PRELIMINARY REPORT INTO THE ALLEGED IRREGULARITIES RELATING TO THE APPOINTMENT OF THE TRANSACTION ADVISORS IN RESPECT OF THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

VOLUME 2A

MARCH 2019

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List of Abbreviations

Below is a list of abbreviations utilised in the Report

Abbreviation	Description
AC	Audit Committee
BADC	Board Acquisitions and Disposals Committee
B-BBEE	Broad-based Black Economic Empowerment
BoD	Board of Directors
CDB	China Development Bank
CFET	Cross Functional Evaluation Team
Constitution	The Constitution of the Republic of South Africa, 1996
DoA	Delegation of Authority
EXCO	Executive Committee
FRMF	Financial Risk Management Framework
FX	Foreign Exchange
GCE	Group Chief Executive
GCFO	Group Chief Financial Officer
GCSCO	Group Chief Supply Chain Officer
ISCM	Integrated Supply Chain Management
King Code	The King Report and Code on Corporate Governance
LOI	Letter of Intent
MDS	Market Demand Strategy
MOI	Memorandum of Incorporation
MSA	Master Services Agreement
PFMA	Public Finance Management Act 1 of 1999 (as amended)
PMO	Project Management Office
PPPFA	Preferential Procurement Policy Framework Act 5 of 2000
PPM	Procurement Procedures Manual
PRECCA	Prevention and Combating of Corrupt Activities Act 12 of 2004
PTN	Post Tender Negotiations
RFPs	Request for Proposals
SCM	Supply Chain Management
SCS	Supply Chain Service
SD	Supplier Development
SNG	Sizwe Ntsaluba Gobodo Inc
SOP	Standard Operating Procedures
TAC	Transnet Acquisition Council
TE	Transnet Engineering
TFR	Transnet Freight Rail
TIA	Transnet Internal Audit
TCO	Total Cost of Ownership
TSDBF	Transnet Second Defined Benefit Fund
VAT	Value Added Tax

List of Role Players

Below are the names of persons who played a role in the procurement of the 1064 locomotives referred to in this Report and exhibits

Name of Persons	Description of role or capacity
Mr Salim Essa	• Director of Tequesta Group Limited (incorporated in Hong Kong) • Director of VR Laser (Pty) Ltd • Former director of Trillian Capital Partners
Ms Cindy Felix	• TCC Procurement manager • Member of the TAC (which sat on 26 July 2012 for the evaluation of the Transaction Advisory services RFP)
Mr David Fine	• Senior partner at McKinsey and Company
Mr Siyabonga Gama	Former: • Group Chief Executive at Transnet (2016 - 2018) • Acting Group Chief Executive (2015 - 2016) • Chief Executive of Transnet Freight Rail (2006 - 2016)
Mr Tewodros Gebreselasie	• Former Senior Economic Advisor at Regiments Capital (Pty) ltd
Mr Yousuf Laher	• Current Executive Manager: Finance, Transnet Freight Rail Former: • Member of the Cross Functional Evaluation Team (Finance) (2013) • Member of the 1064 Locomotives Post Negotiation Team (February 2014)
Mr Rhulani Madale	• Current Funding Analyst
Mr Ajay Mistry	• Former Senior Consultant at Regiments Capital (Pty) Ltd
Mr Brian Molefe	• Former Group Chief Executive (GCEO) (2011 - 2015)
Mr Kuben Moodley	• Director of Albatime (Pty) Ltd
Ms Mathane Makgatho	Former: • Group Treasurer at Transnet (resigned 2014) • Member of the CFST, Finance Team
Ms Monicca Motloung	• Current Funding Analyst (Transnet Treasury)
Ms Mosilo Mothepu	Former: • Principle at Regiments Capital (Pty) Ltd (2007 – 2010) • Chief Executive Officer at Trillian Financial Advisory (1 March 2016 – 22 June 2016)
Mr Litha Nyhonyha	• Chairperson of Regiments Capital (Pty) Ltd
Mr Niven Pillay	• Director of Regiments Capital (Pty) Ltd
Mr Garry Pita	Former: • Group Chief Supply Chain Officer (GCSCO) (2010 - 2015) • Acting Chief Finance Officer (2015 - 2016) • Group Chief Financial Officer (GCFO) (2016 - 2018)
Mr Phetole Ramosebudi	• Former Group Treasurer (2015 - 2018)
Mr Daniel Roy	• Chief Executive Officer of Trillian Asset Management and shareholder of Trillian Capital

