discretion lower the minimum threshold for open tenders see paragraph.8.1.3. (iv) above. RFPs will also be used on phase 2 of the 2-stage tender, where the value of the business is >R2m. Since prices are tendered on a RFP, **business may be awarded on a RFP).**

EOI – Expression of Interest: Very similar to a **RFI** and used merely to gauge what is available in the market, if the market is unknown. An EOI can be used in phase 1 of the 2-stage tender as well. A firm price commitment will not be called for in an EOI, hence no business can be awarded against an EOI.

10.1.38 **"service"** means a work in respect of which the tenderer undertakes inter alia to -

(a) provide employees for a period and for consideration (compensation) in such a manner that Transnet has full power and control over the tendered employees; or
(b) carry out one or more assignments independent of Transnet's supervision for a period and for consideration (compensation); by
  (i) making his and/or his employees' expertise available; or
  (ii) providing and using the tenderer's employees, and exercising supervision over the work;
  (iii) making available and using the tenderer's employees as well as any equipment, machinery or goods that may be required, and exercising supervision over the work;

according to the kind and magnitude of the work which is defined in the specification,

10.1.39 **"subsidiary"** means any subsidiary of Transnet, where Transnet holds a majority shareholding or where Transnet has the majority vote on the Board of Directors of such subsidiary.

10.1.40 **"tender"** means a public request to do business which has been properly published and to which any member of the public can submit a price, or such price which is submitted;

10.1.41 **"tenderer"** means any person/enterprise which has submitted a tender (as opposed to contender)

10.1.42 **"Transnet"** means Transnet Limited, Registration No. 1990/000900/06 incorporated in terms of the Companies Act, 1973 (Act 61 of 1973), as amended.

10.1.43 **"year"** means any defined period of twelve consecutive months.

EXHIBIT 3

TRANSNET

TRANSNET DELEGATION OF AUTHORITY FRAMEWORK

(EFFECTIVE FROM 1 MAY 2012)

APPROVED BY THE TRANSNET BOARD OF DIRECTORS ON 25 APRIL 2012

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1 Interpretation and Definitions

The following words and expressions bear the following meanings, unless the context indicates otherwise -

1.1 "Board" means the Board of Directors of the Company and includes the Board when it acts in the capacity as the Divisional Board of the deemed Authority under the National Ports Act No. 12 of 2005;

1.2 "Board Reserved Matters" means matters reserved by the Board as set out in Annexure A1 of Written resolution 2011/P2,

1.3 "CAPIC" means the Capital Investment Committee, a committee of the Group Executive Committee which has been established to make decisions regarding capital expenditure;

1.4 "CE" means Chief Executive of an Operating Division

1.5 "Company" means Transnet SOC Ltd including its Operating Divisions and Specialist Units, with registration number 1990/000900/30 and "Transnet" shall have a corresponding meaning;

1.6 "Company Strategy" means the strategy for the Company as approved from time to time by the Board,

1.7 "Consultant" means a person, or partners in a firm, or a company or a close corporation who can provide expert or specialised advisory skills, but excludes anyone who also carries out the physical work or provides the end product for Transnet based on his own professional or expert advice. Such consultancy service normally pertains to a specific project and therefore non-repetitive in nature and confined to design work, investigation, or advice on management, financial, business or technical matters;

In short, a consultant does not supply the ultimate end product, but merely gives a recommendation, based on his expertise, of the best solution to a specific problem. That proposed solution, if acceptable to Transnet, still has to be acquired, built or erected by another party and may or may not be connected with the consultant. Excludes any professional services procurement package included in the approved asset procurement package plan for and approved physical asset project.

1.8 "Delegation of Authority Framework " means this document, recording the nature and extent of authorities required in order to implement certain actions by or on behalf of the company, including any sub-delegation of authority where permitted and "Delegation" shall have a corresponding meaning;

1.9 "FRMF" mean Financial Risk Management Framework

1.10 "GCE" means Transnet Chief Executive of the Company;

1.11 "GCFO" means Transnet Chief Financial Officer of the Company;

1.12 "GCSCO" means Transnet Chief Supply Chain Officer

1.13 "Group Executive Committee" or "Group Exco" means the executive committee established to take responsibility for the day to day execution of strategy and running of the Company;

1.14 "Group Executive or Group Executive nominee" refers to the Group Executive responsible for the supporting business or his/her nominee,

1.15 "International agreements" means agreements entered into with entities incorporated in foreign jurisdictions or which are required to be construed in accordance with the laws of a foreign jurisdiction including the neighbouring countries,

1.16 "Memorandum of Incorporation" or "MOI" means the constitutive documents of the Company, as amended;

1.17 "Neighbouring Countries" means countries sharing a border with the Republic of South Africa,

1.18 Operating Divisions means the Operating Divisions of Transnet, namely, Transnet Freight Rail, Transnet Rail Engineering, Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines,

1.19 "PFMA" means the Public Financial Management Act 1 of 1999 (as amended), read together with its regulations' including Treasury Regulations,

1.20 "Shareholder Minister" means the Minister of Public Enterprises;

1.21 "Shareholder's Compact" means the Shareholder's Compact annually concluded between the Company and the Shareholder in terms of Regulation 29 of the Treasury Regulations;

1.22 "Specialist Unit" mean all business units of Transnet which have been deemed 'supporting businesses' in terms of the Company Strategy, these include Transnet Properties, Transnet Foundation, Transnet Capital Projects and Transnet Corporate Centre. Where a Specialist Unit CE is not a member of the Group Exco, the Group Exco member responsible for such Specialist Unit shall sub-delegate powers to the Specialist Unit's CE;

1.23 "Subsidiary" means subsidiary as defined in the Companies Act 71 of 2008 (as amended) and Subsidiaries shall have a corresponding meaning;

1.24 "Transnet" means the Company with its subsidiaries.

1.25 "Treasury Regulations" means the regulations promulgated by the Minister of Finance in terms of section 76 of the PFMA, as published in the *Government Gazette* of 15 March 2005 under Government Notice No R225 and as amended from time to time;

1.26 Transnet Total Asset base: refers to the total value of the assets in Transnet and is set at the asset value indicated in the integrated report for the year;

1.27 "VAT" means Value Added Tax. All amounts indicated in the document are exclusive of VAT;

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2 Scope

This Delegation of Authority Framework records the nature and extent of the authorities delegated by the GCE to certain employees and members of the Group Exco and other authorities delegated in order to implement certain actions by or on behalf of the Company. It includes, to the extent necessary and/or incidental thereto, the authority to discharge all of the duties, obligations and powers imposed upon the deemed Authority under the National Ports Act 12 of 2005.

3 Application

3.1 This Delegation of Authority Framework applies to all employees of the Company, including its Operating Divisions and Specialist Units. It does not apply to any of the Company's subsidiaries. The respective Boards of Directors of the Company will prepare the requisite delegations of authority for those subsidiaries.

3.2 The persons set out in clause 5 below are granted the power and /or authority to perform their functions and responsibilities subject to the limits of authority outlined in clause 5 below, provided that the exercise of such power and/or authority in terms of this delegation is not in conflict with the following:

- PFMA;
- Board Reserved Matters;
- Memorandum of Incorporation;
- Company Strategy;
- Shareholder's Compact;
- the Corporate Business Plan, annual Budget and Borrowing Strategy and/or Funding Plan of the Company as approved by the Board from time to time;
- Enterprise Risk Management Framework; and
- Any approvals by the Board and the Minister of Finance for the delegation of the power to borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Company to any future financial commitment in terms of section 66 of the PFMA.

3.3 This Delegation supersedes any prior Delegations of Authority Framework and takes effect upon the date determined by the Board of Directors.

3.4 Any proposal for amendments to this Delegation or to the authorities or the authorities delegated in this Delegation must be submitted in writing to the Transnet Company Secretary for consideration and approval by the Board of Directors.

4 Delegating Powers

4.1 A person authorised to exercise any of the authorities set out in clause 5 below ("original bearer of authority") may, in writing, sub-delegate to his/her subordinate ("designate") during his/her temporary absence or for an indefinite period, provided:

4.1.1 the authority is conferred by way of a certificate signed by the original bearer of authority, naming and identifying the designate, and the extent of the authority which is sub-delegated to the designate;

4.1.2 the sub-designated authority shall only be exercised within the original bearer of authority's respective area of responsibility; and

4.1.3 the sub-delegated authority may be revoked at any time by the original bearer of authority.

4.2 Unless otherwise specifically indicated, approval of any of the matters listed in clause 5 below may be granted by a designate.

4.3 With respect to all matters and authorities specifically listed in clause 5 below, the delegated authority by the GCE to bind the company is in regard to any business activity or transaction (or a series of related transactions) and is subject to the value in the aggregate of all payments or any consideration made or to be made for any such business activity or transaction(s) being complied with.

4.4 The original bearer of authority or designate must ensure that all the necessary procedures and/or approvals have been fulfilled prior to exercising any of the matters and authorities listed in clause 5 below

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5 Company Authorities

Limits of authority have been delegated by the Board of Directors to the Transnet Group Chief Executive. In the interest of good corporate governance, approval structures have been established in the Company. Requests for approval must follow the approved governing processes and structures for recommendation but the final approval vests with the delegated individual (for example CE, GCFO, GCE) as reflected in the specific delegations set out in this document.

In cases where business requirements necessitate that approval be obtained from the delegated authority without the review and recommendation by the relevant governance structures (CAPIC, Group Exco, etc) this must be reported to the relevant governance structures immediately thereafter.

The authority to approve the Annual Corporate Plan and Budget of the Company vests with the Board of Directors, provided that it must be submitted to the Shareholder in terms of Section 52 of the PFMA.

5.1 Capital Expenditure

NOTE 1: Capital expenditure may only be authorised if the project has been so approved by CAPIC or the relevant divisional CAPIC in accordance with the limits set out in this Delegation of Authority Framework and capital funds have been allocated in the annual Budget of the Company.

NOTE 2: Capital expenditure may only be authorised if the project has been approved and a warrant number has been issued by the relevant authority. All requests for capital expenditure exceeding the Divisional CE's limit must be submitted to the project administrator at Transnet Financial Planning

5.1.1 CAPEX in approved budget/Corporate Plan: To commence projects

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco /GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Operating Divisions	Up to but not exceeding R200m	Up to but not exceeding R400m	Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Up to but not exceeding R2500m	Exceeding R2500m
Approval Authority →	Group Exco Member		Transnet CAPIC/GCFO	Group Exco /GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Specialist Units	Up to but not exceeding R20m		Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Up to but not exceeding R2500m	Exceeding R2500m

*Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.
Approval limits are per individual project, reported on a monthly basis to Group Financial Planning.
Amounts indicated above exclude the capitalisation of borrowing costs.
All ICT projects requiring Transnet approval must be signed off by the Head: Enterprise Information Management Services.
Board Acquisitions and Disposals Committee refers to the Acquisitions and Disposal Committee of the Board. Group Exco/GCE to be the final approval gate for all capitalisation of maintenance projects (COPEX) irrespective of the value of the project provided that it has been included in the Corporate Plan.
Front end loading (FEL) studies for level 1 and 2 may be approved in terms of the operating expenditure DoA, FEL 3 studies may be approved as standalone (excluding execution) per the above table. Please refer to the Accounting Policy for Conceptual, Pre-feasibility and Feasibility Studies when capitalising FEL studies.

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5.1.2 Unforeseen CAPEX (not included in budget/Corporate Plan)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Operating Divisions	Up to but not exceeding R50m	Up to but not exceeding R75m	Up to but not exceeding R400m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R1250m	Exceeding R1250m
Approval Authority →	Group Exco Member		Transnet CAPIC/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Specialist Units	Up to but not exceeding R20m		Up to but not exceeding R400m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R1250m	Exceeding R1250m

*Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.
All unforeseen Capex approved by Operating Divisions/Specialist Units within their delegated authority, must be reported on a quarterly basis to Group Financial Planning.
Amounts indicated above exclude the capitalisation of borrowing costs.
All ICT projects requiring Transnet approval must be signed off by the Head: Enterprise Information Management Services.
Approval limits are per project at Operating Divisional level subject to an aggregate divisional limit of R200m per annum and R400m for TFR on condition that divisions remain within their annual approved capital budget (refer to 5.1.4). If an unforeseen project will result in the divisional 7 year investment plan being increased then Group Exco needs to be approached for approval.

5.1.3 Increase in Estimated Total Cost (ETC) of Existing/Approved Projects

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	ETC may be increased to a maximum of R200m, increases beyond this amount may only be approved at Transnet Level	ETC may be increased to a maximum of R400m, increases beyond this amount may only be approved at Transnet Level	Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R1400m	Exceeding R1400m
Approval Authority →	Group Exco Member		Transnet CAPIC/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	ETC may be increased to a maximum of R20m, increases beyond this amount may only be approved at Transnet Level		Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R1400m	Exceeding R1400m

Increase in ETC of projects already approved by the Shareholder Minister must be reported to the Shareholder Minister if the increase is in excess of 15%.
All ICT projects requiring Transnet approval must be signed off by the Head: Information Management Services.
All cost increases in excess of 25% of the approved budget for a project must be reported to Transnet CAPIC/GCFO.

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Amounts indicated above exclude the capitalisation of borrowing costs. Increases in ETC of a project solely due to the capitalisation of borrowing costs may be approved by the OD Exco/CE. Project costs and capitalisation of borrowing costs are to be managed separately and may not be expended on projects interchangeably.

5.1.3.1 Any increase in excess of the annual approved capital investment budget must be submitted to Transnet CAPIC/GCFO for approval.

5.1.4 Asset Write-off/Scrapping: Movable Assets

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m

The above amounts refer to net book value and are a cumulative annual limit. Write-offs above R10m and above R50m in the case of TFR must be reported to Transnet CAPIC/GCFO quarterly.

5.1.5 Asset write-off/Scrapping/Demolition of Immovable Assets (excluding land) e.g. buildings, structures

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board*
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R150m	Up to but not exceeding R250m	Up to but not exceeding R300m	Exceeding R300m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board*
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R300m	Exceeding R300m

*Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval
The above amounts refer to an estimated market value at that point in time and are a cumulative annual limit
Write-offs below R10m and below R50m in the case of TFR must be reported to Transnet CAPIC/GCFO quarterly.

5.1.6 Disposal of Movable Assets (excluding sale of scrap)

Approval Authority →	OD Exco/CE*	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board#
Operating Divisions	Up to but not exceeding R50m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m
Approval Authority →	Group Exco Member	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board#
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m

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*The above amounts refer to an estimated market value and are subject to a cumulative annual limit of R200m. For sale of scrap please refer to 5.5.1
#Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval

5.1.7 Management's intervention in addressing non-compliance with the regard to the approval of capital projects

Approval Authority →	OD CE	GCFO	GCE
Operating Divisions	Nil	Nil	Unlimited
Approval Authority →	Group Exco Member	GCFO	GCE
Specialist Units	Nil	Nil	Unlimited

Together with the application for approval of non-compliance, the requestor must advise on the steps/corrective measures taken to avoid a repeat of the transgression.
If the approval of non-compliance results in the annual divisional budget being exceeded, then the request must be submitted to Transnet CAPIC for approval (refer to 5.1.4).

5.1.8 Alienation/acquisition of immovable property (land and servitudes)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board*
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R350m	Up to but not exceeding R500m	Exceeding R500m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board*
Specialist Units	Up to but not exceeding R1m		Up to but not exceeding R200m	Up to but not exceeding R350m	Up to but not exceeding R500m	Exceeding R500m

*Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.
Approval limits are per transaction and are with reference to market value
All transactions entered into in terms of the above must be reported to Transnet CAPIC/GCFO
Only immovable property on the non-core list, may be disposed off (refer to 5.1.8.1), such disposal may only be done through the Specialist Unit, Transnet Property.
Amounts indicated above exclude the capitalisation of borrowing costs

5.1.8.1 Newly identified properties to be included on the non-core list (Book value of individual properties)

GCFO	GCE	Board
Up to but not exceeding R100m*	Up to but not exceeding R200m	Exceeding R200m

* These disposals must be reported to Transnet Capic/Group Exco/Transnet Board.

0058-0373-0001-0141

5.2 Treasury

Treasury Policies and Strategies

Approval Authority →	Transnet Treasurer	GCFO	GCE	Board Audit Committee	Board
Financial Risk Management Framework	Recommend	Recommend	Recommend	Recommend	Approve

NOTE 1: In respect of all transactions set out in paragraphs 5.2.1 to and including 5.2.10, the necessary legal advice must be obtained where applicable and persons executing such transactions must comply fully with the applicable Enterprise Risk Management Framework and any revised limits determined in terms of such framework and the provisions of the PFMA and, when in doubt, persons must consult the Treasury Compliance Officers and Transnet Finance or Transnet Legal Services.

NOTE 2: Only approved financial instruments as approved in terms of the applicable Treasury Financial Risk Management Framework approved by the Board and subject to such limits determined in accordance with such framework may be utilized in the Treasury operations.

5.2.1 InterTransnet Debt (Treasury inter Transnet debt write-off)

Approval Authority →	Deputy Treasurer: Back Office	Transnet Treasurer	GCFO	GCE
Operating Divisions	Up to but not exceeding R5m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m
Specialist Units	Up to but not exceeding R2m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m

All breaches of the above limits to be reported to the Board Audit Committee
External debt write-off on financial instruments due to counter-party liquidation may only be approved by the GCE.

5.2.2 Maximum annual loss on all market-making activities (Realised and unrealised) including repo facilities

Approval Authority →	Traders and Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding R1m	Up to but not exceeding R1.5m	Up to but not exceeding R2.5m	Up to but not exceeding R5m	Exceeding R5m

All breaches of the above limits to be reported to the Board Audit Committee
Note: The above limits are aggregate desk limits

5.2.3 Market-making: Net nominal open position on the market-making desk (long or short) expressed in terms of a Transnet TN27 Bond (Only in extreme market conditions when positions from Market Making Panel cannot be accommodated in the repo portfolio)

Approval Authority →	Traders and Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding R10m	Up to but not exceeding R15m	Up to but not exceeding R25m	Up to but not exceeding R50m	Exceeding R50m

All breaches of the above limits to be reported to the Board Audit Committee.

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5.2.4 Market-making – Spot transactions (Expressed in nominal terms)

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding R75m	Up to but not exceeding R100m	Up to but not exceeding R200m	Up to but not exceeding R250m	Up to but not exceeding R750m	Exceeding R750m

All breaches of the above limits to be reported to the Board Audit Committee.
Approval limits are per transaction/event and excludes bond auctions.

5.2.5 Buy and sellback transactions (Expressed in nominal terms)

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding R250m	Up to but not exceeding R500m	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R1500m	Exceeding R1500m
Duration Limit	2 weeks	3 weeks	1 month	1 month	2 months	Greater than 2 months

All breaches of the above limits (amount or tenure) to be reported to the Board Audit Committee
Approval limits are per transaction/event.

5.2.6 Foreign Exchange Transactions (operational, expressed in USD equivalent)

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding an aggregate equivalent of $10m per day (desk total)	Up to but not exceeding an aggregate equivalent of $20m per day (desk total)	Up to but not exceeding an aggregate equivalent of $40m per day (desk total)	Up to but not exceeding an aggregate of $100m per day (desk total)	Up to but not exceeding a daily equivalent of $200m (desk total)	Exceeding a daily equivalent of $200m (desk total)

All breaches of the above limits to be reported to the Board Audit Committee
Note: In respect of FX hedging transactions that were previously approved as per paragraphs 5.2.7 and 5.2.8, the above approvals will be applicable to accommodate the extension of FX hedges.

5.2.7 Foreign Exchange Hedging Transactions (operational, expressed in USD equivalent)

Approval Authority →	Transnet Treasurer	GCFO	GCE
Group	Projects not exceeding $50m	Projects not exceeding $100m	Projects exceeding $100m
Tenure	Not exceeding 12 Months	Not exceeding 3 years	Exceeding 3 years

All breaches of the above limits (amount or tenure) to be reported to the Board Audit Committee.
Note: Where no specific limit is mentioned, the FRMF policy on foreign exchange risk will apply.
The above project limits are applicable per hedging submission.

5.2.8 Foreign Exchange Hedging Transactions (CAPEX and FX loans, expressed in USD equivalent)

Approval Authority →	Transnet Treasurer	GCFO/Finco	GCE/Group Exco
Group	Projects not exceeding $50m	Projects not exceeding $100m	Project exceeding $100m
Tenure	Not exceeding 18 months	Not exceeding 5 years	Exceeding 5 years

All breaches of the above limits to be reported to the Board Audit Committee.
Note. Where no specific limit is mentioned, the FRMF policy on foreign exchange rate risk will apply.
The above project limits are applicable per hedging submission.

5.2.9 Approval of FX hedges to be hedged by external suppliers on their balance sheet for goods/services to be delivered to Transnet in respect of Rand agreements involving foreign content

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO
Group	Not exceeding $10m	Not exceeding $20m	Not exceeding $30m	Not exceeding $50m	Exceeding $50m

All breaches of the above limits to be reported to the Board Audit Committee and the Board Acquisitions and Disposals Committee for noting.

Note: The Business Units must always obtain quotes on FX forward rates and liaise with the Treasury Trading desk that will verify the rates to ensure it is market related. The Business Units can only enter into the FX hedges with the supplier once the rates are accepted by the Treasury Trading desk via e mail. Once the above approvals are obtained, the Treasury Traders will provide sign off on the rate acceptance.
The above limits are applicable per agreement.

5.2.10 Interest Rate Risk Hedging

Approval Authority →	Notional Amounts	GCFO/Finco	GCE/Group Exco
Group	Notional amount of hedge expressed in USD (FX loans and leases)	Up to but not exceeding $250m	Exceeding $250m
	Notional amount of hedge expressed in ZAR (ZAR loans and leases)	Up to but not exceeding R2000m	Exceeding R2000m
Tenure		Not exceeding 10 years	Exceeding 10 years

All breaches of the above limits to be reported to the Board Audit Committee
Note: Where no specific limit is mentioned, the FRMF policy on interest rate risk will apply.
The above limits are applicable per hedging submission.

5.2.11 Hedging of fuel risk exposures (commodity risk)

Approval Authority →	GCFO/Finco	GCE/Group Exco
Tenure	Not exceeding 12 months	Exceeding 12 months
Notional hedge expressed in RAND	Not exceeding R500m	Exceeding R500m

All breaches of the above limits to be reported to the Board Audit Committee.
Note: The maximum hedge should not exceed 75% of annual budgeted consumption inclusive of energy levy income
The above limits are applicable per hedging submission
Note. Where no specific limit is mentioned, the FRMF policy on commodity risk will apply

5.2.12 Granting of InterTransnet Loans (Interest-bearing only) to divisions/subsidiaries

Approval Authority →	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Operating Division	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Exceeding R2000m
Subsidiary	Up to but not exceeding R10m	Up to but not exceeding R25m	Up to but not exceeding R100m	Exceeding R100m

These above limits are cumulative per financial year.

5.2.13 Granting of InterTransnet Loans (Interest-free)

Approval Authority →	GCFO	GCE
Operating Division	Up to but not exceeding R10m	Exceeding R10m

The above limits are per interTransnet loan.
All breaches of the above limits to be reported to the Board Audit Committee.

5.2.14 Letters of Credit

Approval Authority →	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Transnet	Up to but not exceeding R100m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m

All breaches of the above limits to be reported to the Board Audit Committee.
The above limits are per letter of credit.

Funding Portfolio

NOTE 1: Only derivatives approved in terms of the applicable Financial Risk Management Framework, as approved by the Board, and subject to such limits determined in accordance with such framework may be utilised to hedge any risks

NOTE 2: The total nominal funding amount per financial year in respect of Bonds and any other funding transactions shall be as determined per Board approved/Board amended Funding/Borrowing Plan.

NOTE 3: A Signatories mean, subject to such approvals by the Board and the Minister of Finance in terms of section 66 of the PFMA as may be applicable, the Treasurer and any other officer so designated in writing by the GCFO;

B Signatories mean, subject to such approvals by the Board and the Minister of Finance in terms of section 66 of the PFMA as may be applicable, persons so designated in writing by the Treasurer.

5.2.15 Loan/Funding documentation approvals per instrument per financial year

Approval Authority →	Transnet Treasurer	GCFO	GCE/Group Exco
Tapping of bonds	-	Not exceeding R5bn	Exceeding R5bn
Bank Loans (including overnight facilities)	Up to but not exceeding R1bn	Up to but not exceeding R2.5bn	Exceeding R2.5bn
Commercial Paper		Not exceeding R5bn	Exceeding R5bn
ECA supported funding	Up to but not exceeding R250m	Up to but not exceeding R1bn	Exceeding R1bn
New bond issues (in approved funding plan)	-	Up to but not exceeding R1bn	Exceeding R1bn
Development funding	Up to but not exceeding R250m	Up to but not exceeding R1bn	Exceeding R1bn
Foreign funding	-	Up to but not exceeding R1bn	Exceeding R1bn
Any other source of funding not stipulated above	-	Up to but not exceeding R1bn	Exceeding R1bn

The above is further subjected to the following annual aggregate limit			
	R5bn	R10bn	Limited to the annual Board approved borrowing plan

The above is subject to the following:

- Be executed in accordance with the approved strategy as incorporated in the Corporate Plan (including any amendments approved).
- Be within the laid down cash holding limits of Transnet
- All breaches of the above limits to be reported to the Board Audit Committee.

5.2.16 **Signing of legally binding agreements in respect of Treasury related activities (Including ISDA, ISMA agreements and Bank facilities)**

Only the GCE and/or the GCFO have authority to sign. The Treasurer may sign with a specified delegation.

5.2.17 **Counterparty Limits: Setting of Limits**

Approval Level			
TRANSNET TREASURER	GCFO	GCE	Board or Committee of the Board
			Investment Risk Limits
Price Risk Limits ≤ R25 m	Price Risk Limits ≤ R250 m	Price Risk Limits ≤ R500 m	Price Risk Limits > R500 m
Recommendation of Bond Issue and Bond Issuer Limits	Approval of Bond Issue and Bond Issuer Limits		
Recommendation of Settlement Limits	Approval of Settlement Limits		

All investment risk limits and price risk limits above R500m to be approved by the Board Audit Committee.

Note: Where no specific limit is mentioned, the FRMF policy on Counter Party Risk will apply.

Note: A portion of the approved investment risk limit may be utilised for price risk purposes as long as the sum of the two stays within the overall Board Audit Committee approved risk limit.

5.2.18 **Appointment of Commercial Bankers and the Opening of Bank Accounts**

	Transnet Treasurer	GCFO
All OD/SU	Recommendation to open bank accounts and the appointment of bankers	Approval of new bank accounts and the appointment of bankers and the approval of all documentation relating to such accounts including electronic banking documentation.
Process to follow	There is no delegation to any OD/SU to appoint commercial bankers or to open bank accounts, domestically or internationally; only the GCFO may make such appointments.	

5.2.19 **Establishing financial policy with regard to insurance**

Authority Level	GCFO after consulting with Chief Risk Officer

Board Risk Committee to approve.

5.2.20 **Authorisation of cheque signatories, Test keys and EFT's**

Signing Cheques	Two A signatories or one A and one B signatory
Signing Test keys for paying/receiving	Two A signatories or one A and one B signatory
Electronic transfer of funds	Two A signatories or one A and one B signatory

5.2.21 Payment instructions and confirmation notes

Signing payment instructions/ receipts/ settlement instructions:	Two A signatories or one A and one B signatory
Signing confirmation notes in respect of approved financial transactions executed	One A signatory

5.2.22 Approval of Annual Borrowing Plan

	Board
Group	Approve the annual borrowing plan for execution by Treasury

Annual borrowing plan to be recommended by the Treasurer, GCFO and the Board Audit Committee for approval by the Board.

5.2.23 Authorisation to enter into binding transactions

	TRANSNET TREASURER
Group	Authorise Treasury employees to enter into binding financial transactions on behalf of the Transnet

5.2.24 Issuing of Guarantees (subject to requirements of section 66 of the PFMA)

	Transnet Treasurer	GCFO	GCE	Board
Transnet	Up to but not exceeding R25m	Up to but not exceeding R50m	Exceeding R50m	Exceeding R100m aggregate per financial year

All breaches of the above limits to be reported to the Board Audit Committee.
Board approval is required for the granting by the Company of any guarantees exceeding an aggregate limit of R100m per financial year (section 66(3) of the PFMA)

5.2.25 Issuing Letters of Support

	Board
Group	Only the Board of Directors have authority to issue letters of support

5.2.26 Issuing of security per transaction (subject to section 66 of the PFMA)

	Transnet Treasurer	GCFO	GCE	Board
Group	Up to but not exceeding R250m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Exceeding R1000m

The above limits are per transaction. All breaches of the above limits to be reported to the Board Audit Committee

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5.3 Finance

5.3.1 Bad Debt Write-off

Trade Debtors

Approval Authority →	OD Exco/CE* excluding TFR	TFR Exco/CE	GCFO	Group Exco/ GCE	Board Audit Committee	Board
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R500m	Exceeding R500m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/ GCE	Board Audit Committee	Board*
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R500m	Exceeding R500m

*Approval limits are R10m and R20m for TFR per transaction subject to an annual cumulative limit of R50m and R100m for TFR. Specialist unit limit is R5m cumulative per annum.

5.3.2 Setting of limits for credit facilities (Trade debtors)

Approval Authority →	Divisional CFO	OD Exco/CE* excluding TFR	TFR CE	GCFO	GCE
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R150m	Up to but not exceeding R300m	Exceeding R300m
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R10m		Up to but not exceeding R300m	Exceeding R300m

Board Audit Committee to recommend approval of annual credit limit for working capital.
Limits are per individual customer/client. Credit limits are to be reviewed on an annual basis. The limits are applicable subject to the division following the credit evaluation process.

5.3.3 Issuing of Credit notes

Approval Authority →	Divisional CFO	OD Exco *	GCFO	GCE
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R300m	Exceeding R300m
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R10m	Up to but not exceeding R300m	Exceeding R300m

Limits are per individual credit note and relates to external parties. Issuing of credit notes regarding internal/interdivisional transactions may be within the control of the divisional CFOs.
* Excludes the product reconciliation process at Transnet Pipelines where the Divisional CFO and Divisional COO approve transactions arising out of the product reconciliation process.

5.3.4 Exceeding the operational expenditure budget in total for the year (Operating Divisions/Specialist Units)

The Board of Directors to be informed at every meeting of the financial status and latest estimates of the Company

Approval Authority →	OD CE	GCFO	GCE	Board
Operating Divisions	Up to but not exceeding 5% of approved budget	Up to but not exceeding 7.5% of approved budget	Exceeding 7.5% of approved budget to a maximum of 10%	>10%
Specialist Units	Up to but not exceeding 5% of approved budget	Up to but not exceeding 7.5% of approved budget	Exceeding 7.5% of approved budget to a maximum of 10%	> 10%

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Delegations for operational transactions that are too detailed to include in the Transnet Delegations of Authority Framework will be determined and applied in terms of the details set out by the CE in conjunction with the CFO of the respective OD/SU.

5.4 Procurement

All procurement transactions (including reverse logistics – selling of goods) must fully comply with the approved Transnet Procurement Policy and Procurement Procedures Manual (PPM), as well as the Transnet Capital Projects Construction Procurement Policy, Processes, Procedures and Methods (CPPPPM) where applicable – Any commercial agreement (for the purchase of goods or services) must be signed off by an authorized employee of Supply Chain Management (Procurement) prior to signing of the contract to indicate that all the steps as per clause 5.5 below have been followed and that all procurement related governance has been adhered to

5.4.1 Appointment of Consultants

Approval Authority →	OD CE	GCFO	Group Excol GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R25m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m
Approval Authority →	Group Exco Members	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	R10m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m

Approval limits are cumulative per annum. Excludes appointment of consultants to perform feasibility studies for capital projects.

5.4.2 Approval to approach the market for Open Tenders

Approval Authority →	OD CE and TCP GE	GCSCO	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R450m	Up to but not exceeding R525m	Up to but not exceeding R600m	Up to but not exceeding R750m	Up to but not exceeding R1500m	Exceeding R1500m

*The OD CE may only delegate these powers to go to market with Open Tenders to Heads of Procurement. The Requisition (or Request to Purchase) issued to Procurement must be approved by the OD's Budget Owner or his duly authorized delegate. Such approved requisition or Request to Purchase will signify that the acquisition has been approved and that the necessary funds are available

Submissions requiring approval of the GCSCO or higher must also include a procurement strategy document, signed off by the person with the delegated authority.

Approval Authority →	Specialist Unit HOD (budget owner)	GCSCO	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	Up to but not exceeding R75m	Up to but not exceeding R525m	Up to but not exceeding R600m	Up to but not exceeding R750m	Up to but not exceeding R1500m	Exceeding R1500m

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The Requisition (or Request to Purchase) issued to Procurement must be approved by the Specialist Unit's HOD or his duly authorised delegate. Such approved requisition or Request to Purchase will signify that the acquisition has been approved and that the necessary funds are available.
Submissions requiring approval of the GCSCO or higher must also include a procurement strategy document, signed off by the person with the delegated authority.

5.4.3 Approval to approach the market for confined tenders: Confinement of tenders (not subject to the quotation system)

Approval Authority →	OD CE and TCP GE	GCSCO	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Nil	Nil	Nil	Up to but not exceeding R250m	Up to but not exceeding R1000m	Exceeding R1000m
Approval Authority →	Group Exco Members	GCSCO	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	Nil	Nil	Nil	Up to but not exceeding R250m	Up to but not exceeding R1000m	Exceeding R1000m

The limits are per transaction/confinement. All requests for approval of confinements must be made by the OD CE/Group Exco Member to the GCE. The OD Specialist Unit shall prepare the submission in collaboration with Transnet integrated supply chain management (iSCM) to ensure that the rules for confinement are met.
In instances where confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority.

5.4.4. Management's intervention to address non-compliance with procurement policies and procedures

Approval Authority →	OD CE and TCP GE	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Nil	Nil	Up to but not exceeding R50m	Up to but not exceeding R1000m	Exceeding R1000m
Approval Authority →	Group Exco Members	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
SU	Nil	Nil	Up to but not exceeding R50m	Up to but not exceeding R1000m	Exceeding R1000m

All requests for approval of non-compliance must be made by the OD CE/Group Exco member to the GCE. The OD/Specialist Unit shall prepare the submission in collaboration with Transnet iSCM to ensure that the rules for confinement are met.

5.4.5 Establishing Procurement policy (opex, capex and disposals)

Authority Level	Board Acquisitions and Disposals Committee

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5.5 Contracts/Agreements

NOTE 1: Any person who has been authorised to execute any legal documents including deeds, leases, assignments, contracts, applications, financial instruments, external submissions to or on behalf of Transnet and/or its OD or any other legal documents may only do so with the prior advice of the relevant Legal Services department as set out in the Transnet Legal Policy.

NOTE 2: Unless otherwise indicated in the authorities below, the authority to execute a contract or other binding document carries with it like authority to cancel or modify it, but only with the prior written advice of the relevant Legal Services department as set out in the Transnet Legal Policy and if it relates to Procurement Contracts, the approval of the relevant Acquisition Council (as per the Procurement Procedures Manual - PPM).

NOTE 3: Any person authorized to enter into an agreement/contract or other binding document involving capital expenditure must have obtained prior financial approval in terms of the procedures set out in 5.1 prior to entering into such a CAPEX contract.

NOTE 4: Approval limits are per transaction/contract.

NOTE 5: The authority to execute a contract or other binding document carries with it the understanding that an authorized payment required thereby will be made once proof of receipt has been obtained. No person is authorised to obligate the company to an amount greater than such payment or create more onerous obligations than those contained in the contract or other binding document. Increases to the original scope of the binding document must be supported by authorised amendment.

NOTE 6: In terms of the PPM all amendments to contracts must be approved by the Manager (i.e. a person with the relevant delegated powers) who originally signed the initial contract as well as by the relevant Acquisition Council where the amendment exceeds 10% of the original contract value.
For higher value contracts (i.e. those signed by the operating division's CE, the GCFO or GCE), it is advisable to obtain a written mandate from that official empowering a delegate to administer such contract and to effect changes to such contract not exceeding 10% of the initially approved contract value.

5.5.1 Enter into and signing of Contracts/Agreements and award of business: (including the sale of scrap)

Approval Authority →	OD CE and TCP GE		Transnet Chief Supply Chain Officer	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R450m		Up to but not exceeding R525m	Up to but not exceeding R600m	Up to but not exceeding R750m	Up to but not exceeding R1500m	Exceeding R1500m
Approval Authority →	**Specialist Unit CE**	**Group Exco members**	**Transnet Chief Supply Chain Officer**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Specialist units excluding TCP	Up to but not exceeding R5m subject to the contract period not exceeding 5 years	Up to but not exceeding R30m	Up to but not exceeding R525m.	Up to but not exceeding R600m	Up to but not exceeding R750m	Up to but not exceeding R1500m	Exceeding R1500m

Values are per contract for the full term of the contract (Total value of contract excluding VAT) on condition that approval has been obtained for the related expenditure over the period. Please refer to the conditions stipulated below.

Payments: Once the decision to contract has been issued, contract execution will be governed by the Operating Divisions, including the payment process provided that the contract amount is not exceeded.

5.5.1.1 Contracts > R450m, including Transnet's top 60% value opex items and capex contracts

Prior to entering into a high value (greater than R450m) / 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 - 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.

5.5.1.3 International Contracts/Agreements (all contracts)

- Approval to enter into an agreement/contract or other binding document involving foreign currency 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 FX 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 an embedded derivative. All FX agreements above R100m must apart from the above also obtain written approval from the GCFO.

5.5.2 Enter into and Signing of Revenue Contracts/Agreements: (excluding lease contracts and the sale of scrap)

Approval Authority -->	OD CE *Limit per Annum per contract up to but not exceeding 5 years*	GCFO *Limit per Annum per contract up to but not exceeding 5 years*	GCE *Limit per Annum per contract up to but not exceeding 5 years*	Board Acquisitions and Disposals Committee *Limit per Annum per contract and contracts exceeding 5 years*	Board *Limit per Annum per contract and contracts exceeding 5 years*
Operating Divisions	Up to but not exceeding R300m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3000m	Exceeding R3000m
Approval Authority -->	Specialist Unit CE *Limit per Annum per contract up to but not exceeding 5 years*	GCFO *Limit per Annum per contract up to but not exceeding 5 years*	GCE *Limit per Annum per contract up to but not exceeding 5 years*	Board Acquisitions and Disposals Committee *Limit per Annum per contract and contracts exceeding 5 years*	Board *Limit per Annum per contract and contracts exceeding 5 years*
Specialist units	Up to but not exceeding R100m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3000m	Exceeding R3000m

- Transnet integrated customer agreements where a service incorporates more than one division must be signed off by the GCFO and the Group Executive: Commercial in addition to sign off by the OD CE's up to but not exceeding revenue of R500m per annum not exceeding 5 years.
- If the contract period is below 12 months the contract value is to be annualized and the delegated authority required to approve the transaction will be determined by the annualized amount.
- All limits indicated above are exclusive of VAT
- Board approval is required if ANY one of the following limits are exceeded:

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- The contract period exceeds 5 years
- The annual value of the contract exceeds R3000m
- The total value of the contract over the contract life exceeds R15000m.

5.5.3 Internal Contracts

Contracts between divisions such as service level agreements and project specific agreements may be entered into between OD CE's.

5.5.4 Property and Lease Agreements

All external Property Lease Agreements (excluding vacant land) as well as other expenditure leases

Approval Authority →	OD CE and TCP GE	GCFO	GCE	Board Acquisitions and Disposals Committee
Operating Divisions	Up to but not exceeding R15m annualised	Up to but not exceeding R200m full term	Up to but not exceeding R500m full term	Exceeding R500m full term
	Tenure not exceeding 5 years	Tenure not exceeding 10 years	Tenure not exceeding 15 years	Tenure exceeding 15 years
Approval Authority →	OD CE	GCFO	GCE	Board Acquisitions and Disposals Committee
Property	Up to but not exceeding R10m annualised	Up to but not exceeding R200m full term	Up to but not exceeding R500m full term	Exceeding R500m full term
	Tenure not exceeding 3 years	Tenure not exceeding 10 years	Tenure not exceeding 15 years	Tenure exceeding 15 years

- Tenders that include alienation/leasing out of land for a period longer than 5 years must be submitted to the GCE for approval prior to going out on tender or RFP.
- All external Lease Agreements (> 5 years) of properties on land/properties adjacent to other land/properties of ODs and/or belonging to Transnet Property, must be communicated and agreed with the relevant division/Transnet Property before entering into any Lease Agreements.
- All leases for vacant land may only be approved by the GCE with the above limits for the GCE applicable i.e. if the lease value exceeds R500m or the tenure exceeds 15 years then Board Acquisitions and Disposals Committee approval is required. For the purposes of this transaction vacant land is considered to be undeveloped land.
- Interdivisional leases for vacant land may be entered into and signed by the respective OD CEs/GE: TCP/Specialist Unit CE
- Special Delegation to apply to the CE of TNPA in compliance with the Ports Act.
- Internal leases between Transnet Property and OD/SU may be signed by the CEs of the respective ODs/SUs.

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5.6 Legal Services

NOTE: The provision of legal services must be in accordance with the Transnet Legal Policy. In respect of all litigation the bearer of the authority may, after taking legal advice from Transnet, execute all documents and do all things necessary to give effect to his/her authorisation.

5.6.1 Commencing or settling any litigation, arbitration

Approval Authority →	Divisional Head: Legal and Risk	OD CE and GE:TCP	GE: Corporate Services	GCFO	GCE
Operating Divisions	Up to but not exceeding R2m	Up to but not exceeding R35m with concurrence of GE: Corporate Services	Up to but not exceeding R50m	Up to but not exceeding R100m with concurrence of GE: Corporate Services	Exceeding R100m
Approval Authority →	OD CE		GE: Corporate Services	GCFO	GCE
Transnet Property	Up to but not exceeding R1m		Up to but not exceeding R50m	Up to but not exceeding R100m with concurrence of GE: Corporate Services	Exceeding R100m with concurrence of GE: Corporate Services

Approval limits are per litigation matter and relate to the settlement amount of that particular matter.
Commencement may be effected by an authorised person from the legal function

5.6.2

Any disputes with government entities or where the outcome of any litigation, arbitration or similar proceedings is likely to have a material effect on the business, financial condition or prospects of the Company	Board of Directors

5.6.3

Defending, subject to paragraph 5.6.1 above and Transnet Legal Policy, any litigation (actions or applications) in court or any other competent forum	GE: Corporate Services/ OD CE

5.6.4 Subject to the Transnet Legal Policy, the appointment of external advisors attorneys, advocates and any other external legal advisors

Approval Authority →	OD CE	GE: Corporate Services	GCE
OPERATING DIVISION	Up to but not exceeding R10m	Up to but not exceeding R50m	Exceeding R50m
	Specialist Units CEs and Heads of Legal	GE: Corporate Services	GCE
Specialist Units CEs and Heads of Legal	Up to but not exceeding R5m	Up to but not exceeding R50m	Exceeding R50m

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5.7 Human Resources

INTRODUCTION

The Delegation of Authority for Human Resources provides for controls and good governance in the following areas:

- Organisation Management
- Personnel Appointments and Remuneration
- Appointment of Fixed Term Contract Employees
- Interim / Ad-hoc Remuneration Adjustments
- Rewards / Awards / Exceptional Payments / *Ex-gratia* Awards
- Suspension of Employees
- Dismissal of Employees
- Mutual Separation Agreements
- Collective Bargaining and Trade Union Recognition
- Deviation from approved Human Resources Policies

PRINCIPLES

1. Any approval in the Human Resources environment must be obtained from a manager who is at least two hierarchical reporting level's higher than the employee for whom authorization is required.
2. When acting in a higher capacity, decision for own portfolio or department that will ordinarily be recommended by the acting incumbent must be referred to one level higher.
3. Where an incumbent acts for a period of longer than three months, the full powers of delegation of the position in which the person is acting, may be transferred to the acting incumbent.
4. Each OD may implement stricter delegations and increase the level of authority above those set out in the document. Any such change must be in writing.
5. Board approval is required for the appointment and remuneration of the Transnet GCE and GCFO.
6. The Remuneration and HR Committee (REMHRCO) provides final approval for the annual reward allocation including the salary mandate.
7. The REMHRCO provides final approval for the remuneration packages for Group Exco.
8. All matters relating to the position of the GCE and GCFO are reserved for the Board and Shareholder Minister in line with the Company's governing legislation and mandates.

ABBREVIATIONS

The abbreviations used in the Human Resources Delegation of Authority are set out in the table below:

FA	Final Approval
FACC	Final Approval for Corporate Centre
R	Recommendation
A	Has provided advice
N	Noting
GE: HR	Group Executive: Human Resources
CE, GE	Chief Executive of OD or relevant Group Executive of Corporate Staff Department
GM: PM	General Manager People Management in Transnet HR
GM: ER	General Manager Employee Relations in Transnet HR
OD HR GM	General Manager Human Resources at the Operating Division
LM GM	Line Management - General Manager

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The table below sets out the delegation framework for Human Resources

1 Organisation Management: Creation of New Positions / Change in Positions / Restructuring

- No permanent or fixed term contract position can be created or the grade level changed unless the approved Organisation Management governance was followed in respect of the evaluation of positions and ratification of grade levels.

	HUMAN RESOURCES	REMHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: PM	LM:GM
1.1	Group Exco (A level)	FA	R				R	
1.2	General Managers (B level)		FA	R	R		R	
1.3	Executive Managers (C level)			A	FA	R	R	R
1.4	Senior Management (level D) and Below					FA	FA:CC	R

2 Personnel Appointments and Remuneration

- The Remuneration and Human Resources Committee reviews the GCE's assessment of performance and approves the remuneration of Group Exco Members.
- The appointment and remuneration of all management level employees (levels A to F) will be guided by the Guidelines and Salary Bands issued by the Group Remuneration Office. These Guidelines and Salary Bands will take into account the occupational specific categories.
- For managers in levels A and B the Group Remuneration Office will recommend the appropriate remuneration bands based on market information and internal parity. Approval of the final appointment and remuneration package will be in terms of the delegations below.
- Each OD will apply the Guidelines and Salary Bands when appointing and structuring the packages of management employees in levels C and below. Approval of the final appointment and remuneration package will be in terms of the delegations below.
- After salary adjustments and before a mandate is sought for the next financial year, the Group Remuneration Office will conduct a comparative analysis of salaries across ODs to inform the Group Guidelines and Salary Bands of managers for the new financial year. Affordability and the need for internal and external parity will inform these guidelines.

	HUMAN RESOURCES	REMHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: PM	LM: GM
2.1	Group Exco (A level)	N	*FA	R			R	
2.2	General Managers (B level)		FA	R	R		R	
2.3	Executive Managers (C level)			A	FA	R	R	R
2.4	Senior Management (D level and below)					FA	FA:CC	R

* The appointment of a Group Exco Member will be made by the GCE in consultation with the Corporate Governance and Nominations Committee

3 Appointment of Fixed-Term Contract Employees

A person appointed on a fixed-term contract (for a specific period of time or to perform a specific project) must be appointed into a graded position.

	HUMAN RESOURCES	REMHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: PM	LM: GM
3.1	Group Exco (A Level)	FA	R				R	
3.2	General Managers (B level)		FA	R	R		R	
3.3	Executive Managers (C level)				FA	R	R	R
3.4	Senior Management (D level and below)					FA	FA:CC	R

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4 Counter Offers and Interim Salary Adjustments

- In line with the Group Remuneration Philosophy approved by the Remuneration and Human Resources Committee of the Board, there will be no interim / ad-hoc remuneration adjustments.
  If an employee produces a written and current counter offer of employment with details of the remuneration package, and Transnet seeks to retain the employee based on the criticality of the employee's skill, an interim adjustment of the employee's current remuneration package may be offered in terms of the delegations below. Any counter offer must be in accordance with the Group Guidelines and Salary Bands issued by Group Remuneration.

HUMAN RESOURCES	REMHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:PM	LM: GM
4.1 Group Exco (A Level)	FA	R	N			R	
4.2 General Managers (B level)		FA	R	R		R	
4.3 Executive Managers (C level)			FA	R	R	R	R
4.4 Senior Management (D level and below)					FA	FA:CC	R

5 Internal Rewards / Awards / Exceptional Payments / *Ex-gratia* Awards

The amounts reflected below are per initiative (not per individual employee payment) per annum

HUMAN RESOURCES	Board	REMHRCO	GCE	GE: HR	GCFO	OD CE/ Group Executive	HR GM	GM: PM	LM: GM
5.1 R10m and above	FA	R	R	R				R	
5.2 Between R5m but not exceeding R10m		FA	R	R				R	
5.3 Between R50 000 but not exceeding R5m			FA	R		R		R	
5.4 Between R20 000 but not exceeding R50 000				A	FA	R	R	R	R
5.5 Up to but not exceeding R20 000				FA		R	R	R	R
5.6 Up to but not exceeding R 10 000						FA	R	R	R

6 Suspension of Employees

- The suspension of all employees is per the delegations of authority below.
- In the case of the suspension of a bargaining unit employee, the relevant OD Employee Relations Manager must recommend the suspension based on the merits of the case.