Mr Vikas Sagar	• Former partner at McKinsey Incorporated
Mr Ndiphiwe Silinga	• Current Group Chief Legal Counsel: Legal & Compliance Former: • General Manager: Group Legal (2012 - 2014) • Member of Transnet Locomotives Steering Committee
Mr Anoj Singh	• Former Group Chief Financial Officer (GCFO) (2012 - 2017)
Mr Danie Smit	• Former Deputy Treasurer Middle Office – Transnet Group Treasurer
Mr Edward Thomas	• Acting Group Supply Chain Officer (GSCO) Former: • General Manager Finance • Member of the CFET for the appointment of the transaction advisors for the 1064 Locomotives acquisition • Attended the Locomotives Steering Committee meetings
Mr Eric Wood	• Current Director of Trillian Capital and other Trillian companies • Former Director of Regiments Capital and other Regiments companies

BADC Committees members 29 April 2015 and 01 October 2015

Below is the committee that was in place and / or established during the procurement of the 1064 Locomotives which is referred to in this Report and exhibits.

Structure	Names of Members
BADC	Members • SD Shane • LC Mabaso • ZA Nagdee • SI Gama • G Pita • A Singh • MR Seleke

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List of Entities

Below are entities who were involved in the procurement of the 1064 Locomotives referred to in this Report and exhibits:

Name of Entity	Description of Entity
China Development Bank (CDB)	• Provided a loan facility in the amount of USD 1.5 billion to Transnet, for financing the 1064 Locomotives acquisition from China North Rail and China South Rail
JP Morgan	• Lead Manager in respect of the USD 1.5 billion CBD loan (later replaced by Trillian)
KPMG Consortium	• Unsuccessful bidder for the appointment of the tender for the 1064 locomotive's transaction advisors • Members: - KPMG; - Nkonki Incorporated; - Norton Rose; and - Arcus Gibb
Letsema Consulting	• Member of the McKinsey Consortium • Transaction advisor in respect of the 1064 Locomotives tender • Withdrew from McKinsey Consortium due to a conflict of interest arising from its association with Barloworld
McKinsey Consortium	• Successful bidder appointed as a transaction advisor for the acquisition of the 1064 Locomotives • Members - Advance Rail Technologies - McKinsey Incorporated - Letsema Consulting - Advanced Rail Technologies - Nedbank Capital - Edward Nathan Sonnenbergs (ENS) - Koikanyang Inc - Utho Capital - Regiments Capital (Pty) Ltd (added later to replace Letsema Consulting and Nedbank Capital)
McKinsey Incorporated	• Lead member of the McKinsey Consortium • Transaction advisor in respect of the 1064 Locomotives tender
Nedbank Capital	• Member of the McKinsey Consortium • Transaction advisor in respect of the 1064 Locomotives tender • Withdrew as a transaction advisor in respect of the 1064 Locomotives tender due to a conflict of interest

PWC Consortium	• Unsuccessful bidder for the appointment of the tender for the 1064 locomotives transaction advisors • Members - PWC South Africa - Siyaya DB Engineers - Cliffe Dekker Hofmeyer
Regiments Capital (Pty) Ltd	• Member of the McKinsey Consortium (for the procurement and supplier development elements) • Transaction advisor in respect of the 1064 Locomotives tender
Sizwe Ntsaluba Gobodo Inc.	• A firm of accountants that provided an opinion to Transnet on whether it should do an interest rate swap with the TSDBF.
Trillian Asset Management (Pty) Ltd	• Lead Manager in respect of the USD 1.5 billion CBD loan
Transnet Second Defined Benefit Fund	• A Transnet pension fund. • Used a counterparty to the interest swaps in respect of the Club loan
Webber Wentzel Attorneys	• Legal Advisors in respect of the 1064 Locomotives tender

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List of Exhibits

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PART B	Minutes of Meetings
PART C	Memoranda
PART D	Bid Documents
PART E	Transnet Governance Documents
PART F	Agreements and Addenda
PART G	Other Documents (Statutory, Reports and Proposals)