HUMAN RESOURCES	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: ER	LM: GM	Line Manager	ER Manager
6.1 Group Exco (A level)	FA	R			R			
6.2 General Managers (B level)	FA	R	R		R			
6.3 Managers (C level)		FA	R	R	A	R		
6.4 Senior Management (D level to F level)				R	A	FA	R	A
6.5 Bargaining unit employees							FA	R

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7 Dismissal of Employees

- The dismissal of any employee for reasons of discipline or incapacity must be preceded by a fair hearing in line with Transnet policies.
- The dismissal of an employee for operational requirements must be preceded by a fair consultation process.

HUMAN RESOURCES	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: ER	LM: GM	Line Manager	ER Manager
7.1 Group Exco (A level)	FA	R			R			
7.2 General Managers (B level)	FA	R	R		A			
7.3 Managers (C level)		A	FA	R	R	R		A
7.4 Senior Management (D level to F level)			A	R	R	FA	R	A
7.5 Bargaining unit employees							FA	R

8 Mutual Separation

Terms and conditions and financial settlement amounts of mutual separation agreements for A – D Roles will be guided by the Guidelines issued by the Group Remuneration Office.

HUMAN RESOURCES	REMHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:ER	LM:GM
8.1 Group Exco (A level	FA	R	R			R	
8.2 General Managers (B level)		FA	R	R		R	
8.3 Executive Managers (C level and below)			FA	R	R	R	R

9 Collective Bargaining and Trade Union Recognition

HUMAN RESOURCES	REMHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:ER	LM:GM
9.1 Conclusion of any Collective Agreements with Unions excluding shift patterns			FA	R	R	R	
9.2 Mandate for salary and wage negotiations	FA	R	R			R	
9.3 Recognition of Trade Union and Signing of Recognition Agreement	N	N	FA	R	R	R	

10 Deviation from Approved Human Resources Policies

HUMAN RESOURCES	Board	GCE	GCFO	GE: HR	OD CEs Group Exco	HR GM	GM: ER	LM: GM
10.1 Any deviation from a Transnet HR Policy		FA		R	R	R	R	R

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5.8 General Delegations

5.8.1 Chartering of Aircraft

Authority Level	OD CE	GCFO	GCE
Chartering of Aircraft	NIL	Up to but not exceeding R3m	Exceeding R3m
Chartering of helicopters for operations	R150000*	Up to but not exceeding R1m	Exceeding R1m

* The limits for OD CEs are cumulative per aircraft per month.

5.8.2 Mobile phones: Authorising payments exceeding monthly limits (reflected in mobile phone contract)

	Group Exco Member	GCFO	GCE
Transnet Wide	Up to but not exceeding R10 000 per month	Up to but not exceeding R20000 per month	Exceeding R20000 per month

5.8.3 Entertainment Expenditure

Authority Level	OD CE	Group Executives	GCE
	Up to but not exceeding R50000 per occasion	Up to but not exceeding R50000 per occasion	Amounts exceeding R50000 per occasion

Costs incurred by any person on behalf of the company must be authorised by that person's superior and must be within the approved budgetary limits. Supporting documentation should be marked cancelled to prevent re-use thereof. All entertainment expenses must be business related expenses.

5.8.4 Rewards/Awards/Exceptional Payments to external parties: (Examples: *Ex-gratia* awards, exceptional performance, recognition payments)

	OD CE	GCFO	GCE	REMHRCO	Board
Operating Divisions	Up to but not exceeding R50000	Up to but not exceeding R100000	Up to but not exceeding R5m	Up to but not exceeding R10m	Exceeding R10m
	Group Exco Members	GCFO	GCE	REMHRCO	Board
Specialist units	Up to but not exceeding R50000	Up to but not exceeding R100000	Up to but not exceeding R5m	Up to but not exceeding R10m	Exceeding R10m

5.8.5 Sponsorships and Donations

Approval Authority →	OD CE	GCFO	GCE	Social and Ethics Committee	Board
Operating Divisions	Up to but not exceeding R5m	Up to but not exceeding R7m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m
Approval Authority →	Group Exco Members	GCFO	GCE	Social and Ethics Committee	Board
Specialist Units	Up to but not exceeding R2m	Up to but not exceeding R7m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m

Approval limits are cumulative per annum e.g. the OD CE can approve a total amount of R5m per annum for sponsorships and donations.

5.8.6 Annual filing of tariffs with regulators

- Public Policy and Regulation Committee: Approves tariff increase applications from Operating Divisions.
- OD CE in concurrence with the GCFO: Filing of Tariffs with relevant Regulatory body.

5.8.7 International Business Travel (excluding African countries)

	Approval Authority
Below CE level at Operating Division*	GCE
CE of Operating Division	GCE
Corporate Centre	GCE
Specialist Units	GCE
Group Executives	GCE
GCE and Chairman	User – Retrospective review by GCE or Chairman and vice versa.

*CE of OD must recommend and the GCE to approve

5.8.8 Domestic Business Travel (including travel to African countries)

	Approval Authority
Chairman/GCE/Group Exco Members	User
CE of Specialist Unit	Group Exco member responsible
General Managers/Extended Exco	OD CE/OD CFO/Group Executives
All other levels	Extended Exco

Travel: All travel must be in line with the approved Travel Policy. Travel to African countries may only be approved at Exco level and may not be sub-delegated

Extended Exco members at an OD/SU unit may sub-delegate to the appropriate lower level.

5.8.9 Communication

	Approval Authority
External communication on strategy and operations	Company spokesperson/GM Communications or GCE
Communication on operational issues relating to an OD	Group Exco Member responsible for OD
Communication with the Shareholder Minister	Office of the GCE or Chairman of the Board of Directors

5.8.10 Establishment of Special Purpose Vehicles (SPVs) and Trusts

	Approval Authority
Establishment of SPVs and Trusts	GCE may approve after recommendation by the GCFO and GE Corporate Services. The transaction to be reported to the Board Acquisitions and Disposals Committee

5.8.11 Restructuring and sale of business

	Approval Authority
Restructuring or sale of business	Transnet Board of Directors in accordance with Section 54 of the PFMA

5.8.12 Pension Fund and Medical Fund Rule Amendments as recommended by the Board of Trustees of the Funds

	Approval Authority
Changes to the rules of the pension and medical fund that do not impact the financial position of the Fund	Board
Rule amendments that impact the financial position of the pension and medical fund	Ministerial approval from the Department of Public Enterprises with the concurrence of the Minister of Finance

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5.8.13 Application for Environmental Authorisation

- All environmental impact assessment or basic assessment applications must be prepared by a competent independent environmental assessment practitioner/consultant, unless exemption from this provision has been obtained in writing by the Department of Environmental Affairs and under the supervision of the Environmental Department in the OD/SU.
- The application for environmental authorisation must be signed as per the approval authority below.

	Approval authority to act as applicant for an environmental authorisation for Transnet SOC Ltd
Operating Division	Project Manager/ Operations Manager/Environmental Manager
Specialist Unit (Transnet Property)	Chief Operations Officer of Property
Specialist Unit (Transnet Capital Projects)	Project Director

- The applicant remains legally responsible for the compliance with the environmental authorisation throughout the implementation of the authorisation.
- Should an authorisation for new capital projects contain operational elements after formal handover of the project by TCP, the DEA needs to be informed in writing of the change in names and acknowledgement from DEA be filed.
- Should any of the above applicants leave Transnet, the DEA needs to be informed in writing of the new person responsible for the implementation of the environmental authorisation

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EXHIBIT 4

iSCM

TRANSNET

delivering freight reliably

INTEGRATED SUPPLY CHAIN MANAGEMENT

TRANSNET PROCUREMENT PROCEDURES MANUAL [PPM]

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

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ISSUED BY:

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

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- National Objectives
- iSCM Procurement Objectives
- iSCM Control Objectives

Chapter 2: Definitions, Abbreviations and Acronyms

Chapter 3: Scope and Exclusions

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Evaluation and Adjudication

Contract Management

Functions of Governance Structures

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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:

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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.

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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)*.

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.

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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
IC³ 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

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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

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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

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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.

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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:

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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).

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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)

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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

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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.

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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.

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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.

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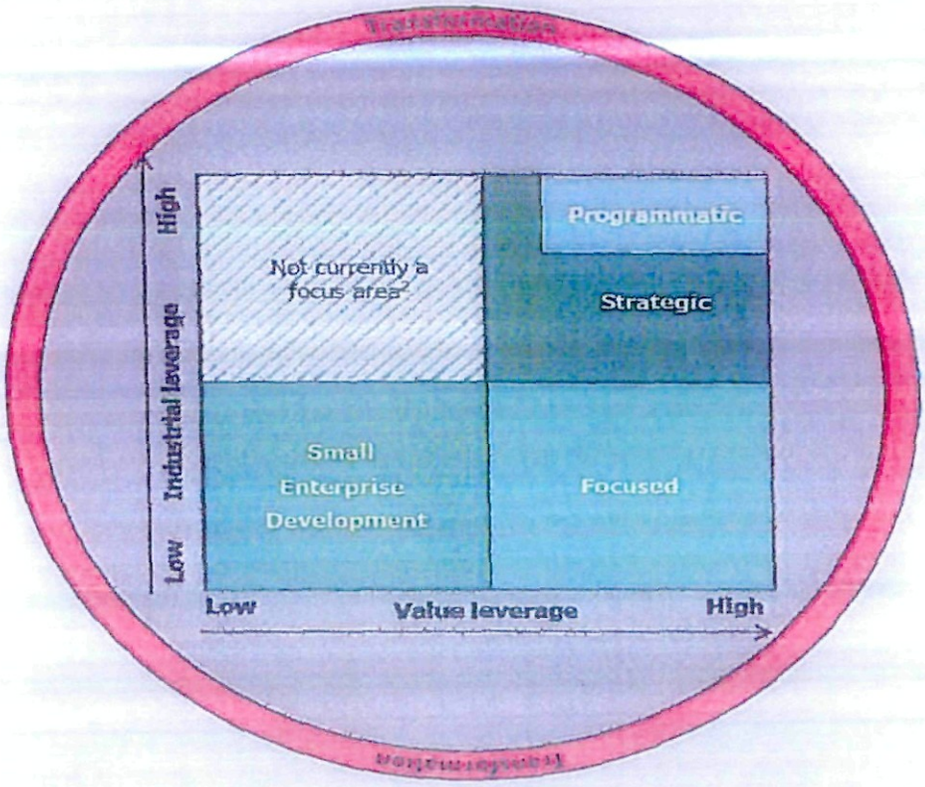

Figure [1] – IC³ SD Classification Matrix

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).*

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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.

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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

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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

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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.

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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

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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.

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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

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 OD's 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

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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:

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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.

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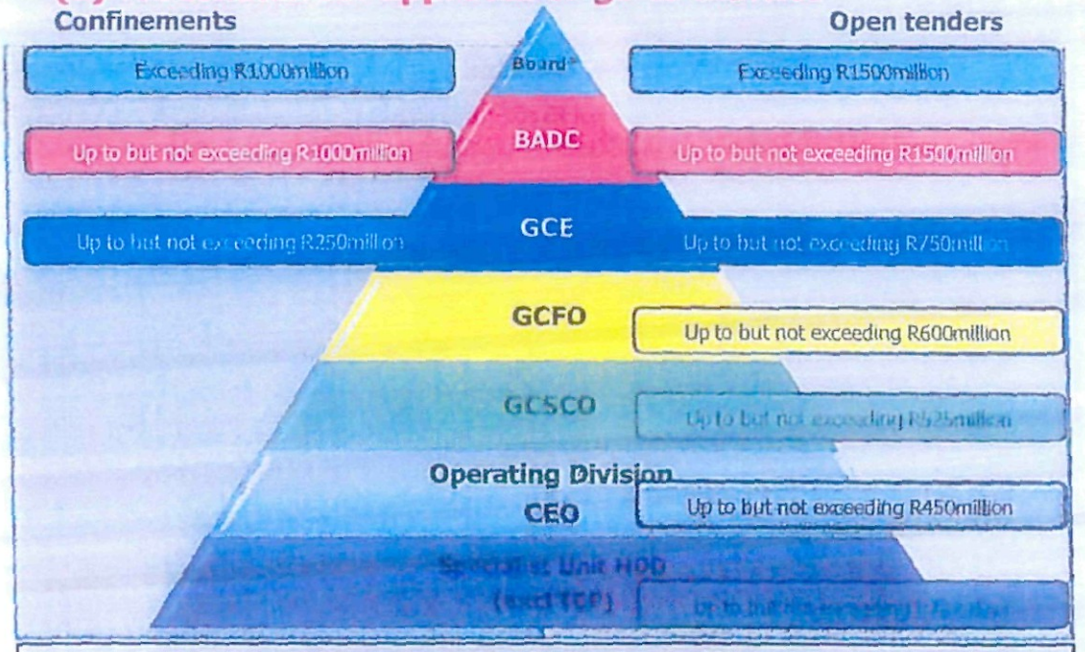
Procurement approval processes at Transnet

Going to market	Process approval	Contract sign off / award of business
• Prior approval of chosen procurement mechanism and strategy. • Differing thresholds for open tenders, confinements and consultants.	• Once the procurement process is complete, a recommendation must be made to the relevant governance structure (an Acquisition Council or higher) to approve the process followed. • Once the process is approved, the contract must be concluded by the person/structure with the appropriate delegation of authority.	• After approval of the process followed, the person/structure with the appropriate delegation of authority must award the business to the successful bidder and sign the contract.

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

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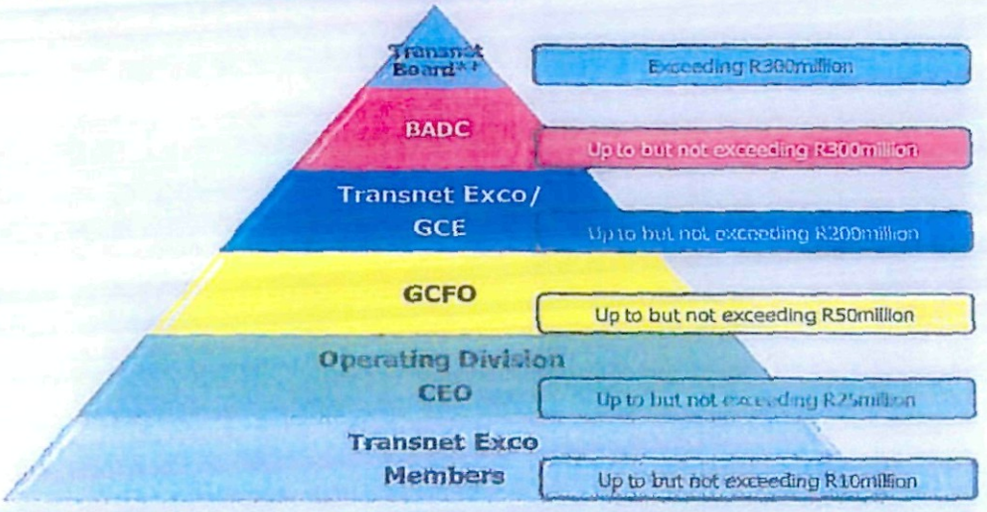
(b) Appointment of consultants*

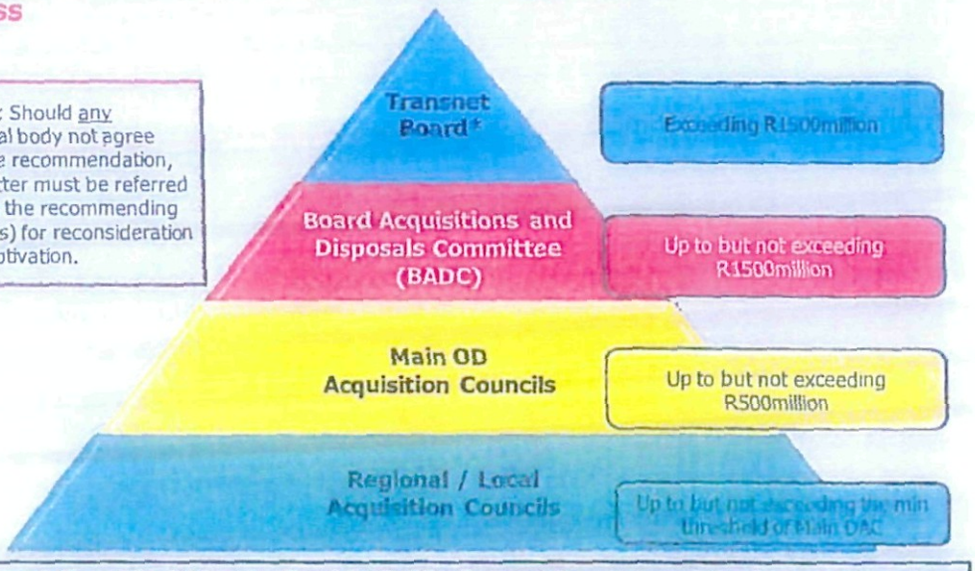


* Approval limits are cumulative per annum.
**In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R2,5 billion of the value of Transnet's asset base) before proceeding with the acquisition.
#In order to frame an approved list, 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)

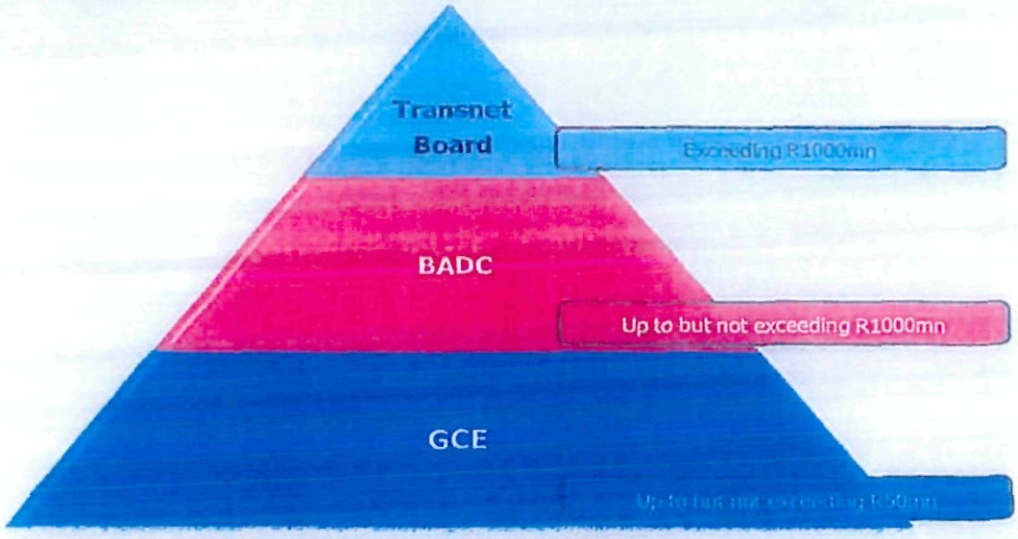


Figure [9] – Management's intervention to address non-compliance with procurement policies & procedures

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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

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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:

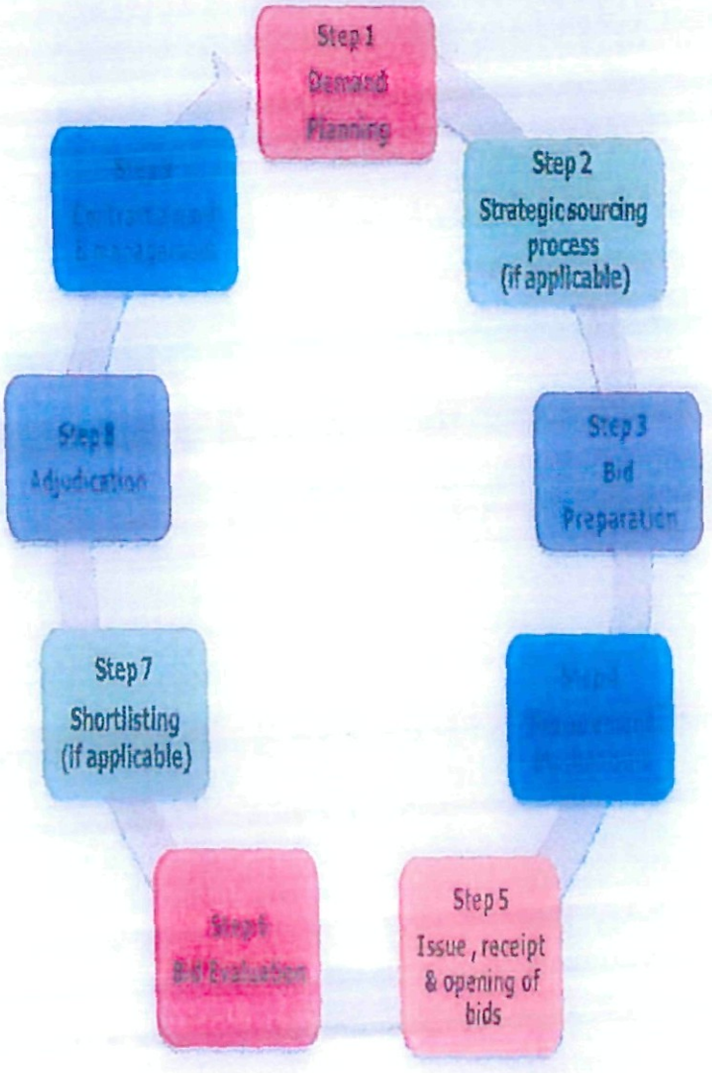

Figure [10] – The Procurement Cycle

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SECTION A: Background and Context

SECTION B: PROCUREMENT PLANNING

Chapter 7: Demand Planning & Demand Management
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- Measurement of BBBEE status

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- Two stage bidding process

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- High Value Tender Process
- Unsolicited bids
- Contract consolidation
- Acquisitions associated with income generating contracts

SECTION C: Go to Market

SECTION D: Evaluation and Adjudication

SECTION E: Contract Management

SECTION F: Functions of Governance Structures

Appendices

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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.

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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

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Figure 11 below gives an outline of the main steps in the demand management process.

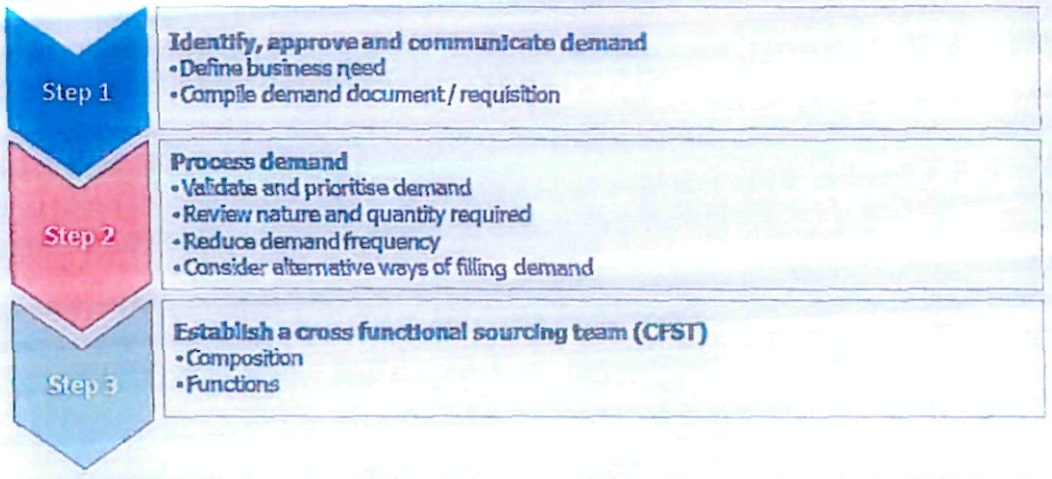
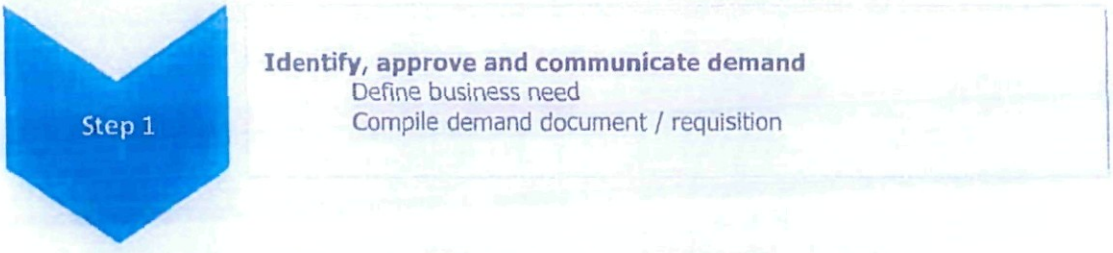


Figure [11] – Demand Steps

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)

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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:

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(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.

Step 3

Establish a cross functional sourcing team (CFST)

Composition

Functions

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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:

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- 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;

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- 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

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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.

Methodology for developing a Sourcing Strategy

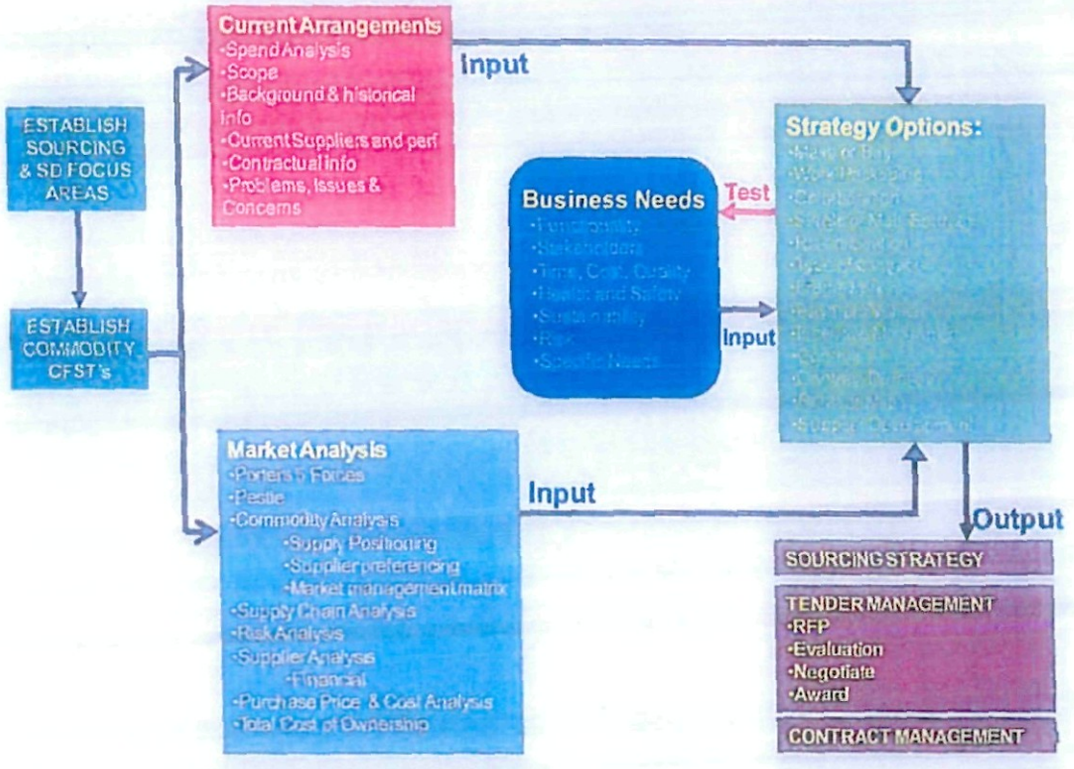

Figure [12] – Methodology for developing a sourcing strategy

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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.

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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.

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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.

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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	

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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.

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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*

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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:

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- 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.

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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;

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- 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.

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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
[illegible]			

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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

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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

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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).

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TABLE 13

Indicator	Required Responses	Compliance Target	Score out of 10
[illegible]			
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

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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. $\frac{100}{180} \times 15 = 8.33$

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

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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

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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.

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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:

Transnet's SD approach is to leverage the MDS infrastructure programme to foster economic growth and promote transformation

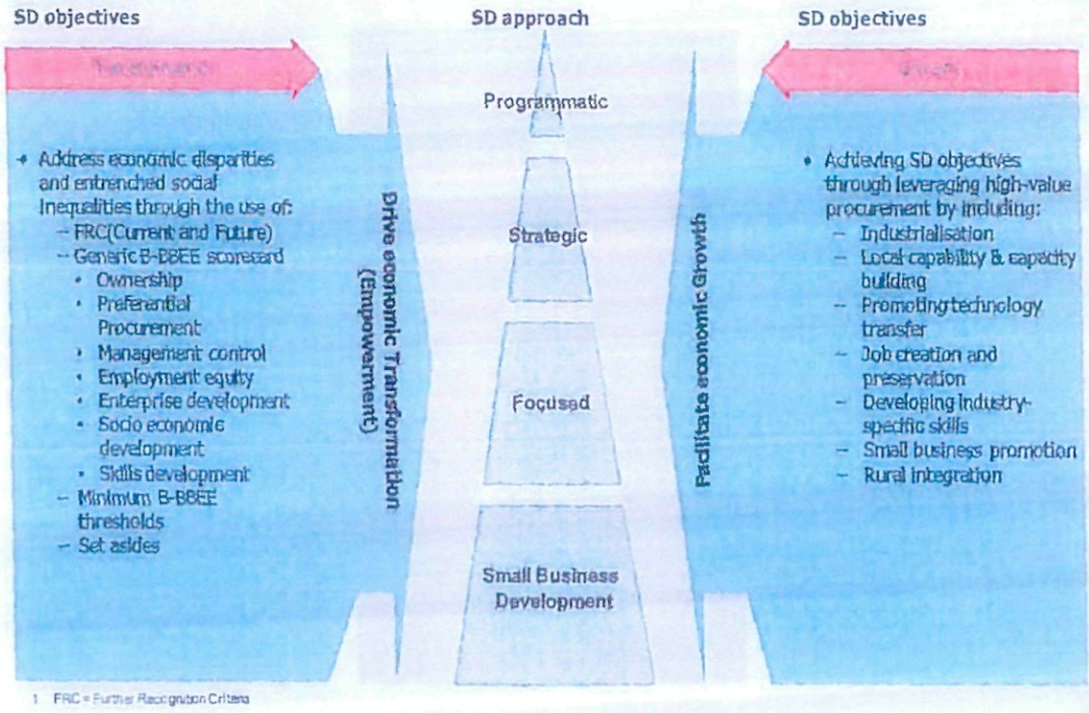

Figure [14] – SD Approach

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:

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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**

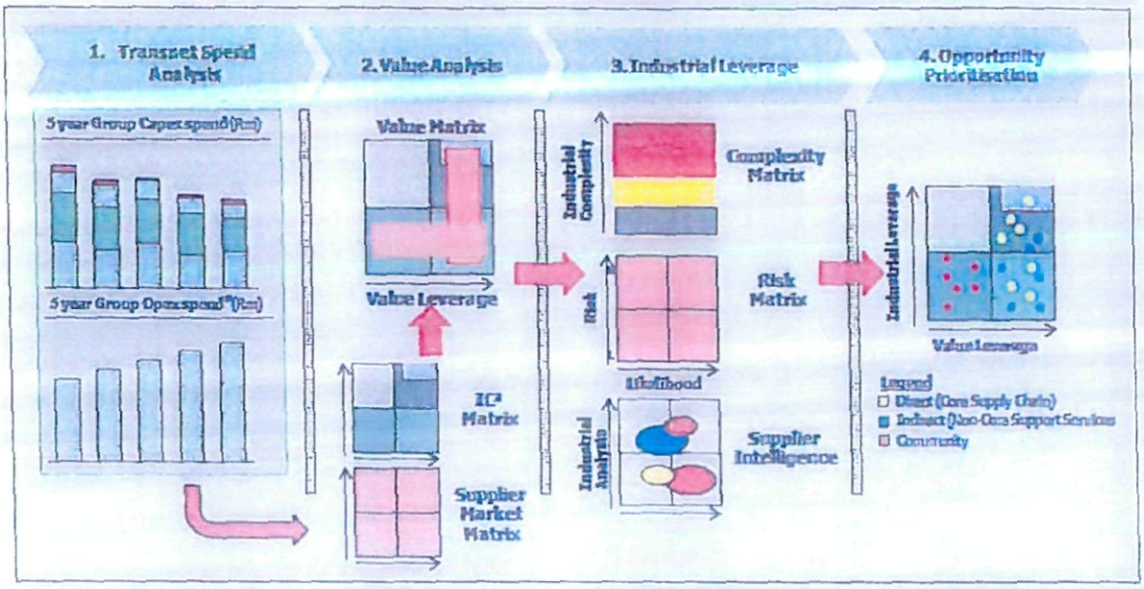
Focused initiatives include all medium to high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium term contracts that can be leveraged to encourage supplier and product development. The focus on investment in technology 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.



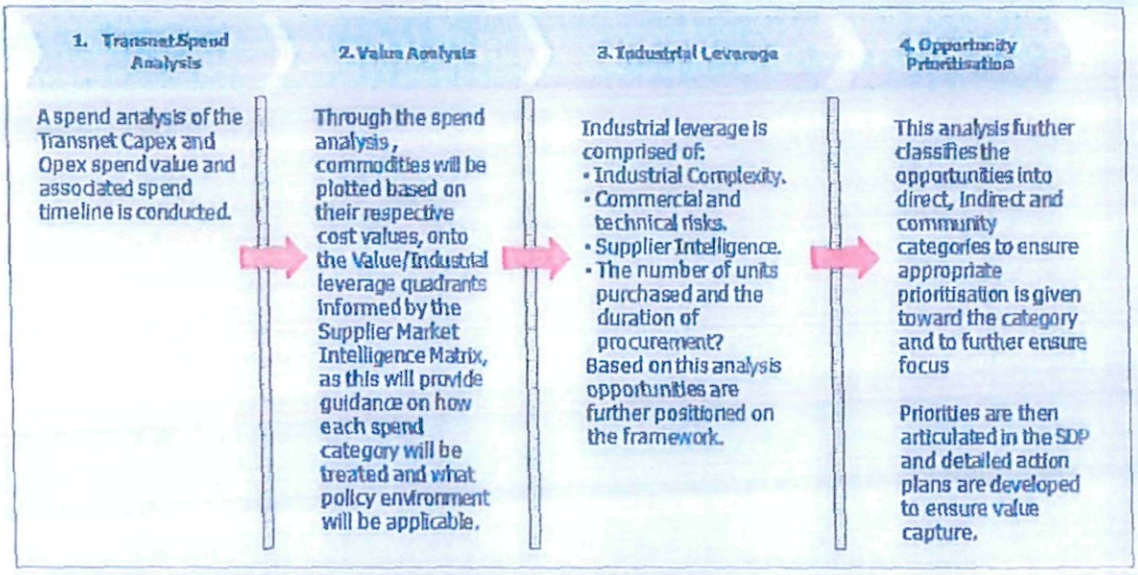


Figure [15] – 4 Step Process

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).

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The IC³ framework developed by the DPE was adopted to assist in the prioritisation of SD opportunities and includes transformation

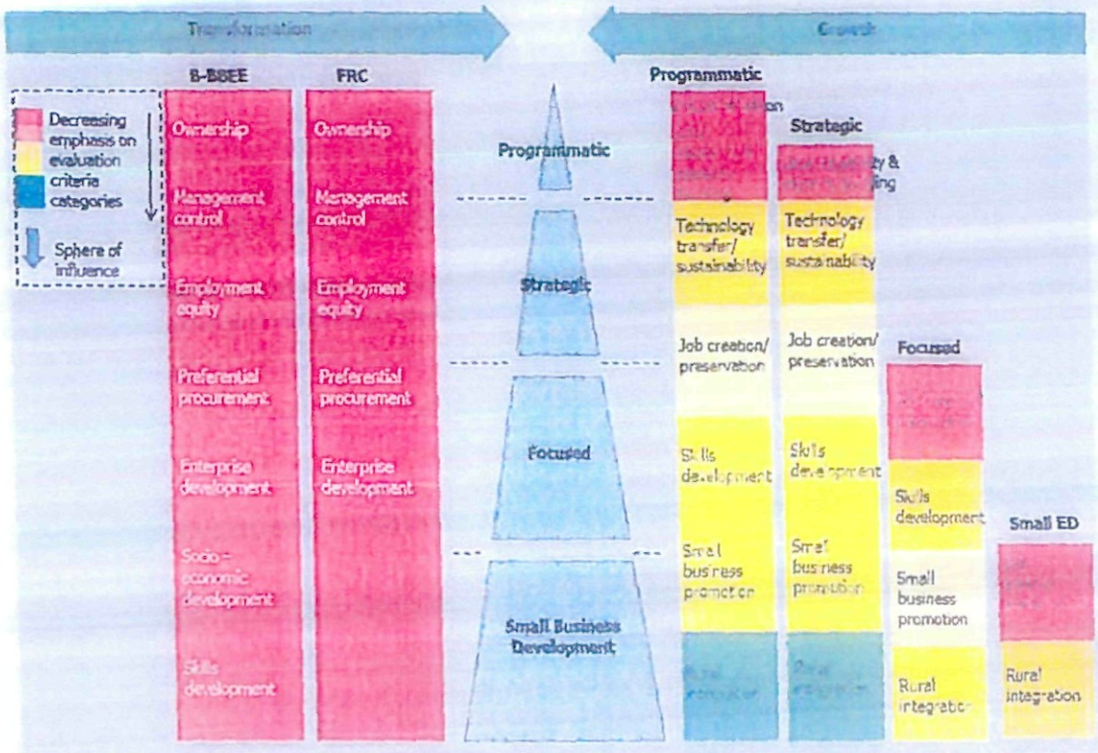

Figure [16] – SD Criteria

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.

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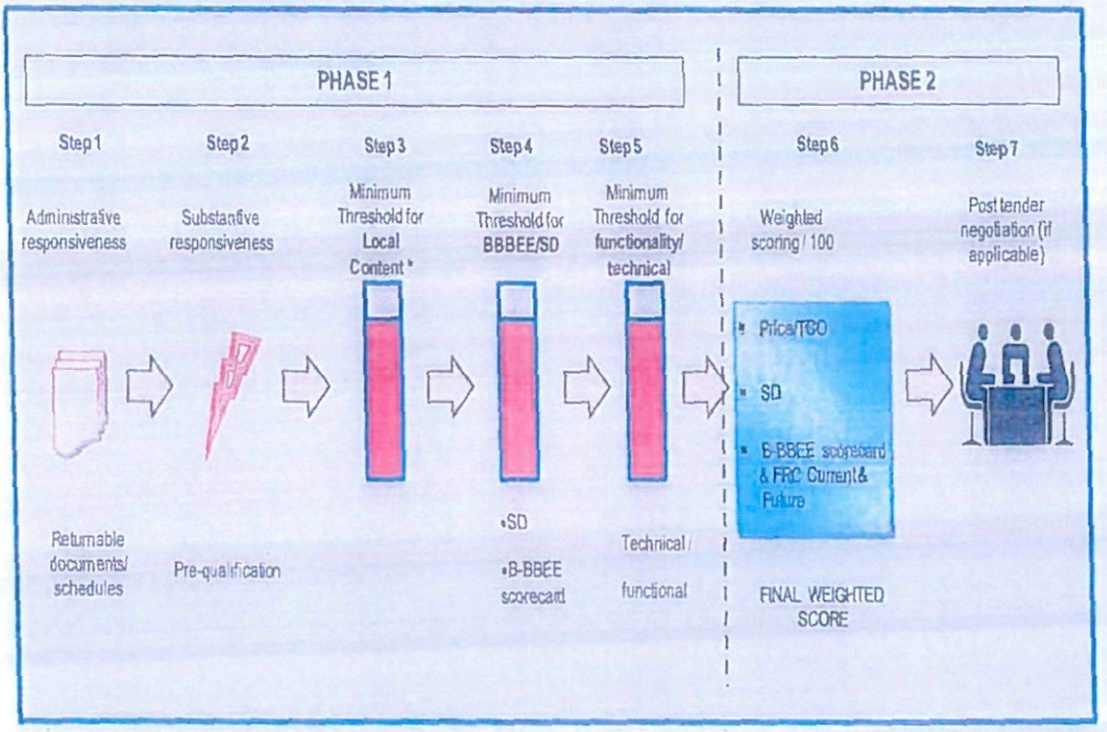
CHAPTER 13 : DETERMINING BID EVALUATION CRITERIA

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

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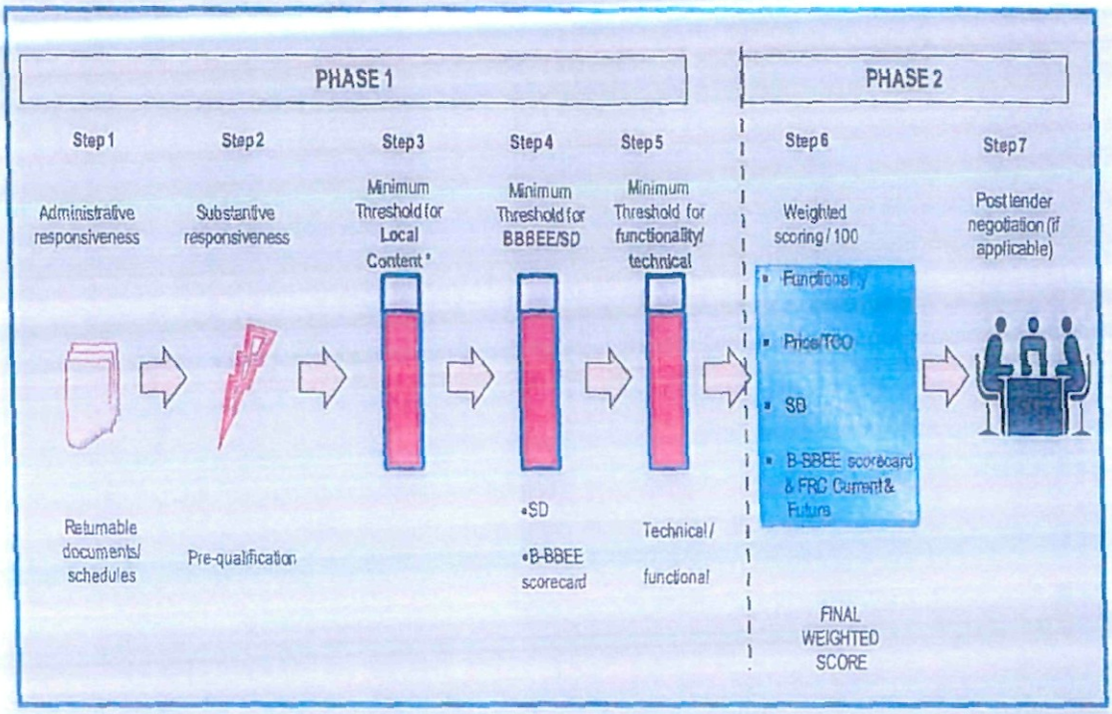
13.1.2 Method 2

(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*

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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.

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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).

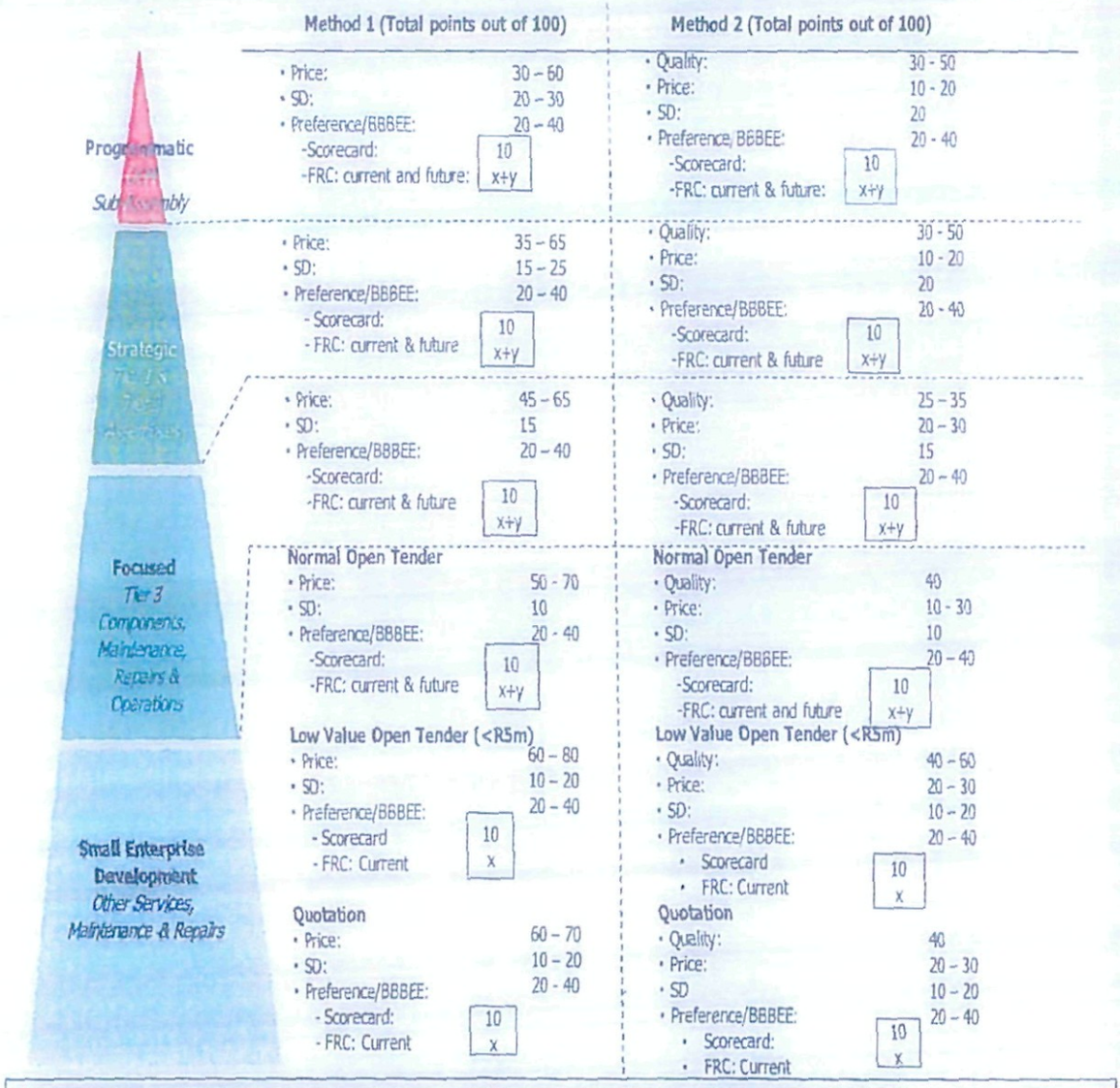

Figure [19]: Methods 1 & 2

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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.

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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:

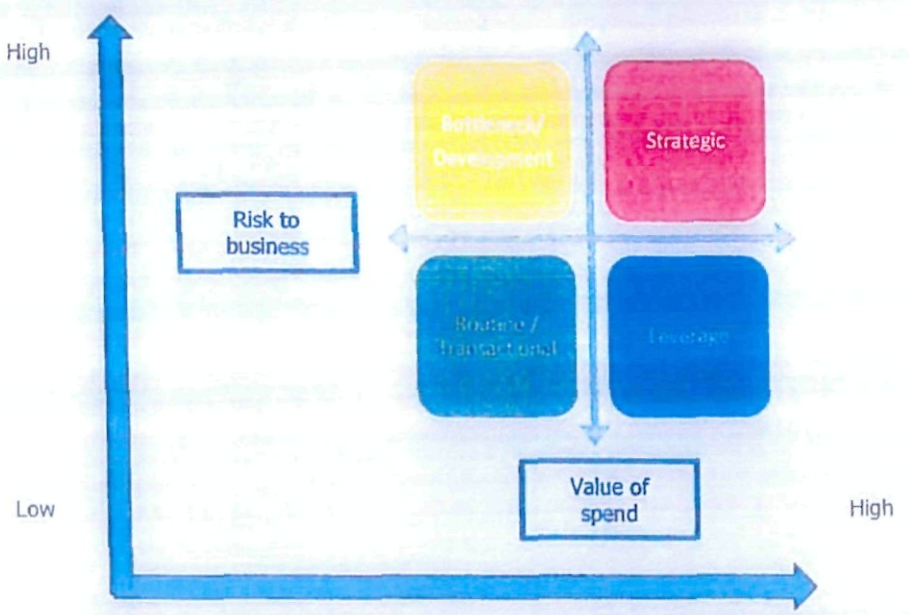

Figure [20] – Risk / Value Matrix

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

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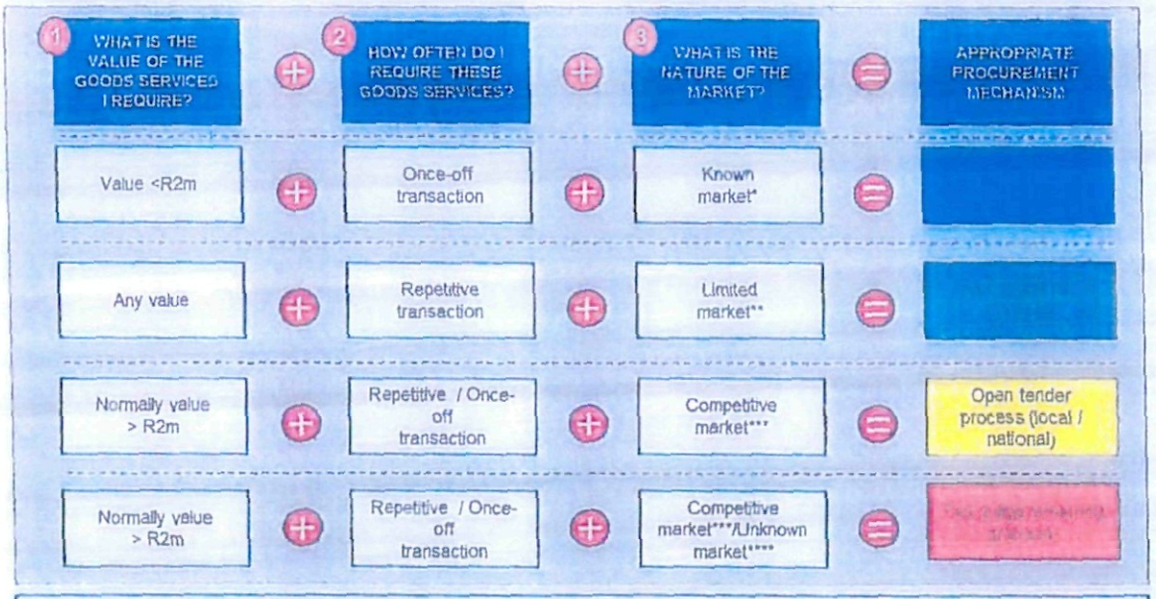
Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
	• Objective is to leverage economies of scale		medium term
Bottleneck/ Development	• High risk; low spend • Limited suppliers • These are items that Transnet must have but which are difficult to obtain • Critical items • 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

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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

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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

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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

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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.