PART A: LETTERS AND EMAILS

Exhibit no.	Date	Description of exhibit
1.	Undated	Letter from McKinsey to Transnet regarding McKinsey's refusal to provide its financial statements to Transnet
2.	12/06/2013	Letter from McKinsey regarding the potential conflict of interest of Nedbank Capital
3.	19/11/2013	Letter from Transnet's Mr Anoj Singh to McKinsey confirming the replacement of Nedbank Capital with Regiments
4.	20/01/2014	Email from Mr Indheran Pillay to Mr Anoj Singh enclosing the updated scope agreement from Regiments, for Mr Singh's signature
5.	27/01/2014	Email from Mr Edward Thomas to Mr Niven Pillay, enclosing a signed agreement with amendments made by Mr Anoj Singh
6.	06/02/2014	Letter from Regiments to Transnet regarding appointment of Regiments as financial advisors for the 1064 Locomotives project
7.	27/03/2014	Email from Mr Wood to Mr Singh enclosing Regiment's invoice for the forex and warranty bonds
8.	02/04/2014	Email from Mr Yousuf Laher to Ms Cindy Felix regarding the additional work taken on by McKinsey in respect of the negotiations
9.	15/04/2014	Closeout out letter from Mr Wood and addressed to Mr Singh stating that Regiments had secured significant savings for Transnet
10.	16/04/2014	Letter from McKinsey to Transnet regarding the cession agreement between itself and Regiments
11.	16/04/2014	Email from Mr Tewodros Gebreselasie to Mr Yusuf Laher enclosing Regiments closeout letter.
12.	16/04/2014	Email from Mr Yusuf Laher to Mr Tewodros Gebreselasie advising Regiments to amend its closeout letter
13.	17/04/2014	Email from Mr Ajay Mistry to Mr Yousuf Laher enclosing the amended closeout letter from Regiments.
14.	23/04/2014	Email from Mr Danie Smit to Mr Eric Woods regarding their closeout letter and the work Regiments alleges it has done.

15.	21/05/2015	Email from Mr Danie Smit to Neo Vantyi confirming that the Transnet Financial Risk Management Framework had been done internally by Transnet
16.	21/08/2014	Email from Ms Mathane Makgatho to Mr Anoj Singh and Mr Brian Molefe regarding her disagreement with the use of Regiments as transaction advisors for the negotiations with the CDB.
17.	09/06/2015	Email from Mr Phetole Ramosebudi to Mr Eric Wood enclosing the draft termination letter addressed to JP Morgan
18.	16/09/2015	Email from Mr Edward Thomas to Mr Phetole Ramosebudi confirming that the JP Morgan hedged the financial risks emanating from the CDB loan.
19.	18/11/2015	Letter from Trillian to Transnet setting out the terms and conditions on which Trillian is engaged by Transnet
20.	02/12/2015	Email from Mr Phetole Ramosebudi to Mr Garry Pita informing him that the Club loan should be converted to a fixed rate and that he would make proper submissions thereon for Mr Garry Pita
21.	12/09/2016	Letter from Regiments to Transnet in respect of the Club loan and the subsequent payment of R 93 million to Trillian
22.	25/10/2017	E-mail correspondence from Regiments personnel, namely, Ms Mosilo Mothepu (former Regiments employee) and Mr Eric Wood (former Regiments employee) to Mr Garry Pita

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PART B: MINUTES OF MEETINGS

Exhibit no.	Date	Description of exhibit
1.	26/07/2012	TAC Resolution: approval of the award of business for category 4&5
2.	29/04/2015	Excerpt from the Minutes of the BADC: approval of the appointment of JP Morgan and Regiments to secure the CDB loan
3.	01/10/2015	Excerpt from the draft Minutes of the BADC: approval of the appointment of Trillian

PART C: MEMORANDA

Exhibit no.	Date	Description of exhibit
1.	07/05/2012	Memorandum compiled by Mr Garry Pita to Mr Brian Molefe requesting approval for appointing service providers for the transaction advisory services to the 1064 Locomotives acquisition tender through a confinement process
2.	20/08/2012	Memorandum from Mr Anoj Singh to Mr Brian Molefe regarding the replacement of Letsema Consulting arising from its association with Barloworld
3.	19/11/2013	Memorandum from Mr Anoj Singh to Mr Brian Molefe requesting approval to extend the contract periods for the confined transactions awarded to McKinsey
4.	16/04/2014	Memorandum from Mr Anoj Singh to Mr Brian Molefe requesting approval for the change in Regiment's remuneration model and for paying Regiments an amount of R78.4 million
5.	23/04/2014	Memorandum compiled by Mr Edward Thomas, from Mr Garry Pita to Mr Anoj Singh opposing the proposal to amend Regiments' payment structure (unsigned).
6.	23/05/2014	Memorandum compiled by Mr Brian Molefe to the Transnet Board of Directors provides that the risk mitigation, forex and escalation contributed to an increase of R9.5 billion (59% of the increase in the cost of acquisition)
7.	28/04/2015	Memorandum compiled by Mr Phetole Ramosebudi to the BADC recommending that the BADC approve the contract extension from R99.5 million to R 265.5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction
8.	19/05/2015	Memorandum compiled by Mr Anoj Singh and Mr Garry Pita to Mr Siyabonga Gama acknowledging the cession between McKinsey and Regiments
9.	17/09/2015	Memorandum compiled from Mr Siyabonga Gama to the BADC recommending the appointment of Trillian in the place of JP Morgan as a Lead Manager of the USD 1 billion ZAR equivalent Club Loan which was previously confined to JP Morgan
10.	24/11/2015	Memorandum compiled by Mr Phetole Ramosebudi to Mr Siyabonga Gama, Mr Garry Pita and Mr Ndiphiwe Silinga requesting Mr Siyabonga Gama and Mr Garry Pita sign off on the Trillian invoice in respect of the ZAR Club loan