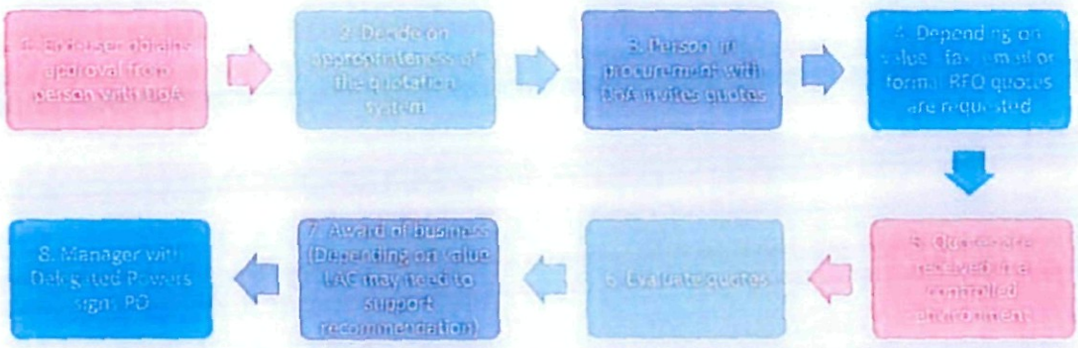

Figure [22] – Quotation Process

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;

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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

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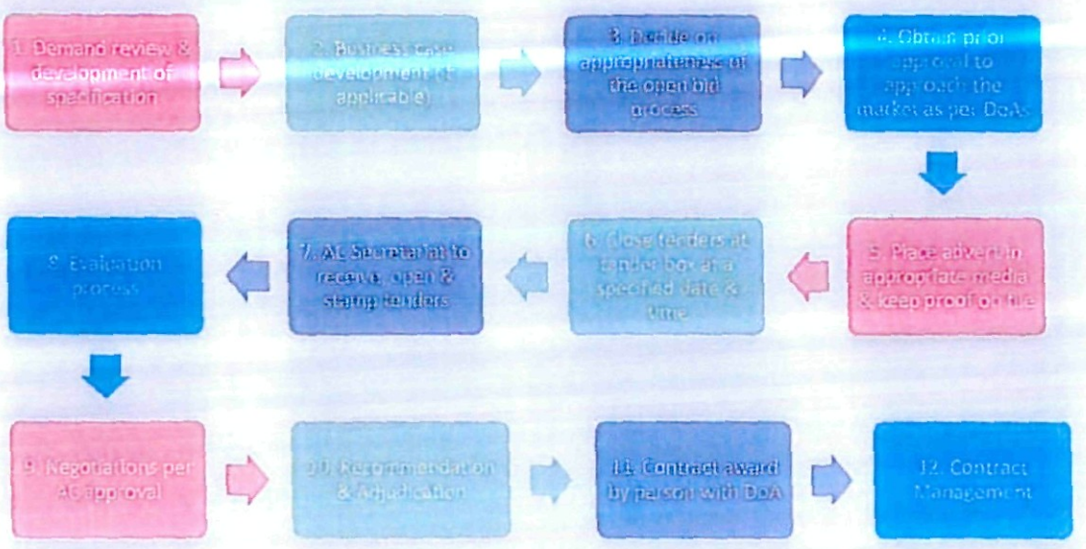

Figure [23] – Open Bid Process

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.

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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:

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- 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.

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(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.

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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.

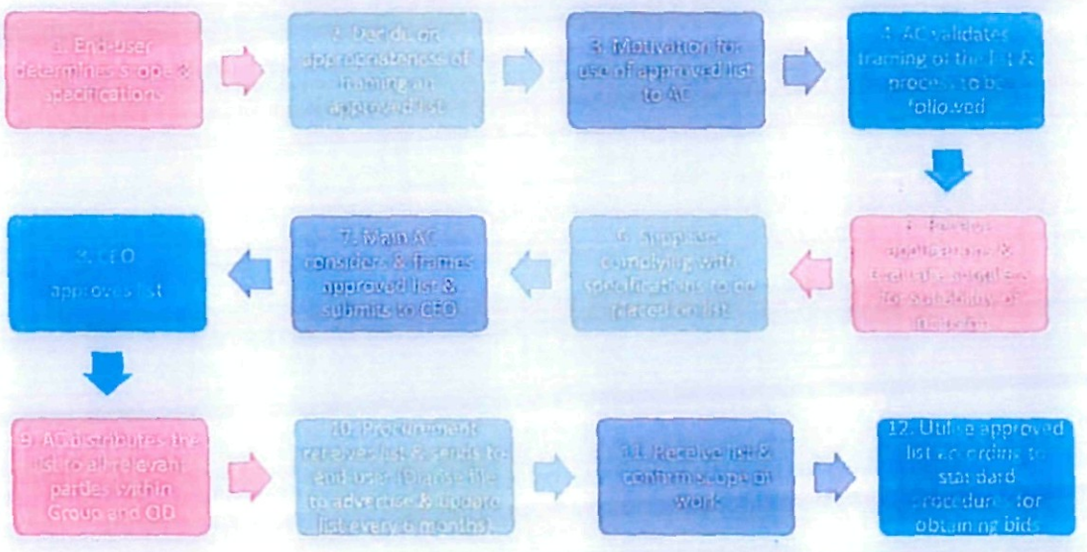

Figure [24] – Process to frame Approved List

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;

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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.

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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.

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(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.

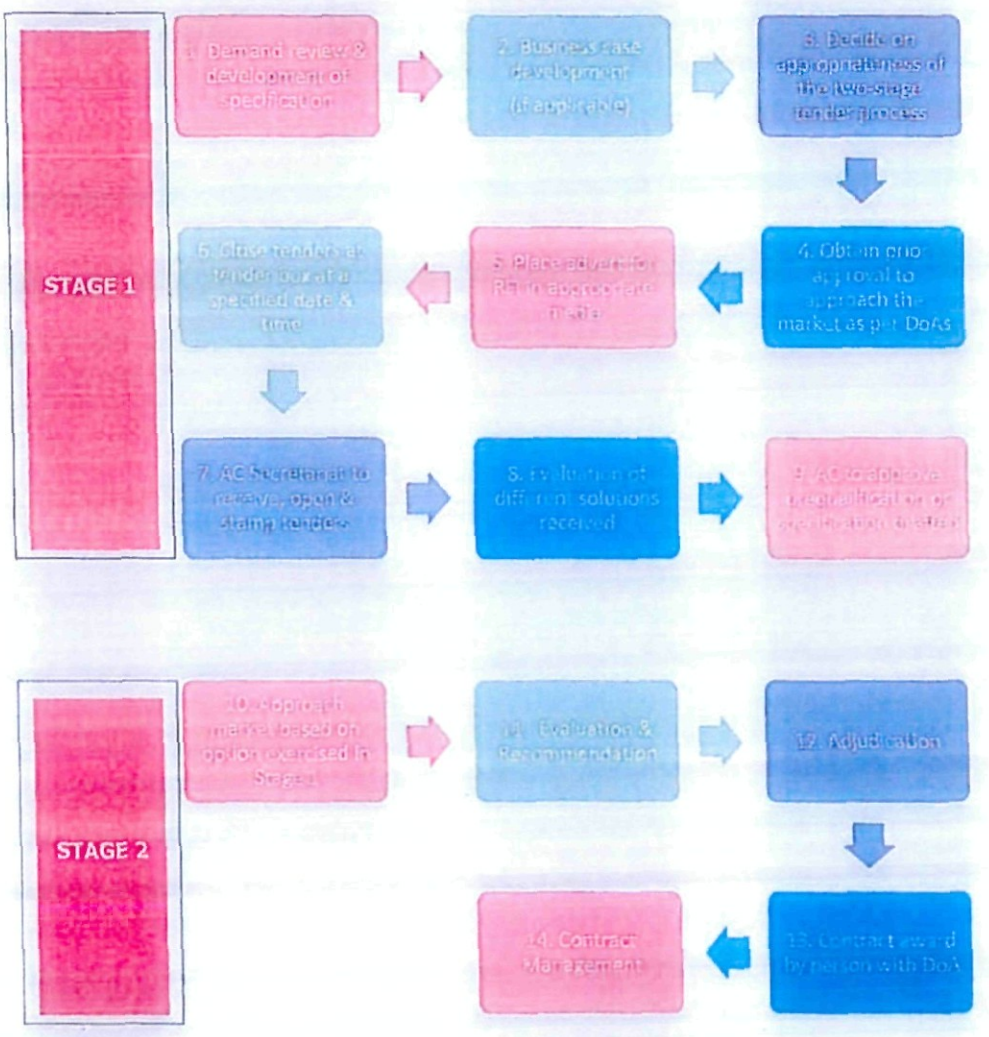

Figure [25] – Two stage bidding process

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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

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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.

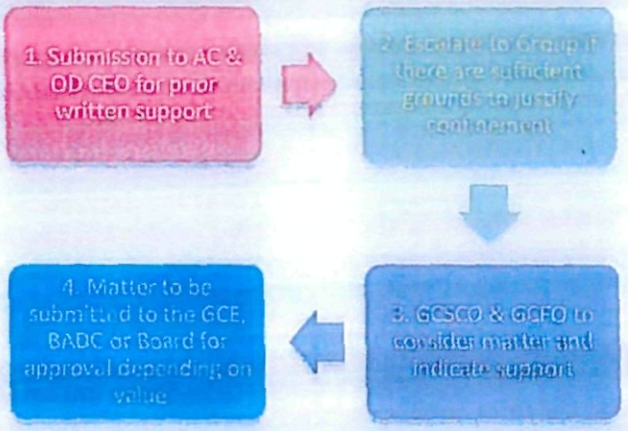

Figure [26] – The Confinement process

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.

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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.

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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.

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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:

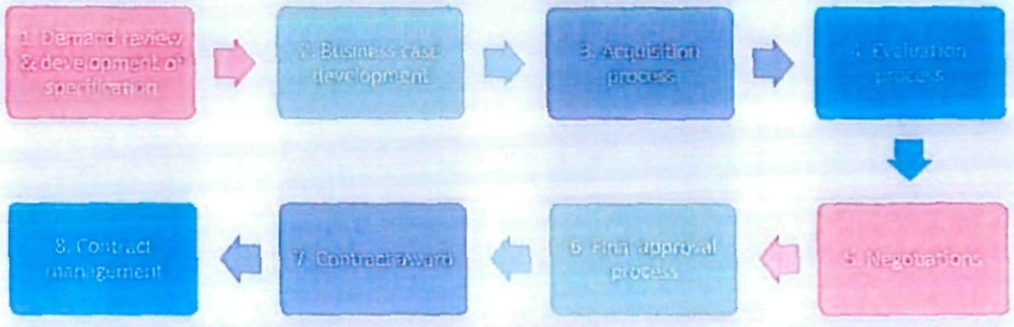

Figure [27] – The HVT process

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.

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- 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*

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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

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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:

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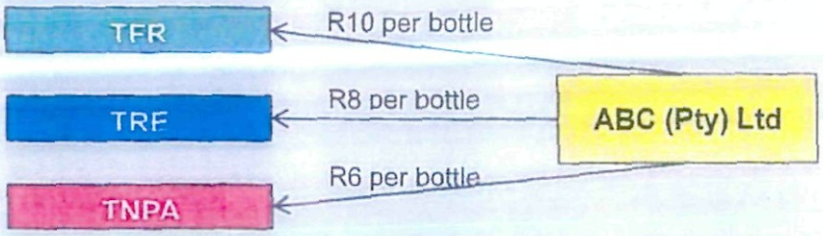
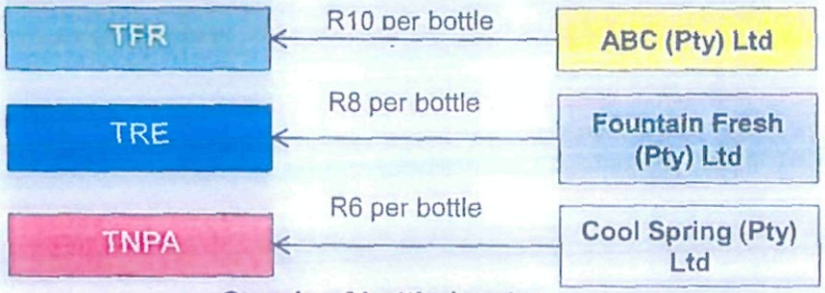


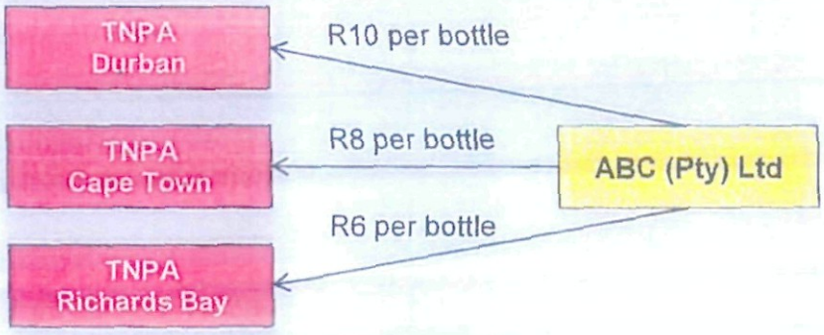
Supply of bottled water

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;

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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

SECTION D: Evaluation and Adjudication

SECTION E: Contract Management

SECTION F: Functions of Governance Structures

Appendices

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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.

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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;

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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.

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CHAPTER 17 : BID ADMINISTRATION
(issue, receipt, opening of bids and communication)

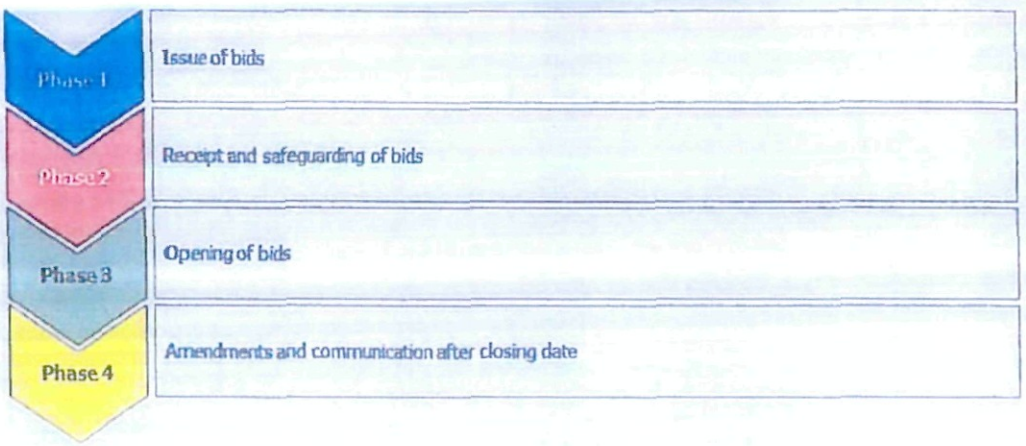
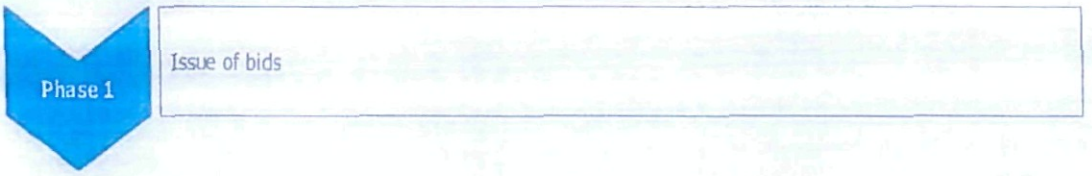


Figure [28] – Four phases of bid administration



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

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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 all 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

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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

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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,

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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

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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.



Opening of bids

17.3 PHASE 3: OPENING OF BIDS

17.3.1 Time and manner of opening of bids

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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

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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 on the same terms and conditions **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.

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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
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Chapter 20: Adjudication

- General principles of adjudication
- The role of the AC during adjudication
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SECTION E Contract Management

SECTION F Functions of Governance Structures

Appendices

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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.

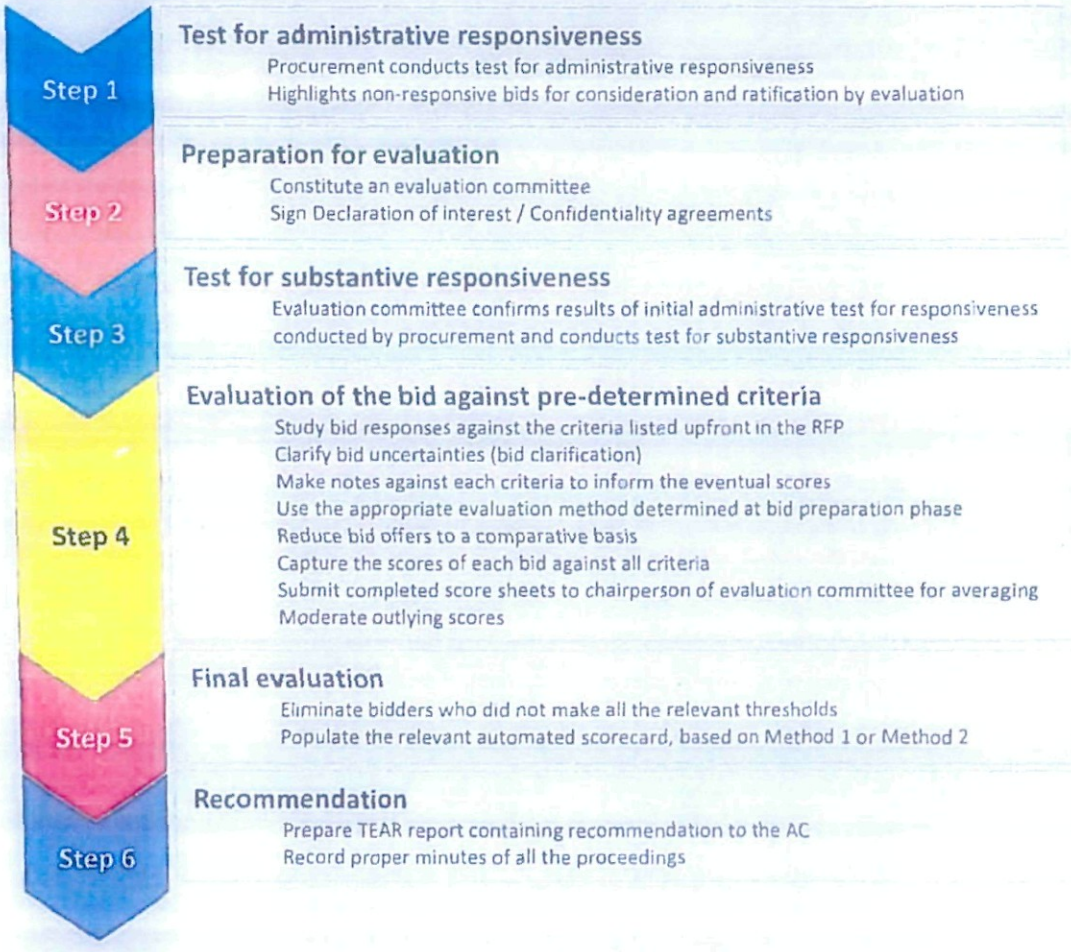
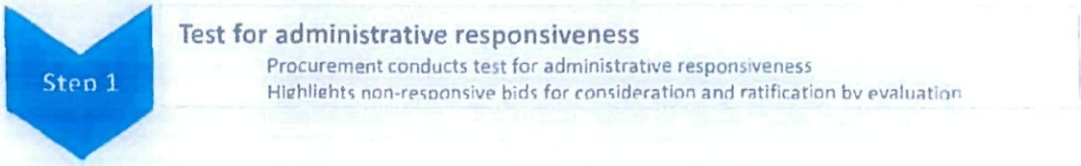


Figure [29] – 6 Steps for Bid Evaluation



18.1 TEST FOR ADMINISTRATIVE RESPONSIVENESS

18.1.1 Test for Responsiveness based on returnable documents submitted and signatures on the Bid documents:

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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 response 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



Preparation for evaluation

Constitute an evaluation committee
Sign Declaration of interest / Confidentiality agreements

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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.

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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.

Step 3

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

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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.

Step 4

Evaluation of the bid against pre-determined criteria

Study bid responses against the criteria listed upfront in the RFP
Clarify bid uncertainties (bid clarification) in terms of 17.4.3
Make notes against each criteria to inform the eventual scores
Use the appropriate evaluation method determined at bid preparation phase
Reduce bid offers to a comparative basis
Capture the scores of each bid against all criteria
Submit completed score sheets to chairperson of evaluation committee for averaging
Moderate outlying scores
Apply relevant weightings to determine final weighted scores

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)

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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	
Reduct on 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.

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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

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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	33.25

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

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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.



Final evaluation

Eliminate bidders who did not make both the thresholds

Populate the relevant automated scorecard, based on Method 1 or Method 2

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.

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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.

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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

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- 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 122 896 753	R 119,000,000	58.04	17.30	Level 4	7	6	88.34	3	3.27	R 3,896,753
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.

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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	67.00	4	0.00	R 0
BIDDER B	R 111,837,221	R 95,574,943	16.60	28.40	16.67	Level 1	10	5	76.67	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	57.88	R 55,321,810
BIDDER D	R 170,965,432	R 95,574,943	4.22	38.00	18.60	Level 2	9	7	76.82	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		16.8	10	26.8
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

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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

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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.

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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;

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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

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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.

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SECTION B Procurement planning

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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
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Chapter 23: Blacklisting

- Definition of blacklisting
- Grounds for blacklisting
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- Appropriate blacklisting period
- Representation
- Blacklisting procedure
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Functions of Governance Structures

Appendices

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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.

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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*

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- 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)

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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%*

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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

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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:

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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

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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

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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.

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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;

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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.

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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.

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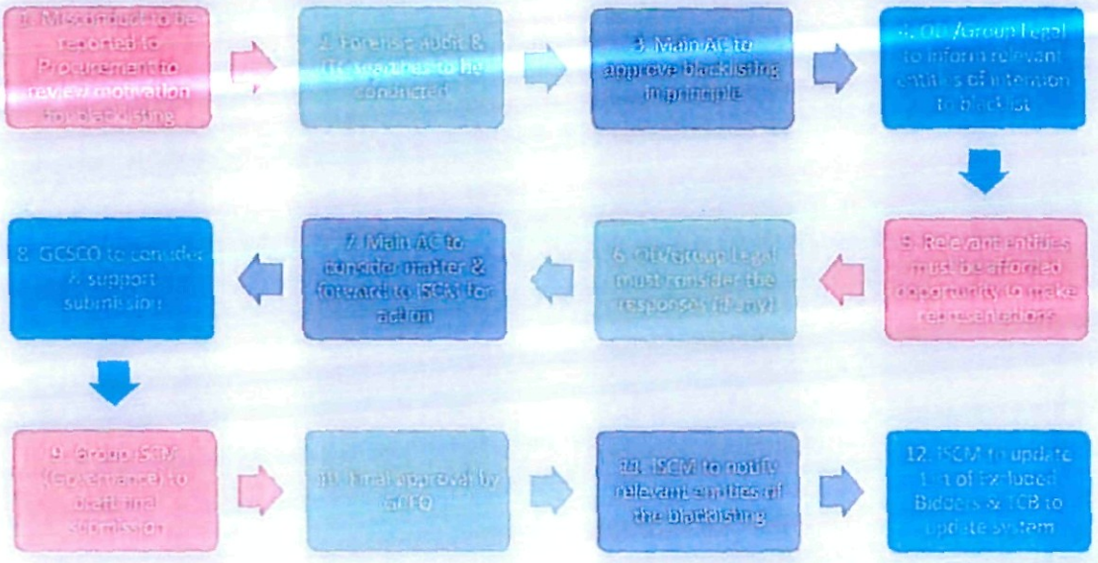

Figure [37] – The blacklisting process

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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

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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.

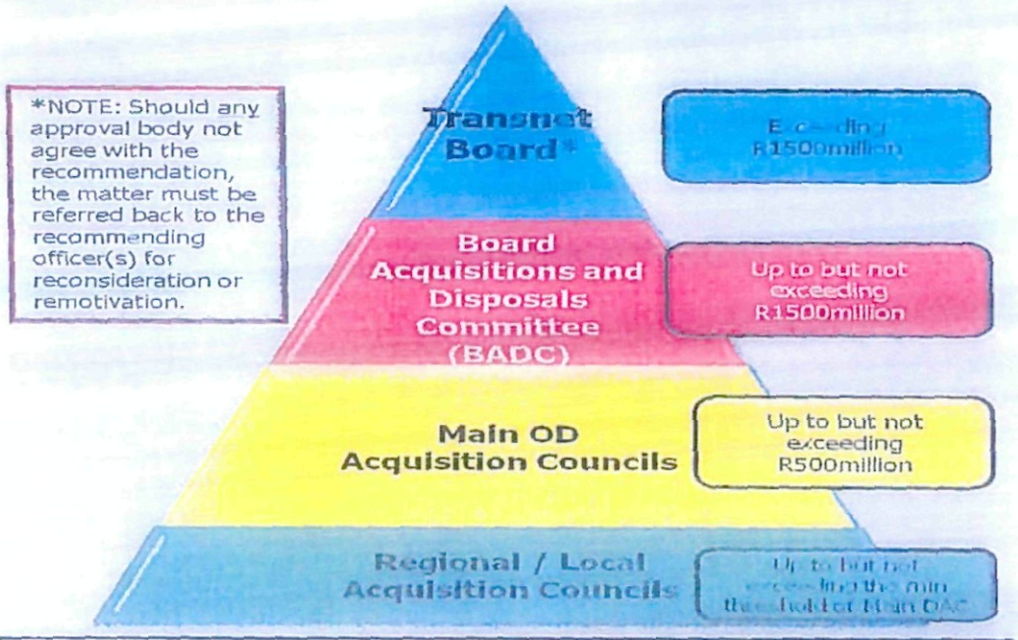

Figure [38] – Thresholds for process approval

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.

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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

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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.

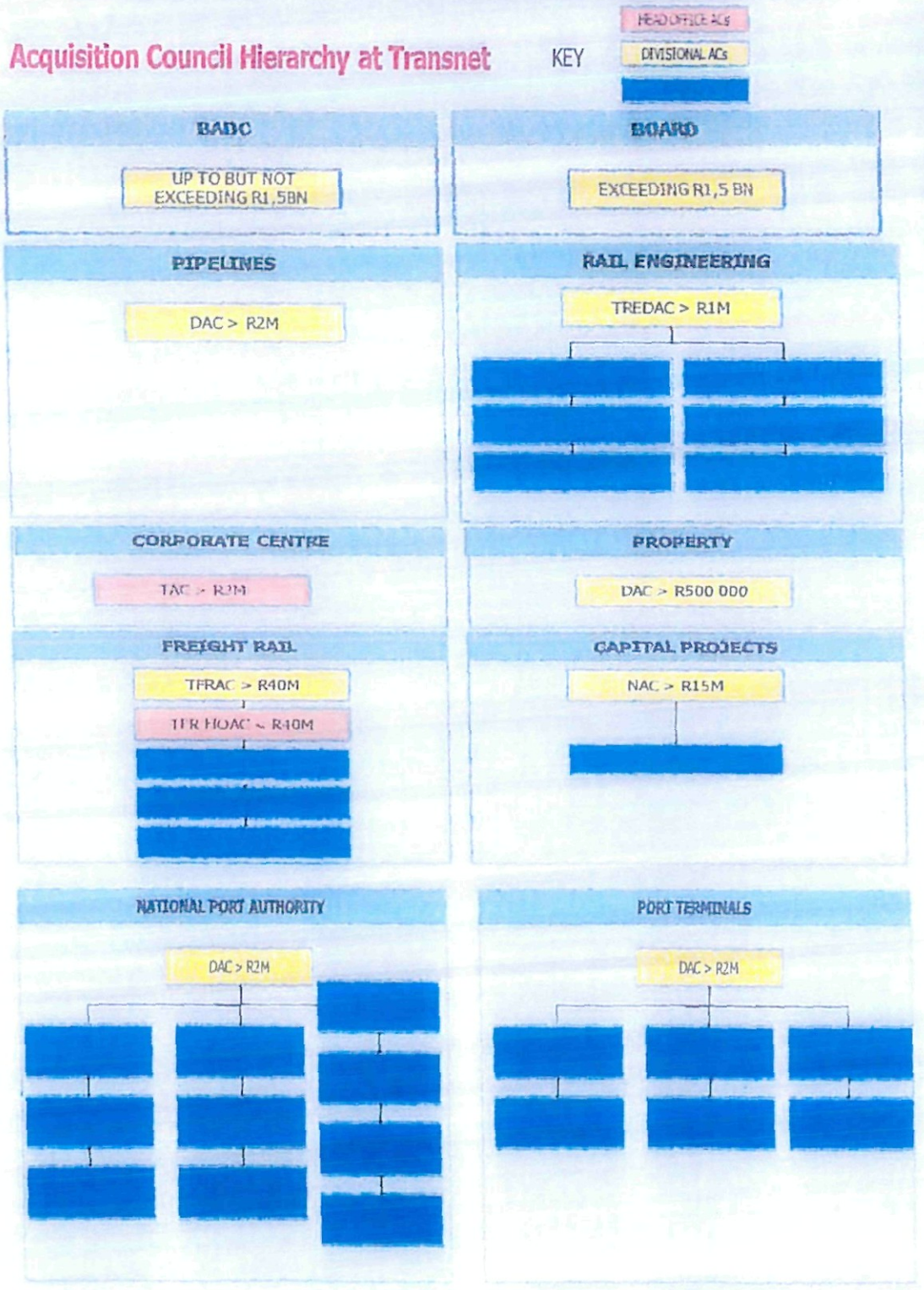

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Figure [39] – Acquisition Council Hierarchy at Transnet

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.

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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;

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(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.

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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:-

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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

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(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.

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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.

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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.

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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.

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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

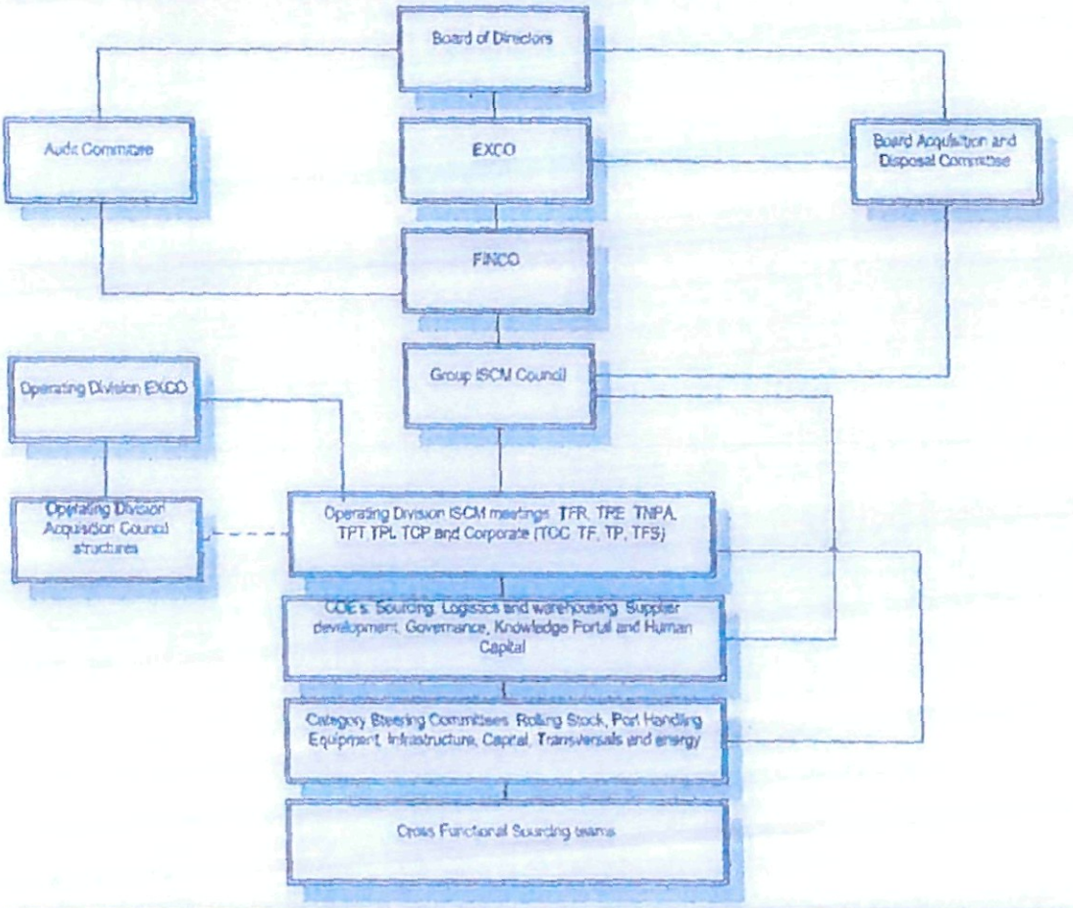

Figure [40] – iSCM Governance hierarchy

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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]*):

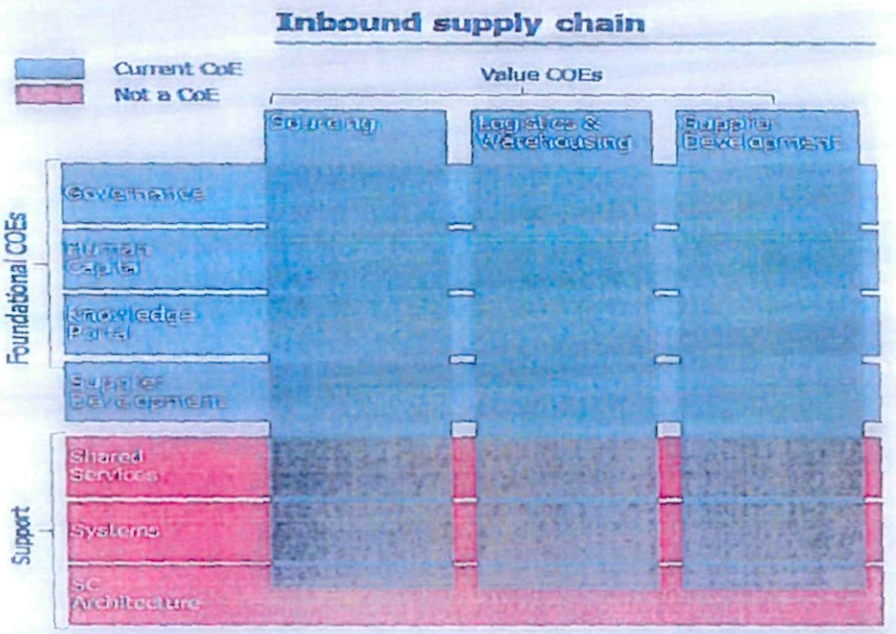

Figure [41] – Centres of Excellence

24.6.4 Integrated Supply Chain Management (ISCM) Strategic Themes

The following are the key strategic iSCM themes:



Figure [42] – iSCM themes

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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

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- 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.

0058-0373-0001-0363

EXHIBIT 5

TRANSNET

TRANSNET DELEGATION OF AUTHORITY FRAMEWORK

(EFFECTIVE FROM 1 SEPTEMBER 2012)

APPROVED BY THE TRANSNET BOARD OF DIRECTORS ON 29 AUGUST 2012

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1 Interpretation and Definitions

The following words and expressions bear the following meanings, unless the context indicates otherwise:-

1.1 **"Board"** means the Board of Directors of the Company and includes the Board when it acts in the capacity as the Divisional Board of the deemed Authority under the National Ports Act No. 12 of 2005;

1.2 **"Board Reserved Matters"** means matters reserved by the Board as set out in Annexure A1 of Written resolution 2011/P2;

1.3 **"CAPIC"** means the Capital Investment Committee, a committee of the Group Executive Committee which has been established to make decisions regarding capital expenditure;

1.4 **"CE"** means Chief Executive of an Operating Division;

1.5 **"Company"** means Transnet SOC Ltd including its Operating Divisions and Specialist Units, with registration number 1990/000900/30 and **"Transnet"** shall have a corresponding meaning;

1.6 **"Company Strategy"** means the strategy for the Company as approved from time to time by the Board.

1.7 **"Consultant"** means a person, or partners in a firm, or a company or a close corporation who can provide expert or specialised advisory skills, but excludes anyone who also carries out the physical work or provides the end product for Transnet based on his own professional or expert advice. Such consultancy service normally pertains to a specific project and therefore non-repetitive in nature and confined to design work, investigation, or advice on management, financial, business or technical matters;

In short, a consultant does not supply the ultimate end product, but merely gives a recommendation, based on his expertise, of the best solution to a specific problem. That proposed solution, if acceptable to Transnet, still has to be acquired, built or erected by another party and may or may not be connected with the consultant. Excludes any professional services procurement package included in the approved asset procurement package plan for and approved physical asset project.

1.8 "**Delegation of Authority Framework** " means this document, recording the nature and extent of authorities required in order to implement certain actions by or on behalf of the company, including any sub-delegation of authority where permitted and **"Delegation"** shall have a corresponding meaning;

1.9 "**FRMF**" mean Financial Risk Management Framework

1.10 **"GCE"** means Transnet Chief Executive of the Company;

1.11 **"GCFO"** means Transnet Chief Financial Officer;

1.12 **"GCSCO"** means Transnet Chief Supply Chain Officer;

1.13 **"Group Executive Committee"** or **"Group Exco"** means the executive committee established to take responsibility for the day to day execution of strategy and running of the Company;

1.14 **"Group Executive or Group Executive nominee"** refers to the Group Executive responsible for the supporting business or his/her nominee;

1.15 **"International agreements"** means agreements entered into with entities incorporated in foreign jurisdictions or which are required to be construed in accordance with the laws of a foreign jurisdiction including the neighbouring countries;

1.16 **"Memorandum of Incorporation"** or **"MOI"** means the constitutive documents of the Company, as amended;

1.17 **"Neighbouring Countries"** means countries sharing a border with the Republic of South Africa;

1.18 **Operating Divisions** means the Operating Divisions of Transnet, namely, Transnet Freight Rail, Transnet Rail Engineering, Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines;

1.19 **"PFMA"** means the Public Financial Management Act 1 of 1999 (as amended), read together with its regulations' including Treasury Regulations;

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1.20 "Shareholder Minister" means the Minister of Public Enterprises;

1.21 **"Shareholder's Compact"** means the Shareholder's Compact annually concluded between the Company and the Shareholder in terms of Regulation 29 of the Treasury Regulations;

1.22 **"Specialist Unit"** mean all business units of Transnet which have been deemed 'supporting businesses' in terms of the Company Strategy, these include Transnet Property, Transnet Foundation, Transnet Capital Projects and Transnet Corporate Centre. Where a Specialist Unit CE is not a member of the Group Exco, the Group Exco member responsible for such Specialist Unit shall sub-delegate powers to the Specialist Unit's CE;

1.23 **"Subsidiary"** means subsidiary as defined in the Companies Act 71 of 2008 (as amended) and Subsidiaries shall have a corresponding meaning;

1.24 **"Transnet"** means the Company with its subsidiaries.

1.25 **"Treasury Regulations"** means the regulations promulgated by the Minister of Finance in terms of section 76 of the PFMA, as published in the *Government Gazette* of 15 March 2005 under Government Notice No R225 and as amended from time to time;

1.26 **Transnet Total Asset base:** refers to the total value of the assets in Transnet and is set at the asset value indicated in the integrated report for the year; and

1.27 "VAT" means Value Added Tax. All amounts indicated in the document are exclusive of VAT.

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2 Scope

This Delegation of Authority Framework records the nature and extent of the authorities delegated by the GCE to certain employees and members of the Group Exco and other authorities delegated in order to implement certain actions by or on behalf of the Company. It includes, to the extent necessary and/or incidental thereto, the authority to discharge all of the duties, obligations and powers imposed upon the deemed Authority under the National Ports Act 12 of 2005.

3 Application

3.1 This Delegation of Authority Framework applies to all employees of the Company, including its Operating Divisions and Specialist Units. It does not apply to any of the Company's subsidiaries. The respective Boards of Directors of the Company will prepare the requisite delegations of authority for those subsidiaries.

3.2 The persons set out in clause 5 below are granted the power and /or authority to perform their functions and responsibilities subject to the limits of authority outlined in clause 5 below, provided that the exercise of such power and/or authority in terms of this delegation is not in conflict with the following:

- PFMA;
- Board Reserved Matters;
- Memorandum of Incorporation;
- Company Strategy;
- Shareholder's Compact;
- the Corporate Business Plan, annual Budget and Borrowing Strategy and/or Funding Plan of the Company as approved by the Board from time to time;
- Enterprise Risk Management Framework; and
- Any approvals by the Board and the Minister of Finance for the delegation of the power to borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Company to any future financial commitment in terms of section 66 of the PFMA.

3.3 This Delegation supersedes any prior Delegations of Authority Framework and takes effect upon the date determined by the Board of Directors.

3.4 Any proposal for amendments to this Delegation or to the authorities or the authorities delegated in this Delegation must be submitted in writing to the Transnet Company Secretary for consideration and approval by the Board of Directors.

4 Delegating Powers

4.1 A person authorised to exercise any of the authorities set out in clause 5 below ("original bearer of authority") may, in writing, sub-delegate to his/her subordinate ("designate") during his/her temporary absence or for an indefinite period, provided:

4.1.1 the authority is conferred by way of a certificate signed by the original bearer of authority, naming and identifying the designate, and the extent of the authority which is sub-delegated to the designate;

4.1.2 the sub-designated authority shall only be exercised within the original bearer of authority's respective area of responsibility; and

4.1.3 the sub-delegated authority may be revoked at any time by the original bearer of authority.

4.2 Unless otherwise specifically indicated, approval of any of the matters listed in clause 5 below may be granted by a designate.

4.3 With respect to all matters and authorities specifically listed in clause 5 below, the delegated authority by the GCE to bind the company is in regard to any business activity or transaction (or a series of related transactions) and is subject to the value in the aggregate of all payments or any consideration made or to be made for any such business activity or transaction(s) being complied with.

4.4 The original bearer of authority or designate must ensure that all the necessary procedures and/or approvals have been fulfilled prior to exercising any of the matters and authorities listed in clause 5 below.

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5 Company Authorities

Limits of authority have been delegated by the Board of Directors to the Transnet Group Chief Executive. In the interest of good corporate governance, approval structures have been established in the Company. Requests for approval must follow the approved governing processes and structures for recommendation but the final approval vests with the delegated individual (for example CE, GCFO, GCE) as reflected in the specific delegations set out in this document.

In cases where business requirements necessitate that approval be obtained from the delegated authority without the review and recommendation by the relevant governance structures (CAPIC, Group Exco, etc) this must be reported to the relevant governance structures immediately thereafter.

The authority to approve the Annual Corporate Plan and Budget of the Company vests with the Board of Directors, provided that it must be submitted to the Shareholder in terms of Section 52 of the PFMA.

5.1 Capital Expenditure

NOTE 1: Capital expenditure may only be authorised if the project has been so approved by CAPIC or the relevant divisional CAPIC in accordance with the limits set out in this Delegation of Authority Framework and capital funds have been allocated in the annual Budget of the Company.

NOTE 2: Capital expenditure may only be authorised if the project has been approved and a warrant number has been issued by the relevant authority. All requests for capital expenditure exceeding the Divisional CE's limit must be submitted to the project administrator at Transnet Financial Planning.

5.1.1 CAPEX in approved budget/Corporate Plan: To commence projects

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco /GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Operating Divisions	Up to but not exceeding R200m	Up to but not exceeding R400m	Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Up to but not exceeding R2500m	Exceeding R2500m
Approval Authority →	**Group Exco Member**		**Transnet CAPIC/GCFO**	**Group Exco /GCE**	**Board Acquisitions and Disposals Committee**	**Board**	**Shareholder Minister**
Specialist Units	Up to but not exceeding R20m		Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Up to but not exceeding R2500m	Exceeding R2500m

*Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.
Approval limits are per individual project, reported on a monthly basis to Group Financial Planning.
Amounts indicated above exclude the capitalisation of borrowing costs.
All ICT projects requiring Transnet approval must be signed off by the Head: Enterprise Information Management Services.
Board Acquisitions and Disposals Committee refers to the Acquisitions and Disposal Committee of the Board. Group Exco/GCE to be the final approval gate for all capitalisation of maintenance projects (COPEX) irrespective of the value of the project provided that it has been included in the Corporate Plan.
Front end loading (FEL) studies for level 1 and 2 may be approved in terms of the operating expenditure DoA, FEL 3 studies may be approved as standalone (excluding execution) per the above table. Please refer to the Accounting Policy for Conceptual, Pre-feasibility and Feasibility Studies when capitalising FEL studies.

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5.1.2 Unforeseen CAPEX (not included in budget/Corporate Plan)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Operating Divisions	Up to but not exceeding R50m	Up to but not exceeding R75m	Up to but not exceeding R400m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R1250m	Exceeding R1250m
Approval Authority →	Group Exco Member		Transnet CAPIC/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Specialist Units	Up to but not exceeding R20m		Up to but not exceeding R400m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R1250m	Exceeding R1250m

*Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.
All unforeseen Capex approved by Operating Divisions/Specialist Units within their delegated authority, must be reported on a quarterly basis to Group Financial Planning.
Amounts indicated above exclude the capitalisation of borrowing costs.
All ICT projects requiring Transnet approval must be signed off by the Head: Enterprise Information Management Services
Approval limits are per project at Operating Divisional level subject to an aggregate divisional limit of R200m per annum and R400m for TFR on condition that divisions remain within their annual approved capital budget (refer to 5.1.4). If an unforeseen project will result in the divisional 7 year investment plan being increased then Group Exco needs to be approached for approval.

5.1.3 Increase in Estimated Total Cost (ETC) of Existing/Approved Projects

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	ETC may be increased to a maximum of R200m, increases beyond this amount may only be approved at Transnet Level	ETC may be increased to a maximum of R400m, increases beyond this amount may only be approved at Transnet Level	Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R1400m	Exceeding R1400m
Approval Authority →	Group Exco Member		Transnet CAPIC/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	ETC may be increased to a maximum of R20m, increases beyond this amount may only be approved at Transnet Level		Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R1400m	Exceeding R1400m

Increase in ETC of projects already approved by the Shareholder Minister must be reported to the Shareholder Minister if the increase is in excess of 15%.
All ICT projects requiring Transnet approval must be signed off by the Head: Information Management Services.
All cost increases in excess of 25% of the approved budget for a project must be reported to Transnet CAPIC/GCFO.

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Amounts indicated above exclude the capitalisation of borrowing costs. Increases in ETC of a project solely due to the capitalisation of borrowing costs may be approved by the OD Exco/CE. Project costs and capitalisation of borrowing costs are to be managed separately and may not be expended on projects interchangeably.

5.1.3.1 Any increase in excess of the annual approved capital investment budget must be submitted to Transnet CAPIC/GCFO for approval.

5.1.4 **Asset Write-off/Scrapping: Movable Assets**

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m

The above amounts refer to net book value and are a cumulative annual limit. Write-offs above R10m and above R50m in the case of TFR must be reported to Transnet CAPIC/GCFO quarterly.

5.1.5 **Asset write-off/Scrapping/Demolition of Immovable Assets (excluding land) e.g. buildings, structures**

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board*
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R150m	Up to but not exceeding R250m	Up to but not exceeding R300m	Exceeding R300m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board*
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R300m	Exceeding R300m

*Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.
The above amounts refer to an estimated market value at that point in time and are a cumulative annual limit.
Write-offs below R10m and below R50m in the case of TFR must be reported to Transnet CAPIC/GCFO quarterly.

5.1.6 **Disposal of Movable Assets (excluding sale of scrap)**

Approval Authority →	OD Exco/CE*	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board#
Operating Divisions	Up to but not exceeding R50m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m
Approval Authority →	Group Exco Member	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board#
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m

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*The above amounts refer to an estimated market value and are subject to a cumulative annual limit of R200m. For sale of scrap please refer to 5.5.1
#Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.

5.1.7 **Management's intervention in addressing non-compliance with the regard to the approval of capital projects**

Approval Authority →	**OD CE**	**GCFO**	**GCE**
Operating Divisions	Nil	Nil	Unlimited
Approval Authority →	**Group Exco Member**	**GCFO**	**GCE**
Specialist Units	Nil	Nil	Unlimited

Together with the application for approval of non-compliance, the requestor must advise on the steps/corrective measures taken to avoid a repeat of the transgression.
If the approval of non-compliance results in the annual divisional budget being exceeded, then the request must be submitted to Transnet CAPIC for approval (refer to 5.1.4).

5.1.8 **Alienation/acquisition of Immovable property (land and servitudes)**

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board*
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R350m	Up to but not exceeding R500m	Exceeding R500m
Approval Authority →	**Group Exco Member**		**Transnet Capic/GCFO**	**Group Exco/GCE**	**Board Acquisitions and Disposals Committee**	**Board***
Specialist Units	Up to but not exceeding R1m		Up to but not exceeding R200m	Up to but not exceeding R350m	Up to but not exceeding R500m	Exceeding R500m

*Refer to Materiality and Significance Framework. If the set limit (currently R2500m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.
Approval limits are per transaction and are with reference to market value
All transactions entered into in terms of the above must be reported to Transnet CAPIC/GCFO
Only immovable property on the non-core list, may be disposed off (refer to 5.1.8.1), such disposal may only be done through the Specialist Unit, Transnet Property.
Amounts indicated above exclude the capitalisation of borrowing costs.

5.1.8.1 **Newly identified properties to be included on the non-core list (Book value of individual properties)**

GE: Transnet Property	GCFO	GCE	Board
Up to but not exceeding R50m	Up to but not exceeding R100m*	Up to but not exceeding R200m	Exceeding R200m

* These disposals must be reported to Transnet Capic/Group Exco/Transnet Board.

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5.2 Treasury

Treasury Policies and Strategies

Approval Authority →	Transnet Treasurer	GCFO	GCE	Audit Committee	Board
Financial Risk Management Framework	Recommend	Recommend	Recommend	Recommend	Approve

NOTE 1: In respect of all transactions set out in paragraphs 5.2.1 to and including 5.2.10, the necessary legal advice must be obtained where applicable and persons executing such transactions must comply fully with the applicable Enterprise Risk Management Framework and any revised limits determined in terms of such framework and the provisions of the PFMA and, when in doubt, persons must consult the Treasury Compliance Officers and Transnet Finance or Transnet Legal Services.

NOTE 2: Only approved financial instruments as approved in terms of the applicable Treasury Financial Risk Management Framework approved by the Board and subject to such limits determined in accordance with such framework may be utilised in the Treasury operations.

5.2.1 **InterTransnet Debt (Treasury inter Transnet debt write-off)**

Approval Authority →	Deputy Treasurer: Back Office	Transnet Treasurer	GCFO	GCE
Operating Divisions	Up to but not exceeding R5m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m
Specialist Units	Up to but not exceeding R2m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m

All breaches of the above limits to be reported to the Audit Committee.
External debt write-off on financial instruments due to counter-party liquidation may only be approved by the GCE.

5.2.2 **Maximum annual loss on all market-making activities (Realised and unrealised) including repo facilities**

Approval Authority →	Traders and Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding R1m	Up to but not exceeding R1.5m	Up to but not exceeding R2.5m	Up to but not exceeding R5m	Exceeding R5m

All breaches of the above limits to be reported to the Audit Committee
Note: The above limits are aggregate desk limits

5.2.3 **Market-making: Net nominal open position on the market-making desk (long or short) expressed in terms of a Transnet TN27 Bond (Only in extreme market conditions when positions from Market Making Panel cannot be accommodated in the repo portfolio)**

Approval Authority →	Traders and Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding R10m	Up to but not exceeding R15m	Up to but not exceeding R25m	Up to but not exceeding R50m	Exceeding R50m

All breaches of the above limits to be reported to the Audit Committee.

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5.2.4 **Market-making – Spot transactions (Expressed in nominal terms)**

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding R75m	Up to but not exceeding R100m	Up to but not exceeding R200m	Up to but not exceeding R250m	Up to but not exceeding R750m	Exceeding R750m

All breaches of the above limits to be reported to the Audit Committee.
Approval limits are per transaction/event and excludes bond auctions.

5.2.5 **Buy and sellback transactions (Expressed in nominal terms)**

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding R250m	Up to but not exceeding R500m	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R1500m	Exceeding R1500m
Duration Limit	2 weeks	3 weeks	1 month	1 month	2 months	Greater than 2 months

All breaches of the above limits (amount or tenure) to be reported to the Audit Committee.
Approval limits are per transaction/event.

5.2.6 **Foreign Exchange Transactions (operational, expressed in USD equivalent)**

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Group	Up to but not exceeding an aggregate equivalent of $10m per day (desk total)	Up to but not exceeding an aggregate equivalent of $20m per day (desk total)	Up to but not exceeding an aggregate equivalent of $40m per day (desk total)	Up to but not exceeding an aggregate of $100m per day (desk total)	Up to but not exceeding a daily equivalent of $200m (desk total)	Exceeding a daily equivalent of $200m (desk total)

All breaches of the above limits to be reported to the Audit Committee.
Note: In respect of FX hedging transactions that were previously approved as per paragraphs 5.2.7 and 5.2.8, the above approvals will be applicable to accommodate the extension of FX hedges.

5.2.7 **Foreign Exchange Hedging Transactions (operational, expressed in USD equivalent)**

Approval Authority →	Transnet Treasurer	GCFO	GCE
Group	Projects not exceeding $50m	Projects not exceeding $100m	Projects exceeding $100m
Tenure	Not exceeding 12 Months	Not exceeding 3 years	Exceeding 3 years

All breaches of the above limits (amount or tenure) to be reported to the Audit Committee.
Note: Where no specific limit is mentioned, the FRMF policy on foreign exchange risk will apply.
The above project limits are applicable per hedging submission.

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5.2.8 **Foreign Exchange Hedging Transactions (CAPEX and FX loans, expressed in USD equivalent)**

Approval Authority →	Transnet Treasurer	GCFO/Finco	GCE/Group Exco
Group	Projects not exceeding $50m	Projects not exceeding $100m	Project exceeding $100m
Tenure	Not exceeding 18 months	Not exceeding 5 years	Exceeding 5 years

All breaches of the above limits to be reported to the Audit Committee.
Note: Where no specific limit is mentioned, the FRMF policy on foreign exchange rate risk will apply.
The above project limits are applicable per hedging submission.

5.2.9 **Approval of FX hedges to be hedged by external suppliers on their balance sheet for goods/services to be delivered to Transnet in respect of Rand agreements involving foreign content**

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO
Group	Not exceeding $10m	Not exceeding $20m	Not exceeding $30m	Not exceeding $50m	Exceeding $50m

All breaches of the above limits to be reported to the Audit Committee for noting.

Note: The Business Units must always obtain quotes on FX forward rates and liaise with the Treasury Trading desk that will verify the rates to ensure it is market related. The Business Units can only enter into the FX hedges with the supplier once the rates are accepted by the Treasury Trading desk via e mail. Once the above approvals are obtained, the Treasury Traders will provide sign off on the rate acceptance.
The above limits are applicable per agreement.

5.2.10 **Interest Rate Risk Hedging**

Approval Authority →	Notional Amounts	GCFO/Finco	GCE/Group Exco
Group	Notional amount of hedge expressed in USD (FX loans and leases)	Up to but not exceeding $250m	Exceeding $250m
	Notional amount of hedge expressed in ZAR (ZAR loans and leases)	Up to but not exceeding R2000m	Exceeding R2000m
Tenure		Not exceeding 10 years	Exceeding 10 years

All breaches of the above limits to be reported to the Audit Committee.
Note: Where no specific limit is mentioned, the FRMF policy on interest rate risk will apply.
The above limits are applicable per hedging submission.

5.2.11 **Hedging of fuel risk exposures (commodity risk)**

Approval Authority →	GCFO/Finco	GCE/Group Exco
Tenure	Not exceeding 12 months	Exceeding 12 months
Notional hedge expressed in RAND	Not exceeding R500m	Exceeding R500m

All breaches of the above limits to be reported to the Audit Committee.
Note: The maximum hedge should not exceed 75% of annual budgeted consumption inclusive of energy levy income
The above limits are applicable per hedging submission.
Note: Where no specific limit is mentioned, the FRMF policy on commodity risk will apply.

5.2.12 **Granting of InterTransnet Loans (Interest-bearing only) to divisions/subsidiaries**

Approval Authority →	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Operating Division	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Exceeding R2000m
Subsidiary	Up to but not exceeding R10m	Up to but not exceeding R25m	Up to but not exceeding R100m	Exceeding R100m

These above limits are cumulative per financial year.

5.2.13 **Granting of InterTransnet Loans (Interest-free)**

Approval Authority →	GCFO	GCE
Operating Division	Up to but not exceeding R10m	Exceeding R10m

The above limits are per interTransnet loan.
All breaches of the above limits to be reported to the Audit Committee.

5.2.14 **Letters of Credit**

Approval Authority →	Deputy Treasurer: Front Office	Transnet Treasurer	GCFO	GCE
Transnet	Up to but not exceeding R100m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m

All breaches of the above limits to be reported to the Audit Committee.
The above limits are per letter of credit.

Funding Portfolio

NOTE 1: Only derivatives approved in terms of the applicable Financial Risk Management Framework, as approved by the Board, and subject to such limits determined in accordance with such framework may be utilised to hedge any risks.

NOTE 2: The total nominal funding amount per financial year in respect of Bonds and any other funding transactions shall be as determined per Board approved/Board amended Funding/Borrowing Plan.

NOTE 3: A. Signatories mean, subject to such approvals by the Board and the Minister of Finance in terms of section 66 of the PFMA as may be applicable, the Treasurer and any other officer so designated in writing by the GCFO.

B. Signatories mean, subject to such approvals by the Board and the Minister of Finance in terms of section 66 of the PFMA as may be applicable, persons so designated in writing by the Treasurer.

5.2.15 **Loan/Funding documentation approvals per instrument per financial year**

Approval Authority →	Transnet Treasurer	GCFO	GCE/Group Exco
Tapping of bonds	-	Not exceeding R5bn	Exceeding R5bn
Bank Loans (including overnight facilities)	Up to but not exceeding R1bn	Up to but not exceeding R2.5bn	Exceeding R2.5bn
Commercial Paper		Not exceeding R5bn	Exceeding R5bn
ECA supported funding	Up to but not exceeding R250m	Up to but not exceeding R1bn	Exceeding R1bn
New bond issues (in approved funding plan)	-	Up to but not exceeding R1bn	Exceeding R1bn
Development funding	Up to but not exceeding R250m	Up to but not exceeding R1bn	Exceeding R1bn
Foreign funding	-	Up to but not exceeding R1bn	Exceeding R1bn
Any other source of funding not stipulated above	-	Up to but not exceeding R1bn	Exceeding R1bn
The above is further subjected to the following annual aggregate limit			

	R5bn	R10bn	Limited to the annual Board approved borrowing plan

The above is subject to the following:

- Be executed in accordance with the approved strategy as incorporated in the Corporate Plan (including any amendments approved).
- Be within the laid down cash holding limits of Transnet.
- All breaches of the above limits to be reported to the Audit Committee.

5.2.16 **Signing of legally binding agreements in respect of Treasury related activities (Including ISDA, ISMA agreements and Bank facilities)**

Only the GCE and/or the GCFO have authority to sign. The Treasurer may sign with a specified delegation.

5.2.17 **Counterparty Limits: Setting of Limits**

Approval Level			
TRANSNET TREASURER	GCFO	GCE	Board or Committee of the Board
			Investment Risk Limits
Price Risk Limits ≤ R25 m	Price Risk Limits ≤ R250 m	Price Risk Limits ≤ R500 m	Price Risk Limits > R500 m
Recommendation of Bond Issue and Bond Issuer Limits	Approval of Bond Issue and Bond Issuer Limits		
Recommendation of Settlement Limits	Approval of Settlement Limits		

All investment risk limits and price risk limits above R500m to be approved by the Audit Committee

Note: Where no specific limit is mentioned, the FRMF policy on Counter Party Risk will apply.

Note: A portion of the approved investment risk limit may be utilised for price risk purposes as long as the sum of the two stays within the overall Audit Committee approved risk limit.

5.2.18 **Appointment of Commercial Bankers and the Opening of Bank Accounts**

	Transnet Treasurer	GCFO
All OD/SU	Recommendation to open bank accounts and the appointment of bankers.	Approval of new bank accounts and the appointment of bankers and the approval of all documentation relating to such accounts including electronic banking documentation.
Process to follow	There is no delegation to any OD/SU to appoint commercial bankers or to open bank accounts, domestically or internationally; only the GCFO may make such appointments.	

5.2.19 **Establishing financial policy with regard to insurance**

Authority Level	GCFO after consulting with Chief Risk Officer

Board Risk Committee to approve.

5.2.20 **Authorisation of cheque signatories, Test keys and EFT's**

Signing Cheques	Two A signatories or one A and one B signatory
Signing Test keys for paying/receiving	Two A signatories or one A and one B signatory
Electronic transfer of funds	Two A signatories or one A and one B signatory

5.2.21 **Payment instructions and confirmation notes**

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Signing payment instructions/ receipts/ settlement instructions:	Two A signatories or one A and one B signatory
Signing confirmation notes in respect of approved financial transactions executed:	One A signatory

5.2.22 **Approval of Annual Borrowing Plan**

	Board
Group	Approve the annual borrowing plan for execution by Treasury

Annual borrowing plan to be recommended by the Treasurer, GCFO and the Audit Committee for approval by the Board.

5.2.23 **Authorisation to enter into binding transactions**

	TRANSNET TREASURER
Group	Authorise Treasury employees to enter into binding financial transactions on behalf of the Transnet

5.2.24 **Issuing of Guarantees (subject to requirements of section 66 of the PFMA)**

	Transnet Treasurer	GCFO	GCE	Board
Transnet	Up to but not exceeding R25m	Up to but not exceeding R50m	Exceeding R50m	Exceeding R100m aggregate per financial year

All breaches of the above limits to be reported to the Audit Committee.
Board approval is required for the granting by the Company of any guarantees exceeding an aggregate limit of R100m per financial year (section 66(3) of the PFMA).

5.2.25 **Issuing Letters of Support**

	Board
Group	Only the Board of Directors have authority to issue letters of support

5.2.26 **Issuing of security per transaction (subject to section 66 of the PFMA)**

	Transnet Treasurer	GCFO	GCE	Board
Group	Up to but not exceeding R250m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Exceeding R1000m

The above limits are per transaction. All breaches of the above limits to be reported to the Audit Committee.

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5.3 Finance

5.3.1 Bad Debt Write-off

Trade Debtors

Approval Authority →	OD Exco/CE* excluding TFR	TFR Exco/CE	GCFO	Group Exco/ GCE	Audit Committee	Board
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R500m	Exceeding R500m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/ GCE	Board Audit Committee	Board*
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R500m	Exceeding R500m

*Approval limits are R10m and R20m for TFR per transaction subject to an annual cumulative limit of R50m and R100m for TFR. Specialist unit limit is R5m cumulative per annum.

5.3.2 Setting of limits for credit facilities (Trade debtors)

Approval Authority →	Divisional CFO	OD Exco/CE* excluding TFR	TFR CE	GCFO	GCE
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R150m	Up to but not exceeding R300m	Exceeding R300m
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R10m		Up to but not exceeding R300m	Exceeding R300m

Audit Committee to recommend approval of annual credit limit for working capital.
Limits are per individual customer/client. Credit limits are to be reviewed on an annual basis. The limits are applicable subject to the division following the credit evaluation process.

5.3.3 Issuing of Credit notes

Approval Authority →	Divisional CFO	OD Exco *	GCFO	GCE
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R300m	Exceeding R300m
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R10m	Up to but not exceeding R300m	Exceeding R300m

Limits are per individual credit note and relates to external parties. Issuing of credit notes regarding internal/interdivisional transactions may be within the control of the divisional CFOs.
* Excludes the product reconciliation process at Transnet Pipelines where the Divisional CFO and Divisional COO approve transactions arising out of the product reconciliation process.

5.3.4 Exceeding the operational expenditure budget in total for the year (Operating Divisions/Specialist Units)

The Board of Directors to be informed at every meeting of the financial status and latest estimates of the Company

Approval Authority →	OD CE	GCFO	GCE	Board
Operating Divisions	Up to but not exceeding 5% of approved budget	Up to but not exceeding 7.5% of approved budget	Exceeding 7.5% of approved budget to a maximum of 10%	>10%
Specialist Units	Up to but not exceeding 5% of approved budget	Up to but not exceeding 7.5% of approved budget	Exceeding 7.5% of approved budget to a maximum of 10%	> 10%

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Delegations for operational transactions that are too detailed to include in the Transnet Delegations of Authority Framework will be determined and applied in terms of the details set out by the CE in conjunction with the CFO of the respective OD/SU.

5.4 **Procurement**

All procurement transactions (including reverse logistics – selling of goods) must fully comply with the approved Transnet Procurement Policy and Procurement Procedures Manual (PPM), as well as the Transnet Capital Projects Construction Procurement Policy, Processes, Procedures and Methods (CPPPPM) where applicable – Any commercial agreement (for the purchase of goods or services) must be signed off by an authorized employee of Supply Chain Management (Procurement) prior to signing of the contract to indicate that all the steps as per clause 5.5 below have been followed and that all procurement related governance has been adhered to.

5.4.1 **Appointment of Consultants**

Approval Authority →	**OD CE**	**GCFO**	**Group Exco/ GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Operating Divisions	Up to but not exceeding R25m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m
Approval Authority →	**Group Exco Members**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Specialist Units	R10m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m

Approval limits are cumulative per annum. Excludes appointment of consultants to perform feasibility studies for capital projects.

5.4.2 **Approval to approach the market for Open Tenders**

Approval Authority →	**OD CE and TCP GE**	**GCSCO**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Operating Divisions	Up to but not exceeding R450m	Up to but not exceeding R525m	Up to but not exceeding R600m	Up to but not exceeding R750m	Up to but not exceeding R1500m	Exceeding R1500m

*The OD CE may only delegate these powers to go to market with Open Tenders to Heads of Procurement. The Requisition (or Request to Purchase) issued to Procurement must be approved by the OD's Budget Owner or his duly authorized delegate. Such approved requisition or Request to Purchase will signify that the acquisition has been approved and that the necessary funds are available.

Submissions requiring approval of the GCSCO or higher must also include a procurement strategy document, signed off by the person with the delegated authority.

Approval Authority →	**Specialist Unit HOD (budget owner)**	**GCSCO**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Specialist Units	Up to but not exceeding R75m	Up to but not exceeding R525m	Up to but not exceeding R600m	Up to but not exceeding R750m	Up to but not exceeding R1500m	Exceeding R1500m

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The Requisition (or Request to Purchase) issued to Procurement must be approved by the Specialist Unit's HOD or his duly authorised delegate. Such approved requisition or Request to Purchase will signify that the acquisition has been approved and that the necessary funds are available.
Submissions requiring approval of the GCSCO or higher must also include a procurement strategy document, signed off by the person with the delegated authority.

5.4.3 **Approval to approach the market for confined tenders: Confinement of tenders (not subject to the quotation system)**

Approval Authority →	OD CE and TCP GE	GCSCO	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Nil	Nil	Nil	Up to but not exceeding R250m	Up to but not exceeding R1000m	Exceeding R1000m
Approval Authority →	Group Exco Members	GCSCO	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	Nil	Nil	Nil	Up to but not exceeding R250m	Up to but not exceeding R1000m	Exceeding R1000m

The limits are per transaction/confinement. All requests for approval of confinements must be made by the OD CE/Group Exco Member to the GCE. The OD Specialist Unit shall prepare the submission in collaboration with Transnet integrated supply chain management (iSCM) to ensure that the rules for confinement are met.
In instances where confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority.

5.4.4. **Management's intervention to address non-compliance with procurement policies and procedures**

Approval Authority →	OD CE and TCP GE	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Nil	Nil	Up to but not exceeding R50m	Up to but not exceeding R1000m	Exceeding R1000m
Approval Authority →	Group Exco Members	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
SU	Nil	Nil	Up to but not exceeding R50m	Up to but not exceeding R1000m	Exceeding R1000m

All requests for approval of non-compliance must be made by the OD CE/Group Exco member to the GCE. The OD/Specialist Unit shall prepare the submission in collaboration with Transnet iSCM to ensure that the rules for confinement are met.

5.4.5 **Establishing Procurement policy (opex, capex and disposals)**

Authority Level	Board Acquisitions and Disposals Committee

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5.5 **Contracts/Agreements**

NOTE 1: Any person who has been authorised to execute any legal documents including deeds, leases, assignments, contracts, applications, financial instruments, external submissions to or on behalf of Transnet and/or its OD or any other legal documents may only do so with the prior advice of the relevant Legal Services department as set out in the Transnet Legal Policy.

NOTE 2: Unless otherwise indicated in the authorities below, the authority to execute a contract or other binding document carries with it like authority to cancel or modify it, but only with the prior written advice of the relevant Legal Services department as set out in the Transnet Legal Policy and if it relates to Procurement Contracts, the approval of the relevant Acquisition Council (as per the Procurement Procedures Manual - PPM).

NOTE 3: Any person authorized to enter into an agreement/contract or other binding document involving capital expenditure must have obtained prior financial approval in terms of the procedures set out in 5.1 prior to entering into such a CAPEX contract.

NOTE 4: Approval limits are per transaction/contract.

NOTE 5: The authority to execute a contract or other binding document carries with it the understanding that an authorized payment required thereby will be made once proof of receipt has been obtained. No person is authorised to obligate the company to an amount greater than such payment or create more onerous obligations than those contained in the contract or other binding document. Increases to the original scope of the binding document must be supported by authorised amendment.

NOTE 6: In terms of the PPM all amendments to contracts must be approved by the Manager (i.e. a person with the relevant delegated powers) who originally signed the initial contract as well as by the relevant Acquisition Council where the amendment exceeds 10% of the original contract value.
For higher value contracts (i.e. those signed by the operating division's CE, the GCFO or GCE), it is advisable to obtain a written mandate from that official empowering a delegate to administer such contract and to effect changes to such contract not exceeding 10% of the initially approved contract value.

5.5.1 **Enter into and signing of Contracts/Agreements and award of business: (including the sale of scrap)**

Approval Authority →	OD CE and TCP GE		Transnet Chief Supply Chain Officer	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R450m		Up to but not exceeding R525m	Up to but not exceeding R600m	Up to but not exceeding R750m	Up to but not exceeding R1500m	Exceeding R1500m
Approval Authority →	**Specialist Unit CE**	**Group Exco members**	**Transnet Chief Supply Chain Officer**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Specialist units excluding TCP	Up to but not exceeding R5m subject to the contract period not exceeding 5 years	Up to but not exceeding R30m	Up to but not exceeding R525m,	Up to but not exceeding R600m	Up to but not exceeding R750m	Up to but not exceeding R1500m	Exceeding R1500m

Values are per contract for the full term of the contract (Total value of contract excluding VAT) on condition that approval has been obtained for the related expenditure over the period. Please refer to the conditions stipulated below.

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Payments: Once the decision to contract has been issued, contract execution will be governed by the Operating Divisions, including the payment process provided that the contract amount is not exceeded.

5.5.1.1 **Contracts > R450m, including Transnet's top 60% value opex items and capex contracts**

Prior to entering into a high value (greater than R450m) / 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 - 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.

5.5.1.3 **International Contracts/Agreements (all contracts)**

- Approval to enter into an agreement/contract or other binding document involving foreign currency 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 FX 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 an embedded derivative. All FX agreements above R100m must apart from the above also obtain written approval from the GCFO.

5.5.2 **Enter into and Signing of Revenue Contracts/Agreements: (excluding lease contracts and the sale of scrap)**

Approval Authority →	OD CE Limit per Annum per contract up to but not exceeding 5 years	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Board Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Operating Divisions	Up to but not exceeding R300m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3000m	Exceeding R3000m
Approval Authority →	**Specialist Unit CE Limit per Annum per contract up to but not exceeding 5 years**	**GCFO Limit per Annum per contract up to but not exceeding 5 years**	**GCE Limit per Annum per contract up to but not exceeding 5 years**	**Board Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years**	**Board Limit per Annum per contract and contracts exceeding 5 years**
Specialist units	Up to but not exceeding R10m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3000m	Exceeding R3000m

- Transnet integrated customer agreements where a service incorporates more than one division must be signed off by the GCFO and the Group Executive: Commercial in addition to sign off by the OD CE's, up to but not exceeding revenue of R500m per annum not exceeding 5 years.
- If the contract period is below 12 months the contract value is to be annualized and the delegated authority required to approve the transaction will be determined by the annualized amount.
- All limits indicated above are exclusive of VAT
- Board approval is required if ANY one of the following limits are exceeded:

- The contract period exceeds 5 years
- The annual value of the contract exceeds R3000m.
- The total value of the contract over the contract life exceeds R15000m.

5.5.3 **Internal Contracts**

Contracts between divisions such as service level agreements and project specific agreements may be entered into between OD CE's.

5.5.4 **Property and Lease Agreements**

All external Property Lease Agreements (excluding vacant land) as well as other expenditure leases.

Approval Authority →	OD CE, GE: Transnet Property and TCP GE	GCFO	GCE	Board Acquisitions and Disposals Committee
Operating Divisions	Up to but not exceeding R15m annualised	Up to but not exceeding R200m full term	Up to but not exceeding R500m full term	Exceeding R500m full term
	Tenure not exceeding 5 years	Tenure not exceeding 10 years	Tenure not exceeding 15 years	Tenure exceeding 15 years

- Tenders that include alienation/leasing out of land for a period longer than 5 years must be submitted to the GCE for approval prior to going out on tender or RFP.
- Cession of leases: All cession or assignment of Lease agreements shall be approved by the Group CFO or Group Executive: Transnet Property. For cession of leases at ODs the Chief Executive of the respective OD may approve cession or assignment of lease agreements.
- Cession of lease agreements with a change to material terms of the existing lease e.g. extension or shortening of the lease period, change of rental terms etc. may be approved in terms of the above limits i.e. where the original lease was approved in terms of the delegated authority above, changes of material terms to be approved by the same approval body.
- All external Lease Agreements (> 5 years) of properties on land/properties adjacent to other land/properties of ODs and/or belonging to Transnet Property, must be communicated and agreed with the relevant division/Transnet Property before entering into any Lease Agreements.
- All leases for vacant land may only be approved by the GCE with the above limits for the GCE applicable i.e. if the lease value exceeds R500m or the tenure exceeds 15 years then Board Acquisitions and Disposals Committee approval is required. For the purposes of this transaction vacant land is considered to be undeveloped land.
- In cases where vacant land is leased out with its own rental premium applicable to it and a separate rental premium for improvements located on the portion of the same leased site, although part of one lease transaction – to the extent that the proposed lease has lettable vacant land, the GCE shall approve such lease transactions in line with his limits of authority as stated in the table above.
- Interdivisional leases for vacant land may be entered into and signed by the respective OD CEs/GE: TCP/GE: Transnet Property.
- Special Delegation to apply to the CE of TNPA in compliance with the Ports Act.
- Internal leases between Transnet Property and OD/SU may be signed by the CEs of the respective ODs/SUs.

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5.6 **Legal Services**

NOTE: The provision of legal services must be in accordance with the Transnet Legal Policy. In respect of all litigation the bearer of the authority may, after taking legal advice from Transnet, execute all documents and do all things necessary to give effect to his/her authorisation.

5.6.1 **Commencing or settling any litigation, arbitration**

Approval Authority →	Divisional Head: Legal and Risk	OD CE, GE: Transnet Property and GE:TCP	GE: Group Legal Services	GCFO	GCE
Operating Divisions	Up to but not exceeding R2m	Up to but not exceeding R10m. Greater than R10m but less than R35m with concurrence of GE: Group Legal Services	Up to but not exceeding R50m	Up to but not exceeding R100m with concurrence of GE: Group Legal Services	Exceeding R100m

Approval limits are per litigation matter and relate to the settlement amount of that particular matter. Commencement may be effected by an authorised person from the legal function

5.6.2

Any disputes with government entities or where the outcome of any litigation, arbitration or similar proceedings is likely to have a material effect on the business, financial condition or prospects of the Company	Board of Directors

5.6.3

Defending, subject to paragraph 5.6.1 above and Transnet Legal Policy, any litigation (actions or applications) in court or any other competent forum	GE: Group Legal Services/ OD CE

5.6.4 **Subject to the Transnet Legal Policy, the appointment of external advisors attorneys, advocates and any other external legal advisors**

Approval Authority →	OD CE	GE: Group Legal Services	GCE
OPERATING DIVISION	Up to but not exceeding R10m	Up to but not exceeding R50m	Exceeding R50m
	Specialist Units CEs and Heads of Legal	GE: Group Legal Services	GCE
Specialist Units CEs and Heads of Legal	Up to but not exceeding R5m	Up to but not exceeding R50m	Exceeding R50m

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5.7 Human Resources

INTRODUCTION

The Delegation of Authority for Human Resources provides for controls and good governance in the following areas:

- Organisation Management
- Personnel Appointments and Remuneration
- Appointment of Fixed Term Contract Employees
- Interim / Ad-hoc Remuneration Adjustments
- Rewards / Awards / Exceptional Payments / *Ex-gratia* Awards
- Suspension of Employees
- Dismissal of Employees
- Mutual Separation Agreements
- Collective Bargaining and Trade Union Recognition
- Deviation from approved Human Resources Policies

PRINCIPLES

1. Any approval in the Human Resources environment must be obtained from a manager who is at least two hierarchical reporting levels higher than the employee for whom authorization is required.
2. When acting in a higher capacity, decision for own portfolio or department that will ordinarily be recommended by the acting incumbent must be referred to one level higher.
3. Where an incumbent acts for a period of longer than three months, the full powers of delegation of the position in which the person is acting, may be transferred to the acting incumbent.
4. Each OD may implement stricter delegations and increase the level of authority above those set out in the document. Any such change must be in writing.
5. Board approval is required for the appointment and remuneration of the Transnet GCE and GCFO.
6. The Social, Ethics and Human Resources Committee (SEHRCO) provides final approval for the annual reward allocation including the salary mandate.
7. The SEHRCO provides final approval for the remuneration packages for Group Exco.
8. All matters relating to the position of the GCE and GCFO are reserved for the Board and Shareholder Minister in line with the Company's governing legislation and mandates.

ABBREVIATIONS

The abbreviations used in the Human Resources Delegation of Authority are set out in the table below:

FA	Final Approval
FACC	Final Approval for Corporate Centre
R	Recommendation
A	Has provided advice
N	Noting
GE: HR	Group Executive: Human Resources
CE, GE	Chief Executive of OD or relevant Group Executive of Corporate Staff Department
GM: PM	General Manager People Management in Transnet HR
GM: ER	General Manager Employee Relations in Transnet HR
OD HR GM	General Manager Human Resources at the Operating Division
LM: GM	Line Management - General Manager

The table below sets out the delegation framework for Human Resources.

1 Organisation Management: Creation of New Positions / Change in Positions / Restructuring

- No permanent or fixed term contract position can be created or the grade level changed unless the approved Organisation Management governance was followed in respect of the evaluation of positions and ratification of grade levels.

HUMAN RESOURCES	SEHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: PM	LM:GM
1.1 Group Exco (A level)	FA	R				R	
1.2 General Managers (B level)		FA	R	R		R	
1.3 Executive Managers (C level)			A	FA	R	R	R
1.4 Senior Management (level D) and Below					FA	FA.CC	R

2 Personnel Remuneration

- The SEHRCO reviews the GCE's assessment of performance and approves the remuneration of Group Exco Members.
- The appointment and remuneration of all management level employees (levels A to F) will be guided by the Guidelines and Salary Bands issued by the Group Remuneration Office. These Guidelines and Salary Bands will take into account the occupational specific categories.
- For managers in levels A and B the Group Remuneration Office will recommend the appropriate remuneration bands based on market information and internal parity. Approval of the final appointment and remuneration package will be in terms of the delegations below.
- Each OD will apply the Guidelines and Salary Bands when appointing and structuring the packages of management employees in levels C and below. Approval of the final appointment and remuneration package will be in terms of the delegations below.
- After salary adjustments and before a mandate is sought for the next financial year, the Group Remuneration Office will conduct a comparative analysis of salaries across ODs to inform the Group Guidelines and Salary Bands of managers for the new financial year. Affordability and the need for internal and external parity will inform these guidelines.

HUMAN RESOURCES	SEHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: PM	LM: GM
2.1 Group Exco (A level)	N	*FA	R			R	
2.2 General Managers (B level)		FA	R	R		R	
2.3 Executive Managers (C level)			A	FA	R	R	R
2.4 Senior Management (D level and below)					FA	FA.CC	R

* The appointment of a Group Exco Member will be made by the GCE in consultation with the Social, Ethics and Human Resources Committee

3 Appointment of Fixed-Term Contract Employees

A person appointed on a fixed-term contract (for a specific period of time or to perform a specific project) must be appointed into a graded position.

HUMAN RESOURCES	SEHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: PM	LM: GM
3.1 Group Exco (A Level)	FA	R				R	
3.2 General Managers (B level)		FA	R	R		R	
3.3 Executive Managers (C level)				FA	R	R	R
3.4 Senior Management (D level and below)					FA	FA.CC	R

4 Counter Offers and Interim Salary Adjustments

- In line with the Group Remuneration Philosophy approved by the SEHRCO, there will be no interim / ad-hoc remuneration adjustments.
  If an employee produces a written and current counter offer of employment with details of the remuneration package, and Transnet seeks to retain the employee based on the criticality of the employee's skill, an interim adjustment of the employee's current remuneration package may be offered in terms of the delegations below. Any counter offer must be in accordance with the Group Guidelines and Salary Bands issued by Group Remuneration.

HUMAN RESOURCES	SEHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:PM	LM: GM
4.1 Group Exco (A Level)	FA	R	N			R	
4.2 General Managers (B level)		FA	R	R		R	
4.3 Executive Managers (C level)			FA	R	R	R	R
4.4 Senior Management (D level and below)					FA	FA CC	R

5 Internal Rewards / Awards / Exceptional Payments / *Ex-gratia* Awards

The amounts reflected below are per initiative (not per individual employee payment) per annum

HUMAN RESOURCES	Board	SEHRCO	GCE	GE: HR	GCFO	OD CE/ Group Executive	HR GM	GM: PM	LM: GM
5.1 R10m and above	FA	R	R	R				R	
5.2 Between R5m but not exceeding R10m		FA	R	R				R	
5.3 Between R50 000 but not exceeding R5m			FA	R		R		R	
5.4 Between R20 000 but not exceeding R50 000				FA		FA	R	R	R
5.5 Up to but not exceeding R20 000				FA		FA	R	R	R
5.6 Up to but not exceeding R 10 000						FA	R	R	R

6 Suspension of Employees

- The suspension of all employees is per the delegations of authority below.
- In the case of the suspension of a bargaining unit employee, the relevant OD Employee Relations Manager must recommend the suspension based on the merits of the case

HUMAN RESOURCES	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: ER	LM: GM	Line Manager	ER Manager
6.1 Group Exco (A level)	FA	R			R			
6.2 General Managers (B level)	FA	R	R		R			
6.3 Managers (C level)		FA	R	R	A	R		
6.4 Senior Management (D level to F level)				R	A	FA	R	A
6.5 Bargaining unit employees							FA	R

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7 Dismissal of Employees

- The dismissal of any employee for reasons of discipline or incapacity must be preceded by a fair hearing in line with Transnet policies.
- The dismissal of an employee for operational requirements must be preceded by a fair consultation process.

HUMAN RESOURCES	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: ER	LM: GM	Line Manager	ER Manager
7.1 Group Exco (A level)	FA	R			R			
7.2 General Managers (B level)	FA	R	R		A			
7.3 Managers (C level)		A	FA	R	R	R		A
7.4 Senior Management (D level to F level)			A	R	R	FA	R	A
7.5 Bargaining unit employees							FA	R

8 Mutual Separation

Terms and conditions and financial settlement amounts of mutual separation agreements for A – D Roles will be guided by the Guidelines issued by the Group Remuneration Office.

HUMAN RESOURCES	SEHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:ER	LM:GM
8.1 Group Exco (A level	FA	R	R			R	
8.2 General Managers (B level)		FA	R	R		R	
8.3 Executive Managers (C level and below)			FA	R	R	R	R

9 Collective Bargaining and Trade Union Recognition

HUMAN RESOURCES	SEHRCO	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:ER	LM:GM
9.1 Conclusion of any Collective Agreements with Unions excluding shift patterns			FA	R	R	R	
9.2 Mandate for salary and wage negotiations	FA	R	R			R	
9.3 Recognition of Trade Union and Signing of Recognition Agreement	N	N	FA	R	R	R	

10 Deviation from Approved Human Resources Policies

HUMAN RESOURCES	Board	GCE	GCFO	GE: HR	OD CEs Group Exco	HR GM	GM: ER	LM: GM
10.1 Any deviation from a Transnet HR Policy		FA		R	R	R	R	R

5.8 General Delegations

5.8.1 Chartering of Aircraft

Authority Level	OD CE	GCFO	GCE
Chartering of Aircraft	NIL	Up to but not exceeding R3m	Exceeding R3m
Chartering of helicopters for operations	R150000*	Up to but not exceeding R1m	Exceeding R1m

* The limits for OD CEs are cumulative per aircraft per month.

5.8.2 Mobile phones: Authorising payments exceeding monthly limits (reflected in mobile phone contract)

	Group Exco Member	GCFO	GCE
Transnet Wide	Up to but not exceeding R10 000 per month	Up to but not exceeding R20000 per month	Exceeding R20000 per month

5.8.3 Entertainment Expenditure

Authority Level	OD CE	Group Executives	GCE
	Up to but not exceeding R50000 per occasion	Up to but not exceeding R50000 per occasion	Amounts exceeding R50000 per occasion

Costs incurred by any person on behalf of the company must be authorised by that person's superior and must be within the approved budgetary limits. Supporting documentation should be marked cancelled to prevent re-use thereof. All entertainment expenses must be business related expenses.

5.8.4 Rewards/Awards/Exceptional Payments to external parties: (Examples: *Ex-gratia* awards, exceptional performance, recognition payments)

	OD CE	GCFO	GCE	SEHRCO	Board
Operating Divisions	Up to but not exceeding R50000	Up to but not exceeding R100000	Up to but not exceeding R5m	Up to but not exceeding R10m	Exceeding R10m
	Group Exco Members	GCFO	GCE	SEHRCO	Board
Specialist units	Up to but not exceeding R50000	Up to but not exceeding R100000	Up to but not exceeding R5m	Up to but not exceeding R10m	Exceeding R10m

5.8.5 Sponsorships and Donations

Approval Authority →	OD CE	GCFO	GCE	SEHRCO	Board
Operating Divisions	Up to but not exceeding R5m	Up to but not exceeding R7m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m
Approval Authority →	Group Exco Members	GCFO	GCE	SEHRCO	Board
Specialist Units	Up to but not exceeding R2m	Up to but not exceeding R7m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m

Approval limits are cumulative per annum e.g. the OD CE can approve a total amount of R5m per annum for sponsorships and donations.

5.8.6 Annual filing of tariffs with regulators

- Public Policy and Regulation Committee: Approves tariff increase applications from Operating Divisions.
- OD CE in concurrence with the GCFO: Filing of Tariffs with relevant Regulatory body.

5.8.7 International Business Travel (excluding African countries)

	Approval Authority
Below CE level at Operating Division*	GCE
CE of Operating Division	GCE
Corporate Centre	GCE
Specialist Units	GCE
Group Executives	GCE
GCE and Chairman	User – Retrospective review by GCE or Chairman and vice versa.

*CE of OD must recommend and the GCE to approve

5.8.8 **Domestic Business Travel (including travel to African countries)**

	Approval Authority
Chairman/GCE/Group Exco Members	User
CE of Specialist Unit	Group Exco member responsible
General Managers/Extended Exco	OD CE/OD CFO/Group Executives
All other levels	Extended Exco

Travel: All travel must be in line with the approved Travel Policy. Travel to African countries may only be approved at Exco level and may not be sub-delegated.
Extended Exco members at an OD/SU unit may sub-delegate to the appropriate lower level.

5.8.9 **Communication**

	Approval Authority
External communication on strategy and operations	Company spokesperson/GM Communications or GCE
Communication on operational issues relating to an OD	Group Exco Member responsible for OD
Communication with the Shareholder Minister	Office of the GCE or Chairman of the Board of Directors

5.8.10 **Establishment of Special Purpose Vehicles (SPVs) and Trusts**

	Approval Authority
Establishment of SPVs and Trusts	GCE may approve after recommendation by the GCFO and GE: Group Legal Services. The transaction to be reported to the Board Acquisitions and Disposals Committee

5.8.11 **Restructuring and sale of business**

	Approval Authority
Restructuring or sale of business	Transnet Board of Directors in accordance with Section 54 of the PFMA

5.8.12 **Pension Fund and Medical Fund Rule Amendments as recommended by the Board of Trustees of the Funds**

	Approval Authority
Changes to the rules of the pension and medical fund that do not impact the financial position of the Fund	Board
Rule amendments that impact the financial position of the pension and medical fund	Ministerial approval from the Department of Public Enterprises with the concurrence of the Minister of Finance

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5.8.13 Application for Environmental Authorisation

- All environmental impact assessment or basic assessment applications must be prepared by a competent independent environmental assessment practitioner/consultant, unless exemption from this provision has been obtained in writing by the Department of Environmental Affairs and under the supervision of the Environmental Department in the OD/SU.
- The application for environmental authorisation must be signed as per the approval authority below.

	Approval authority to act as applicant for an environmental authorisation for Transnet SOC Ltd
Operating Division	Project Manager/ Operations Manager/Environmental Manager
Specialist Unit (Transnet Property)	Chief Operations Officer of Property
Specialist Unit (Transnet Capital Projects)	Project Director

- The applicant remains legally responsible for the compliance with the environmental authorisation throughout the implementation of the authorisation.
- Should an authorisation for new capital projects contain operational elements after formal handover of the project by TCP, the DEA needs to be informed in writing of the change in names and acknowledgement from DEA be filed.
- Should any of the above applicants leave Transnet, the DEA needs to be informed in writing of the new person responsible for the implementation of the environmental authorisation.

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Transnet SOC Ltd Counterparty Risk Management Policy

Policy Reference Number	TG/GIC12/1/8P
Version Number	1
Effective Date	1 November 2012
Review Date	Annually as applicable
Policy Owner	Chief Financial Officer
Signature	
Sponsor	Transnet EXCO
Date Approved	July 2012

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EXHIBIT 6

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Transnet

Stakeholders

	Name	Designation	Approval Signature	Date	E-Mail	Contact Number
Compulsory Stakeholder Involvement						
Risk Management	Eddie Lindeque	GM: Group Risk Management		02/11/12	Eddie.lindeque@transnet.net	011 308-2472
Compliance	Indira Reddy	GM: Group Compliance		02-11-12	Indira.reddy@transnet.net	011 308-3590
Legal Services	Ndiphiwe Silinga	GM: Group Legal		02/11/12	Ndiphiwe.silinga@transnet.net	011 308-2350
Other Stakeholder Involvement						
IT	Anoj Singh	Acting Chief Information Officer		04/11/12	Anoj.singh@transnet.net	011 308-2253

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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.

	Designation	Approval Signature	Date	E-Mail	Contact Number
Policy Owner	Chief Financial Officer		04/11/12	Anoj.singh@transnet.net	011 308-2253
Policy Sponsor	Chief Financial Officer		04/11/12	Anoj.singh@transnet.net	011 308-2253

Final Approval

EXCO

Name of Committee

July 2012

Date Approved

Summary of Version Control

Version Number	Effective Date	Summary of Changes
1	1 November 2012	New Transnet document

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1. BACKGROUND

Transnet SOC Ltd ("Transnet") has various contracts with suppliers of goods and services, customers and financial institutions as well as sponsorship agreements. These contracts expose Transnet to the risk that the counterparty will not fulfil its contractual obligations.

2. PURPOSE

The purpose of the Counterparty Risk Management Policy is to provide guidance to Transnet relating to the management of counterparty risks.

3. DEFINITIONS

Counterparty:

A legal or financial term that means a party to a contract concluded by Transnet.

Counterparty risk:

The risk that the counterparty will not fulfil its contractual obligations.

Counterparty risk should be identified and considered when negotiating a contract and on a regular basis during the life time of the contract.

Counterparty risk is also defined as "default risk".

Contract:

An agreement with specific terms between Transnet and one or more persons or entities in which there is a promise to do something in return for a valuable benefit, including, supplier, customer, sponsorship as well as fund/investment and trading contracts.

Customer:

A person or entity that purchases goods or services from Transnet.

EXCO:

Means the Transnet Group Executive Committee established to take responsibility for the day to day execution of the strategy and running of Transnet.

Operating Divisions (ODs):

Means all the Operating Divisions of Transnet.

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PFMA:

Refers to the Public Finance Management Act no 1 of 1999.

Supplier:

A party that supplies goods or services to Transnet in exchange for consideration or commercial benefit.

Transnet:

Means Transnet SOC Ltd inclusive of its Operating Divisions, with registration number 1990/000900/30.

Transnet Contract Life Cycle Management (CLM) system:

The SAP system that enables the formulation, approval, storage and management of contract documents.

4. SCOPE

- This policy provides guidance regarding the counterparty risk management materiality assessment considerations (Appendix A) and the key considerations to manage counter parties (Appendix B). This policy applies to all Transnet employees who are responsible to evaluate and manage contracts.
- Appendix A and B identify the counterparty risk management considerations that need to be aligned to the following policies, guidelines and frameworks that govern counterparty risk:
  - Transnet Credit Policy
  - Standard Operating Procedure: Credit Application, Extension and Review
  - Transnet Financial Risk Management Framework
  - Transnet Procurement Policy
  - Transnet Commercial Contracting Guideline

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5. POLICY STATEMENT

Transnet's policies must address, amongst others, the following good contract management principles:

- Consistency across Operating Divisions ("ODs") in the management of counterparty risk exposures which are similar;
- Opportunities to improve value for money and an increased likelihood that intended benefits are realised; and
- Compliance with the PFMA requirements in sections 50 and 51.

6. ROLES AND RESPONSIBILITIES

- Integrated Supply Chain Management and Group Commercial to:
  - Revise the existing policies and procedures indicated in the scope to include the consideration identified in Appendix A and B, and
  - Communicate the revised policies and procedures to the Transnet Operating Divisions (ODs) through awareness training sessions.

- Many factors that impact on contracting and counterparty risk management are OD specific. This policy is therefore to be used as a basis for the ODs to develop their own specific contracting and counterparty risk management process and governance mechanisms. These policies must be approved by the OD Executive Committee.

- The roles and responsibilities to implement the policy are as follows:

Responsible	:	General and Senior Managers
Accountable	:	Group Executives & Chief Executive Officers
Informed	:	All Employees involved in the contracting process
Policy Owner	:	Group Chief Financial Officer (GCFO)

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7. RELATED INFORMATION AND REFERENCE

The Transnet Counterparty Risk Management Policy must be read in conjunction with other policies which impact upon the management of contracts and financial risks.

Other policies which are closely related to the Counterparty Risk Management Policy include:

- Transnet Credit Policy
- Transnet Financial Risk Management Framework
- Transnet Procurement Policy
- Transnet Commercial Contracting Guideline
- Delegation of Authority Framework

The provisions of the Transnet Counterparty Risk Management Policy are underscored by the principles identified in the King III report on good corporate governance and the provisions of the PFMA.

8. EXCLUSIONS

There are no exclusions to this Policy.

9. REQUEST TO DEVIATE FROM POLICY

In cases where material and compelling circumstances merit deviation 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.

Deviations from the OD specific policy shall be submitted to the relevant OD Chief Executive, who shall have full authority to grant such request, in whole or in part, or to refuse same.

10. WARNING

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.

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11. APPENDIX A: MATERIALITY ASSESSMENT CONSIDERATIONS (ASSESSMENT OF THE DEFAULT RISK OF THE CONTRACT)

Materiality Assessment considerations (assessment of the default risk of the contract): Key considerations to be taken into account when the materiality of the contract is assessed. That is, if the counterparty defaults, consideration is given to what assets (financial, operational and reputational) Transnet will be exposed	Key counterparty risk
1. Establish the total contract value in Rand per annum. Consider the impact on Transnet if the supplier or customer defaults	Financial exposure risk
2. Identify whether there has been negative publicity or substantial recent changes in the company structure. For example: Financial fraud in the counterparty's business or its holding or subsidiary company; poor financial results; recent changes in the management team, board or ownership of the supplier / customer	Financial exposure risk
3. Determine the overall "health" of the industry in which the supplier / customer operates by conducting a desk top research of relevant media publications	Financial exposure risk Performance risk
4. Assess the extent to which Transnet trade or invest funds with the counterparty which may exceed the risk appetite	Investment risk
5. Identify if there has been deterioration of the counterparty's credit risk rating over the past 6 to 12 months. Consider the causes of the downrating	Credit risk
6. Consider whether the fund investment and trading counterparty / customer / supplier have been rated by a reputable rating agency	Credit risk
7. Consider whether the contract involves a monopolistic / specialised service and / or critical components	Dependency risk Performance risk
8. Consider the contract revenue in relation to the supplier's annual turnover per their Annual Financial Statements and assess the ability of the supplier to deliver the goods / services	Performance risk
9. Consider the political / sovereign risk of foreign based counterparties and its impact on the counterparty's ability to fulfil its obligations	Financial exposure risk Performance risk
10. Consider the geographical location of foreign based customers / suppliers and the vulnerability of that country to extreme weather conditions, natural disasters and geopolitical incidents	Geographical risk Performance risk
11. Consider the regulatory and compliance risks that could impact the counterparty's ability to deliver required services to Transnet	Legal, regulatory and compliance risk

12. APPENDIX B: KEY CONSIDERATIONS TO MANAGE COUNTER PARTIES

Contract management considerations Key considerations to be applied in the management of counterparty risks through the life of the contract. These considerations apply to all three of the contract phases (tender, negotiation and lifecycle of the contract) and should be utilised to develop and maintain a register for identified risk for counterparties	Key counterparty risks
1. Review the organisation's audited Annual Financial Statements for the past 3 years	Financial exposure risk
2. Determine and analyse key financial ratios. For example: NPAT margin; EBIT Margin; Current Ratio; Turnover/Contract Value; Interest cover; Gearing; financial performance of supplier relative to peers; etc.	Financial exposure risk
3. Perform media searches of major counterparties to identify any key risks that have not been disclosed upfront. For example: Poor financial results which impacts the going concern of the customer / supplier	Financial exposure risk
4. Review analyst reports and gauge overall market sentiment of major counterparties	Financial exposure risk
5. Monitor customer financial sustainability where concentration risk is applicable. For example: Financial statement reviews, sector performance analysis, latest credit rating, etc.	Financial exposure risk
6. Monitor if any debt covenants have been breached / are close to breach / re-arrangements of debts	Liquidity risk Credit risk Investment risk
7. Review geographical, political and economic risks based on the location of the supplier/customer	Political / geographical risk Performance risk
8. Perform a review of the security / collateral for credit customers through: • Reviewing parent company guarantees (if applicable) • Ensuring that credit letters and credit guarantees are in place when trading with other countries • Monitoring customers that trade against deposits (i.e. monitoring consumption of deposit) • Performance bonds for suppliers of capital projects	Performance risk Financial exposure risk
9. Consider the impact where the terms of the contract and / or service level agreement were renegotiated as a result of changes in the business of the supplier / Transnet	Performance risk
10. Assess the quality and availability of alternate suppliers	Performance risk Concentration risk
11. Monitor the cost of procurement and lead time of new suppliers	Performance risk Legal risk
12. Monitor the track record of the supplier regarding the meeting of commitments to other businesses. Obtain and check references	Performance risk
13. Review the supplier's business resumption and contingency planning as well as the regular testing thereof. For example: Outsourced IT Systems, building / property facility management, etc.	Performance risk Financial exposure risk

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Contract management considerations: Key considerations to be applied in the management of counterparty risks through the life of the contract. These considerations apply to all three of the contracting stages (tender, negotiation and lifecycle of the contract) and should be utilised to develop and maintain a register for identified major counterparties.	Key counterparty risk
14. Regularly assess performance of the supplier / counterparty. For example: Quality of service / product, productivity, achievement of KPIs, cost overruns, timely provision of service, achievement of maintenance targets, etc.	Performance risk Compliance risk
15. Assess availability of alternate financial counterparties to ensure diversification of funding sources	Liquidity risk Credit risk
16. Review counterparty dealing limits per investment category against preset limits and in light of changes in credit rating of the counterparty	Concentration / liquidity risk Financial exposure risk
17. Determine limits for unrated counterparties based on predetermined criteria	Liquidity risk Financial exposure risk
18. Review exposure to counterparties to determine whether Transnet is exposed to counterparty risk beyond the predetermined risk appetite/limits of Transnet	Credit risk Financial exposure risk
19. Monitor that credit checks, payment history reviews, overdue debt analysis reviews are performed	Credit risk
20. Re-assess credit terms on predetermined basis linked to payment history of customer	Credit risk
21. Review latest credit ratings of the counterparty (For example: Treasury: from all three internationally recognised credit rating agencies; Suppliers and Customers: Dunn & Bradstreet Reports)	Credit risk Performance risk
22. Review licensing or registrations to ensure the supplier can legally perform its services. For example: • Company Registration documents • SARS Certificate of Good Tax Standing / Tax Clearance Certificate / Worker Compensation: DoL Certificate of Good Standing • VAT Registration • Licences or authorisation to operate. For example: Mineral and water licences	Legal, regulatory and compliance risk Performance risk

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EXHIBIT 7

TRANSNET

ANNEXURE "A"

TRANSNET DELEGATION OF AUTHORITY FRAMEWORK

(EFFECTIVE FROM 1 JUNE 2013)

APPROVED BY THE TRANSNET BOARD OF DIRECTORS ON 29 MAY 2013

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1 Interpretation and Definitions

The following words and expressions bear the following meanings, unless the context indicates otherwise:-

1.1 **"Board"** means the Board of Directors of the Company and includes the Board when it acts in the capacity as the Divisional Board of the deemed Authority under the National Ports Act No. 12 of 2005;

1.2 **"Board Reserved Matters"** means matters reserved by the Board as set out in Annexure A1 of Written resolution 2011/P2;

1.3 **"CAPIC"** means the Capital Investment Committee, a committee of the Group Executive Committee which has been established to make decisions regarding capital expenditure;

1.4 "CE" means Chief Executive of an Operating Division;

1.5 **"Chairperson"** means the person who is appointed as the Chairperson of the Board as per the MOI;

1.6 **"Company"** means Transnet SOC Ltd including its Operating Divisions and Specialist Units, with registration number 1990/000900/30 and **"Transnet"** shall have a corresponding meaning;

1.7 **"Company Strategy"** means the strategy for the Company as approved from time to time by the Board.

1.8 **"Consultant"** means a person, or partners in a firm, or a company or a close corporation who can provide expert or specialised advisory skills, but excludes anyone who also carries out the physical work or provides the end product for Transnet based on his own professional or expert advice. Such consultancy service normally pertains to a specific project and therefore non-repetitive in nature and confined to design work, investigation, or advice on management, financial, business or technical matters;

In short, a consultant does not supply the ultimate end product, but merely gives a recommendation, based on his expertise, of the best solution to a specific problem. That proposed solution, if acceptable to Transnet, still has to be acquired, built or erected by another party and may or may not be connected with the consultant. Excludes any professional services procurement package included in the approved asset procurement package plan for and approved physical asset project.

1.9 **"Delegation of Authority Framework "** means this document, recording the nature and extent of authorities required in order to implement certain actions by or on behalf of the company, including any sub-delegation of authority where permitted and **"Delegation"** shall have a corresponding meaning;

1.10 **"FRMF"** mean Financial Risk Management Framework

1.11 **"GCE"** means Transnet Chief Executive of the Company;

1.12 **"GCFO"** means Transnet Chief Financial Officer;

1.13 **"GCSCO"** means Transnet Chief Supply Chain Officer;

1.14 **"Group Executive Committee"** or **"Group Exco"** means the executive committee established to take responsibility for the day to day execution of strategy and running of the Company;

1.15 **"Group Executive or Group Executive nominee"** refers to the Group Executive responsible for the supporting business or his/her nominee;

1.16 **"International agreements"** means agreements entered into with entities incorporated in foreign jurisdictions or which are required to be construed in accordance with the laws of a foreign jurisdiction including the neighbouring countries;

1.17 **"Memorandum of Incorporation"** or **"MOI"** means the constitutive documents of the Company, as amended;

1.18 **"Neighbouring Countries"** means countries sharing a border with the Republic of South Africa;

1.19 **Operating Divisions** means the Operating Divisions of Transnet, namely, Transnet Freight Rail, Transnet Engineering, Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines;

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1.20 "PFMA" means the Public Financial Management Act 1 of 1999 (as amended), read together with its regulations' including Treasury Regulations;

1.21 **"Prescribed Officer"** means a person who, within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66(1), read with Regulation 38.

1.22 **"Shareholder"** means the Government of the Republic of South Africa represented by the Shareholder Minister.

1.23 **"Shareholder Minister"** means the Minister of Public Enterprises as defined in the MOI;

1.24 **"Shareholder's Compact"** means the shareholder's compact being an agreement entered into pursuant to section 52 of the PFMA between the Shareholder representative and the Board from time to time;

1.25 **"Specialist Unit"** mean all business units of Transnet which have been deemed 'supporting businesses' in terms of the Company Strategy, these include Transnet Property, Transnet Foundation, Transnet Capital Projects and Transnet Corporate Centre. Where a Specialist Unit CE is not a member of the Group Exco, the Group Exco member responsible for such Specialist Unit shall sub-delegate powers to the Specialist Unit's CE;

1.26 **"Subsidiary"** means subsidiary as defined in the Companies Act 71 of 2008 (as amended) and Subsidiaries shall have a corresponding meaning;

1.27 "Transnet" means the Company with its Subsidiaries and Operating Divisions as stated in clause 1.6 above.

1.28 **"Treasury Regulations"** means the regulations issued in terms of section 76 of the PFMA, amended from time to time;

1.29 **Transnet Total Asset Base:** refers to the total value of the assets in Transnet and is set at the asset value indicated in the integrated report for the year; and

1.30 "VAT" means Value Added Tax. All amounts indicated in the document are exclusive of VAT.

2 Scope

This Delegation of Authority Framework records the nature and extent of the authorities delegated by the GCE to certain employees and members of the Group Exco and other authorities delegated in order to implement certain actions by or on behalf of the Company. It includes, to the extent necessary and/or incidental thereto, the authority to discharge all of the duties, obligations and powers imposed upon the deemed Authority under the National Ports Act 12 of 2005.

3 Application

3.1 This Delegation of Authority Framework applies to all employees of the Company, including its Operating Divisions and Specialist Units. It does not apply to any of the Company's subsidiaries. The respective Boards of Directors of the Company will prepare the requisite delegations of authority for those subsidiaries.

3.2 The persons set out in clause 5 below are granted the power and /or authority to perform their functions and responsibilities subject to the limits of authority outlined in clause 5 below, provided that the exercise of such power and/or authority in terms of this delegation is not in conflict with the following:

- PFMA;
- Board Reserved Matters;
- Memorandum of Incorporation;
- Company Strategy;
- Shareholder's Compact;
- the Corporate Plan, Annual Budget and Borrowing Strategy and/or Funding Plan of the Company as approved by the Board from time to time;
- Enterprise Risk Management Framework; and
- Any approvals by the Board and the Minister of Finance for the delegation of the power to borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Company to any future financial commitment in terms of section 66 of the PFMA.

3.3 This Delegation supersedes any prior Delegations of Authority Framework and takes effect upon the date determined by the Board of Directors.

3.4 Any proposal for amendments to this Delegation or to the authorities or the authorities delegated in this Delegation must be submitted in writing to the Transnet Company Secretary for consideration and approval by the Board of Directors.

4 Delegating Powers

4.1 A person authorised to exercise any of the authorities set out in clause 5 below ("original bearer of authority") may, in writing, sub-delegate to his/her subordinate ("designate") during his/her temporary absence or for an indefinite period, provided:

4.1.1 the authority is conferred by way of a certificate signed by the original bearer of authority, naming and identifying the designate, and the extent of the authority which is sub-delegated to the designate;

4.1.2 the sub-delegated authority shall only be exercised within the original bearer of authority's respective area of responsibility; and

4.1.3 the sub-delegated authority may be revoked at any time by the original bearer of authority.

4.2 Unless otherwise specifically indicated, approval of any of the matters listed in clause 5 below may be granted by a designate.

4.3 With respect to all matters and authorities specifically listed in clause 5 below, the delegated authority by the GCE to bind the Company is in regard to any business activity or transaction (or a series of related transactions) and is subject to the value in the aggregate of all payments or any consideration made or to be made for any such business activity or transaction(s) being complied with.

4.4 The original bearer of authority or designate must ensure that all the necessary procedures and/or approvals have been fulfilled prior to exercising any of the matters and authorities listed in clause 5 below.

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5 Company Authorities

Limits of authority have been delegated by the Board of Directors to the Transnet Group Chief Executive. In the interest of good corporate governance, approval structures have been established in the Company. Requests for approval must follow the approved governing processes and structures for recommendation but the final approval vests with the delegated individual (for example CE, GCFO, GCE) as reflected in the specific delegations set out in this document.

In cases where business requirements necessitate that approval be obtained from the delegated authority without the review and recommendation by the relevant governance structures (CAPIC, Group Exco, etc.) this must be reported to the relevant governance structures immediately thereafter.

The authority to approve the Annual Corporate Plan and Budget of the Company vests with the Board of Directors, provided that it must be submitted to the Shareholder in terms of Section 52 of the PFMA.

5.1 Capital Expenditure

NOTE 1: Capital expenditure may only be authorised if the project has been so approved by CAPIC or the relevant divisional CAPIC in accordance with the limits set out in this Delegation of Authority Framework and capital funds have been allocated in the annual Budget of the Company.

NOTE 2: Capital expenditure may only be authorised if the project has been approved and a warrant number has been issued by the relevant authority. All requests for capital expenditure exceeding the Divisional CE's limit must be submitted to the project administrator at Transnet Financial Planning.

5.1.1 CAPEX in approved budget/Corporate Plan: To commence projects

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco /GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Operating Divisions	Up to but not exceeding R200m	Up to but not exceeding R400m	Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Up to but not exceeding R3900m	Exceeding R3900m
Approval Authority →	**Group Exco Member**		**Transnet CAPIC/GCFO**	**Group Exco /GCE**	**Board Acquisitions and Disposals Committee**	**Board**	**Shareholder Minister**
Specialist Units	Up to but not exceeding R20m		Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Up to but not exceeding R3900m	Exceeding R3900m

*Refer to Materiality and Significance Framework. If the set limit (R3900m) is exceeded then the Board has to consider and recommend to Shareholder Minister for approval.

- Approval limits are per individual project, reported on a monthly basis to Group Financial Planning.
- Amounts indicated above exclude the capitalisation of borrowing costs.
- All ICT projects requiring Transnet approval must be signed off by the Head: Enterprise Information Management Services.
- Board Acquisitions and Disposals Committee refers to the Acquisitions and Disposal Committee of the Board. Group Exco/GCE to be the final approval gate for all capitalisation of maintenance projects (COPEX) irrespective of the value of the project provided that it has been included in the Corporate Plan.
- Front end loading (FEL) studies for level 1 and 2 may be approved in terms of the operating expenditure DoA, FEL 3 studies may be approved as standalone (excluding execution) per the above table. Please refer to the Accounting Policy for Conceptual, Pre-feasibility and Feasibility Studies when capitalising FEL studies.
- Approvals exceeding R2000m but less than R3900m in ETC are to be reported to the Shareholder Minster

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5.1.2 Unforeseen CAPEX (not included in budget/Corporate Plan)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Operating Divisions	Up to but not exceeding R50m	Up to but not exceeding R75m	Up to but not exceeding R400m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3900m	Exceeding R3900m
Approval Authority →	Group Exco Member		Transnet CAPIC/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board	Shareholder Minister
Specialist Units	Up to but not exceeding R20m		Up to but not exceeding R400m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3900m	Exceeding R3900m

*Refer to Materiality and Significance Framework. If the set limit (currently R3900m) is exceeded then the Board has to consider and recommend to Shareholder Minister for approval.

- All unforeseen Capex approved by Operating Divisions/Specialist Units within their delegated authority, must be reported on a quarterly basis to Group Financial Planning.
- Amounts indicated above exclude the capitalisation of borrowing costs.
- All ICT projects requiring Transnet approval must be signed off by the Head: Enterprise Information Management Services
- Approval limits are per project at Operating Divisional level subject to an aggregate divisional limit of R200m per annum and R400m for TFR on condition that divisions remain within their annual approved capital budget (refer to 5.1.3.1).
- Divisional investment committees are to monitor the limits pertaining to the respective OD and to escalate submissions to Transnet if the respective OD limits are reached.
- If an unforeseen project will result in the divisional 7 year investment plan being increased then Group Exco needs to be approached for approval.

5.1.3 Increase in Estimated Total Cost (ETC) of Existing/Approved Projects

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet CAPIC/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	ETC may be increased to a maximum of R200m, increases beyond this amount may only be approved at Transnet Level	ETC may be increased to a maximum of R400m, increases beyond this amount may only be approved at Transnet Level	Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R1400m	Exceeding R1400m
Approval Authority →	Group Exco Member		Transnet CAPIC/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	ETC may be increased to a maximum of R20m, increases beyond this amount may only be approved at Transnet Level		Up to but not exceeding R800m	Up to but not exceeding R1000m	Up to but not exceeding R1400m	Exceeding R1400m

- Increase in ETC of projects already approved by the Shareholder Minister must be reported to the Shareholder Minister if the increase is in excess of 15%.

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- All ICT projects requiring Transnet approval must be signed off by the Head: Information Management Services.
- All cost increases in excess of 25% of the approved budget for a project must be reported to Transnet CAPIC/GCFO.
- Amounts indicated above exclude the capitalisation of borrowing costs. Increases in ETC of a project solely due to the capitalisation of borrowing costs may be approved by the OD Exco/CE. Project costs and capitalisation of borrowing costs are to be managed separately and may not be expended on projects interchangeably.

5.1.3.1 Any increase in excess of the annual approved capital investment budget must be submitted to Transnet CAPIC/GCFO for approval.

5.1.4 **Asset Write-off/Scrapping: Movable Assets**

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m

*Refer to Materiality and Significance Framework. If the set limit (currently R3900m) is exceeded then the Board has to consider and recommend to Shareholder Minister for approval.

- The above amounts refer to net book value and are a cumulative annual limit. Write-offs above R10m and above R50m in the case of TFR must be reported to Transnet CAPIC/GCFO quarterly.
- Divisional investment committees are to monitor the limits pertaining to the respective OD and to escalate submissions to Transnet if the respective OD limits are reached.

5.1.5 **Asset write-off/Scrapping/Demolition of Immovable Assets (excluding land) e.g. buildings, structures**

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board*
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R150m	Up to but not exceeding R250m	Up to but not exceeding R300m	Exceeding R300m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board*
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R300m	Exceeding R300m

*Refer to Materiality and Significance Framework. If the set limit (currently R3900m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.

- The above amounts refer to an estimated market value at that point in time and are a cumulative annual limit.
- Divisional investment committees are to monitor the limits pertaining to the respective OD and to escalate submissions to Transnet if the respective OD limits are reached.
- Write-offs below R10m and below R50m in the case of TFR must be reported to Transnet CAPIC/GCFO quarterly.

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5.1.6 Disposal of Movable Assets (excluding sale of scrap)

Approval Authority →	OD Exco/CE*	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board#
Operating Divisions	Up to but not exceeding R50m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m
Approval Authority →	Group Exco Member	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board#
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R700m	Exceeding R700m

*The above amounts refer to an estimated market value and are subject to a cumulative annual limit of R200m. For sale of scrap please refer to 5.5.1.

- Divisional investment committees are to monitor the limits pertaining to their OD and to escalate submissions to Transnet once the respective OD limits are reached.
- #Refer to Materiality and Significance Framework. If the set limit (currently R3900m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.

5.1.7 Management's intervention in addressing non-compliance with regard to the approval of capital projects

Approval Authority →	OD CE	GCFO	GCE
Operating Divisions	Nil	Nil	Unlimited
Approval Authority →	Group Exco Member	GCFO	GCE
Specialist Units	Nil	Nil	Unlimited

- Together with the application for approval of non-compliance, the requestor must advise on the steps/corrective measures taken to avoid a repeat of the transgression within 30 days of the transgression being discovered.
- If the approval of non-compliance results in the annual divisional budget being exceeded, then the request must be submitted to Transnet CAPIC for approval (refer to 5.1.3.1).

5.1.8 Alienation/acquisition of Immovable property (land and servitudes)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board*
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R350m	Up to but not exceeding R500m	Exceeding R500m
Approval Authority →	Group Exco Member		Transnet Capic/GCFO	Group Exco/GCE	Board Acquisitions and Disposals Committee	Board*
Specialist Units	Up to but not exceeding R1m		Up to but not exceeding R200m	Up to but not exceeding R350m	Up to but not exceeding R500m	Exceeding R500m

*Refer to Materiality and Significance Framework. If the set limit (R3 900m) is exceeded then the Board to consider and recommend to Shareholder Minister for approval.

- Approval limits are per transaction and are with reference to market value
- All transactions entered into in terms of the above must be reported to Transnet CAPIC/GCFO
- Only immovable property on the non-core list, may be disposed of (refer to 5.1.8.1), such disposal may only be done through the Specialist Unit, Transnet Property.
- Amounts indicated above exclude the capitalisation of borrowing costs.

5.1.8.1 Newly identified properties to be included on the non-core list (Book value of individual properties)

GE: Transnet Property	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Up to but not exceeding R50m	Up to but not exceeding R100m*	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m

* These disposals must be reported to Transnet Capic/Group Exco/Board Acquisitions and Disposals Committee/Transnet Board.

5.2 Treasury

Treasury Policies and Strategies

Approval Authority →	Group Treasurer	GCFO	GCE	Audit Committee	Board
Financial Risk Management Framework	Recommend	Recommend	Recommend	Recommend	Approve

NOTE 1: In respect of all transactions set out in paragraphs 5.2.1 to and including 5.2.10, the necessary legal advice must be obtained where applicable and persons executing such transactions must comply fully with the applicable Enterprise Risk Management Framework and any revised limits determined in terms of such framework and the provisions of the PFMA and, when in doubt, persons must consult the Treasury Compliance Officers and Transnet Finance or Transnet Legal Services.

NOTE 2: Only approved financial instruments as approved in terms of the applicable Treasury Financial Risk Management Framework approved by the Board and subject to such limits determined in accordance with such framework may be utilised in the Treasury operations.

5.2.1 InterTransnet Debt (Treasury inter Transnet debt write-off)

Approval Authority →	Deputy Treasurer: Back Office	Group Treasurer	GCFO	GCE
Operating Divisions	Up to but not exceeding R5m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m
Specialist Units	Up to but not exceeding R2m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m

All breaches of the above limits to be reported to the Audit Committee.
External debt write-off on financial instruments due to counter-party liquidation may only be approved by the GCE.

5.2.2 Maximum annual loss on all repo activities (Realised and unrealised)

Approval Authority →	Traders and Chief Trader	Deputy Treasurer: Front Office	Group Treasurer	GCFO	GCE
Group	Up to but not exceeding R1m	Up to but not exceeding R1.5m	Up to but not exceeding R2.5m	Up to but not exceeding R5m	Exceeding R5m

All breaches of the above limits to be reported to the Audit Committee
Note: The above limits are aggregate desk limits

5.2.3 Buy and sellback and sell and buyback transactions (Expressed in nominal terms)

Approval Authority →	Traders and Senior Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer	GCFO
Group	Up to but not exceeding R250m	Up to but not exceeding R500m	Up to but not exceeding R750m	Up to but not exceeding R1 000m	Exceeding R1 000m
Duration Limit	2 weeks	3 weeks	1 month	1 month	> 1 month

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All breaches of the above limits (amount or tenure) to be reported to the Audit Committee.
Approval limits are per transaction/event.

5.2.4 **Foreign Exchange Spot Transactions Operational payments, not related to hedging, early take ups or extensions (expressed in USD equivalent)**

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer	GCFO
Group	Up to but not exceeding an aggregate equivalent of $20m per day (desk total)	Up to but not exceeding an aggregate equivalent of $40m per day (desk total)	Up to but not exceeding an aggregate equivalent of $100m per day (desk total)	Up to but not exceeding an aggregate of $250m per day (desk total)	Exceeding a daily equivalent of $250m (desk total)

All breaches of the above limits to be reported to the Audit Committee.

5.2.5 **Foreign Exchange Hedging Transactions New hedges or re-alignment of existing hedges (expressed in USD equivalent)**

Approval Authority →	Deputy Treasurer Middle Office	Group Treasurer	GCFO
Group	Submissions not exceeding $10m	Submissions not exceeding $100m	Submissions exceeding $100m
Tenure	Not exceeding 18 Months	Not exceeding 3 years	Exceeding 3 years

All breaches of the above limits (amount or tenure) to be reported to the Audit Committee.

5.2.6 **Foreign Exchange Hedging Transactions: Extensions, early take ups (expressed in USD equivalent)**

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer
Group	Not exceeding an aggregate equivalent of $20m per day (desk total)	Not exceeding an aggregate equivalent of $50m per day (desk total)	Not exceeding an aggregate equivalent of $100m per day (desk total)	Exceeding an aggregate of $100m per day (desk total)

All breaches of the above limits to be reported to the Audit Committee.
Note: Where no specific limit is mentioned, the FRMF policy on foreign exchange rate risk will apply.

5.2.7 **Approval of FX hedges to be hedged by external suppliers on their balance sheet for goods/services to be delivered to Transnet in respect of Rand agreements involving foreign content**

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer
Group	Not exceeding $10m	Not exceeding $25m	Not exceeding $50m	Exceeding $50m

All breaches of the above limits to be reported to the Audit Committee for noting.
The above limits are applicable per agreement.
Note: The Business Units must always obtain quotes on FX forward rates and liaise with the Treasury Trading desk that will verify the rates to ensure it is market related. The Business Units can only enter into the FX hedges with the supplier once the rates are accepted by the Treasury Trading desk via e mail. Once the above approvals are obtained, the Treasury Traders will provide sign off on the rate acceptance.

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5.2.8 Interest Rate Risk Hedging

Approval Authority →	Notional Amounts	Group Treasurer	GCFO
Group	Notional amount of hedge expressed in USD (FX loans and leases)	Up to but not exceeding $100m	Exceeding $100m
	Notional amount of hedge expressed in ZAR (ZAR loans and leases)	Up to but not exceeding R1 000m	Exceeding R1 000m
Tenure		Not exceeding 5 years	Exceeding 5 years

All breaches of the above limits to be reported to the Audit Committee.
Note: Where no specific limit is mentioned, the FRMF policy on interest rate risk will apply.
The above limits are applicable per hedging submission.

5.2.9 Hedging of fuel risk exposures (commodity risk)

Approval Authority →	Group Treasurer	GCFO
Tenure	Not exceeding 6 months	Not Exceeding 18 months
Notional hedge expressed in RAND	Not exceeding R250m	Exceeding R250m

All breaches of the above limits to be reported to the Audit Committee.
Note: The maximum hedge should not exceed 75% of annual budgeted consumption inclusive of energy levy income.
The above limits are applicable per hedging submission.
Note: Where no specific limit is mentioned, the FRMF policy on commodity risk will apply.

5.2.10 Granting of InterTransnet Loans (Interest-bearing only) to divisions/subsidiaries

Approval Authority →	Deputy Treasurer: Front Office	Group Treasurer	GCFO	
Operating Division	Up to but not exceeding R750m	Up to but not exceeding R1 000m	Exceeding R1 000m	
Subsidiary	Up to but not exceeding R10m	Up to but not exceeding R25m	Exceeding R25m	

These above limits are cumulative per financial year.

5.2.11 Letters of Credit

Approval Authority →	Deputy Treasurer: Front Office	Group Treasurer	GCFO	GCE
Transnet	Up to but not exceeding R100m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m

All breaches of the above limits to be reported to the Audit Committee.
The above limits are per letter of credit.

Funding Portfolio

NOTE 1: Only derivatives approved in terms of the applicable Financial Risk Management Framework and subject to such limits determined in accordance with such framework may be utilised to hedge any risks.

NOTE 2: The total nominal funding amount per financial year in respect of Bonds and any other funding transactions shall be as determined per Board approved/Board amended Funding/Borrowing Plan.

NOTE 3: A. Signatories mean, subject to such approvals by the Board and the Minister of Finance in terms of section 66 of the PFMA as may be applicable, the Group Treasurer and any other officer so designated in writing by the GCFO.

B. Signatories mean, subject to such approvals by the Board and the Minister of Finance in terms of section 66 of the PFMA as may be applicable, persons so designated in writing by the Group Treasurer.

5.2.12 Loan/Funding documentation approvals per instrument per financial year

Approval Authority →	Group Treasurer	GCFO	GCE
Tapping of bonds	-	Not exceeding R5bn (Electronic signatures are utilised on pricing supplements as per standing approval)	Exceeding R5bn (Electronic signatures are utilised on pricing supplements as per standing approval)
Bank Loans (including overnight facilities)	Up to but not exceeding R1bn	Up to but not exceeding R2.5bn	Exceeding R2.5bn
Commercial Paper		Not exceeding R5bn (Electronic signatures are utilised on pricing supplements as per standing approval)	Exceeding R5bn (Electronic signatures are utilised on pricing supplements as per standing approval)
ECA supported funding	Up to but not exceeding R250m	Up to but not exceeding R1bn	Exceeding R1bn
New bond issues (in approved funding plan)	-	Up to but not exceeding R1bn	Exceeding R1bn
Development funding	Up to but not exceeding R250m	Up to but not exceeding R1bn	Exceeding R1bn
Foreign funding	-	Up to but not exceeding R1bn	Exceeding R1bn
Any other source of funding not stipulated above	-	Up to but not exceeding R1bn	Exceeding R1bn
The above is further subjected to the following annual aggregate limit			
	R1.5bn	R10bn	Limited to the annual Board approved borrowing plan *

The above is subject to the following:

- Be executed in accordance with the approved strategy as incorporated in the Corporate Plan (including any approved amendments).
- Be within the laid down cash holding limits of Transnet.
- All breaches of the above limits to be reported to the Audit Committee.
- * The GCE can increase funding requirements up to 10% of Board approved borrowing plan and needs to be ratified by Board.

5.2.13 **Signing of legally binding agreements in respect of Treasury related activities (Including ISDA, ISMA agreements and Bank facilities)**

Only the GCE and/or the GCFO have authority to sign. The Group Treasurer may sign with a specified delegation of authority.

5.2.14 Counterparty Limits: Setting of Limits

Approval Level			
Group Treasurer	GCFO	GCE	Board Audit Committee
			Counter Party Risk Limits[1]
Price Risk Limits ≤ R25m[3]	Price Risk Limits ≤ R250 m[3]	Price Risk Limits ≤ R500 m[3]	
Recommendation of Bond Issue and Bond Issuer Limits	Approval of Bond Issue and Bond Issuer Limits		
Recommendation of Settlement Limits[2]	Approval of Settlement Limits[2]		
Recommendation of limits where Transnet is exposed to	Approval of limits where Transnet is exposed to		

counterparty issuer risk as a result of advance payment guarantees, performance bonds, retention bonds etc. issued under supplier agreement/contracts[3]	counterparty issuer risk as a result of advance payment guarantees, performance bonds, retention bonds etc. issued under supplier agreement/contracts[3]		

Note: Where no specific limit is mentioned, the FRMF policy on Counter Party Risk will apply.
Note[1]: The approved counterparty risk may be utilised for price risk, investment risk as well as issuer risk (in respect of advance payment guarantees, performance bonds, retention bonds etc.) as long as the sum of the individual exposures remains within the overall Audit Committee approved risk limit.
Note[2]: Settlement risk limits are set at 1.5 times the approved counterparty limit as stipulated in the FRMF and will be approved with the counterparty limit.
Note [3]: In respect of counterparties not approved by Audit Committee

5.2.15 **Appointment of Commercial Bankers and the Opening of Bank Accounts**

	Group Treasurer	GCFO
All OD/SU	Recommendation to open bank accounts and the appointment of bankers.	Approval of new bank accounts and the appointment of bankers and the approval of all documentation relating to such accounts including electronic banking documentation.
Process to follow	There is no delegation to any OD/SU to appoint commercial bankers or to open bank accounts, domestically or internationally; only the GCFO may make such appointments.	

5.2.16 **Establishing financial policy with regard to insurance**

Authority Level	GCFO after consulting with Chief Risk Officer. (Insurance role moved to Group Treasury according to the PWC Benchmarking Exercise Report.)

Board Risk Committee to approve.

5.2.17 **Authorisation of cheque signatories, Test keys and EFT's**

Signing Cheques	Two A signatories or one A and one B signatory
Signing Test keys for paying/receiving	Two A signatories or one A and one B signatory
Electronic transfer of funds	Two A signatories or one A and one B signatory

5.2.18 **Payment instructions and confirmation notes**

Signing payment instructions/ receipts/ settlement instructions:	Two A signatories or one A and one B signatory
Signing confirmation notes in respect of approved financial transactions executed:	One A signatory

5.2.19 **Approval of Annual Borrowing Plan**

	Board
Group	Approve the annual borrowing plan for execution by Treasury

Annual borrowing plan to be recommended by the Group Treasurer, GCFO and the Audit Committee for approval by the Board.

5.2.20 **Authorisation to enter into binding transactions**

	Group Treasurer
Group	Authorise Treasury employees to enter into binding financial transactions on behalf of the Transnet

5.2.21 Issuing of Guarantees (subject to requirements of section 66 of the PFMA)

	Group Treasurer	GCFO	GCE	Board
Transnet	Up to but not exceeding R25m	Up to but not exceeding R200m	Up to but not exceeding R500m	Exceeding R500m

All breaches of the above limits to be reported to the Audit Committee.
Limits are per transaction.

5.2.22 Issuing Letters of Support

	Board
Group	Only the Board of Directors has authority to issue letters of support

5.2.23 Issuing of security per transaction (subject to section 66 of the PFMA)

	Group Treasurer	GCFO	GCE	Board
Group	Up to but not exceeding R250m	Up to but not exceeding R500m	Up to but not exceeding R1 000m	Exceeding R1 000m

The above limits are per transaction. All breaches of the above limits to be reported to the Audit Committee.

5.2.24 Advance Payment Guarantees (APG) and Performance Bonds (PB) in Supplier Agreements

	OD CFO	Treasury	Group CFO
Notional Value	Up to but not exceeding R25m	Up to but not exceeding R75m	Exceeding R75m
Issuer Acceptance		All issuers	All Issuers

- The limits are cumulative per annum
- The OD CFO is required to obtain legal acceptance from the Divisional Legal Department and or Group Legal in respect of all APGs and PBs
- APGs and PBs should be constructed in a manner that they become payable on demand
- The minimum long term credit rating requirements may not be less than
    - A- from Fitch Ratings or Standard and Poors or
    - A3 from Moody's
    - Issuers not rated will not be accepted
    - Group Treasury may also consider an equivalent rating from other recognised rating agencies as contained in the FRMF

5.3 Finance

5.3.1 Bad Debt Write-off

Trade Debtors

Approval Authority →	OD Exco/CE* excluding TFR	TFR Exco/CE	GCFO	Group Exco/ GCE	Audit Committee	Board
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R500m	Exceeding R500m
Approval Authority →	**Group Exco Member**		**Transnet Capic/GCFO**	**Group Exco/ GCE**	**Board Audit Committee**	**Board***
Specialist Units	Up to but not exceeding R5m		Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R500m	Exceeding R500m

*Approval limits are R10m and R20m for TFR per transaction subject to an annual cumulative limit of R50m and R100m for TFR. Specialist unit limit is R5m cumulative per annum.

5.3.2 Setting of limits for credit facilities (Trade debtors)

Approval Authority →	Divisional CFO excluding TFR	OD Exco/CE* excluding TFR	TFR CFO	TFR CE	GCFO	GCE
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R100m	Up to but not exceeding R150m	Up to but not exceeding R300m	Exceeding R300m
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R10m	n/a	n/a	Up to but not exceeding R300m	Exceeding R300m

Limits are per individual customer/client. Credit limits are to be reviewed on an annual basis. The limits are applicable subject to the division following the credit evaluation process.
Internal limits between ODs are not applicable.

5.3.3 Issuing of Credit notes

Approval Authority →	Divisional CFO	OD Exco *	GCFO	GCE
Operating Divisions	Up to but not exceeding R10m	Up to but not exceeding R20m	Up to but not exceeding R300m	Exceeding R300m
Specialist Units	Up to but not exceeding R5m	Up to but not exceeding R10m	Up to but not exceeding R300m	Exceeding R300m

Limits are per individual credit note and relates to external parties. Issuing of credit notes regarding internal/interdivisional transactions must be within the control of the divisional CFOs.
* Excludes the product reconciliation process at Transnet Pipelines where the Divisional CFO and Divisional COO approve transactions arising out of the product reconciliation process.

5.3.4 Exceeding the operational expenditure budget in total for the year (Operating Divisions/Specialist Units)

The Board of Directors to be informed at every meeting of the financial status and latest estimates of the Company

Approval Authority →	OD CE*	GCFO	GCE	Board
Operating Divisions	Up to but not exceeding 5% of approved budget	Up to but not exceeding 7.5% of approved budget	Exceeding 7.5% of approved budget to a maximum of 10%	>10%
Specialist Units	Up to but not exceeding 5% of approved budget	Up to but not exceeding 7.5% of approved budget	Exceeding 7.5% of approved budget to a maximum of 10%	> 10%

* To be reported quarterly to the GCFO and GCE together with mitigating action plans to ensure that key financial metrics are maintained or met.

Delegations for operational transactions that are too detailed to include in the Transnet Delegations of Authority Framework will be determined and applied in terms of the details set out by the CE/GE in conjunction with the CFO of the respective OD/SU.

5.4 Procurement

All procurement transactions (including reverse logistics – selling of goods) must fully comply with the approved Transnet Supply Chain Policy and Procurement Procedures Manual (PPM), as well as the Transnet Capital Projects Construction Procurement Policy, Processes, Procedures and Methods (CPPPPM) where applicable – Any commercial agreement (for the purchase of goods or services) must be signed off by an authorised employee of Supply Chain Management (Procurement) prior to signing of the contract to indicate that all the steps as per clause 5.5 below have been followed and that all procurement related governance has been adhered to.

5.4.1 Appointment of Consultants

Approval Authority →	OD CE*	GCFO	Group Exco/ GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R25m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m
Approval Authority →	**Group Exco Members**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Specialist Units	R10m	Up to but not exceeding R50m	Up to but not exceeding R200m	Up to but not exceeding R300m	Exceeding R300m

*Approval limits are cumulative per annum. Excludes appointment of consultants to perform feasibility studies for capital projects.

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5.4.2 Approval to approach the market for Open Tenders

Approval Authority →	OD CE and TCP GE	GCSCO	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R450m	Up to but not exceeding R525m	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Exceeding R2000m
Approval Authority →	**Specialist Unit HOD (budget owner)**	**GCSCO**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Specialist Units	Up to but not exceeding R75m	Up to but not exceeding R525m	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Exceeding R2000m

*The OD CE may only delegate these powers to go to market with Open Tenders to Heads of Procurement. The Requisition (or Request to Purchase) issued to Procurement must be approved by the OD's Budget Owner or his duly authorised delegate. Such approved requisition or Request to Purchase will signify that the acquisition has been approved and that the necessary funds are available.
Submissions requiring approval of the GCSCO or higher must also include a procurement strategy document, signed off by the person with the delegated authority.

The Requisition (or Request to Purchase) issued to Procurement must be approved by the Specialist Unit's HOD or his duly authorised delegate. Such approved requisition or Request to Purchase will signify that the acquisition has been approved and that the necessary funds are available.
Submissions requiring approval of the GCSCO or higher must also include a procurement strategy document, signed off by the person with the delegated authority.

5.4.3 **Approval to approach the market for confined tenders: Confinement of tenders (not subject to the quotation system)**

Approval Authority →	OD CE and TCP GE	GCSCO	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Nil	Nil	Nil	Up to but not exceeding R250m	Up to but not exceeding R1000m	Exceeding R1000m
Approval Authority →	**Group Exco Members**	**GCSCO**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Specialist Units	Nil	Nil	Nil	Up to but not exceeding R250m	Up to but not exceeding R1000m	Exceeding R1000m

The limits are per transaction/confinement. All requests for approval of confinements must be made by the OD CE/Group Exco Member to the GCE. The OD Specialist Unit shall prepare the submission in collaboration with Transnet integrated supply chain management (iSCM) to ensure that the rules for confinement are met.
In instances where confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority.

5.4.4. Management's intervention to address non-compliance with procurement policies and procedures

Approval Authority →	OD CE and TCP GE	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Nil	Nil	Up to but not exceeding R50m	Up to but not exceeding R1000m	Exceeding R1000m
Approval Authority →	Group Exco Members	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
SU	Nil	Nil	Up to but not exceeding R50m	Up to but not exceeding R1000m	Exceeding R1000m

All requests for approval of non-compliance must be made by the OD CE/Group Exco member to the GCE. The OD/Specialist Unit shall prepare the submission in collaboration with Transnet iSCM to ensure that the rules for the addressing of non-compliance are met. Together with the application for approval of non-compliance, the requestor must advise on the steps/corrective measures taken to avoid a repeat of the transgression within 30 days of the transgression being discovered.

5.4.5 Establishing Procurement policy (opex, capex and disposals)

Authority Level	Board Acquisitions and Disposals Committee

5.4.6 Procurement process approval

NOTE: Each OD/SU will have its own main Acquisition Council (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/SU CE to lower the R2 million threshold, or to create Secondary Regional/Local Acquisition Councils. The OD/SU CE may also delegate certain process approval powers to the relevant Manager for matters below the Secondary Acquisition Councils' delegation. Transactions exceeding the OD/SU CE's Delegated Powers will also be considered by the OD's main AC for recommendation to the higher approval body (e.g. the BADC). If it concurs with the recommendation, the matter will be referred to the relevant person/structure with the delegation of authority for approval. Should any process approval body not agree with the recommendation, the matter must be referred back to the recommending officer(s) for reconsideration or re-motivation.

Approval Authority →	OD and TCP (Secondary and/or Main) Acquisition Councils	Group Chief Supply Chain Officer	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions including TCP	Up to but not exceeding R450m	Up to but not exceeding R525m	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Exceeding R2000m
Approval Authority	Specialist Unit (Secondary and/or Main) Acquisition Councils	Group Chief Supply Chain Officer	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Specialist Units excluding TCP	Up to but not exceeding R5m subject to the contract period not exceeding 5 years	Up to but not exceeding R525m	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Exceeding R2000m

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5.5 Contracts/Agreements

NOTE 1: Any person who has been authorised to execute any legal documents including deeds, leases, assignments, contracts, applications, financial instruments, external submissions to or on behalf of Transnet and/or its OD or any other legal documents may only do so with the prior advice of the relevant Legal Services department as set out in the Transnet Legal Policy.

NOTE 2: Unless otherwise indicated in the authorities below, the authority to execute a contract or other binding document carries with it like authority to cancel or modify it, but only with the prior written advice of the relevant Legal Services department as set out in the Transnet Legal Policy and if it relates to Procurement Contracts, the approval of the relevant Acquisition Council (as per the Procurement Procedures Manual - PPM).

NOTE 3: Any person authorised to enter into an agreement/contract or other binding document involving capital expenditure must have obtained prior financial approval in terms of the procedures set out in 5.1 prior to entering into such a CAPEX contract.

NOTE 4: Approval limits are per transaction/contract.

NOTE 5: The authority to execute a contract or other binding document carries with it the understanding that an authorised payment required thereby will be made once proof of receipt has been obtained. No person is authorised to obligate the company to an amount greater than such payment or create more onerous obligations than those contained in the contract or other binding document. Increases to the original scope of the binding document must be supported by authorised amendment.

NOTE 6: In terms of the PPM all amendments to contracts must be approved by the Manager (i.e. a person with the relevant delegated powers) who originally signed the initial contract as well as by the relevant Acquisition Council where the amendment exceeds 10% of the original contract value.
For higher value contracts (i.e. those signed by the operating division's CE, the GCFO or GCE), it is advisable to obtain a written mandate from that official empowering a delegate to administer such contract and to effect changes to such contract not exceeding 10% of the initially approved contract value.

5.5.1 Enter into and signing of Contracts/Agreements and award of business: (including the sale of scrap)

Approval Authority →	OD CE and TCP GE		Group Chief Supply Chain Officer	GCFO	GCE	Board Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R450m		Up to but not exceeding R525m	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Exceeding R2000m
Approval Authority →	**Specialist Unit CE**	**Group Exco members**	**Group Chief Supply Chain Officer**	**GCFO**	**GCE**	**Board Acquisitions and Disposals Committee**	**Board**
Specialist units excluding TCP	Up to but not exceeding R5m subject to the contract period not exceeding 5 years	Up to but not exceeding R30m	Up to but not exceeding R525m,	Up to but not exceeding R750m	Up to but not exceeding R1000m	Up to but not exceeding R2000m	Exceeding R2000m

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Values are per contract for the full term of the contract (Total value of contract excluding VAT) on condition that approval has been obtained for the related expenditure over the period. Please refer to the conditions stipulated below. Payments: Once the decision to contract has been issued, contract execution will be governed by the Operating Divisions, including the payment process provided that the contract amount is not exceeded.

5.5.1.1 **Contracts > R500m, including Transnet's top 60% value opex items and capex contracts**

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.

5.5.1.2 International Contracts/Agreements (all contracts)

- Approval to enter into an agreement/contract or other binding document involving foreign currency 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 FX 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 an embedded derivative. All FX agreements above R100m must apart from the above also obtain written approval from the GCFO.

5.5.2 Enter into and Signing of Revenue Contracts/Agreements and authority to issue binding quotes locally: (excluding lease contracts and the sale of scrap)

Approval Authority →	OD CE Limit per Annum per contract up to but not exceeding 5 years	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Board Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Operating Divisions	Up to but not exceeding R300m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3000m	Exceeding R3000m
Approval Authority →	Specialist Unit CE Limit per Annum per contract up to but not exceeding 5 years	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Board Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Specialist units	Up to but not exceeding R10m	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3000m	Exceeding R3000m

- Transnet integrated customer agreements where a service incorporates more than one division must be signed off by the GCFO and the Group Executive: Commercial in addition to sign off by the OD CE's, up to but not exceeding revenue of R500m per annum not exceeding 5 years.

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- If the contract period is below 12 months the contract value is to be annualised and the delegated authority required to approve the transaction will be determined by the annualised amount.
- All limits indicated above are exclusive of VAT
- Board approval is required if ANY one of the following limits are exceeded:
  - The contract period exceeds 5 years
  - The annual value of the contract exceeds R3000m.
  - The total value of the contract over the contract life exceeds R15000m.

5.5.3 **Enter into and Signing of Revenue Contracts/Agreements and authority to issue binding quotes internationally including cross border contracts: (excluding lease contracts and the sale of scrap)**

Approval Authority →	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Board Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Operating Divisions	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3000m	Exceeding R3000m
Approval Authority →	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Board Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Specialist units	Up to but not exceeding R500m	Up to but not exceeding R1000m	Up to but not exceeding R3000m	Exceeding R3000m

5.5.4 Internal Contracts

Contracts between divisions such as service level agreements and project specific agreements may be entered into between OD CE's.

5.5.5 Property and Lease Agreements

All external Property Lease Agreements (excluding vacant land) as well as other expenditure leases.

Approval Authority →	OD CE and TCP GE	Transnet Property GE	GCFO	GCE	Board Acquisitions and Disposals Committee
Operating Divisions	Up to but not exceeding R15m annualised	Up to but not exceeding R50m annualised	Up to but not exceeding R200m full term	Up to but not exceeding R500m full term	Exceeding R500m full term
	Tenure not exceeding 5 years	Tenure not exceeding 5 years	Tenure not exceeding 10 years	Tenure not exceeding 15 years	Tenure exceeding 15 years

- Tenders that include alienation/leasing out of land for a period longer than 5 years must be submitted to the GCE for approval prior to going out on tender or RFP.
- Cession of leases: All cession or assignment of Lease agreements shall be approved by the Group CFO or Group Executive: Transnet Property. For cession of leases at OD level the Chief Executive of the respective OD may approve cession or assignment of lease agreements.
- Cession of lease agreements with a change to material terms of the existing lease e.g. extension or shortening of the lease period, change of rental terms etc. may be approved in terms of the above limits i.e. where the original lease was approved in terms of the delegated authority above, changes of material terms to be approved by the same approval body.

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- All external Lease Agreements (> 5 years) of properties on land/properties adjacent to other land/properties of ODs and/or belonging to Transnet Property, must be communicated and agreed with the relevant division/Transnet Property before entering into any Lease Agreements.
- All leases for vacant land may only be approved by the GCE with the above limits for the GCE applicable i.e. if the lease value exceeds R500m or the tenure exceeds 15 years then Board Acquisitions and Disposals Committee approval is required. For the purposes of this transaction vacant land is considered to be undeveloped land.
- In cases where vacant land is leased out with its own rental premium applicable to it and a separate rental premium for improvements located on the portion of the same leased site, although part of one lease transaction – to the extent that the proposed lease has lettable vacant land, the GCE shall approve such lease transactions in line with his limits of authority as stated in the table above.
- Interdivisional leases for vacant land may be entered into and signed by the respective OD CEs/GE: TCP/GE: Transnet Property.
- Special Delegation to apply to the CE of TNPA in compliance with the National Ports Act of 2005 as amended.
- Internal leases between Transnet Property, Operating Divisions and Specialist Units may be signed by the CEs of the respective ODs/SUs.

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5.6 Legal Services

NOTE: The provision of legal services must be in accordance with the Transnet Legal Policy. In respect of all litigation the bearer of the authority may, after taking legal advice from Transnet, execute all documents and do all things necessary to give effect to his/her authorisation including submission though governance structures.

5.6.1 Commencing or settling any litigation, arbitration

Approval Authority →	Divisional Head: Legal and Risk	OD CE, GE: Transnet Property and GE:TCP	GE: Group Legal Services	GCFO	GCE
Operating Divisions	Up to but not exceeding R2m	Up to but not exceeding R10m. Greater than R10m but less than R35m with concurrence of GE: Group Legal Services	Up to but not exceeding R50m	Up to but not exceeding R100m with concurrence of GE: Group Legal Services	Exceeding R100m

Approval limits are per litigation matter and relate to the settlement amount of that particular matter.
Commencement may be effected by an authorised person from the legal function

5.6.2

Any disputes with government entities or where the outcome of any litigation, arbitration or similar proceedings is likely to have a material effect on the business, financial condition or prospects of the Company	Board of Directors
Matters which pose a reputational risk to the Company should be submitted for consideration.	Board Risk Committee

5.6.3

Defending, subject to paragraph 5.6.1 above and Transnet Legal Policy, any litigation (actions or applications) in court or any other competent forum	GE: Group Legal Services/ OD CE

5.6.4 Subject to the Transnet Legal Policy, the appointment of external advisors attorneys, advocates and any other external legal advisors

Approval Authority →	OD CE	GE: Group Legal Services	GCE
OPERATING DIVISION	Up to but not exceeding R10m	Up to but not exceeding R50m	Exceeding R50m
	Specialist Units CEs and Heads of Legal	GE: Group Legal Services	GCE
Specialist Units CEs and Heads of Legal	Up to but not exceeding R5m	Up to but not exceeding R50m	Exceeding R50m

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5.7 Human Resources

INTRODUCTION

The Delegation of Authority for Human Resources provides for controls and good governance in the following areas:

- Organisation Management
- Personnel Appointments and Remuneration
- Appointment of Fixed Term Contract Employees
- Interim / Ad-hoc Remuneration Adjustments
- Rewards / Awards / Exceptional Payments / *Ex-gratia* Awards
- Suspension of Employees
- Dismissal of Employees
- Mutual Separation Agreements
- Collective Bargaining and Trade Union Recognition
- Deviation from approved Human Resources Policies

PRINCIPLES

1. Any approval in the Human Resources environment must be obtained from a manager who is at least two hierarchical reporting levels higher than the employee for whom authorization is required.
2. When acting in a higher capacity, decision for own portfolio or department that will ordinarily be recommended by the acting incumbent must be referred to one level higher.
3. Where an incumbent acts for a period of longer than three months, the full powers of delegation of the position in which the person is acting, may be transferred to the acting incumbent.
4. Each OD may implement stricter delegations and increase the level of authority above those set out in the document. Any such change must be in writing.
5. Board approval is required for the appointment and remuneration of the Transnet GCE and GCFO.
6. The Remuneration, Social and Ethics Committee (REMSEC) provides final approval for the annual reward allocation including the salary mandate.
7. The REMSEC provides final approval for the remuneration packages for Group Exco according to the DPE Remuneration standards.
8. All matters relating to the position of the GCE and GCFO are reserved for the Board and Shareholder Minister in line with the Company's governing legislation and mandates.

ABBREVIATIONS

The abbreviations used in the Human Resources Delegation of Authority are set out in the table below

FA	Final Approval
FA:CC	Final Approval for Corporate Centre
R	Recommendation
A	Has provided advice
C	Consultation
N	Noting
GE: HR	Group Executive: Human Resources
CE, GE	Chief Executive of OD or relevant Group Executive of Corporate Staff Department
GM: HRE	General Manager: Human Resources Enablement
GM: ER	General Manager: Group Employee Relations
OD HR GM	General Manager: Human Resources at the Operating Division
LM: GM	Line Management - General Manager

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The table below sets out the delegation framework for Human Resources.

1 Organisation Management: Creation of New Positions / Change in Positions / Restructuring

- No permanent or fixed term contract position can be created or the grade level changed unless the approved Organisation Management governance was followed in respect of the evaluation of positions and ratification of grade levels.

HUMAN RESOURCES	REMSEC	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	LM:GM
1.1 Group Exco (A level)	FA	R				
1.2 General Managers (B level)		FA	R	R		
1.3 Executive Managers (C level)			A	FA	R	R
1.4 Senior Management (D level and below)					FA	R

2 Personnel Remuneration

- The REMSEC reviews the GCE's assessment of performance and approves/recommends the remuneration of Group Exco Members, Prescribed Officers and Extended Exco to the Board for approval by the Shareholder
- The remuneration of the abovementioned category of employees shall be in terms of the Remuneration Standards.
- The appointment and remuneration of all management level employees (levels A to F) will be guided by the Guidelines and Salary Bands issued by the Group Remuneration Office. These Guidelines and Salary Bands will take into account the occupational specific categories.
- For managers in levels A and B the Group Remuneration Office will recommend the appropriate remuneration bands based on market information and internal parity. Approval of the final appointment and remuneration package will be in terms of the delegations below.
- Each OD will apply the Guidelines and Salary Bands when appointing and structuring the packages of management employees in levels C and below. Approval of the final appointment and remuneration package will be in terms of the delegations below.
- After salary adjustments and before a mandate is sought for the next financial year, the Group Remuneration Office will conduct a comparative analysis of salaries across ODs to inform the Group Guidelines and Salary Bands of managers for the new financial year. Affordability and the need for internal and external parity will inform these guidelines.

HUMAN RESOURCES	REMSEC & CORP GOV	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	LM: GM
2.1 Group Exco (A level)	C	*FA	R			
2.2 General Managers (B level)		FA	R	R		
2.3 Executive Managers (C level)			A	FA	R	R
2.4 Senior Management (D level and below)					FA	R

* The Chairpersons of Remuneration, Social and Ethics and the Corporate Governance and Nominations Committees will be consulted by the GCE for the appointment of Group Exco Members (other than executive directors). The consultation will be through a memorandum submitted to the Chairpersons of the Committees

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3 Appointment of Fixed-Term Contract Employees

A person appointed on a fixed-term contract (for a specific period of time or to perform a specific project) must be appointed into a graded position.

HUMAN RESOURCES	REMSEC	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	LM: GM
3.1 Group Exco (A Level)	FA	R				
3.2 General Managers (B level)		FA	R	R		
3.3 Executive Managers (C level)				FA	R	R
3.4 Senior Management (D level and below)					FA	R

4 Counter Offers and Interim Salary Adjustments

- In line with the Group Remuneration Philosophy approved by the REMSEC, there will be no interim / ad-hoc remuneration adjustments.
  If an employee produces a written and current counter offer of employment with details of the remuneration package, and Transnet seeks to retain the employee based on the criticality of the employee's skill, an interim adjustment of the employee's current remuneration package may be offered in terms of the delegations below. Any counter offer must be in accordance with the Group Guidelines and Salary Bands issued by Group Remuneration.

HUMAN RESOURCES	REMSEC	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:HRE	LM: GM
4.1 Group Exco (A Level)	FA	R	N			R	
4.2 General Managers (B level)		FA	R	R		R	
4.3 Executive Managers (C level)			FA	R	R	R	R
4.4 Senior Management (D level and below)					FA	FA:CC	R

5 Internal Rewards / Awards / Exceptional Payments / *Ex-gratia* Awards

The amounts reflected below are per initiative (not per individual employee payment) per annum

HUMAN RESOURCES	Board	REMSEC	GCE	GE: HR	GCFO	OD CE/ Group Executive	HR GM	GM: HRE	LM: GM
5.1 R10m and above	FA	R	R	R				R	
5.2 Between R5m but not exceeding R10m		FA	R	R				R	
5.3 Between R50 000 but not exceeding R5m			FA	R		R		R	
5.4 Between R20 000 but not exceeding R50 000				FA		FA	R	R	R
5.5 Up to but not exceeding R20 000				FA		FA	R	R	R
5.6 Up to but not exceeding R 10 000						FA	R	R	R

6 Suspension of Employees

- The suspension of all employees is per the delegations of authority below.
- In the case of the suspension of a bargaining unit employee, the relevant OD Employee Relations Manager must recommend the suspension based on the merits of the case.

HUMAN RESOURCES	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: ER	LM: GM	Line Manager	ER Manager
6.1 Group Exco (A level)	FA	R			R			
6.2 General Managers (B level)	FA	R	R		R			
6.3 Executive Managers (C level)		FA	R	R	A	R		
6.4 Senior Management (D level to F level)				R	A	FA	R	A
6.5 Bargaining unit employees							FA	R

7 Dismissal of Employees

- The dismissal of any employee for reasons of discipline or incapacity must be preceded by a fair hearing in line with Transnet policies.
- The dismissal of an employee for operational requirements must be preceded by a fair consultation process.

HUMAN RESOURCES	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM: ER	LM: GM	Line Manager	ER Manager
7.1 Group Exco (A level)	FA	R			R			
7.2 General Managers (B level)	FA	R	R		A			
7.3 Executive Managers (C level)		A	FA	R	R	R		A
7.4 Senior Management (D level to F level)			A	R	R	FA	R	A
7.5 Bargaining unit employees							FA	R

8 Mutual Separation

Terms and conditions and financial settlement amounts of mutual separation agreements for A – D Roles will be guided by the Guidelines issued by the Group Remuneration Office.

HUMAN RESOURCES	REMSEC	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:ER	LM:GM
8.1 Group Exco (A level	FA	R	R			R	
8.2 General Managers (B level)		FA	R	R		R	
8.3 Executive Managers (C level and below)			FA	R	R	R	R

9 Collective Bargaining and Trade Union Recognition

HUMAN RESOURCES	REMSEC	GCE	GE: HR	OD CE/ Group Executive	OD HR GM	GM:ER	LM:GM
9.1 Conclusion of any Collective Agreements with Unions excluding shift patterns			FA	R	R	R	
9.2 Mandate for salary and wage negotiations	FA	R	R			R	
9.3 Recognition of Trade Union and Signing of Recognition Agreement	N	N	FA	R	R	R	

10 Deviation from Approved Human Resources Policies and recommendation of Governance related policies

HUMAN RESOURCES	Group Exco	GCE	GCFO	GE: HR	OD CEs Group Exco	HR GM	GM: ER	LM: GM
10.1 Any deviation from a Transnet HR Policy		FA		R	R	R	R	R
10.2 Recommendation of Policies to Group Exco	FA							
10.3 Report all human capital risks	N			R				

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5.8 General Delegations

5.8.1 Chartering of Aircraft

Authority Level	OD CE	GCFO	GCE
Chartering of Aircraft	NIL	Up to but not exceeding R3m	Exceeding R3m
Chartering of helicopters for operations	R250 000*	Up to but not exceeding R1m	Exceeding R1m

* The limits for OD CEs are cumulative per aircraft per month.

5.8.2 Mobile phones: Authorising payments exceeding monthly limits (reflected in mobile phone contract)

	Group Exco Member	GCFO	GCE
Transnet Wide	Up to but not exceeding R10 000 per month	Up to but not exceeding R20000 per month	Exceeding R20000 per month

5.8.3 Entertainment Expenditure

Authority Level	OD CE	Group Executives	GCE
	Up to but not exceeding R50000 per occasion	Up to but not exceeding R50000 per occasion	Amounts exceeding R50000 per occasion

Costs incurred by any person on behalf of the Company must be authorised by that person's superior and must be within the approved budgetary limits. Supporting documentation should be marked cancelled to prevent re-use thereof. All entertainment expenses must be business related expenses.

5.8.4 Rewards/Awards/Exceptional Payments to external parties: (Examples: *Ex-gratia* awards, exceptional performance, recognition payments)

	OD CE	GCFO	GCE	REMSEC	Board
Operating Divisions	Up to but not exceeding R50000	Up to but not exceeding R100000	Up to but not exceeding R5m	Up to but not exceeding R10m	Exceeding R10m
	Group Exco Members	GCFO	GCE	REMSEC	Board
Specialist units	Up to but not exceeding R50000	Up to but not exceeding R100000	Up to but not exceeding R5m	Up to but not exceeding R10m	Exceeding R10m

5.8.5 Sponsorships and Donations

Approval Authority →	OD CE	GCFO	GCE	REMSEC	Board
Operating Divisions	Up to but not exceeding R5m	Up to but not exceeding R7m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m
Approval Authority →	**Group Exco Members**	GCFO	GCE	REMSEC	Board
Specialist Units	Up to but not exceeding R2m	Up to but not exceeding R7m	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m

Approval limits are cumulative per annum e.g. the OD CE can approve a total amount of R5m per annum for sponsorships and donations.

5.8.6 Annual filing of tariffs with regulators

- Public Policy and Regulation Committee: Approves tariff increase applications from Operating Divisions.
- OD CE in concurrence with the GCFO: Filing of Tariffs with relevant Regulatory body.

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5.8.7 International Business Travel (including travel to African countries)

	Approval Authority
Below CE level at Operating Division*	GCE
CE of Operating Division	GCE
Corporate Centre	GCE
Specialist Units	GCE
Group Executives	GCE
GCE and Chairperson	User – Retrospective review by GCE or Chairperson and vice versa.

*CE of OD must recommend and the GCE to approve

5.8.8 **Domestic Business Travel**

	Approval Authority
Chairperson/GCE/Group Exco Members	User
CE of Specialist Unit	Group Exco member responsible
General Managers/Extended Exco	OD CE/OD CFO/Group Executives
All other levels	Extended Exco

Travel: All travel must be in line with the approved Travel Policy.
Extended Exco members at an OD/SU unit may sub-delegate to the appropriate lower level.

5.8.9 **Communication**

	Approval Authority
External communication on strategy and operations	GM: Public and Corporate Affairs or GCE or his Designate
Communication on operational issues relating to an OD	Group Exco Member responsible for OD
Communication with the Shareholder Minister	Office of the GCE or Chairperson of the Board of Directors

Approval to attend seminars and or conduct presentations to external parties which may result in indirect communication may be approved by a Divisional Exco member

5.8.10 **Establishment of Special Purpose Vehicles (SPVs), Public Private Partnerships (PPPs) and Trusts**

	Approval Authority
Establishment of SPVs, PPPs and Trusts	GCE may approve after recommendation by the GCFO and GE: Group Legal Services. The transaction to be reported to the Board Acquisitions and Disposals Committee

5.8.11 **Restructuring and sale of business**

	Approval Authority
Restructuring or sale of business	Transnet Board of Directors in accordance with Section 54 of the PFMA

5.8.12 **Pension Fund and Medical Fund Rule Amendments as recommended by the Board of Trustees of the Funds**

	Approval Authority
Changes to the rules of the pension and medical fund that do not require Ministerial approval	GCE and GCFO
Rule amendments that require Ministerial approval	Board to recommend to the Minister of Public Enterprises for approval

0058-0373-0001-0434

5.8.13 Application for Environmental Authorisation

- All environmental impact assessment or basic assessment applications must be prepared by a competent independent environmental assessment practitioner/consultant, unless exemption from this provision has been obtained in writing by the Department of Environmental Affairs and under the supervision of the Environmental Department in the OD/SU.
- The application for environmental authorisation must be signed as per the approval authority below.

	Approval authority to act as applicant for an environmental authorisation for Transnet SOC Ltd
Operating Division	Project Manager/ Operations Manager/Environmental Manager
Specialist Unit (Transnet Property)	Chief Operations Officer of Property
Specialist Unit (Transnet Capital Projects)	Project Director

- The applicant remains legally responsible for the compliance with the environmental authorisation throughout the implementation of the authorisation.
- Should an authorisation for new capital projects contain operational elements after formal handover of the project by TCP, the DEA needs to be informed in writing of the change in names and acknowledgement from DEA be filed.
- Should any of the above applicants leave Transnet, the DEA needs to be informed in writing of the new person responsible for the implementation of the environmental authorisation.

EXHIBIT 8

public enterprises
Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

TRANSNET
delivering freight reliably

2013-2014
SHAREHOLDER'S COMPACT

Entered into by and between

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, HEREIN REPRESENTED BY THE MINISTER OF PUBLIC ENTERPRISES
("The Shareholder Representative")

And

TRANSNET SOC LTD, HEREIN REPRESENTED BY THE CHAIRPERSON OF THE TRANSNET BOARD OF DIRECTORS

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1. INTERPRETATION

1.1 "Accounting Authority" means the Board of Directors of Transnet;

1.2 "Board" means the Board of Directors of Transnet from time to time;

1.3 "Company" means Transnet;

1.4 "Companies Act" means the Companies Act No. 71 of 2008, as amended and includes any regulation issued thereunder;

1.5 "Corporate Plan" means the document which a state owned company is required to submit to the Shareholder and the National Treasury before the start of its financial year, which gives effect to the Statement of Strategic Intent and Shareholder's Compact;

1.6 "Founding Documents" means the Memorandum of Incorporation (previously known as Memorandum of Association and Articles of Association of Transnet SOC Ltd or any of its subsidiaries as the case may be;

1.7 "Parties" means the Shareholder and Transnet collectively, and Party shall mean any one of them as the context requires;

1.8 "PFMA" means the Public Finance Management Act No. 1 of 1999, as amended;

1.9 "Shareholder's Compact" means this agreement including the annexures hereto, which sets out the key performance measures and indicators to be attained, in support of the Statement of Strategic Intent and to the extent necessary seeks to clarify the objectives of Transnet in the context of the Statement of Strategic Intent, entered into in accordance with the provisions of the PFMA;

1.10 "Shareholder" means the Government of the Republic of South Africa as represented by the Shareholder Representative and his/her successor in law;

1.11 "Shareholder Representative" means the Minister of Public Enterprises;

1.12 "Statement of Strategic Intent" means the document which sets out the agreed mandate and strategy for Transnet;

1.13 "Subsidiary" means a subsidiary of Transnet or any of its subsidiaries over which it exercises ownership control as defined in terms of the PFMA;

1.14 "Transnet" means Transnet SOC Ltd, a public company registered and incorporated as such in accordance with the laws of the Republic of South Africa and pursuant to the Legal Succession to the South African Transport Services, 1989 (Act No. 13 of 1989) with registration number 1990/000900/30, and having its registered head office at 47th Floor, Carlton Centre, Commissioner Street, Johannesburg.

2. FUNCTION OF SHAREHOLDER'S COMPACT

2.1 The purpose of this Shareholder's Compact is to clarify and confirm:

2.1.1 Transnet's Mandate;

2.1.2 The strategic objectives to be attained by Transnet; and

2.1.3 The key performance areas and indicators to measure Transnet's performance during the period of the Shareholder's Compact.

2.2 As part of broader legislative compliance, Transnet shall at all times adhere to the legal framework providing for the prevention and combating of fraud and corruption, particularly within the context of procuring goods and services, competing for and executing contracts.

3. FOUNDING DOCUMENTS AND GOVERNANCE FRAMEWORK

3.1 The Parties agree that the Founding Documents of Transnet shall be reviewed and amended, where required, to ensure that agreed principles and enduring rights and obligations regarding the relationship between the Parties are incorporated and that the Founding documents are comprehensively consistent with the provisions of the

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Companies Act, PFMA, Legal Succession to South African Transport Services Act, National Treasury Regulations and Transnet's Mandate.

3.2 The Board shall ensure that Transnet and its subsidiaries comply with the provisions of the Companies Act, the PFMA and any other legislation, including regulations and consider guidelines issued by the National Treasury and/or the Shareholder Representative.

Transnet shall ensure that Transnet:

3.2.1 Concludes performance agreements with all its significant subsidiaries that are comprehensively and consistently compliant with the spirit, rights, obligations and undertakings stipulated in the Shareholder's Compact.

3.3 If there is any conflict or inconsistency among the provisions of the Founding Documents or the Statement of Strategic Intent or the Corporate Plan and this Shareholder's Compact, the Parties shall take whatever steps that may be necessary to amend the documents to remove the conflict or inconsistency. For so long as the conflict exists on Founding Documents, the MOI shall take precedence and thereafter the Statement of Strategic Intent.

4. MANDATE

The Parties agree that:

4.1 The underlying mandate for Transnet remains as determined by the company's Founding Documents, by prevailing legislation and by this Shareholder' Compact.

4.2 Transnet's key role is to assist in lowering the cost of doing business in South Africa, enabling economic growth and security of supply through providing appropriate ports, rail and pipeline infrastructure as well as operations in a cost effective and efficient manner within acceptable benchmark standards.

4.3 The mandate may be amplified from time to time through a Statement of Strategic Intent from the Shareholder.

5. STRATEGIC OBJECTIVES

5.1 The Parties agree that the strategic objectives of Transnet fall into five main areas, namely:

5.1.1 Reduce the total cost of logistics as a percentage of transportable GDP;

5.1.2 Effect and accelerate modal shift by maximising the role of rail in the national transport task;

5.1.3 Leverage the private sector in the provision of both infrastructure and operations where required;

5.1.4 Integrate South Africa with the region and the rest of the continent; and

5.1.5 Optimise the social and economic impact of all interventions undertaken by the SOC in the achievement of these objectives.

5.2 The Parties acknowledge and agree that the focus of Transnet shall be on the following Key Performance Areas:

5.2.1 Develop and agree on a methodology to quantify and reliably measure Transnet's contribution to reducing the total cost of logistics as a percentage of transportable GDP;

5.2.2 Transformation of the surface transport market through dedicated management with a mandate to deliver an integrated domestic intermodal transport system, industry solutions, long term infrastructure and reliable, cost effectives services whilst aggressively growing rail's market share in those contested sectors of the economy;

5.2.3 Ensure the provision of critical logistics infrastructure and capacity over the short term, however, aligned to a long term national plan that is geared towards meeting the growing demands of the total national economy;

5.2.4 Oversee a sustainable capital investment approach characterised by intelligent investment decisions, financial prudence and commercial sustainability to meet industry demands and customer expectations over the medium term;

5.2.5 Develop and implement a collaborative approach to private sector participation on a case by case basis with the intention to leverage collective resources in the provision of infrastructure and transport services in a way that does not compromise those strategic assets required to support the rollout of the capital expenditure programme;

5.2.6 Operational excellence across the entire organization informed by global best practise and driven by a performance culture that is firmly entrenched within the organisation;

5.2.7 On-going compliance with policy and regulation. In addition compliance to the policy environment with a view to support government in driving regional integration, economic transformation, beneficiation, industrialisation, aggressive job creation and the development of a supplier base that meets Broad Based Black Economic Empowerment ("BBBEE") criteria;

5.2.8 The implementation of global best practises with respect to safety, skills development and procurement. In terms of safety, a fundamental respect for the value of human life and resources. In terms of skills development the need to maintain and develop the intellectual capacity of the company and lastly with respect to procurement the need for transparent governance and tangible benefits for all social, economic and environmental stakeholders;

5.2.9 The introduction and establishment of a robust Centre of Excellence to drive research and the deployment of new and cutting-edge technologies to address the need for competitiveness, growing demand and cost savings;

5.2.10 Sustainable growth encompassing corporate social investment and environmental responsibility. This area of focus is becoming increasingly important as Transnet becomes increasingly prominent within the economy.

6. STRATEGIC INITIATIVES

The Parties agree and undertake to support the strategic initiatives as listed in Annexures A through G.

In addition, Transnet is required to report on a quarterly basis on the National Corridor Performance Measurement (NCPM) with respect to the following:

a) Full cooperation and participation of Transnet to assist the Department in the execution of the NCPM project.
b) Full participation of Transnet with respect to enabling an understanding of the Corridor, its participants, key operational statistics and Transnet's involvement and activities.
c) On-going data inputs for the policy view within NCPM
d) Transnet to ensure migration from monthly data to weekly data on all operational indicators, where appropriate
e) Transnet to ensure automation of data capturing process to NCPM system
f) Provision of 2011/12 data to complete the requirement for historical data.

7. KEY PERFORMANCE INDICATORS AND EVALUATION

The Parties agree that:

7.1 Transnet's performance in relation to the strategic objectives will be measured with reference to both qualitative and quantitative Key Performance Indicators (KPIs) as set out in format, content and coverage of Annexure A, B, C, D, E, F and G.

7.2 Transnet shall report on all Shareholder's Compact KPIs, and results achieved by, the company and its subsidiaries in the Annual Report and Quarterly Reports.

7.3 Transnet shall align its Corporate Plan to the Shareholder's Compact.

8. SIGNIFICANCE AND MATERIALITY

In accordance with the provisions of Treasury Regulations 28.3, the framework for significance and materiality is set out in Annexure E.

9. PERIOD OF SHAREHOLDER'S COMPACT

9.1 This Shareholder's Compact is valid for period of one year.

9.2 The Parties hereby record and acknowledge that the they are required, in terms of the Treasury Regulations, to annually conclude a shareholder's compact and agree that this Shareholder's Compact shall remain in full force and effect until a new Shareholder's Compact is concluded as required by the Treasury Regulations.

9.3 The process for the annual conclusion of a new Shareholder's Compact may be initiated by any one of the Parties through written notice. Upon receipt of such notice by the other Party, the Shareholder's Representative and the Board shall commence negotiation.

10. NO AMENDMENT

10.1 This Shareholder's Compact constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understanding regarding the subject matter hereof.

10.2 It is recorded, acknowledged and agreed that no Party shall be entitled to amend the key performance areas and/or key performance indicators as detailed in Annexures "A" through "D" of this Shareholder's Compact.

Signed: _____ Signed: _____

M.K.N. GIGABA

Minister of Public Enterprises

Shareholder Representative

Date: 2013/06/25

M.E MKWANAZI

Chairperson

Transnet SOC Ltd

Date: 25/06/2013

ANNEXURE A: [a] STRATEGIC DELIVERABLES

Key Performance Area	Description of deliverables	Delivery timeline
Transnet's Sustainability Framework	Economic dividends	Mar-15
	Social dividends	Mar-15
	Environmental dividends	Mar-15
Cost of Logistics	Quantify Transnet's contribution to the Total cost of Logistics as a percentage (%) of transportable GDP.	Sep-13
	0.5% reduction in Total cost of Logistics by 2018/19 as per Market Demand Strategy.	Sep-13
Domestic Intermodal Solution	Quantify and commit to modal split target.	Sep-13
	Quantify the fixed infrastructure capacity, operational performance and financial performance of existing intermodal capacity.	Sep-13
	Develop a long term intermodal/container strategy supported by an appropriate infrastructure and funding plan.	Sep-13
NMPP strategy and infrastructure plan	Develop a medium to long term strategy and infrastructure plan to drive Transnet Pipeline's market share.	Mar-14
Africa Business Development and Regional Integration	Develop a short medium and long strategy to improve intra-Africa trade from a transport perspective.	Jul-13
	Promote regional connectivity through the integration of the freight rail and maritime infrastructure.	Mar-14
	Position Transnet Engineering to become the preferred supplier of rolling stock within the African market.	Mar-14
Private Sector Participation (PSP)	Delivery of R2.5 billion in PSP funding as per 2012/13 Corporate Plan.	Subject to outcomes of Board meeting to be held on May 2013
	Identify clear and sustainable opportunities for PSP.	
	Identify and develop clear industry solutions within the various sectors supported by business cases for approval by the Shareholder.	
	Develop defined timeline for implementation of identified PSP opportunities.	
	Concession of three branch lines as identified by Transnet and the Department	Subject to PFMA Section 54 approval
[b] Policy and Regulation	Full cooperation with the Department to finalise joint positions on rail and maritime policy	Ongoing
	On-going compliance with policy and regulation	Ongoing
Research and Development Excellence	Establishment of a R&D Centre of Excellence	Mar-14
	Quantify how technology has been leveraged to reduce capital outlay and reduce operating expenditure in all spheres of business.	Jun-14
	Quantify how technology has been leverage to improve productivity in all sphere of business	Jun-14
	Quantify how technology has been leverage to improve and increase modal shift.	Jun-14
	Quantify how technology has been leverage to increase market share	Jun-14

[a] The board shall report on the progress of all strategic deliverables on a quarterly basis as well as within the Annual report.
[b] The board shall track and report on the delivery of all commitments on a quarterly basis as well as within the Annual report.

ANNEXURE B: OPERATIONAL PERFORMANCE

Transnet Group

Key Performance Area	Key Performance Indicator	Unit of Measure	2013/14 Target
Financial value creation	Return on total average assets [a]	%	≥ 8.0
	Cash interest cover	Times	≥ 3.3
	Gearing	%	≤ 46.6
	Opex as a % of revenue	%	≤ 57.1
Innovation	Research and development cost	Rm	194

[a] Excluding Port Regulator claw backs

Transnet Freight Rail

Key Performance Area	Key Performance Indicator		Unit of Measure	2013/14 Target
Financial	Return on total average assets		%	≥ 11.4
Tariffs	Average tariff increases	- GFB	%	≤ CPI+2
Market share	Volume	Total Volume	mt	≥ 229.7
		Bulk		
		- Export Coal	mt	≥ 77.0
		- Export Iron Ore	mt	≥ 61.5
		- Export Manganese (PE)	mt	≥ 5.1
		- Export Manganese (DBN)	mt	≥ 1.3
		- Export Coal non RBCT	mt	≥ 6.2
		- Eskom Coal	mt	≥ 11.8
		- Domestic Coal	mt	≥ 8.9
		- Chrome and Ferrochrome	mt	≥ 5.2
		- Domestic Iron Ore	mt	≥ 7.9
		- Domestic Manganese	mt	≥ 1.9
		- Mineral mining	mt	≥ 13
		- Other	mt	≥ 2.5
		Intermediate manufacturing and manufacturing		
		- Agriculture	mt	≥ 4.6
		- Bulk liquids	mt	≥ 2.1
		- Iron and Steel	mt	≥ 0.8
		- Wood and wood products	mt	≥ 2.5
		- Fertilisers	mt	≥ 0.1
		- Industrial chemicals	mt	≥ 0.9
		- Cement	mt	≥ 7.3
		- Intermodal Wholesale	mt	≥ 7.8
		- FMCG long distance	mt	≥ 0.8
		- Automotive	mt	≥ 0.5 (489974FBU)

ANNEXURE B: OPERATIONAL PERFORMANCE (Continued)

Transnet Freight Rail (Continued)

Key Performance Area	Key Performance Indicator		Unit of Measure	2013/14 Target
Productivity	Asset utilisation	Iron Ore	Gtkm/Ntkm	≤ 1.41
		Export Coal	Gtkm/Ntkm	≤ 1.58
		General Freight [a]	Gtkm/Ntkm	≤ 1.67
	Density	SSaldanha	Tonkm/Routekm	≥ 55.30
		RBaycor	Tonkm/Routekm	≥ 36.2
		Natalcor	Tonkm/Routekm	≥ 6.7
		NEastcor	Tonkm/Routekm	≥ 5.7
		Sentracor	Tonkm/Routekm	≥ 4.3
		Capecor	Tonkm/Routekm	≥ 3.9
		NWestcor	Tonkm/Routekm	≥ 3.8
		Eastcor	Tonkm/Routekm	≥ 3.2
		Southcor	Tonkm/Routekm	≥ 2.6
		Northcor	Tonkm/Routekm	≥ 1.6
Service	On-time departure	- Coal Export	Average deviation from scheduled times (minutes)	≤120
		- Export Iron Ore		≤ 60
		- General Freight		≤ 225
	On-time arrival	- Coal Export	Average deviation from scheduled times (minutes)	≤ 240
		- Export Iron Ore		≤ 120
		- General Freight		≤ 260

[a] GFB Asset utilisation will be further broken down in 2014-15 Shareholder Compact

Transnet Engineering

Key Performance Area	Key Performance Indicator	Unit of Measure	2013/14 Target
Financial	External revenue	Rm	R2633m
Innovation	Research and development cost	Rm	R150m
[a] Volume growth	Train cancellations due to Traction	%	≤ 6
	Net volume lost due to traction	Mt	≤ 7
	Traction delays	%	≤ 40

[a] Volume growth to be separated into Export iron ore, export coal and GFB for the 2014-15 Shareholder's Compact

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ANNEXURE B: OPERATIONAL PERFORMANCE (Continued)

Transnet National Ports Authority

Key Performance Area	Key Performance Indicator		Unit of Measure	2013/14 Target
Productivity	Anchorage	- Durban	Hours	≤ 46
		- Cape Town		≤ 35
		- Port Elizabeth		≤ 84
		- Ngqura		≤ 32
		- Richards Bay		≤ 30
	[a] Ship Turnaround Time	Containers		
		- Durban	Hours	≤ 59
		- Cape Town		≤ 30
		- Port Elizabeth		≤ 26
		- Port of East London		≤ 60
		- Richards Bay		≤ 110
		- Ngqura		≤ 29
		Dry bulk		
		- Coal (RBCT)	Hours	≤ 47
		- Iron Ore (Saldanha)		≤ 55
		- Manganese (P.E)		≤ 69
	Berth Occupancy	- Durban	Percentage (%)	≤ 85
		- Cape Town		≤ 70
		- Port Elizabeth		≤ 50
		- Ngqura		≤ 75
	Berth Utilisation	- Durban	Percentage (%)	≤ 80
		- Cape Town		≤ 70
		- Port Elizabeth		≤ 60
		- Ngqura		≤ 75
		- East London		≤ 40
		- Richards Bay		≤ 40

[a] Shipping delays to be quantified and reported on a quarterly basis

ANNEXURE B: OPERATIONAL PERFORMANCE (Continued)

Transnet Port Terminal

Key Performance Area	Key Performance Indicator		Unit of Measure	2013/14 Target
Financial	Return on Total Average Assets		%	≥ 5.8
Tariff increases	Average Tariff Increase (Containers)		%	≤ 6
Productivity	Dwell Time	DCT - Pier 1		
		- Imports	Days	≤ 3
		- Exports	Days	≤ 5
		- Transshipment [a]	Days	≤ 10
		DCT - Pier 2		
		- Imports	Days	≤ 3
		- Exports	Days	≤ 5
		- Transshipment	Days	≤ 10
		CTCT		
		- Imports	Days	≤ 3
		- Exports	Days	≤ 5
		- Transshipment	Days	≤ 15
	Moves per gross crane hour [b]	DCT - Pier 1	Moves/GCH	≥ 28
		DCT - Pier 2		≥ 30
		CTCT		≥ 32
		Ngqura		≥ 32
Service Delivery	Train turnaround time	DCT - Pier 1	Hours	≤ 6
		DCT - Pier 2	Hours	≤ 6
		CTCT	Hours	≤ 6
		Saldanha [c]	Minutes	≤ 105
		Richards Bay	Hours	≤ 12
		Port Elizabeth	Hours	≤12
	Truck turnaround time	DCT - Pier 1	Minutes	≤ 35
		DCT - Pier 2	Minutes	≤ 35
		CTCT	Minutes	≤ 35
		Ngqura	Minutes	≤ 35
		Richards Bay	Minutes	≤ 35

[a] TPT shall not encourage transhipment dwells times of greater than 5 days
[b] TPT shall report on Moves/GCH for the Ports of Richard Bay and East London on a quarterly basis
[c] Rake process time inside tippler – Subject to service design review

Transnet Pipelines

Key Performance Area	Key Performance Indicator	Unit of Measure	2013/14 Target
Service reliability	Ordered vs. Delivered volumes (% of deliverables within 5% of order)	%	≥ 85
	Planned vs. Actual Delivery time (% of deliverables within 2 hours of plan)	%	≥ 80
	Operating cost per Ml.km (Nominal R/Ml.km) (Real R/Ml.km)	Rand	≤ 122
Capacity utilisation	NMPP- Actual usage : capacity at the time (Ml/week)	Ratio	≥ 48:84
Market share [a]	Total petroleum products	Billion litres	≥ 16.75

[a] Volumes to be expressed as market share in Annual report

ANNEXURE C: SOCIAL IMPACT

Human Capital

Key Performance Area		Unit of Measure	2013/14 Target
Skills development	Training spend	% of personnel costs	4.6
	Technician trainees	Number of learners	330
	Engineering Trainees	Number of Learners	132
	Artisan trainees	Number of learners	1550
	Sector specific trainees	Number of learners	1980
[a] Employment creation	Jobs created (Transnet permanent employees)	Number of jobs	4336
Safety	DIFR (for all Transnet operational divisions)	Weighted average	0.75
	Employee fatalities	Number of fatalities	0
Productivity	Revenue per employee	R million	0.98

[a] Transnet is required to report on direct and indirect jobs created within the quarterly and annual reports. Employment resulting from the procurement activity shall be reported separately within the quarterly reports and Annual report.

Corporate Social Investment

Corporate Social Investment		Total CSI budget	R257m
Phelophepha I and Phelophepha II health care trains		Operating budget	R95m
Rural station in Eastern Cape, Northern Cape, North West, Limpopo, Free State, Kwazulu-Natal	Dental treatment	People	17,425
	Spectacles issued		28,700
	Individual counselling		700
	Counseling workshops		31,000
	Teenage girls education		3,600
	Health, diabetic, cancer screening		36,000
	Community volunteer training		720
	Prescriptions		38 125

ANNEXURE C: SOCIAL IMPACT (Continued)

Other Social Development

Educator Development			
Makana (EC), Motheo (FS), Moretele (NW), Mtubatuba and Durban South (KZN), Sekhukhune (L)	350 teachers	Results improvement in Maths, science, English: Y1: 5%, Y2: 10%	R12.3m
	98% attendance		
	95% course completion		
	Learner performance improvement (Maths, Science, English): yr1: 5%; yr 2: 10%		
Orphan youth programme			R2m
Sports development			R30m
Container assistance			R10m
Transnet employee volunteer programme (Inanda (Durban), Motherwell (PE), Diepsloot (Jhb)			R26.4m

ANNEXURE D: ECONOMIC IMPACT

Key Performance Area	Unit of Measure	[a] With PPPFA exemption	[a] Without PPPFA exemption
Local Content	% of total spend	70	70
CSDP (SD value)	% of contract value invested in RSA	45	35
Skills development	% of total spend	6	6
BBBEE	% of total spend	87	70
Black Women Owned	% of total spend	8	5
Black Owned	% of total spend	15	10
Black Youth Owned	% of total spend	2	0.5
QSE/EME	% of total spend	15	10
People Living with Disability	% of total spend	0.5	0.25

[a] The appropriate scenario shall be deployed depending on the status of the PPPFA exemption as at 31 March 2013

QSE = Qualifying Small Enterprise (Annual turnover 5m-35m)
EME = Exempted Micro Enterprise (Annual turnover of <5m)

ANNEXURE E: SIGNIFICANCE AND MATERIALITY FRAMEWORK

This appendix sets out the standing in terms of Sections 54 of the PFMA and provides guidance for the determination of the materiality limit in terms of section 55 (2) of the PFMA

PFMA	Description	Exemption from Section 54 of the PFMA
S54(2) (d)	Acquisition or disposal of a significant asset	1. If acquisition does not exceed 2% of the 31 December 2012 audited asset base value (which equates to R 3.9 billion), however the Department should receive a detailed notification for all acquisition and disposal of assets above R 2 billion.
S54(2) (b)	Acquisition or disposal of a significant partnership, trust, joint ventures, etc.	1. If partnership is specified in business plan. 2. If participation is not specified in corporate business plan but risk is R100m or below.
S54(2) (c)	Acquisition or disposal of a significant shareholding in a company.	1. If participation or disposal is specified in corporate business plan. 2. If participation or disposal is not specified in corporate business plan but capital risk is R100m or below.
S4(2) (e)	Commencement of cessation of a significant business activity.	1. If such commencement/cessation is specified in corporate business plan. 2. If such commencement/cessation is not specified in corporate business plan but capital at risk is R100m or below.

The Shareholder representative hereby determines the materiality limit for reporting in terms of section 55 (2) (b) (i) , (ii) and (iii) is R25 million .

ANNEXURE F: CAPITAL EXPENDITURE

Project	Estimated Total Cost (ETC) R'm	Date of completion	[a]Est. % completion at year end 31/03/2013	Target % completion at year end 31/03/2014	[b]Schedule Performance Index	[c]Cost performance index
Projects which have reached the execution phase - Front End Loading (FEL) 4						
1. Coal Line expansion to 81 mt	5,100	Mar-18	18	32	≥ 0.90	≥ 0.90
2. Acquisition of 95 Electric Locomotives for GFB	2,659	Mar-14	10.2	20.7	≥ 0.90	≥ 0.90
3. Acquisition of wagons for MDS [d]	19,595	Beyond 2019	10	19.60	≥ 0.90	≥ 0.90
4. Ngqura Container Terminal Ph2A	1,099	Mar-14	10	65	≥ 0.90	≥ 0.90
5. New Multi-Product Pipeline	23,400	Dec-13	76	98	≥ 0.90	≥ 0.90
6. Reconstruction of sheetpile quaywalls at Maydon Wharf	1,514	Dec-16	14	15	≥ 0.90	≥ 0.90
7. Straddle carrier replacement [d]	1,309	Mar-16	0	11	≥ 0.90	≥ 0.90
8. Acquisition of 465 Diesel locomotives for MDS volume growth	13,262	Beyond 2019	0	0	≥ 0.90	≥ 0.90
9. Acquisition of 599 Electric Locomotives for MDS volume growth	24,884	Beyond 2019	0	0	≥ 0.90	≥ 0.90
Projects which are yet to reach the execution phase						
10. Expansion of the Ore Line to 82,5mt [f]	10,888	Dec-17	FEL 3: 23	FEL 3: 100	na	na
11. Coal export line expansion to 97 Mtpa [f]	6,219	Beyond 2019	0	0	na	na
12. Manganese expansion to 16mt [f]	11,345	Mar-21	FEL 3: 71	FEL 3: 100	na	na
13. Swaziland rail link [f]	5,000	Mar-18	FEL 2: 75 FEL 3: 4	FEL 2: 100 FEL 3: 100	na	na
14. Waterberg expansion to 16mt [f]	5,090	Beyond 2019	FEL 3: 25	FEL3: 100	na	na
15. Deepening of DCT berths	4,500	Mar-19	0	0	na	na

(a) Percentage of completion certified as per acceptable standards
(b) Scheduled Performance Index=Budget cost of work performed/Budget of work scheduled
(c) Cost Performance Index=Budgeted costs of work perfumed/Actual cost of work perform
(d) The majority of projects making up these grounds do not yet have the appropriate Delegation of Authority approval.
(e) The majority of projects making up these Major groups are at various FEL stages and therefore there Estimated Total Cost is subject change
(f) Updated risk assessment per project reported on quarterly basis.

ANNEXURE G: ENERGY EFFICIENCY

Electricity Energy Efficiency

Division	Unit of Measure	% Efficiency gain YoY
TFR Traction	gtk/kWh	≥ 1%
TFR Real Estate	kWh/m2	≥ 2%
TP	kWh	≥ 5%
TPL	lkm/kWh	≥ 1%
TPT	ton/kWh	≥ 2%
TNPA	employee/kWh	≥ 4%
TRE	man-hour/kWh	≥ 4%

Fuel Energy Efficiency

Division	Unit of Measure	% Efficiency gain YoY
TFR Traction	gtk/litre	≥ 1%
TPT	ton/litre	≥ 2%
TRE	man-hour/litre	≥ 4%

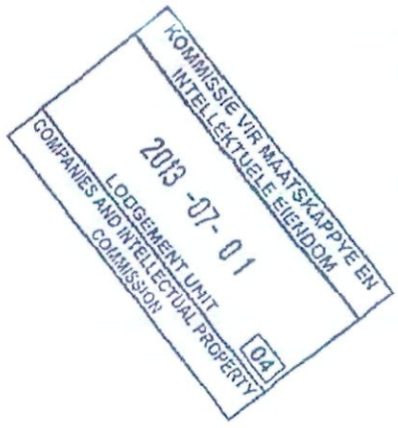
Reporting Standards applied

Sustainability Report 2013	Global Reporting Initiative Guidelines, United Nations Global Compact Principles
Integrated Report 2013	King III, Companies Act, International Integrated Reporting Council framework

EXHIBIT 9

I certify that this is the new Memorandum of Incorporation which was adopted in terms of a Special Resolution of the sole Shareholder of the Company dated 25 June 2013

Chairperson



REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008

MEMORANDUM OF INCORPORATION FOR A STATE OWNED COMPANY

Name of Company: **TRANSNET SOC LTD**

Registration number: **1990/000900/30**

which is referred to in the rest of this Memorandum of Incorporation as the "**Company**".

This Memorandum of Incorporation was adopted by Special Resolution passed on 25 June 2013 in substitution for the existing Memorandum of Incorporation (consisting of a Memorandum and Articles of Association) of the Company and signed by the Chairperson for purposes of identification.

Preamble

The Company is a pre-existing company as contemplated in Item 2 of Schedule 5 of the Act and exists in accordance with the Enabling Legislation to carry on business in all aspects and branches of transport and harbour operations, it being recorded that the Company is also subject to the provisions of the PFMA. The Government is the sole Shareholder of the Company and the rights attached to such Shares are exercised by the Minister. The Company now wishes to adopt this Memorandum of Incorporation in order to bring its constitution in line with the Act.

The Annexures attached to this Memorandum of Incorporation are incorporated into, and form an integral part of, this Memorandum of Incorporation.

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1. INTERPRETATION

In this MOI:-

1.1. words that are defined in the Act (which are contained in **Annexure A** for ease reference), but not defined in this MOI will bear the same meaning in this MOI as in the Act. For ease of reading, such terms have been capitalised in this MOI;

1.2. unless the context provides or requires otherwise:-

1.2.1. "**Act**" means the Companies Act, No. 71 of 2008 or any legislation which replaces it;

1.2.2. "**APA**" means the Auditing Profession Act, No. 26 of 2005 or any legislation which replaces it;

1.2.3. "**Applicable Legislation**" means any legislation, regulation, rules of practice of all the Courts in the Republic, by-law, policy or directive document presently in existence or coming into existence after the Effective Date and during the term of this MOI which is applicable to the Company or its Subsidiaries;

1.2.4. "**Board**" means the "board of directors" of the Company from time to time, as defined in the Act, which is also the accounting authority for purposes of the PFMA;

1.2.5. "**Chairperson**" means the person who is appointed as the chairperson of the Board and the Company, in accordance with clause 17.2;

1.2.6. "**Company**" means Transnet SOC Ltd, registration number 1990/000900/30, or by whatever other name it may be known from time to time;

1.2.7. "**Company Secretary**" means the Person who is appointed as the company secretary from time to time, in accordance with the provisions of section 86 and clause 26 of this MOI;

1.2.8. "**Corporate Plan**" means the three year plan of the Company as contemplated in the PFMA read with the Treasury Regulations, which plan must include (but is not limited to) –

1.2.8.1. strategic objectives and outcomes identified and agreed on by the executive authority in the Shareholder's Compact;

1.2.8.2. strategic and business initiatives as embodied in business function strategies;

1.2.8.3. key performance measures and indicators for assessing the Company's performance in delivering the desired outcomes and objectives;

1.2.8.4. a risk management plan;

1.2.8.5. a fraud prevention plan;

1.2.8.6. the SMF;

1.2.8.7. a financial plan addressing –

1.2.8.7.1. quarterly projections for the first year of revenue, expenditure and borrowings against annual targets;

1.2.8.7.2. asset and liability management;

1.2.8.7.3. cash flow projections;

1.2.8.7.4. capital expenditure programmes;

1.2.8.7.5. dividend policies; and

1.2.8.7.6. such other issues as may be required in terms of the PFMA from time to time;

1.2.9. "**Deliver**" means deliver in the manner in which the Company is entitled to give notice or deliver documents in accordance with clause 30 and the Act, including Table CR3 of the Regulations, which is attached hereto as **Annexure C** and '**Delivered**' and '**Delivering**' shall have the corresponding meaning as the context may indicate;

1.2.10. "**DoA**" means the Delegation of Authority Framework approved by the Board from time to time;

1.2.11. "**Electronic Address**" means in regard to Electronic Communication, any email address furnished to the Company by the Shareholder;

1.2.12. "**Enabling Legislation**" means the Legal Succession to the South African Transport Services Act, No. 9 of 1989, or any legislation which replaces it;

1.2.13. "**Gazette**" means the Government Gazette of the Republic;

1.2.14. "**Government**" means the Government of the Republic, which includes for the purposes of this MOI, the "**State**" being the Republic;

1.2.15. **"Group Chief Executive"** means the group chief executive of the Company;

1.2.16 "Group Chief Financial Officer" means the group chief financial officer of the Company;

1.2.17. "**Guidelines**" means the 'guidelines for the appointment of a Chief Executive Officer for a State Owned Enterprise' as issued by the Shareholder from time to time;

1.2.18. "**Ineligible or Disqualified**" means ineligible or disqualified as contemplated in the Act (a list of which is in **Annexure B** for ease of reference but which does not form part of this MOI for purposes of interpretation) or as contemplated in clause 17.9.3.1 which shall apply not only to Directors but also to Prescribed Officers, members of Board and statutory committees and the Company Secretary;

1.2.19. "**Minister**" means the Minister of Public Enterprises in his capacity as the representative of the Government and the executive authority (as defined in the PFMA) of the Company, or if any other Minister is designated as being the representative of the Government or the executive authority with respect to the Company, then that Minister acting in such capacity;

1.2.20. "**MOI**" means this Memorandum of Incorporation;

1.2.21. "**Month**" means a calendar month;

1.2.22. "**Ordinary Resolution**" means a resolution adopted with the support of more than 50% (fifty per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting, or by the Shareholder acting other than at a meeting, as contemplated in section 60;

1.2.23. "**PAA**" means the Public Audit Act, No. 25 of 2004 or any legislation which replaces it;

1.2.24. "**PFMA**" means the Public Finance Management Act, No. 1 of 1999, or any legislation which replaces it;

1.2.25. "**Prescribed Officer**" means a Person who, within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66(10), read with Regulation 38;

1.2.26. "**Present**" shall have the meaning ascribed to the terms "present at a meeting" in the Act;

1.2.27. "**Remuneration Policy**" means the remuneration policy of the Company which will include and incorporate "Remuneration Guidelines" and/or "Standards" on remuneration issued by the Minister from time to time as confirmed by the Company on an annual or biannual basis as contemplated in clause 15.1.1.3;

1.2.28. "**Remuneration, Social and Ethics Committee**" means the Board committee, appointed in accordance with the provisions of clause 23 of the MOI, sections 72(1), 72(4) to 72(10) and Regulation 43;

1.2.29. "**Republic**" means the Republic of South Africa;

1.2.30. "**Securities Services Act**" means the Securities Services Act, No. 36 of 2004, or any legislation which replaces it;

1.2.31. "**Shareholder**" means the Government represented by the Minister;

1.2.32. "**Shareholder's Meeting**" means with respect to any particular matter concerning the Company, a meeting of the Shareholder who is entitled to Exercise Voting Rights in relation to that matter;

1.2.33. "**Shareholder's Compact**" means the shareholder's compact, being an agreement entered into in terms of the Treasury Regulations, between the Shareholder and the Board, on an annual basis;

1.2.34. "**Sign**" and "**Signature**" include, respectively, lithography, printing, electronic signature or signing by a mechanical or electronic process or means;

1.2.35. "**SMF**" means the significance and materiality framework applicable to the Company, developed under Treasury Regulations;

1.2.36. "**Special Resolution**" means a resolution adopted with the support of at least 75% (seventy five per cent) of the Voting Rights Exercised on the resolution at a Shareholder's Meeting or by the Shareholder acting other than at a meeting, as contemplated in section 60;

1.2.37. "**Strategic Intent Statement**" means the primary tool used by the Shareholder to communicate its expectations of the Company strategy and which contains the Company's strategic purpose, scope of business, core business, consultation thresholds or investment strategy developed by the Shareholder in consultation with sector departments, National Treasury and the Presidency of the Republic and taking into account an assessment of the interaction between the policy and regulatory environment with the financial and operational goals of

the Company to ensure shareholder value optimisation and achievement of wider socio-economic objectives;

1.2.38. "**Strict Liability**" means a legal responsibility imposed by the Enabling Legislation and Applicable Legislation or incurred without the necessity to prove that a Director was negligent or directly at fault or criminally intent, regardless of culpability, in respect of damages and/or loss caused by a Director's acts and/or omissions;

1.2.39. "**Treasury Regulations**" means the regulations issued by the National Treasury in terms of section 76 of the PFMA and any amendment thereof or substitution therefor from time to time;

1.2.40. "**Voting Rights**", with respect to any matter to be decided by the Company, means the rights of the Shareholder to vote in connection with that matter;

1.2.41. "**Writing**" and "**Written**" includes Electronic Communication but as regards any Shareholder entitled to vote, only to the extent that such Shareholder has notified the Company of an Electronic Address; and

1.2.42. "**Written Resolution**" means a resolution passed other than at a –

1.2.42.1. Shareholder's Meeting, which –

1.2.42.1.1. was submitted for consideration to the Persons entitled to Exercise Voting Rights in relation to the resolution; and

1.2.42.1.2. was voted on by the Shareholder or by a duly authorised representative at least 75% (seventy five percent) of the Persons entitled to vote contemplated in clause 15 by signing a resolution in counterparts within 10 (ten) Business Days after the resolution was submitted to them;

1.2.42.2. meeting of the Board, in respect of which, subject to clause 17.6.10, 75% (seventy per cent) of all of the Directors voted in favour by signing in Writing a resolution in counterparts, within 10 (ten) Business Days after the resolution was submitted to them.

1.3. Words importing the singular number shall include the plural number and *vice versa*.

1.4. Words importing any one gender shall include the other two genders.

1.5. Words importing natural persons shall include Juristic Persons (whether corporate or not and including partnerships and trusts) and *vice versa*.

1.6. Any reference to a section by number in this MOI shall be a reference to the corresponding section in the Act, unless otherwise stated.

1.7. Reference to any provision of the Act, and the Applicable Legislation shall include such provision as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under the Act, or the Applicable Legislation. Any reference to a particular section in the Act, and the Applicable Legislation is to that section as at the date of adoption of this MOI, and as amended or re-enacted from time to time and/or an equivalent measure in the Act, and the Applicable Legislation, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this MOI are changed, the relevant provision of this MOI shall be read also as if it had been amended as necessary, without the necessity for an actual amendment.

1.8. Reference to a Shareholder represented by proxy shall include a Shareholder, entitled to vote, represented by an agent appointed under a general or special power of attorney and reference to a Shareholder, entitled to vote, Present at a Shareholder's Meeting or acting in person and shall include Juristic Persons or corporations represented by a duly authorised representative or acting in the manner prescribed by the Act, or the Applicable Legislation.

1.9. Subject to the preceding clause, any term or words or expressions defined in the Act, the Enabling Legislation, or the Applicable Legislation shall, unless the context otherwise requires, bear the same meaning in this MOI ascribed to it in the Act, the Enabling Legislation, or the Applicable Legislation in which they are defined. If any term is defined within the context of any particular clause in the MOI, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this MOI, notwithstanding that that term has not been defined in this interpretation provision.

1.10. If the provisions of this MOI are in any way inconsistent with the provisions of the Act, the provisions of the Act shall prevail, and this MOI shall be read in all respects subject to the Act.

1.11. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply to this MOI.

1.12. Headings are intended for reference purposes only and shall not be taken into account in the interpretation of this MOI.

1.13. The words **"include"**, **"including"** and **"in particular"** shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.

1.14. Any reference in this MOI to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.

1.15. The words **"other"** and **"otherwise"** shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

2. PRELIMINARY

Subject to section 5(4) and notwithstanding the omission from this MOI of any provisions to that effect, the Company may do anything that the Act and/or the PFMA and/or Applicable Legislation empowers it to do, even if not specifically so authorised by the MOI.

3. INCORPORATION AND NATURE OF THE COMPANY

3.1. The Company is a pre-existing Company incorporated on 19 February 1990 and is a State-Owned Company as defined in the Act.

3.2. The Company is incorporated in accordance with and governed by:-

3.2.1. the Enabling Legislation;

3.2.2. the PFMA;

3.2.3. the unalterable provisions of the Act;

3.2.4. the alterable provisions of the Act, subject to the limitations, extensions and variations set out in this MOI;

3.2.5. the provisions of this MOI; and

3.2.6. any other Applicable Legislation.

4. POWERS AND CAPACITY OF THE COMPANY

4.1. The Company has the powers and capacity of an Individual, unless otherwise provided in this MOI.

4.2. The Shareholder may ratify any action by the Company or the Board which is inconsistent with any limit, restriction or qualification.

4.3. To the extent that the Company has wholly-owned Subsidiaries, the applicable principles contained in this MOI which apply to the Company by virtue of it being a State-Owned Company under the portfolio of the Department of Public Enterprises shall apply to such Subsidiaries of the Company for the same reason.

Financial

4.4. The Company shall not, without the prior Written approval of the Shareholder:-

4.4.1. enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the SMF; or

4.4.2. establish or participate in –

4.4.2.1. the establishment of a company; or

4.4.2.2. a significant partnership, trust, unincorporated joint venture or similar arrangement; or

4.4.3. acquire or dispose of a significant shareholding in a company or a significant asset; or

4.4.4. dispose of movable assets (excluding sale of scrap) of a value exceeding the limits prescribed by the Shareholder's Compact or the SMF; or

4.4.5. commence or cease a significant business activity; or

4.4.6. commit the Company or its Subsidiaries to borrowings which confer rights to a lender to convert debt into shares of any kind; or

4.4.7. undertake or agree to a significant change in the nature or extent of the Company's interest in a significant partnership, trust, unincorporated joint venture or similar arrangement; or

4.4.8. increase, reduce or alter the Share capital of the Company and the allotment, issue or other disposal of Shares (except for Shares allotted under the group share incentive scheme of the Company, if any); or

4.4.9. declare dividends, or make any Distributions, subject to and in accordance with the provisions of clause 15.1.1.13; or

4.4.10. approve the strategic objectives of the Company and any subsequent material changes in the strategic direction;

The Board's power to affect borrowing

4.5. Subject to the provisions of the PFMA (and, in particular, section 66 of the PFMA), the Board may raise or borrow from time to time for the purposes of the Company, or secure the payment of, such sums as is in accordance with its Corporate Plan and the borrowing programme submitted to the Shareholder, unless otherwise determined by the Shareholder under clause 4.5

4.5.1. The Board may not –

4.5.1.1. issue a guarantee, indemnity or security; or

4.5.1.2. enter into any other transactions that bind, or may bind, the Company or the Revenue Fund as defined in the PFMA to any future financial commitment,

unless –

4.5.1.3. the provisions of the PFMA, in particular, section 66 thereof, are complied with; and

4.5.1.4. if the guarantee, indemnity, security or transaction exceeds the financial limits as prescribed by the Shareholder under clause 4.5, the prior Written consent of the Shareholder is obtained.

4.5.2. Subject, at all times to the PFMA, the Shareholder may, from time to time:-

4.5.2.1. specify any limitations regarding the general authority of the Company to raise or borrow funds, from time to time, for the purposes of the Company, or secure the payment of, such sums; and/or

4.5.2.2. prescribe a financial limit for the issue of guarantees, indemnities, Securities or the entering into of other transactions, in terms of which specific Shareholder approval is not required where such transactions are not as contemplated in the borrowing programme submitted.

4.5.3. The Board shall, in accordance with the PFMA and the Applicable Legislation, consider and determine the funding structures of the Company having regard to the funding requirements of the Company from time to time.

Regulatory

4.6. The Company shall not, without the prior Written approval of the Shareholder:-

4.6.1. approve the terms and conditions of the Company's rights issues, public offers, capital issues or issues of convertible Securities including Shares or convertible Securities issued for acquisitions; or

4.6.2. authorise the issue prospectuses for Shares, placing documents, listing particulars, rights offers or takeover or merger documents; or

4.6.3. decide to list the Company's Shares on any stock exchange or to terminate any such listing.

4.7. In addition to the limitations and restrictions set out in clause 4.3, 4.4, 0 and 4.6 –

4.7.1. the Board shall ensure that –

4.7.1.1. the proposed Shareholder's Compact for the following Financial Year be submitted to the Shareholder by 30 September each year;

4.7.1.2. the annual budget and the Corporate Plan of the Company shall be presented and/or submitted to the Shareholder, prior to 28 February each year; and

4.7.1.3. the Company discloses to the Shareholder all changes to terms and conditions of trade which may result in a Material impact on the Company.

4.8. The Shareholder may, after consultation with the Board, issue directives to the Board regarding the mandate and objectives of the Company if it is reasonably necessary to do so.

5. AMENDMENTS TO THE MOI

5.1. Save for correcting errors substantiated as such from objective evidence or which are self-evident errors (including, but without limitation *eiusdem generis*, spelling, punctuation, reference, grammar or similar defects) in the MOI, which the Board is empowered to do, all other amendments of the MOI shall be effected in accordance with sections 16(1) and 16(4), and to the extent necessary, the Applicable Legislation and the provisions of this MOI.

5.2. The Board shall publish a notice of any such correction effected by the Board on the Company's website.

6. THE MAKING OF RULES

The Board of the Company shall not be entitled to make any Rules, as defined in the Act.

7. AUTHORISED SHARES IN THE CAPITAL OF THE COMPANY

7.1. It is recorded that as at the date of this MOI, the Company has an authorised share capital of 30 000 000 000 (thirty billion) ordinary Shares with a par value of R1.00 (one rand) each and 12 660 986 310 (twelve billion, six hundred and sixty million, nine hundred and eighty six thousand, three hundred ten) ordinary Shares with a par value of R1.00 (one rand) each in issue.

7.2. The issued and unissued Shares shall:

7.2.1. have ordinary Voting Rights attached to such shares in respect of every matter that may be decided by voting; and

7.2.2. shall rank after all other classes of Shares in the Company which do not rank *pari passu* with the ordinary Shares as regards Distributions and returns of capital, but save as aforesaid shall be entitled to receive the net assets of the Company upon its liquidation.

7.3. The Board shall not have the power to amend the authorised share capital (including increasing or decreasing the number) and the classification of such shares (including determining rights and preferences) as contemplated in section 36(2)(b) or 36(3).

7.4. To the extent that the Company immediately before the Effective Date has authorised but unissued par value Shares in its capital of a class of which there are issued Shares, the unissued Shares of that class may be issued at par or at a premium or at a discount.

7.5. All or any of the rights, privileges or conditions for the time being attached to any class of Securities of the Company may, (unless otherwise provided by the terms of issue of the Securities of that class) whether or not the Company is being wound up, be varied with the sanction of a Special Resolution at a separate meeting of the Shareholder. The provisions of this MOI relating to Shareholder's Meetings shall *mutatis mutandis* apply to any such separate meeting except that –

7.5.1. the necessary quorum shall be 50% (fifty per cent) of all Voting Rights that are entitled to be exercised in respect of that class of Shares;

7.5.2. if at any adjourned or postponed meeting of the Shareholders, the required quorum contemplated in clause 7.5.1 is not present, those Persons entitled to vote who are Present shall be a quorum.

8. PRE-EMPTION ON ISSUE OF ORDINARY SHARES

There shall be no rights of pre-emption in respect of the issue of ordinary Shares.

9. AUTHORITY TO ALLOT AND ISSUE AUTHORISED SHARES AND SECURITIES

9.1. The Board shall not have the power to allot or issue Shares, options relating to such Shares and secured and unsecured debt instruments as contemplated in section 43.

9.2. The Board may not issue capitalisation Shares or offer a cash payment in lieu of awarding a capitalisation Share as contemplated in section 47.

9.3. As regards the issue of –

9.3.1. Shares contemplated in sections 41(1) and (3), the Board shall not have the power to allot or issue same without the prior approval by a Special Resolution;

9.3.2. secured and unsecured debt instruments to which special privileges are to be granted as contemplated in section 43(3), the Board shall not have the power to allot or issue same without the prior approval of an Ordinary Resolution; or

9.3.3. other Securities, the Board shall not have the power to allot or issue same without the prior approval of an Ordinary Resolution.

9.4. Any such approval may be in the form of a general authority to the Board, whether conditional or unconditional, to allot or issue any such Securities contemplated in clauses 9.3.1 and 9.3.3 in their discretion, or in the form of a specific authority in respect of any particular allotment or issue of such Securities contemplated in clauses 9.3.1 and 9.3.3. Such authority shall endure for the period provided in the Ordinary Resolution or Special Resolution in question but may be revoked by Ordinary Resolution or Special Resolution, as the case may be, at any time.

9.5. The Board shall determine the terms of any trust agreement contemplated in section 40(5)(b) in respect of the issue of any Shares by reason of not having been fully paid for upon the issuing thereof.

10. CERTIFICATES EVIDENCING ISSUED SECURITIES AND SECURITIES REGISTER

10.1. The Securities issued by the Company shall be evidenced by certificates, which shall contain the information specified in section 51(1), and which shall be issued in the manner prescribed in section 51.

10.2. The Company shall establish and keep a register of its issued Shares at its Registered Office in the manner specified in section 50 and the Regulations.

11. PROHIBITION REGARDING BENEFICIAL INTERESTS

The Company shall not permit Shares to be held by, and registered in the name of, one Person for the Beneficial Interest of another, as contemplated in section 56(1).

12. RESTRICTION ON THE TRANSFER OF SHARES

In addition to any prescribed obligations which the Shareholder may agree to, the Company shall not transfer Shares without the prior Written consent of the Shareholder.

13. SHAREHOLDER'S AND DIRECTORS' RIGHT TO INFORMATION

13.1. Save as contemplated in clauses 13.2 and 13.3, the Shareholder does not have any additional rights to access to information other than the rights to access to information as contemplated section 26 read with Regulation 24 and the Applicable Legislation.

13.2. The Board shall procure that detailed management accounts of the Company and its Subsidiaries, inclusive of progress made against the Corporate Plan, shall be prepared on a quarterly basis and submitted to the Shareholder within the Month after the end of the quarter in respect of which such accounts are being prepared. Such management accounts shall be circulated on a quarterly basis to each Director of the Board and the Shareholder.

13.3. Any Director or the Shareholder shall be entitled to request from time to time such accounting and other information as may be reasonably required by such Director or the Shareholder.

14. RECORD DATE

14.1. If, at any time, the Board fails to determine a Record Date as contemplated in section 59 the Record Date for the relevant action or event is as determined in accordance with section 59(3).

14.2. Notwithstanding the provisions of clause 14.1 if the Board determines the Record Date, it may not be earlier than the date on which the Record Date is determined or more than 10 (ten) Business Days before the date on which the event or action, for which the Record Date is being set, is scheduled to occur.

14.3. If, at any time, the Board fails to determine a Record Date, the Record Date for the relevant matter is –

14.3.1. in the case of a Shareholder's Meeting, the latest date by which the Company is required to Deliver to Shareholders entitled to vote, notice of that Shareholder's Meeting; or

14.3.2. in any other case, the date of the action or event.

14.4. The Company must publish a notice of a Record Date for any matter by –

14.4.1. Delivering a copy to the Shareholder (and clause 30.3 shall not apply); and

14.4.2. posting a conspicuous copy of the notice –

14.4.2.1. at its Registered Office; or

14.4.2.2. on its website, if it has one.

15. SHAREHOLDER'S MEETINGS AND WRITTEN RESOLUTIONS

15.1. Convening of Shareholder's Meetings and Annual General Meetings

15.1.1. The Company or, for so long as the Government is the sole Shareholder, the Minister shall convene an Annual General Meeting once in every calendar year, but not more than 15 (fifteen) Months after the date of the previous Annual General Meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown, which must, at a minimum, provide for the following business to be transacted –

15.1.1.1. presentation of the integrated Annual Report, comprising of –

15.1.1.1.1. the Directors' report;

15.1.1.1.2. audited Financial Statements for the immediately preceding Financial Year;

15.1.1.1.3. an audit committee report;

15.1.1.1.4. the external Auditors' report;

15.1.1.1.5. Remuneration, Social and Ethics Committee report;

15.1.1.2. appointment of Directors, to the extent required by the Act or the MOI;

15.1.1.3. consideration of the Remuneration Policy of the Company and confirmation that such Remuneration Policy is in accordance with the standards and/or guidelines issued by the Minister;

15.1.1.4. approval of the remuneration payable to Directors (both executive and non-executive) and members of the executive committee of the Company, by Special Resolution (except where Directors remuneration has been approved by the Shareholder by Special Resolution within the previous 2 (two) years) although this may be reviewed on an annual basis if so required by the Shareholder);

15.1.1.5. approval of the Auditor for the current Financial Year (subject to the provisions of section 84(3) of the Act);

15.1.1.6. noting of the audit fees for the previous Financial Year under review;

15.1.1.7. authorising the audit committee to determine the audit fees for the current Financial Year;

15.1.1.8. appointing the audit committee subject to clause 22;

15.1.1.9. consideration of the Strategic Intent Statement;

15.1.1.10. noting of the Shareholder's Compact for the current Financial Year;

15.1.1.11. the approval and/or consideration of the Shareholder's Compact for the following Financial Year;

15.1.1.12. the approval and/or consideration of the SMF;

15.1.1.13. approval, of the Shareholder, of a Distribution (if applicable), which shall have been approved by the Board prior to the Annual General Meeting in accordance with any Distribution policies applicable to the Company, from time to time and the provisions of clause 28;

15.1.1.14. consideration of the performance of the Board through the Board Performance Appraisal report; and

15.1.1.15. any matters raised by the Shareholder, with or without advance notice to the Company; and

15.1.1.16. confirmation of the Remuneration, Social and Ethics Committee members.

15.1.2. The Company shall, as determined by the Board, either –

15.1.2.1. hold a Shareholder's Meeting in order to consider one or more resolutions; or

15.1.2.2. as regards such resolution/s that could be voted on at a Shareholder's Meeting, other than an Annual General Meeting, instead require them to be dealt with by Written Resolution contemplated in clause 1.2.42.1.

15.1.3. Within 10 (ten) Business Days after a Written Resolution is adopted, the Company must Deliver a statement describing the results of the vote, consent process, or election to every Shareholder who was entitled to vote on or consent to the Written Resolution.

15.1.4. A Company must hold a Shareholder's Meeting or put the proposed resolution by way of a Written Resolution contemplated in clause 1.2.42:-

15.1.4.1. at any time that the Board is required by the Act or the MOI to refer a matter to Shareholders entitled to vote for decision;

15.1.4.2. whenever required to fill a vacancy on the Board.

15.1.5. Each proposed resolution shall be expressed with sufficient clarity and specificity and accompanied by sufficient information / explanatory material to enable a Person who is entitled to vote on the resolution to determine whether to participate in the Shareholder's Meeting, if applicable, and to seek to influence the outcome of the vote on the resolution. Once a resolution has been approved, it may not be challenged or impugned on the ground that it did not comply with the aforegoing.

15.1.6. The Board or, for as long as the Government is the sole Shareholder, the Minister may, whenever she/he thinks fit, convene a Shareholder's Meeting or put a proposed resolution by way of a Written Resolution contemplated in clause 1.2.42.1. A Shareholder's Meeting must be convened or the Board must put the proposed resolution by way of a Written Resolution contemplated in clause 1.2.42.1 if one or more Written and signed demands for such a Shareholder's Meeting or Written Resolution is/are delivered to the Company, and —

15.1.6.1. each such demand describes the specific purpose for which the Shareholder's Meeting is proposed; and

15.1.6.2. in aggregate, demands for substantially the same purpose are made and signed by the Shareholders at the earliest time specified in any of those demands, of at least 100% (one hundred percent) of the Voting Rights entitled to be exercised in relation to the matter proposed to be considered at the Shareholder's Meeting.

15.1.7. Written Resolutions contemplated in clause 1.2.42.1, will be passed if signed by a majority of at least 75% (seventy five percent) of the Persons entitled to exercise sufficient Voting Rights for it to have been adopted as an Ordinary or

Special Resolution, as the case may be, at a properly constituted Shareholder's Meeting.

15.1.8. The authority of the Company to conduct a Shareholder's Meeting entirely by Electronic Communication, or to provide for participation in a Shareholder's Meeting by Electronic Communication so long as the Electronic Communication employed ordinarily enables all Persons participating in that Shareholder's Meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the Shareholder's Meeting, as set out in section 63(2), is not limited or restricted.

15.2. Notice of Shareholder's Meetings

15.2.1. A Shareholder's Meeting shall be called by at least 15 (fifteen) Business Days' notice Delivered by the Board (and for this purpose clause 30.3 shall not apply) to all Shareholders entitled to vote or otherwise entitled to receive notice.

15.2.2. The Company or, for as long as the Government is the sole Shareholder, the Minister may call a Shareholder's Meeting with less notice than required by clause 15.2.1, but such a Shareholder's Meeting may proceed only if every Person who is entitled to Exercise Voting Rights in respect of any item on the meeting agenda:-

15.2.2.1. acknowledges actual receipt of the notice;

15.2.2.2. is Present at the Shareholder's Meeting; and

15.2.2.3. votes to waive the required minimum notice of the Shareholder's Meeting.

15.2.3. A Shareholder entitled to vote, who is Present at a Shareholder's Meeting –

15.2.3.1. is regarded as having received or waived notice of the Shareholder's Meeting;

15.2.3.2. has a right to —

15.2.3.2.1. allege a Material defect in the form of notice for a particular item on the agenda for the Shareholder's Meeting; and

15.2.3.2.2. participate in the determination whether to waive the requirements for notice, if at least the required

minimum notice was given, or to ratify a defective notice; and

15.2.3.3. except to the extent set out in clause 15.2.4.2 is regarded to have waived any right based on an actual or alleged Material defect in the notice of the Shareholder's Meeting.

15.2.4. A notice of a Shareholder's Meeting must be in Writing, in plain language and must include:-

15.2.4.1. the date, time and place for the Shareholder's Meeting, and the Record Date for the Shareholder's Meeting;

15.2.4.2. the general purpose of the Shareholder's Meeting, and any specific purpose contemplated in clause 15.1.1, if applicable;

15.2.4.3. in the case of the Annual General Meeting a summarised form of the Financial Statements to be presented and directions for obtaining a copy of the complete annual Financial Statements for the preceding Financial Year;

15.2.4.4. a copy of any proposed resolution of which the Company has received notice, and which is to be considered at the Shareholder's Meeting, and a notice of the percentage of Voting Rights that will be required for that resolution to be adopted;

15.2.4.5. a reasonably prominent statement:-

15.2.4.5.1. that a Shareholder entitled to attend and vote at the Shareholder's Meeting shall be entitled to appoint a proxy to attend, participate in, speak and vote at the Shareholder's Meeting in the place of the Shareholder entitled to vote or give or withhold Written consent on behalf of the Shareholder entitled to vote to a decision by Written Resolution contemplated in clause 1.2.42.1;

15.2.4.5.2. that a proxy need not be a Shareholder;

15.2.4.5.3. that a Shareholder entitled to vote may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Shares held by that Shareholder entitled to vote in respect of any

Shareholder's Meeting and may appoint more than 1 (one) proxy to exercise Voting Rights attached to different Shares held by the Shareholder which entitle her/him/it to vote;

15.2.4.5.4. that the proxy may delegate the authority granted to her/him/it as proxy, subject to any restriction in the proxy itself;

15.2.4.5.5. that participants in a Shareholder's Meeting are required to furnish satisfactory identification in terms of section 63(1) in order to reasonably satisfy the Person presiding at the Shareholder's Meeting that the right of that person to participate and vote, either as the Shareholder, or as a proxy for the Shareholder, has been reasonably verified;

15.2.4.5.6. of the availability of that participation in the Shareholder's Meeting by Electronic Communication, and provide any necessary information to enable Shareholders entitled to vote or their proxies to access the available medium or means of Electronic Communication and advise that access to the medium or means of Electronic Communication is at the expense of the Shareholder entitled to vote or proxy, except to the extent that the Company determines otherwise.

15.2.5. A Shareholder's Meeting may proceed notwithstanding a Material defect in the giving of the notice, subject to clause 15.2.7, only if every Person who is entitled to Exercise Voting Rights in respect of each item on the agenda of the Shareholder's Meeting is Present at the Shareholder's Meeting and votes to approve the ratification of the defective notice.

15.2.6. If a Material defect in the form or manner of giving notice of a Shareholder's Meeting relates only to one or more particular matters on the agenda for the Shareholder's Meeting:-

15.2.6.1. any such matter may be removed from the agenda, and the notice remains valid with respect to any remaining matters on the agenda; and

15.2.6.2. the Shareholder's Meeting may proceed to consider a removed matter, if the defective notice in respect of that matter has been ratified.

15.2.7. An immaterial defect in the form or manner of Delivering notice of a Shareholder's Meeting, or an accidental or inadvertent failure in the Delivery of the notice to any particular Shareholder to whom it was addressed, if the Company elects to do so, does not invalidate any action taken at the Shareholder's Meeting.

15.3. Meeting quorum and adjournment and postponement

15.3.1. Business may be transacted at any Shareholder's Meeting only while a quorum is Present.

15.3.2. The quorum necessary for the commencement of a Shareholder's Meeting or for a matter to be considered at a Shareholder's meeting shall be the Minister Present in person or represented by proxy.

15.3.3. If within 30 (thirty) minutes from the time appointed for the Shareholder's Meeting to commence, a quorum is not Present, the Shareholders Meeting shall be postponed, without motion, vote or further notice, subject to clause 15.4.1, to the date, time and place as agreed to by the Shareholder as soon as reasonably practicable, after the date of such postponed or adjourned meeting.

15.3.4. A Shareholder's Meeting, or the consideration of any matter being debated at the Shareholder's Meeting, may be adjourned or postponed from time to time without further notice on a motion supported by Persons entitled to Exercise, in aggregate, a majority of the Voting Rights —

15.3.4.1. held by all of the Persons who are Present at the Shareholder's Meeting at the time; and

15.3.4.2. that are entitled to be Exercised on at least one matter remaining on the agenda of the Shareholder's Meeting, or on the matter under debate, as the case may be.

15.3.5. Such adjournment or postponement may be either to a fixed time and place or until further notice (in which latter case a further notice shall be Delivered to the Shareholder) as agreed at the Shareholder's Meeting.

15.3.6. A Shareholder's Meeting may not be adjourned or postponed beyond the earlier of:-

15.3.6.1. the date that is 120 (one hundred and twenty) Business Days after the Record Date; or

15.3.6.2. the date that is 60 (sixty) Business Days after the date on which the adjournment or postponement occurred.

15.3.7. No further notice is required to be Delivered by the Company of a Shareholder's Meeting that is postponed or adjourned as contemplated in clause 15.3.6, unless the location for the Shareholder's Meeting is different from:-

15.3.7.1. the location of the postponed or adjourned Shareholder's Meeting; or

15.3.7.2. a location announced at the time of adjournment, in the case of an adjourned Shareholder's Meeting.

15.3.8. After a quorum has been established for a Shareholder's Meeting, or for a matter to be considered at a Shareholder's Meeting, the Shareholder's Meeting may continue, or the matter may be considered, so long as at least 1 (one) Persons with Voting Rights entitled to be exercised at the Shareholder's Meeting, or on that matter, is Present at the Shareholder's Meeting.

15.4. Conduct of Shareholder's meetings and Shareholder resolutions

15.4.1. The Chairperson of the Board shall preside as chairperson at every Shareholder's Meeting of the Company. If there is no such Chairperson, or if at any Shareholder's Meeting she/he is not Present within 30 (thirty) minutes after the time appointed for holding the Shareholder's Meeting or is unwilling to act as Chairperson, the Persons entitled to vote which are Present shall appoint a non-executive Director Present at the Shareholder's Meeting, or if no Director be Present at the Shareholder's Meeting, or if all the Directors Present decline to take the chair, the Persons entitled to vote shall appoint a Chairperson from amongst themselves to act as such at the relevant Shareholder's Meeting. In the exceptional circumstances that no other non-executive Director be available to chair the Shareholder's Meeting, the Shareholder (or a duly authorised representative thereof) shall chair the Shareholder's Meeting.

15.4.2. Every resolution of the Shareholder is either an Ordinary Resolution or a Special Resolution.

15.4.3. Subject to any rights or restrictions attaching to any class or classes of Shares, a Person entitled to vote Present at the Shareholder's Meeting shall have only 1 (one) vote, irrespective of the number of Shares she/he holds or represents. A

proxy shall irrespective of the number of holders of Shares entitled to vote she/he represents have only 1 (one) vote. On a poll every Person entitled to vote who is Present at the Shareholder's Meeting shall have the number of votes determined in accordance with the Voting Rights associated with the Shares in question.

15.4.4. No form appointing a proxy shall be valid after the expiration of 1 (one) year from the date when it was signed unless the proxy itself provides for a longer or shorter duration but it may be revoked at any time. The appointment is revocable unless the proxy appointment expressly states otherwise, and may be revoked by cancelling it in Writing, or making a later inconsistent appointment of a proxy, and Delivering a copy of the revocation instrument to the proxy, and to the Company. The appointment is suspended at any time and to the extent that the Shareholder entitled to vote chooses to act directly and in person in the Exercise of any rights as a Shareholder entitled to vote.

15.4.5. The form appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of such power or authority shall be delivered to the Company immediately prior to the Shareholder's Meeting, before the proxy or holder of the power of attorney or other authority Exercises any rights of the Shareholder entitled to vote at a Shareholder's Meeting.

15.4.6. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Shares in respect of which the proxy is given, provided that no intimation in Writing of such death, insanity, revocation or transfer as aforesaid shall have been received by the Company at its Registered Office before the commencement of the Shareholder's Meeting or adjourned or postponed Shareholder's Meeting at which the proxy is used.

15.4.7. Subject to the provisions of the Act, a form appointing a proxy may be in any usual or common form. The Company shall supply a generally accepted standard form of proxy upon request by a Shareholder entitled to vote.

15.4.8. If a proxy is received duly signed but with no indication as to how the Person named therein should vote on any issue, the proxy may vote or abstain from voting as she/he sees fit unless the proxy indicates otherwise.

16. **APPOINTMENT AND REMOVAL OF THE GROUP CHIEF EXECUTIVE AND THE GROUP CHIEF FINANCIAL OFFICER**

16.1. The Board shall identify, nominate and evaluate potential candidates for appointment as the Group Chief Executive in accordance with the Guidelines.

16.2. The Shareholder shall appoint the Group Chief Executive from the shortlist of candidates provided by the Board, in accordance with the Guidelines.

16.3. The Board shall identify, nominate, evaluate and appoint a candidate as the Group Chief Financial Officer, provided that the Shareholder shall approve such appointment in Writing.

16.4. If the Shareholder does not approve the appointment of the Group Chief Financial Officer identified by the Board in Writing, the Shareholder shall be required to provide a written substantive motivation to the Board as to why the Shareholder does not approve the candidate nominated by the Board. Provided the Shareholder provides such Written substantive motivation to the Board, such candidate shall not be appointed as the Group Chief Financial Officer and the Board shall identify and nominate an alternative candidate for appointment as the Group Chief Financial Officer and the process contemplated in clauses 16.3 and 16.4 shall apply.

16.5. The Group Chief Executive and the Group Chief Financial Officer shall be subject to the same provisions as to removal as the other Directors (as contemplated in clause 17.9), and if he ceases to be or is suspended from being an employee of the Company respectively, his appointment as a Director shall *ipso facto* terminate, without prejudice to any claims or damages which may accrue to him as a result of such termination.

17. **APPOINTMENT OF DIRECTORS**

17.1.1. The Shareholder shall appoint the Directors, and designate one of the non-executive Directors as the Chairperson, of the Company from time to time and in doing so shall endeavour to ensure that the Board shall:-

17.1.1.1. be appropriately balanced in terms of executive and non-executive Directors, including independent Directors;

17.1.1.2. be representative of the gender and race demographics of the Republic;

17.1.1.3. be appointed on the grounds of their knowledge and experience which, when considered collectively, should enable the Board to attain the objects of the Company;

17.1.1.4. when viewed collectively, possess appropriate skills and experience relevant to the business of the Company;

17.1.1.5. include a Group Chief Executive and Group Chief Financial Officer of the Company as contemplated in clause 16.

17.1.2. The Board shall consist of a minimum of 10 (ten) Directors and a maximum of 14 (fourteen) Directors, comprising:-

17.1.2.1. not less than 8 (eight) non-executive Directors, from whom shall be appointed the Chairperson of the Company. A non-executive Director shall hold office for a term of 3 (three) years, from the date of his appointment, subject to confirmation of his appointment at the Annual General Meeting; provided that no person is appointed as a non-executive Director for longer than 3 (three) consecutive terms;

17.1.2.2. not less than 2 (two) executive Directors, whom shall include the Group Chief Executive and the Group Chief Financial Officer, respectively, of the Company,

provided that the Board shall at all times consist of a majority of non-executive Directors.

17.2. Chairperson of the Board

17.2.1. The Chairperson of the Board shall be appointed by the Shareholder in terms of clause 17.1.1.

17.2.2. A Shareholder's Meeting shall be entitled to designate an acting Chairperson (from any of the non-executive Directors) and determine the period for which such acting Chairperson is to hold office and any other terms and conditions applicable to such appointment.

17.2.3. The Chairperson of the Board shall chair all the meetings of the Shareholder and the Board.

17.2.4. If the Chairperson is not Present at any meeting of the Board or if he is not Present within 30 (thirty) minutes after the time appointed for holding the meeting, the Directors Present shall choose any non-executive Director to be Chairperson of the meeting.

17.2.5. The Director appointed as Chairperson of the meeting in terms of clause 17.2.4 (or the acting chairperson) shall act as Chairperson:-

17.2.5.1. for the duration of the meeting or until the meeting is adjourned or postponed; or

17.2.5.2. for such a period of time after the adjournment or postponement of the meeting at which such Director was appointed as Chairperson until the Chairperson of the Board becomes available; or

17.2.5.3. until the Shareholder appoints the Chairperson.

17.2.6. The Chairperson of the Board shall not be appointed or serve as the chairperson of a:

17.2.6.1. Board committee (save that the Chairperson shall be entitled to chair the corporate governance and nominations committee of the Company); nor

17.2.6.2. Subsidiary board.

17.3. Appointment of Directors to the boards of the wholly-owned Subsidiaries of the Company

For so long as the State is the sole Shareholder, it is recorded that the boards of the wholly-owned Subsidiaries of the Company shall comprise employees of such Subsidiaries or the Company.

17.4. Powers of Directors

17.4.1. The management and control of the Company shall be vested in the Board who, in addition to the powers and authorities expressly conferred upon them by this MOI, the Enabling Legislation and the Applicable Legislation, may exercise all such powers, and do all such acts and things, as may be exercised or done by the Company and are not, in terms of this MOI, the Enabling Legislation and the Applicable Legislation, expressly directed or required to be exercised in a Shareholder's Meeting or with the prior Written consent of the Shareholder.

17.4.2. The powers and authorities of the Board, as contemplated in clause 17.4.1, shall be subject to any limitations in terms of the Act, Enabling Legislation and the Applicable Legislation.

17.4.3. Notwithstanding any provision to the contrary contained in this MOI, the Company shall not agree to or approve any matters reserved for Shareholder approval, without the same being approved in Writing by a resolution passed by a Shareholder's Meeting.

17.4.4. The Board may delegate any of the powers, functions, or duties and discretion to an employee(s) of the Company and/or to a committee of the Board. The delegation shall be exercised lawfully, within prescribed powers and authorisation levels and in terms of the Companies policies, directives and procedures.

17.4.5. The delegation:-

17.4.5.1. may be made on and subject to any conditions determined by the Board;

17.4.5.2. may be given together with the power to sub-delegate subject to the provisions of the PFMA, the Act, the Applicable Legislation and further subject to any conditions so determined (if any); and

17.4.5.3. shall be communicated to the delegatee in Writing and such Written communication must contain full particulars of the matters being delegated and of the conditions determined under clauses 17.4.5.1 and 17.4.5.2 above, if any, and where the power of sub-delegation is also conferred, must state that fact, as well as any conditions determined under this clause 17.4.5.3 if any; and

17.4.5.4. shall be reviewed on a regular basis.

17.4.6. Subject to the Written approval of the Shareholder, the Board may approve or note any Share scheme, the rules applicable to any such scheme and any amendment to such rules as recommended by the Remuneration, Social and Ethics Committee; provided that the rules and/or any amendment to such rules, shall be in accordance with the Remuneration Policy.

17.4.7. The Board shall have the powers to pay all taxes, duties, fees, expenses or other amounts that may be payable.

17.5. Recognition of the DoA

It is recorded that the Board shall delegate certain of its powers and functions to an employee(s) of the Company as contemplated in the DoA by passing a resolution of the Board adopting the DoA in accordance with the principles set out in clause 17.4 above.

17.6. Proceedings at Meetings of Directors

17.6.1. The Board may meet for the dispatch of business, adjourn or postpone and otherwise regulate its meetings as it thinks fit. The Company Secretary or a Director may at any time:-

17.6.1.1. when authorised by the Board; or

17.6.1.2. if requested by at least 1 (one) Director which request shall also be approved by the Chairperson of the Board; or

17.6.1.3. if requested by at least 2 (two) Directors of the Company,

convene a meeting of the Board.

17.6.2. The Board shall determine what period of notice shall be given for meetings of the Board and may determine the means of giving such notice, which may include Electronic Communication. It shall be necessary to give notice of a meeting of the Board to all Directors, even those for the time being absent from the Republic.

17.6.3. A meeting of the Board shall proceed even if the Company has not given the required notice of such meeting in accordance with clause 17.6.2 or if there was a defect in the giving of the notice, provided that all Directors:-

17.6.3.1. acknowledge actual receipt of the notice of the meeting concerned;

17.6.3.2. are Present at the meeting; or

17.6.3.3. waive notice of the meeting.

17.6.4. Unless otherwise resolved by the Board, all their meetings shall be held in the city or town where the Company's Registered Office is for the time being situated.

17.6.5. A meeting of the Board may be conducted by Electronic Communication facility and/or by 1 (one) or more Directors participating in the meeting by Electronic Communication so long as the Electronic Communication facility employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

17.6.6. The quorum necessary for the transaction of business of the Board shall be 51% (fifty one percent) of the Directors, provided that such quorum shall always include a majority of non-executive Directors Present in person or through Electronic Communication facility.

17.6.7. The provisions of clause 17.2 shall *mutatis mutandis* apply to this clause 17.6 in relation to the appointment of the Chairperson of the meetings of the Board.

17.6.8. Each Director shall have 1 (one) vote on a matter before the Board.

17.6.9. Resolutions of the Directors shall be decided by more than 50% (fifty per cent) of the votes and in the case of an equality of votes, the Chairperson shall not have a casting vote in addition to his/ her vote as a Director of the Board and the matter being voted on fails.

17.6.10. Subject to the Act

17.6.10.1. a Written Resolution, including through the medium of Electronic Communication, signed and approved by more than 75% (seventy five per cent) of the Directors shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted: provided that each Director has received notice of the matter to be decided upon.

17.6.10.2. resolutions adopted by the Board –

17.6.10.2.1. must be dated and sequentially numbered; and

17.6.10.2.2. are effective as of the date of the resolution, unless the resolution states otherwise;

17.6.10.2.3. in the case of matters requiring urgent resolution or, if for any reason it is impracticable to meet or pass a resolution as contemplated in clause 17.6.10.1 above, proceedings may be conducted by using conference facilities (including telephone and/or video facilities), provided that the required quorum is met. A resolution agreed to by more than 75% (seventy five per cent) of the Directors participating during the course of such proceedings shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted.

17.6.11. The Company Secretary or her designate shall attend meetings and record the minutes of the meetings. Where it is not at all possible for the Company Secretary to attend any such meeting, the Directors shall ensure that minutes are recorded, kept and prepared for that meeting. The Director elected by the Board to record and keep minutes of a meeting held by making use of conference facilities shall, as soon as is reasonably possible after such meeting has been held, provide the Company Secretary with a copy of the minutes of the meeting. The Company Secretary shall circulate the minutes of the meeting to the Directors for their

consideration and comment and shall, after the minutes have been approved by the Board, keep the minutes in the minute book of the Company.

17.7. Absence from Directors Meeting

17.7.1. If any Director is unable to attend a meeting of Directors, such Director shall notify the Chairman and/or the Company Secretary of his/her inability to attend as soon as such Director becomes aware of that fact.

17.7.2. Any Director who fails to attend any meeting of Directors without notifying the Chairman and/or Company Secretary shall be recorded in the minutes of such meeting as absent.

17.8. Conflicts of Interest and Declaration by Directors

17.8.1. For the purposes of this clause 17.7, "**Director**" includes a Prescribed Officer, and a person who is a member of a statutory committee or a committee of the Board, irrespective of whether or not the Person is also a member of the Board.

17.8.2. The Company has a policy that deals with Personal Financial Interests and conflicts of interest of Directors and employees of the Company, which shall be consistent with the provisions of the Act and the PFMA.

17.8.3. If a Director has a Personal Financial Interest or Knows that a Person Related to the Director, as described in section 2 ("**Related Person**") has a Personal Financial Interest in respect of a matter to be considered by the Board, the Director:-

17.8.3.1. must disclose the interest and its general nature in Writing before the matter is considered at the meeting;

17.8.3.2. must disclose to the meeting any Material information relating to the matter, and that is Known to the Director;

17.8.3.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

17.8.3.4. if Present at the meeting of the Board, must recuse himself from the meeting when the matter is being decided upon after making any disclosure contemplated in clause 17.8.3.2 or 17.8.3.3;

17.8.3.5. must not take part in the consideration of the matter, except to the extent of the disclosures contemplated in clause 17.8.3.2 or 17.8.3.3;

17.8.3.6. while absent from the meeting as provided in clause 17.8.3.4:-

17.8.3.6.1. shall be regarded as being Present at the meeting for the purpose of determining whether sufficient Directors are Present to constitute a quorum of the meeting;

17.8.3.6.2. shall not be regarded as being Present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

17.8.3.7. must not execute any document on behalf of the Company in relation to the matter unless specifically requested or directed to do so by the Board.

17.8.4. If a Director of the Company acquires, or Knows that a Related Person has acquired, a Personal Financial Interest in an agreement or other matter in which the Company has a Material interest, after the agreement or other matter has been approved by the Company, the Director shall promptly disclose to the Board, the nature and extent of that interest, and the Material circumstances relating to the Director or Related Person's acquisition of that interest, as the case may be.

17.8.5. If, in the reasonable view of the other non-conflicted Directors, a Director or the Related Person in respect of such Director acts in competition with the Company relating to the matter to be considered at the meeting of the Board, the Director shall only be entitled to such information concerning the matter to be considered at the meeting of the Board as shall be necessary to enable the Director to identify that such Personal Financial Interest exists or continues to exist.

17.8.6. A decision by the Board, or a transaction or agreement approved by the Board, is valid despite any Personal Financial Interest of a Director or a Related Person to the Director, if it:-

17.8.6.1. was approved following the disclosure of the Personal Financial Interest in the manner contemplated in section 75 and this clause 17.7; or

17.8.6.2. despite having been approved without disclosure of that Personal Financial Interest, it has been ratified by an Ordinary Resolution following disclosure of that Personal Financial Interest or so declared by court.

17.8.7. A Director may at any time disclose any general Personal Financial Interest in advance by delivering a Written notice to the Board, setting out the nature and extent of that Personal Financial Interest, to be used generally by the Company until changed or withdrawn by further Written notice from that Director.

17.8.8. Directors have a duty to avoid a conflict of interest in terms of *inter alia* the common law, the PFMA and the Act. Accordingly, a Director must, in addition to making the requisite disclosures set out in clauses 17.8.3 to 17.8.7, disclose any conflict of interest in accordance with the policy referred to in clause 17.8.2, as may be amended from time to time.

17.8.9. A court, on application by any interested person, may declare valid a transaction or agreement that had been approved by the Board, or Shareholder as the case may be, despite the failure of the Director to satisfy the requirements of this clause 17.7 and section 75.

17.8.10. The provisions of this clause 17.7 do not derogate from those Directors duties prescribed by the PFMA and the Directors shall be required to comply both with the provisions of this clause 17.7 and the provisions of the PFMA.

17.9. Removal of Directors

17.9.1. Despite anything to the contrary in this MOI, or any agreement between the Company and a Director, or between any Shareholder and a Director, the Shareholder shall be entitled to remove any Director of the Company by an Ordinary Resolution adopted at a Shareholder's Meeting.

17.9.2. The Shareholder shall, prior to considering the Ordinary Resolution for the removal of any Director:-

17.9.2.1. provide the Director concerned with a notice of a meeting and the resolution proposed to be passed at such meeting at least equivalent to that which a Shareholder is entitled to receive, irrespective of whether or not the Director is a Shareholder of the Company; and

17.9.2.2. afford the Director concerned reasonable opportunity to make a presentation, in person or through a representative, at the meeting prior to the resolution being put to the vote.

17.9.3. The Board shall be entitled, after consultation with the Shareholder, by a resolution of the Board, to remove a Director whom the Board has determined to have:

17.9.3.1. become Ineligible or Disqualified to be a Director of the Company in terms of the Act;

17.9.3.2. become incapacitated to the extent that such Director is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable time; and

17.9.3.3. neglected or been derelict in the performance of, the functions of a Director.

17.9.4. The Board shall, prior to approving the resolution for the removal of a Director in terms of clause 17.9.3:

17.9.4.1. provide the Director concerned with a notice of a meeting and the resolution proposed to be passed at such meeting setting out reasons for the resolution, with sufficient specificity to reasonably permit the Director to prepare and present a response; and

17.9.4.2. afford the Director concerned reasonable opportunity to make presentations, in person or through a representative, at the meeting prior to the resolution being put to the vote.

17.10. Rotation of Directors and filling of vacancies

17.10.1. If a Director ceases to hold office or a term of office of any Director is due to expire, the Shareholder shall, in compliance with the provisions of section 70, ensure that necessary steps are taken to appoint the requisite number of eligible persons as Directors in the place of the retiring Director/s as soon as possible. In this regard the Board shall advise the Shareholder within a reasonable time of such impending vacancy.

17.10.2. The Shareholder shall fill in any vacancy that arose on the Board at its next Annual General Meeting or within a period of 6 (six) Months after the vacancy arose.

17.10.3. A person shall cease to be a Director and a vacancy on the Board shall arise:

17.10.3.1. when the Director's term of office expires or is due for retirement;

17.10.3.2. if any of the circumstances referred to in section 70(1)(b) occur, which include the following, if the Director:

17.10.3.2.1. resigns by Written notice to the Shareholder and the Company;

17.10.3.2.2. dies;

17.10.3.2.3. ceases to hold the office, title, designation or similar status that entitled such a person to be a Director of the Company;

17.10.3.2.4. becomes incapacitated to the extent that the person is unable to perform the functions of a Director and is unlikely to regain that capacity within a reasonable period subject to section 71(3);

17.10.3.2.5. is declared delinquent by the court or placed on probation under conditions that are inconsistent with continuing to be a Director of the Company, in terms of section 162;

17.10.3 2.6. becomes Ineligible or Disqualified to be a Director in terms of section 69, or the Applicable Legislation and this MOI and the Board has determined the matter and has resolved to remove that Director from the Board for reasons of his Ineligibility and/or Disqualification; provided the Director so removed has not applied to court for review of the determination of the Board to remove him or, if has applied to court, such application has not been finalised during the period before the court has confirmed the removal, the Director shall be suspended;

17.10.3.2.7. is removed as a Director by:

17.10.3.2.7.1. a resolution of the Shareholders in terms of section 71(1) (and in accordance with clause 17.9); or

17.10.3.2.7.2. resolution of the Board in terms of section 71(3) (and in accordance with clause 17.9), provided the Director so removed has not applied to court for review of the determination of the Board to remove him or if has applied to

court such application has been finalised; or

17.10.3.2.7.3. an order of the court in terms of section 71(5) or (6); or

17.10.3.3. if he/she is absent from meetings of the Directors for 3 (three) consecutive meetings whether or not he/she has notified the Chairperson and/or Company Secretary) in terms of 17.7 and the Shareholder resolves that such Director's office be vacated.

17.10.4. In the case of non-executive Directors, a person shall cease to be a Director and a vacancy on the Board shall arise:

17.10.4.1. a Director's appointment is reviewed and his term is terminated prematurely to the 3 (three) year term;

17.10.4.2. a Director has served for 2 (two) consecutive 3 (three) year terms, and fails to be re-appointed as a Director for a 3rd (third) term;

17.10.4.3. a Director has served for a 3 (three) year term as a Director, and fails to be re-appointed as Director for a 2nd (second) term; or

17.10.4.4. a Director has been appointed as a Director for 3 (three) consecutive 3 (three) year terms, which 3rd (third) term has now expired.

17.10.5. Unless the Shareholder resolves otherwise, a Director shall also cease to hold office if he:-

17.10.5.1. is Knowingly interested in any contract or proposed contract with the Company and fails to declare his interest and its nature in the manner required by the Act and the PFMA; or

17.10.5.2. assigns his estate for the benefit of his creditors, or suspends payment or files a petition for the liquidation of his affairs, or compounds generally with his creditors; or

17.10.5.3. ceases to be an employee and/or is suspended as an employee of the Company.

17.10.6. In addition if the Group Chief Financial Officer or Group Chief Executive ceases to hold office as a Director for any reason whatsoever, his appointment as the Group Chief Financial Officer or Group Chief Executive (as the case may

be)shall *ipso facto* terminate, without prejudice to any claims for damages which may accrue to him as a result of such termination in accordance with applicable employment laws; provided however, that he shall not be precluded from being employed in any other position of the Company by virtue of the fact that he is no longer a Director.

18. FINANCIAL ASSISTANCE FOR DIRECTORS AND PRESCRIBED OFFICERS AND THEIR RELATED AND INTER-RELATED PARTIES

18.1. Financial Assistance

18.1.1. The Board is prohibited from and shall not have the power to –

18.1.1.1. authorise the provision by the Company of Financial Assistance to any person for the purpose of, or in connection with, the subscription of any option, or any Securities, issued or to be issued by the Company or a Related Person or Inter-Related company, or for the purchase of any Securities of the Company or a Related or Inter-Related company;

18.1.1.2. provide any direct or indirect Financial Assistance to a Related or Inter-Related company, or to a Related or Inter-Related company or corporation, or to a member of a Related or Inter-Related corporation or to a person Related to any such company, corporation,

except, in each case, where –

18.1.1.3. the Shareholder has approved such Financial Assistance, either for the specific recipient or generally for a category of potential recipients (and the specific recipient falls within that category), by Special Resolution adopted within the previous 2 (two) years; provided that where the Shareholder is requested to approve the provision of specific Financial Assistance, the Board shall, at the request of the Shareholder, provide such information to the Shareholder as the Shareholder may require, to satisfy the Shareholder that the conditions set out in clauses 18.1.1.4, 18.1.1.5 and 18.1.1.6 of this MOI have been met, or will be met; and

18.1.1.4. the provisions of the PFMA have been met; and

18.1.1.5. the provisions of section 44 and/or 45 (as the case may be) have been met; and

18.1.1.6. the Board is satisfied that –

18.1.1.6.1. immediately after providing the Financial Assistance, the Company would satisfy the solvency and liquidity test prescribed in section 4; and

18.1.1.6.2. the terms under which the Financial Assistance is proposed to be given are fair and reasonable to the Company.

18.1.2. The Company shall be prohibited from providing any direct or indirect Financial Assistance to any Director or Prescribed Officer of the Company or to a person Related or Inter-Related to any such Director or Prescribed Officer under any circumstances whatsoever.

18.1.3. Notwithstanding any implication in this MOI to the contrary, the Board may not authorise any Financial Assistance by the Company in connection with the subscription for or purchase of its Shares or those of a Related or Inter-Related company without complying with section 44(3).

19. INDEMNITY

19.1. For the purposes of this clause 19 , "Director" includes a former Director, a Prescribed Officer, a person who is a member of a committee of the Board, irrespective of whether or not the person is also a member of the Board and a member of the Audit committee.

19.2. Subject to the provisions of the PFMA, the Company may:-

19.2.1. not directly or indirectly pay any fine that may be imposed on a Director, or on a Director of a Related company, as a consequence of that Director having been convicted of an offence in terms of any national legislation, unless the conviction is based on Strict Liability;

19.2.2. advance expenses to a Director to defend litigation in any proceedings arising out of the Director's service to the Company. For purposes of this clause 19 "service to the Company" includes services which are directly linked to the activities of the Company, and services which the Company consents to or acknowledges; and

19.2.3. directly or indirectly indemnify a Director for –

19.2.3.1. any liability, other than in respect of:-

19.2.3.1.1. any liability arising in terms of section 77(3)(a), (b) or (c) or sections 86(2) or (3) of the PFMA, or from wilful misconduct or wilful breach of trust on the part of the Director; or

19.2.3.1.2. any fine contemplated in clause 19.2.1;

19.2.3.2. any expenses contemplated in clause 19.2.2, irrespective of whether it has advanced those expenses, if the proceedings:-

19.2.3.2.1. are abandoned or exculpate the Director; or

19.2.3.2.2. arise in respect of any other liability for which the Company may indemnify the Director in terms of clause 19.2.3.1.

19.3. Subject to the provisions of the PFMA, the Company may purchase insurance to protect:-

19.3.1. a Director against any liability or expenses contemplated in clause 19.2.2 or 19.2.3; or

19.3.2. the Company against any contingency including but not limited to:-

19.3.2,1. any expenses:-

19.3.2.1.1. that the Company is permitted to advance in accordance with clause 19.2.2; or

19.3.2.1.2. for which the Company is permitted to indemnify a Director in accordance with clause 19.2.3; or

19.3.2.2. any liability for which the Company is permitted to indemnify a Director in accordance with clause 19.2.3.

19.4. The Company is entitled to claim restitution from a Director or of a Related company for any money paid directly or indirectly by the Company to or on behalf of that Director in any manner inconsistent with section 78.

20. REGISTER OF DISCLOSURES

The Company must establish and maintain a register of the disclosures made in terms of section 56(7).

21. BOARD COMMITTEES

21.1. The Shareholder takes cognisance of the main committees appointed by the Board as set out in clause 21.4.

21.2. If the Board seeks to establish a new committee, such establishment may only be made with the prior Written consent of the Minister,

21.3. In the application for new Board committees to the Minister, the Board must submit Written terms of reference including *inter alia* the need for such a committee, the functioning of such a committee, the functions of the committee, and any other relevant information required by the Minister. The number of the Board members appointed to sit on the committee will be at the discretion of the Minister

21.4. Recognised committees at date of this MOI (inclusive of those required by the Act) include:-

21.4.1. audit committee;

21.4.2. Remuneration, Social and Ethics committee;

21.4.3. acquisitions and disposals committee;

21.4.4. risk committee; and

21.4.5. corporate governance and nominations committee.

21.5. No Person shall be appointed as a member of a Board committee, if he is Ineligible or Disqualified and any such appointment shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be appointed as a member of a Board committee nor act as such a member. A Person placed under probation by a court must not serve as a member of a Board committee unless the order of court so permits.

21.6. There are no general qualifications prescribed by the Company for a Person to serve as a member of a Board committee in addition to the requirements or the Regulations.

21.7. A member of a Board committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified.

21.8. Committees of the Board may consult with or receive advice from any person.

21.9. Meetings and other proceedings of a committee of the Board consisting of more than 1 (one) member shall be governed by the provisions of this MOI regulating the meetings and proceedings of Directors.

21.10. The quorum for the transaction of business of the Board committees shall be 50% (fifty percent) of the Board committee members Present in person.

22. AUDIT COMMITTEE

22.1. The Board shall propose, and the Shareholder shall appoint, an audit committee. In the event that the Shareholder elects not to appoint any person proposed by the Board to the audit committee, the Board shall propose an alternate person for appointment by the Shareholder.

22.2. The audit committee shall comprise at least 3 (three) members, all of whom shall be non-executive Directors of the Company and whose appointment shall comply with:

22.2.1. section 77 of the PFMA read with the Treasury Regulations; and

22.2.2. to the extent that the provisions of section 95 and Regulation 42 do not conflict with section 77 of the PFMA read with the Treasury Regulations, section 95 and Regulation 42.

22.3. The audit committee shall meet at least 4 (four) times a year to execute its duties.

22.4. The chairperson of the audit Committee shall be appointed by the Shareholder at the Annual General Meeting.

22.5. Nothing precludes the election by the Company at its Annual General Meeting of an Auditor other than one nominated by the audit committee, but if such an Auditor is elected, the appointment is valid only if the audit committee is satisfied that the proposed Auditor is independent of the Company.

22.6. Each member of the audit committee must –

22.6.1. be a non-executive Director, who satisfies any applicable requirements prescribed by the Minister of Trade and Industry;

22.6.2. not be –

22.6.2.1. involved in the day-to-day management of the Company's business or have been so involved at any time during the previous Financial Year;

22.6.2.2. a Prescribed Officer, or full-time employee, of the Company or another Related or inter-related company, or have been such an Officer or employee at any time during the previous 3 (three) Financial Years; or

22.6.2.3. a material supplier or customer of the Company, such that a reasonable and informed third party would conclude in the circumstances that the integrity, impartiality or objectivity of that Director is compromised by that relationship; and

22.6.2.4. nor be Related to any Person who falls within the criteria in clauses 22.6.2.1 to 22.6.2.3. In addition at least one third of the members of the audit committee at any particular time must have academic qualifications, or experience, in economics, law, corporate governance, finance, accounting, commerce, industry, public affairs or human resource management.

22.7. The Board must propose, and the Shareholder must appoint, a person to fill any vacancy on the audit committee within 40 (forty) Business Days after the vacancy arises.

22.8. The audit committee shall execute all the functions as may be prescribed from time to time in terms of the Act (as read with the Regulations) and the PFMA (as read with Treasury Regulations).

22.9. The Company must pay all expenses reasonably incurred by its audit committee, including, if the audit committee considers it appropriate, the fees of any consultant or specialist engaged by the audit committee to assist it in the performance of its functions.

22.10. No Person shall be elected as a member of the audit committee, if he is Ineligible or Disqualified and any such election shall be a nullity. A Person who is Ineligible or Disqualified must not consent to be elected as a member of the audit committee nor act as a member of the audit committee. A Person placed under probation by a court must not serve as a member of the audit committee unless the order of court so permits.

22.11. A member of the audit committee shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Act.

22.12. There are no general qualifications prescribed by the Company for a Person to serve as a member of the audit committee in addition to the requirements of the Act.

22.13. In accordance with the Treasury Regulations the chairperson of the audit committee shall be independent, be knowledgeable of the status of the position, have the requisite business, financial and leadership skills and may not be the chairperson of the Board or a person who fulfils an executive function in the Company

23. REMUNERATION, SOCIAL AND ETHICS COMMITTEE

23.1. The Board must appoint a Remuneration, Social and Ethics Committee.

23.2. The Company may determine that its Remuneration, Social and Ethics Committee will perform the functions required by Regulation 43 on behalf of its Subsidiaries.

23.3. The Remuneration, Social and Ethics Committee must comprise not less than 3 (three) independent Directors or Prescribed Officers, at least 1 (one) of whom must be a Director who is not involved in the day-to-day management of the Company's business, and must not have been so involved within the previous 3 (three) Financial Years and whose appointment shall be in compliance with the Act and any regulation published thereunder.

23.4. The Remuneration, Social and Ethics Committee shall meet at least once a year to deal with and attend to all functions and matters that are required to be dealt with by the committee in terms and any regulations published thereunder.

23.5. The Remuneration, Social and Ethics Committee shall execute all the functions as may be prescribed from time to time by the Act (as read with the Regulations) in addition to such duties as may be determined by the Board from time to time.

23.6. The Remuneration, Social and Ethics Committee of the Company is entitled to –

23.6.1. require from any Director or Prescribed Officer any information or explanation necessary for the performance of the committee's functions;

23.6.2. request from any employee of the Company any information or explanation necessary for the performance of the committee's functions;

23.6.3. attend any Shareholder's Meeting;

23.6.4. receive all notices of and other communications relating to any Shareholder's Meeting; and

23.6.5. be heard at any Shareholder's Meeting on any part of the business of the meeting that concerns the committee's functions.

23.7. The Company must pay all the expenses reasonably incurred by its Remuneration, Social and Ethics Committee, including, if the Remuneration, Social and Ethics Committee considers it appropriate, the costs or the fees of any consultant or specialist engaged by the Remuneration, Social and Ethics Committee in the performance of its functions, as prescribed in the committee's mandate.

24. REMUNERATION OF DIRECTORS AND MEMBERS OF BOARD AND STATUTORY COMMITTEES

24.1. The Directors and the members of the statutory and Board committees shall be entitled to such remuneration for their services as Directors or members of Board or statutory

committees as may have been determined, in accordance with a Special Resolution (as contemplated in clause 15.1.1.4) and the Remuneration Policy.

24.2. Directors may be paid all reasonable expenses in respect of travelling, accommodation and other expenses properly incurred by them in or about the performance of their duties as Directors and members of statutory and Board committees, including those of attending and travelling to and from meetings of the Board or any Board or statutory committee or any Shareholder's Meeting.

25. PRESCRIBED OFFICERS

25.1. No Person shall hold office as a Prescribed Officer, if he is Ineligible or Disqualified. A Person who is Ineligible or Disqualified must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions. A Person placed under probation by a court must not consent to be appointed to an office or undertake any functions which would result in him being a Prescribed Officer nor act in such office nor undertake any such functions unless the order of court so permits.

25.2. A Prescribed Officer shall cease to hold office as such immediately he becomes Ineligible or Disqualified in terms of the Act.

26. APPOINTMENT OF COMPANY SECRETARY

26.1. The Board must appoint the Company Secretary from time to time, who –

26.1.1. shall be a permanent resident of South Africa and remain so while serving as a Company Secretary; and

26.1.2. shall have the requisite knowledge of, or experience in, relevant laws; and

26.1.3. may be a Juristic Person subject to the following:-

26.1.3.1. every employee of that Juristic Person who provides company secretarial services, or partner and employee of that partnership, as the case may be, is not Ineligible or Disqualified;

26.1.3.2. at least 1 (one) employee of that juristic person, or one partner or employee of that partnership, as the case may be, satisfies the requirements in clauses 26.1.1 and 26.1.2;

26.2. The Company Secretary shall not be a Director.

26.3. Within 60 (sixty) Business Days after a vacancy arises in the office of the Company Secretary, the Board must fill the vacancy by appointing a Person whom the Board consider to have the requisite knowledge and experience. A change in the membership of a Juristic Person or partnership that holds office as Company Secretary does not constitute a casual vacancy in the office of Company Secretary, if the Juristic Person or partnership continues to satisfy the requirements of clause 26.1.3.

26.4. If at any time a Juristic Person or partnership holds office as Company Secretary of the Company –

26.4.1. the Juristic Person or partnership must immediately notify the Board if the Juristic Person or partnership no longer satisfies the requirements of clause 26.1.3, and is regarded to have resigned as Company Secretary upon giving that notice to the Company;

26.4.2. the Company is entitled to assume that the Juristic Person or partnership satisfies the requirements of clause 26.1.3, until the Company has received a notice contemplated in clause 26.4.1; and

26.4.3. any action taken by the Juristic Person or partnership in performance of its functions as Company Secretary is not invalidated merely because the Juristic Person or partnership had ceased to satisfy the requirements of clause 26.1.3 at the time of that action.

26.5. The Company Secretary may resign from office by giving Written notice, as stipulated in his contract of employment, or less than that stipulated with the prior Written approval of the Board.

26.6. If the Company Secretary is removed from office by the Board, the Company Secretary may, by giving Written notice to that effect to the Company by not later than the end of the Financial Year in which the removal took place, require the Company to include a statement in its annual Financial Statements relating to that Financial Year, not exceeding a reasonable length, setting out the Company Secretary's contention as to the circumstances that resulted in the removal. The Company must include this statement in the Directors' report in its annual Financial Statements.

27. AUDITORS

27.1. The Company shall appoint an Auditor at its Annual General Meeting provided that if an Annual General Meeting does not appoint or reappoint an Auditor, the Directors must fill the vacancy in the office in terms of the procedure contemplated in section 91 within 40 (forty) Business Days after the date of the Annual General Meeting. A retiring Auditor may be

automatically re-appointed at an Annual General Meeting without any resolution being passed, unless –

27.1.1. the retiring Auditor is –

27.1.1.1. no longer qualified for appointment;

27.1.1.2. no longer willing to accept the appointment, and has so notified the company; or

27.1.1.3. required to cease serving as Auditor, in terms of section 92;

27.1.2. the audit committee objects to the re-appointment; or

27.1.3. the Company has notice of an intended resolution to appoint some other person or persons in place of the retiring Auditor.

27.2. Any firm of auditors appointed by the Company as the Auditor shall ensure that the Individual responsible for performing the Audit must comply with the requirements of section 90(2), provided that –

27.2.1. the same Individual may not serve as the Auditor or designated Auditor for more than 5 (five) consecutive Financial Years;

27.2.2. if an Individual has served as the Auditor or designated auditor for 2 (two) or more consecutive Financial Years and then ceases to be the Auditor or designated Auditor, the Individual may not be appointed again as the Auditor or designated Auditor until after the expiry of at least 2 (two) further Financial Years.

27.3. In considering whether, for the purposes of this clause 27, a registered Auditor is independent of the Company, the audit committee must –

27.3.1. ascertain that the auditor does not receive any direct or indirect remuneration or other benefit from the Company, except –

27.3.1.1. as Auditor; or

27.3.1.2. for rendering other services to the company, to the extent permitted in terms of this MOI;

27.3.2. consider whether the Auditor's independence may have been prejudiced –

27.3.2.1. as a result of any previous appointment as Auditor; or

27.3.2.2. having regard to the extent of any consultancy, advisory or other work undertaken by the auditor for the Company; and

27.3.3. consider compliance with other criteria relating to independence or conflict of interest as prescribed by the Independent Regulatory Board for Auditors established by the APA,

in relation to the Company, and if the Company is a member of a Group of Companies, any other company within that Group.

27.4. The Auditor –

27.4.1. has the right of access at all times to the Accounting Records and all books and documents of the Company, and is entitled to require from the Board or Prescribed Officers any information and explanations necessary for the performance of the Auditor's duties;

27.4.2. if the Company is a Holding Company, has the right of access to all current and former financial statements of any Subsidiary and is entitled to require from the Board or Prescribed Officers of the Company or Subsidiary any information and explanations in connection with any such statements and in connection with the Accounting Records, books and documents of the Subsidiary as necessary for the performance of the Auditor's duties; and

27.4.3. is entitled to –

27.4.3.1. attend any Shareholder's Meeting;

27.4.3.2. receive all notices of and other communications relating to any Shareholder's Meeting; and

27.4.3.3. be heard at any Shareholder's Meeting on any part of the business of the meeting that concerns the Auditor's duties or functions;

27.4.4. may not perform any services for the Company –

27.4.4.1. that would place the Auditor in a conflict of interest as prescribed or determined by the Independent Regulatory Board for Auditors in terms of section 44(6) of the APA; or

27.4.4.2. as may be prescribed by the Audit committee.

27.5. If a vacancy arises in the office of Auditor, the Audit Committee –

27.5.1. shall propose and the Shareholder must appoint a new Auditor within 40 (forty) Business Days, if there was only 1 (one) incumbent Auditor; and

27.5.2. may appoint a new Auditor at any time, if there was more than 1 (one) incumbent, but while any such vacancy continues, the surviving or continuing Auditor may act as Auditor of the Company.

27.6. If, by comparison with the membership of an Auditor firm at the time of its latest appointment, less than ½ (one half) of the members remain after a change in the composition of the members of the Auditor firm, that change constitutes the resignation of the firm as Auditor of the company, giving rise to a vacancy.

27.7. Before making an appointment in terms of clause 27.5 the Board –

27.7.1. must propose to the Audit committee, within 15 (fifteen) Business Days after the vacancy occurs, the name of at least one registered auditor to be considered for appointment as the new Auditor; and

27.7.2. may proceed to make an appointment of a Person proposed in terms of clause 27.7.1 if, within 5 (five) Business Days after delivering the proposal, the Audit committee does not give notice in Writing to the Board rejecting the proposed auditor.

27.8. The provisions of clauses 26.5 and 26.6 apply *mutatis mutandis* to the Auditor.

28. DISTRIBUTIONS TO THE SHAREHOLDER

28.1. The Company may –

28.1.1. make Distributions from time to time in accordance with the Enabling Legislation and the Distributions or similar policy of the Company from time to time, subject to the provisions of clause 15.1.1.13 above, this clause 28, the provisions of section 46 and Shareholder approval, and provided that:-

28.1.1.1. any such Distribution:-

28.1.1.1.1. is pursuant to an existing legal obligation of the Company, or a court order; or

28.1.1.1.2. the Board, by resolution, has authorised the Distribution;

28.1.1.2. it reasonably appears that the Company will satisfy the solvency and liquidity test in the Act immediately after completing the proposed Distribution; and

28.1.1.3. the Board, by resolution, has acknowledged that it has applied the solvency and liquidity test in the Act and reasonably concluded that the Company will satisfy the solvency and liquidity test immediately after completing the proposed Distribution;

28.1.2. must before incurring any debt or other obligation for the benefit of the Shareholder, comply with the requirements in clause 28.1.1,

and must complete any such Distribution fully within 120 (one hundred and twenty) Business Days after the acknowledgement referred to in clause 28.1.1.3, failing which it must again comply with the aforegoing.

28.2. The Board, after consultation with the Shareholder, shall develop an appropriate Distribution or similar policy and framework for the Company taking into account, *inter alia*, the Corporate Plan and strategic objectives which shall be reviewed on a regular basis. Any capitalisation or investment, and expenditure incurred in respect of industry restructuring, delivery of universal services or any other socio-economic activities carried out by the Company upon the request of the Shareholder shall be taken into account in calculating any dividends or Distributions and other payments payable to the Shareholder.

28.3. No notice of change of address or instructions as to payment given after the determination of a dividend or other Distribution by the Company in terms of clause 28.1.1.1, shall become effective until after the dividend or other Distribution has been made, unless the Board so determines at the time the dividend or other Distribution is approved.

28.4. All unclaimed dividends or other Distributions as contemplated in this clause may be invested or otherwise be made use of by the Board for the benefit of the Company until claimed, provided that any dividend or other Distribution remaining unclaimed for a period of not less than 3 (three) years from the date on which it became payable may be forfeited by resolution of the Directors for the benefit of the Company.

28.5. The Company shall be entitled at any time to delegate its obligations in respect of unclaimed dividends or other unclaimed Distributions, to any one of the Company's bankers from time to time.

29. **LOSS OF DOCUMENTS**

The Company shall not be responsible for the loss in transmission of any cheque, warrant, certificate or (without any limitation *eiusdem generis*) other document sent through the post either to the address of any Shareholder or to any other address requested by the Shareholder.

30. **NOTICES**

30.1. The Company may give notices, documents, records or statements or notices of availability of the aforegoing by personal delivery to the Shareholder or by sending them prepaid through the post or by transmitting them by Electronic Communication.

30.2. The Shareholder has after having furnished an Electronic Address to the Company, by doing so –

30.2.1. authorises the Company to use Electronic Communication to give notices, documents, records or statements or notices of availability of the aforegoing to it; and

30.2.2. confirms that same can conveniently be printed by the Shareholder within a reasonable time and at a reasonable cost.

30.3. Any notice required to be given by the Company to the Shareholders or the holder of a security warrant to bearer, and not expressly prohibiting the provisions of this clause from applying, shall be sufficiently given (subject to giving a notice of availability in accordance with clause 30.1 or 30.2), if given by posting it on the Company's web site until at least the date when the event to which the notice refers occurs.

30.4. Any notice, document, record or statement or notice of availability of the aforegoing sent by the Company shall be deemed to have been Delivered on the date and time determined in accordance with **Annexure C**.

30.5. A Shareholder (or his executor) shall be bound by every notice in respect of the Shares Delivered to the Person who was, at the date on which that notice was Delivered, shown in the Securities Register or established to the satisfaction of the Directors (as the case may be) as the Shareholder, notwithstanding that the Shareholder may then have been dead or may subsequently have died or have been or become otherwise incapable of acting in respect of the Shares, and notwithstanding any transfer of the Shares was not registered at that date. The Company shall not be bound to enter any Person in the Securities Register as entitled to any Shares until that Person gives the Company an address for entry on the Securities Register.

30.6. If joint Shareholders are registered in respect of any Shares or if more than 1 (one) Person is entitled to Shares, all notices shall be given to the Person named first in the Securities Register in respect of the Shares, and notice so Delivered shall be sufficient notice to all the Shareholders of Shares.

30.7. The Company shall not be bound to use any method of giving notice, documents, records or statements or notices of availability of the aforegoing, contemplated in the Regulations in respect of which provision is made for deemed delivery, but if the Company does use such a method, the notice, document, record or statement or notice of availability of the aforegoing shall be deemed to be delivered on the day determined in accordance with the Regulations. In any other case, when a given number of days' notice or notice extending over any period is required to be given (which are not Business Days which shall be calculated in accordance with clause 31), the provisions of clause 31 shall also be applied.

30.8. As regards the signature of an Electronic Communication by the Shareholder, it shall be in such form as the Directors may specify to demonstrate that the Electronic Communication is genuine, or failing any such specification by the Directors, it shall be constituted by the Shareholder indicating in the Electronic Communication that it is the Shareholder's intention to use the Electronic Communication as the medium to indicate the Shareholder's approval of the information in, or the Shareholder's signature of the document in or attached to, the Electronic Communication which contains the name of the Shareholder sending it in the body of the Electronic Communication.

31. FINANCIAL YEAR

The Financial Year of the Company is the 12 (twelve) Month period ending on 31 March of each year. The Financial Year may not be changed by the Board without the prior Written consent or approval of the Shareholder and subject to the PFMA and the requirements of section 27(4).

32. CALCULATION OF BUSINESS DAYS

When a particular number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by —

32.1. excluding the day on which the first such event occurs;

32.2. including the day on or by which the second event is to occur; and

32.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 32.1 and 32.2 respectively.

33. WINDING UP

Subject to the provisions of the Act, the Company shall not be wound up or placed into "business rescue" as contemplated in the Act without the prior Written consent of the Shareholder.

34. **SUBSIDIARIES**

The Company may, from time to time, form or acquire further Subsidiaries, subject to the PFMA and the Enabling Legislation and the provisions of this MOI.

35. **PROTECTION OF WHISTLE-BLOWERS**

The Company shall establish and maintain a system to receive disclosures contemplated in section 159.

Annexure A – Definitions in the Companies Act

"**accounting records**" means information in written or electronic form concerning the financial affairs of a company as required in terms of this Act including, but not limited to, purchase and sales records, general and subsidiary ledgers and other documents and books used in the preparation of financial statements;[1]

"**annual general meeting**" means the meeting of a public company required by section 61(7);

"**audit**" has the meaning set out in the Auditing Profession Act, but does not include an "independent review" of annual financial statements, as contemplated in section 30(2)(b)(ii)(bb);

"**auditor**" has the meaning set out in the Auditing Profession Act;

"**Banks Act**" means the Banks Act, 1990 (Act No. 1194 of 1990);

"**beneficial interest**", when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to—

(a) receive or participate in any distribution in respect of the company's securities;

(b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or

(c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);

"**board**" means the board of directors of a company;

"**business days**" has the meaning determined in accordance with section 5(3);

"**central securities depository**" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"**Commission**" means the Companies and Intellectual Property Commission established by section 185;

"**Commissioner**" means the person appointed to or acting in the office of that name, as contemplated in section 189;

"**company**" means a juristic person incorporated in terms of this Act, a domesticated company, or a juristic person that, immediately before the effective date —

(a) was registered in terms of the —

(i) Companies Act, 1973 (Act No. 61 of 1973), other than as an external company as defined in that Act; or

(ii) Close Corporations Act, 1984 (Act No. 69 of 1984), if it has subsequently been converted in terms of Schedule B;

(b) was in existence and recognised as an 'existing company' in terms of the Companies Act, 1973 (Act No. 61 of 1973); or

(c) was deregistered in terms of the Companies Act, 1973 (Act No. 61 of 1973), and has subsequently been re-registered in terms of this Act;

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[1] Regulation 25(3) contains requirements as to what the accounting records must include.

"**Competition Act**", means the Competition Act, 1998 (Act No. 89 of 1998);

"**convertible**" when used in relation to any securities of a company, means securities that may, by their terms, be converted into other securities of the company, including—

(a) any non-voting securities issued by the company and which will become voting securities—

(i) on the happening of a designated event; or

(ii) if the holder of those securities so elects at some time after acquiring them; and

(b) Options to acquire securities to be issued by the company, irrespective of whether those securities may be voting securities, or non-voting securities contemplated in paragraph (a);

"**creditor**" means a person to whom a company is or may become obligated in terms of any liability or other obligation that would be required to be considered by the company if it were applying the solvency and liquidity test set out in section 4;

"**director**" means a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternative director, by whatever name designated;

"**distribution**" means a direct or indirect—

(a) transfer by a company of money or other property of the company, other than its own shares, to or for the benefit of one or more holders of any of the shares or to the holder of a beneficial interest in any such shares, of that company or of another company within the same group of companies, whether—

(i) in the form of a dividend;

(ii) as a payment in lieu of a capitalisation share, as contemplated in section 47;

(iii) as consideration for the acquisition—

(aa) by the company of any of its shares, as contemplated in section 48; or

(bb) by any company within the same group of companies, of any shares of a company within that group of companies; or

(iv) otherwise in respect of any of the shares of that company or of another company within the same group of companies, subject to section 164(19);

(b) incurrence of a debt or other obligation by a company for the benefit of one or more holders of any of the shares of that company or of another company within the same group of companies; or

(c) forgiveness or waiver by a company of a debt or other obligation owed to the company by one or more holders of any of the shares of that company or of another company within the same group of companies,

but does not include any such action taken upon the final liquidation of the company;

"**effective date**", with reference to any particular provision of this Act, means the date on which that provision came into operation in terms of section 225;

"**electronic communication**" has the meaning set out in section 1 of the Electronic Communications and Transactions Act;

"**Electronic Communications and Transactions Act**" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"**employee share scheme**" has the meaning set out in section 95(1)(c);

"**exchange**" when used as a noun, has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"**exercise**", when used in relation to voting rights, includes voting by proxy, nominee, trustee or other person in a similar capacity;

"**ex officio director**" means a person who holds office as a director of a particular company solely as a consequence of that person holding some other office, title, designation or similar status specified in the company's Memorandum of Incorporation;

"**external company**" means a foreign company that is carrying on business, or non-profit activities, as the case may be, within the Republic, subject to section 23(2);

"**financial statement**" includes—

(a) annual financial statements and provisional annual financial statements;

(b) interim or preliminary reports;

(c) group and consolidated financial statements in the case of a group of companies; and

(d) financial information in a circular, prospectus or provisional announcement of results, that an actual or prospective creditor or holder of the company's securities, or the Commission, Panel or other regulatory authority, may reasonably be expected to rely on;

"**group of companies**" means a holding company and all of its subsidiaries;

"**holding company**", in relation to a subsidiary, means a juristic person that controls that subsidiary as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);

"**incorporator**", when used—

(a) with respect to a company incorporated in terms of this Act, means a person who incorporated that company, as contemplated in section 13; or

(b) with respect to a pre-existing company, means a person who took the relevant actions comparable to those contemplated in section 13 to bring about the incorporation of that company;

"**individual**" means a natural person;

"**inter-related**", when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in a manner contemplated in section 2(1) and one of them is related to the third in any such manner, and so forth in an unbroken series;

"**juristic person**" includes—

(a) a foreign company; and

(b) a trust, irrespective of whether or not it was established within or outside the Republic;

"**knowing**", "**knowingly**" or "**knows**", when used with respect to a person, and in relation to a particular matter, means that the person either—

(a) Had actual knowledge of the matter; or

(b) Was in a position in which the person reasonably ought to have—

(i) had actual knowledge;

(ii) investigated the matter to an extent that would have provided the person with actual knowledge; or

(iii) taken other measures which, if taken, could reasonably be expected to have provided the person with actual knowledge of the matter;

"**nominee**" has the meaning set out in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004);

"**ordinary resolution**" means a resolution adopted with the support of more than 50% of the voting rights exercised on the resolution, or a higher percentage as contemplated in section 65(8) —

(a) at a shareholders meeting; or

(b) by holders of the company's securities acting other than at a meeting, as contemplated in section 60;

"**person**" includes a juristic person;

"**personal financial interest**", when used with respect to any person—

(a) means a direct material interest of that person, of a financial, monetary or economic nature, or to which a monetary value may be attributed; but

(b) does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002), unless that person has direct control over the investment decisions of that fund or investment;

"**prescribed officer**" means a person who, within a company, performs any function that has been designated by the Minister in terms of section 66(10);

"**present at a meeting**" means to be present in person, or able to participate in the meeting by electronic communication, or to be represented by a proxy who is present in person or able to participate in the meeting by electronic communication;

"**private company**" means a profit company that—

(a) is not a public, personal liability or state-owned company; and

(b) satisfies the criteria set out in section 8(2)(b);

"**profit company**" means a company incorporated for the purpose of financial gain for its shareholders;

"**public company**" means a profit company that is not a state-owned company, a private company or a personal liability company;

"**record date**" means the date established under section 59 on which a company determines the identity of its shareholders and their shareholdings for the purposes of this Act;

"**registered office**" means the office of a company, or of an external company, that is registered as required by section 23;

"**related**", when used in respect of two persons, means persons who are connected to one another in any manner contemplated in section 2(1)(a) to section (c);

"**rules**" and "**rules of a company**" means any rules made by a company as contemplated in section 15(3) to (5);

"**securities**" means any shares, notes, bonds, debentures or other instruments, irrespective of their form or title, issued or authorised to be issued by a profit for the purposes of raising capital;

"**securities register**" means the register required to be established by a profit company in terms of section 50(1);

"**share**" means one of the units into which the proprietary interest in a profit company is divided;

"**shareholder**", subject to, means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register, as the case may be;

"**shareholders meeting**", with respect to any particular matter concerning a company, means a meeting of those holders of that company's issued securities who are entitled to exercise voting rights in relation to that matter;

"**special resolution**" means—

(a) in the case of a company, a resolution adopted with the support of at least 75% of the voting rights exercised on the resolution, or a different percentage as contemplated in section 65(10):-

(i) at a shareholders meeting; or

(ii) by holders of the company's securities acting other than at a meeting, as contemplated in section 60; or

(b) in the case of any other juristic person, a decision by the owner or owners of that person, or by another authorized person, that requires the highest level of support in order to be adopted, in terms of the relevant law under which that juristic person was incorporated;

"**subsidiary**" has the meaning determined in accordance with section 3;

"**voting securities**", with respect to any particular matter, means securities that—

(a) carry voting rights with respect to that matter; or

(b) are presently convertible to securities that carry voting rights with respect to that; and

"**wholly-owned subsidiary**" has the meaning determined in accordance with section 3(1)(b).

Annexure B – Ineligible / disqualified in terms of section 69(7) and (8) of the Act read with Regulation 39(3)

1. A person is ineligible to be a Director if the Person –

   1.1. is a Juristic Person;

   1.2. is an unemancipated minor, or is under a similar legal disability; or

   1.3. does not satisfy any qualification set out in the MOI.

2. A person is disqualified to be a Director if –

   2.1. a court has prohibited that Person to be a Director, or declared the Person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

   2.2. the Person –

      2.2.1. is an unrehabilitated insolvent;

      2.2.2. is prohibited in terms of any public regulation to be a Director;

      2.2.3. has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or

      2.2.4. has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than R1 000,00 (one thousand rand), for theft, fraud, forgery, perjury or an offence –

         2.2.4.1. involving fraud, misrepresentation or dishonesty;

         2.2.4.2. in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or

         2.2.4.3. under the Companies Act, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Securities Services Act, 2004 (Act No. 36 of 2004), or Chapter 2 of the Prevention and Combating of Corruption Activities Act, 2004 (Act No. 12 of 2004).

Annexure C – Prescribed methods of delivery in the Regulations

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
Any Person	By faxing the notice or a certified copy of the document to the Person, if the Person has a fax number;	On the date and at the time recorded by the fax receiver, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a copy of the document by electronic mail, if the Person has an Electronic Address;	On the date and at the time recorded by the computer used by the Company, unless there is conclusive evidence that it was delivered on a different date or at a different time.
	By sending the notice or a certified copy of the document by registered post to the Person's last known address;	On the 7th (seventh) day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.
	By any other means authorised by the High Court; or	In accordance with the order of the High Court.
	By any other method allowed for that Person in terms of the following rows of this Table.	As provided for that method of delivery.
Any natural Person	By handing the notice or a certified copy of the document to the Person, or to any representative authorised in writing to accept service on behalf of the Person;	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the Person's place of residence or business with any other Person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;	On the date and at the time recorded on a receipt for the delivery.
	By leaving the notice or a certified copy of the document at the Person's place of employment with any Person who is apparently at least 16 (sixteen) years old and apparently in authority.	On the date and at the time recorded on a receipt for the delivery.
A company or similar body corporate	By handing the notice or a certified copy of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within South Africa;	On the date and at the time recorded on a receipt for the delivery.
	If there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed

Person to whom the document is to be delivered	Method of delivery	Date and Time of Deemed delivery
	place of business.	on a different date or at a different time.
The state or a province	By handing the notice or a certified copy of the document to a responsible employee in any office of the State's Attorney.	On the date and at the time recorded on a receipt for the delivery.
A municipality	By handing the notice or a certified copy of the document to the town clerk, assistant town clerk or any Person acting on behalf of that Person.	On the date and at the time recorded on a receipt for the delivery.
A trade union	By handing the notice or a certified copy of the document to a responsible employee who is apparently in charge of the main office of the union.	On the date and at the time recorded on a receipt for the delivery.
	If there is no person willing to accept service, by affixing a certified copy of the notice or document to the main door of that office.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
Employees of the Company	By fixing the notice or certified copy of the document, in a prominent place in the workplace where it can be easily read by employees.	On the date and at the time sworn to by affidavit of the Person who affixed the document, unless there is conclusive evidence that the document was affixed on a different date or at a different time.
A partnership, firm or association	By handing the notice or a certified copy of the document to a Person who is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of the partnership, firm or association;	On the date and at the time recorded on a receipt for the delivery.
	If the partnership, firm or association has no place of business, by handing the notice or a certified copy of the document to a partner, the owner of the firm, or the chairman or secretary of the managing or other controlling body of the association, as the case may be.	On the date and at the time recorded on a receipt for the delivery.

EXHIBIT 10

TRANSNET

Declaration of Interest and Related Party Disclosures Policy

Policy Reference Number	TG/GCS 2/4P
Version Number	2
Effective Date	1 July 2012
Review Date	1 March 2014
Compiled by	Group Company Secretary
Signature	
Policy Sponsor	Group Executive: Group Legal Services
Signature	
Authorised by	Transnet Board of Directors
Date Approved	12 June 2012

Stakeholders

	Name	Designation	Approval Signature	Date	E-Mail	Contact Number
Compulsory Stakeholder Involvement						
Subject Matter Experts						
Risk Management						
Compliance						
Legal Services						
Other Stakeholder Involvement						
Human Capital(Incl. Labour Consultation)						
IT						
"Other"(Please specify)						

0058-0373-0001-0517

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	Ayanda Ceba	Group Company Secretary		25 June 2012	Ayanda.ceba@transnet.net	011 308 2424
Policy Sponsor	Nkuli Mabandla	Group Executive: Group Legal Services		29 JUNE 2012	Nonkululeko.mabandla@transnet.net	011 308 2345

Final Approval

Name of Governance structure: Board of Directors

Date Approved: 12 June 2012

Summary of Version Control

Version Number	Effective Date	Summary of Changes
1	1 July 2012	*Policy inserted onto new Template*
		Policy amended to comply with new Companies Act

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INTRODUCTION

1. Transnet is committed to ensuring effective governance and risk management throughout the organisation.
2. This policy, which supports the Transnet Code of Ethics and Anti-Fraud Policy, provides a governance framework to regulate declarations of interest and provides for related party disclosures

PURPOSE

3 The purpose of the policy is to:

3.1.1 Create awareness of what constitutes a conflict of interest;

3.1.2 Provide guidance to employees on the disclosure of interests and related party transactions and guidance on the disclosure of directorships held in other companies;

3.1.3 Create an environment in which employees understand what the consequences are for non-compliance; and

3.1.4 Provide guidance on the duties of employees to disclose a conflict of interest (that employees have actual knowledge of, or reasonably ought to have knowledge of, or in respect of which the employees reasonably ought to have investigated or taken measures which would have provided the employees with the actual knowledge of), in accordance with legislation and Transnet's policies.

APPLICABILITY

4. This policy will be applicable to all employees of the Company

DEFINITIONS

5 "Conflict of interest" includes, *inter alia*, a situation in which

5.1 An employee has a Personal Financial Interest,

5.2 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 motivations for acting in a particular manner, or which could result in, or be perceived as Favouritism or Nepotism.

5.3 An employee uses his/her position, or privileges or information obtained while acting in the capacity as an employee for:

5.3.1 Private gain or advancement; or

5.3.2 The expectation of private gain, or advancement, or any other advantage accruing to the employee or any member of his family, or friends or business associates

6 **Affiliation**. Involvement with a vendor, service provider, or competitor of Transnet on the part of the employee, a person related to the employee or the employee's family, or friends or business associates, including serving as a shareholder, board member, employee, consultant or advisor to the aforementioned entities.

7. **Nepotism**. The appointment, employment, promotion or advancement of a related party in a position, or the advocacy of such actions by any employee, where that employee is able to influence, directly or indirectly, the decisions relating to these specified actions

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8 **Favouritism**: An inclination in attitude or behaviour to show preferential treatment towards a certain person, group or entity.

9. **Involvement**: Business, social or family connection which may contribute to any undue influence in favour of the third party.

10 **'Personal Financial Interest'**: means a direct Material interest of a person of a financial, monetary or economic nature or to which a monetary value may be attributed

10.1. **"Material"**: when used as an adjective means significant in the circumstances of a particular matter, to a degree that:

10.1.1 is of consequence in determining the matter, or

10.1.2 might reasonably affect a person's judgment or decision-making in the matter; or

10.1.3 could influence the economic decisions taken in a matter.

11. Key meeting includes any meeting where decisions regarding contracts or any other significant financial transactions are made. This may include, but is not limited to, awarding of tenders, negotiation of tariff structures, any third party transactions where the decision makers may hold any direct or indirect financial interest or where any employee may benefit in any way from the transaction (including any indirect benefit to a related party). These meetings may include, but are not limited to; Group Executive Committee and sub committees, e.g. Group Finance Committee, Capital Investment Committee, etc

12 Related person(s) and control:

12.1 Related:

When used in respect of two persons, means persons who are connected to one another in any manner contemplated in subsection (1) below:

(1) *(a)* an individual is related to another individual if they—
  (i) are married or live together in a relationship similar to a marriage; or
  (ii) are separated by no more than one degree of natural or adopted consanguinity or affinity;
 (b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with subsection (2) below; and
 (c) a juristic person is related to another juristic person if—
  (i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with subsection (2) below;
  (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) below.

12.2 Control:

(2) For the purpose of subsection (1) above, a person controls a juristic person, or its business, if—
 (a) in the case of a juristic person that is a company—
  (i) that juristic person is a subsidiary of that first person, as determined in accordance with the Companies Act; or
  (ii) that first person together with any related or inter-related person, is—

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(aa) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or

(bb) has the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board,

(b) in the case of a juristic person that is a close corporation, that first person owns the majority of the members' interest, or controls directly or has the right to control, the majority of members' votes in the close corporation.

(c) in the case of a juristic person that is a trust, that first person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust; or

(d) that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c) of subsection (2).

13. **Relationship** includes the connection subsisting between any two or more persons who are related or inter-related.

14. **A related party transaction** is a transfer of resources, services or obligations between related parties, regardless of whether a price is charged.

15. **Significant influence** is the power to participate in the financial and operating policy decisions of an entity, but does not necessarily amount to control. Significant influence may be gained by share ownership, statute or agreement.

SCOPE

Declaration of interest in contracts and financial interests

16.1 **Applicable to:** Management (Levels A – F) and all other employees who have an interest, either directly or indirectly know that a related person has interest in:

16.1.1 any new or existing contract with an entity external to Transnet which may conduct, or does conduct business with Transnet,

16.1.2 acquiring Transnet and/or its subsidiaries, its assets or businesses, or any part thereof.

16.1.3 any joint venture or other business venture with Transnet or any of its subsidiaries; and

16.1.4 tendering for the supply of goods or services to Transnet or tendering for advisory or other professional services related to the transactions referred to above. Collectively, a "Contractual Interest".

16.2 **To be completed:** Annually by and as and when an interest in a contract is identified and all other employees as and when identified.

16.3 **To be submitted:** to the Group Company Secretary/Governance Officer

16.4 **The relevant forms for completion:** Annexure "A"

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Annual declarations/Related party disclosures

17.1 Applicable to: Management (Level's A – F) and all other employees who have a Conflict of Interest including.

17.1.1 all employees who have an interest either directly or indirectly or know that a related person has an interest in any entity external to Transnet which may conduct or does conduct business with Transnet.

17.1.2 every entity in respect of which any person related to you is a director or manager, or which is Controlled /Significantly Influenced by any such person related to you or in which any such person related to you has a shareholding or other similar interest and in respect of which a Conflict of Interest exists or a potential Conflict of Interest may arise.

17.2 To be completed: Annually and as and when a Conflict of Interest arises, and/or directorship or financial interest of employee changes within the financial year, or directorship or financial interest of persons related to you change within the financial year.

17.3 To be submitted: to the Group Company Secretary/Governance Officer.

17.4 Even if there are no conflicts of interest the prescribed Annual Declaration of Interests and Related Party Disclosure forms must be completed i.e. a Nil Declaration.

17.5 The relevant forms for completion: Annexure "B".

Declaration of interest at meetings

18.1 Applicable to: All members of/attendees at key meetings (as defined in this policy)

18.2 If an employee has a conflict of interest in respect of a matter to be considered at a meeting, or knows that a related person has a personal financial interest in the matter, the employee

18.2.1 must disclose the interest and its general nature before the matter is considered at the meeting;

18.2.2 must disclose to the meeting any material information relating to the matter and known to the employee;

18.2.3 may disclose any observations or pertinent insights relating to the matter if requested to do so;

18.2.4 if present at the meeting, must recuse himself/herself from the meeting immediately after making any disclosure contemplated in paragraphs 18.2.2. or 18.2.3;

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