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PART D: BID DOCUMENTS

Exhibit no.	Date	Description of exhibit
1.	30/05/2012	Request for Proposal (GSM/12/05/0447) for the appointment of transaction advisory services to the 1064 Locomotives tender
2.	06/05/2015	Request for Proposal (GSM/15/05/1265) for the provision of hedging financial risks (interest rate, credit and currency risk) and to lead and underwrite the equivalent syndicate ZAR loan for a period of fourteen (14) years
3.	08/05/2015	JP Morgan's proposal in respect of the RFP (GSM/15/05/1265) for the provision of hedging financial risks (interest rate, credit and currency risk) and to lead and underwrite the equivalent syndicate ZAR loan for a period of fourteen (14) years.

PART E: TRANSNET GOVERNANCE DOCUMENTS

Exhibit no.	Date	Description of exhibit
1.	23/11/2007	Standard Operating Procedures: Credit Application, Extension and Review dated 23 November 2007
2.	01/08/2012	Procurement Procedure Manual (Version 1 - effective 1 October 2012)
3.	29/05/2013	Financial Risk Management Framework dated February 2013 (approved by the Board on 29 May 2013)
4.	01/06/2013	Delegation of Authority Framework (effective 1 June 2013)
5.	25/06/2013	Shareholder's Compact (2013/2014)
6.	25/06/2013	Memorandum of Incorporation
7.	5/09/2013	Declaration of Interest and Related Party Disclosure Policy (Version 2 - effective on 1 July 2012)
8.	10/2013	Procurement Procedure Manual (Version 2-October 2013)
9.	01/09/2014	Delegation of Authority Framework (effective 1 September 2014)

PART F: AGREEMENTS AND ADDENDA

Exhibit no.	Date	Description of exhibit
1.	30/11/2012	Letter of Intent (LOI) from Transnet to McKinsey
2.	04/03/2014	First Addendum to the LOI
3.	14/10/2013	Second Addendum to the LOI
4.	20/01/2014	Agreement for the provision of transaction advisory to the 1064 locomotives tender between Transnet and Regiments
5.	23/01/2014	LOI for the provision of services related to the appointment of a service provider and implement a new best practice framework for the Transnet Second Defined Benefit Fund
6.	04/02/2014	Third Addendum to the LOI
7.	21/02/2014	Master Services Agreement ("MSA") between Transnet and McKinsey
8.	28/04/2014	First Addendum to the MSA
9.	16/07/2015	Second Addendum to the MSA
10.	18/11/2015	Agreement between Transnet and Trillian, for the ZAR 12, 000, 000, 000,00 Club Loan facility in respect of the purchase of Locomotives and general banking

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PART G: OTHER DOCUMENTS

Exhibit no.	Date	Description of exhibit
1.	12/04/2013	Invoice from McKinsey for R 8 334 079.01 (Vat incl.) paid by Transnet
2.	20/11/2013	Invoice from McKinsey for R 2 669 310.00 (Vat incl.) paid by Transnet
3.	13/02/2014	Invoice from Regiments for R 4 902 000.00 (Vat incl.) paid by Transnet
4.	13/02/2014	Invoice from Regiments for R 7 353 000.00 (Vat incl.) paid by Transnet
5.	24/02/2014	Invoice from Regiments for R 7 353 000.00 (Vat incl.) paid by Transnet
6.	24/02/2014	Invoice from Regiments for R 3 676 500.00 (Vat incl.) paid by Transnet
7.	24/02/2014	Invoice from Regiments for R 2 451 000.00 (Vat incl.) paid by Transnet
8.	27/03/2014	Invoice from Regiments for R 79 230 000.00 (Vat incl.) paid by Transnet
9.	27/03/2014	Invoice from Regiments for R 136 800 000.00 (Vat incl.)
10.	31/03/2014	Invoice from Regiments for R 3 676 500.00 (Vat incl.) paid by Transnet
11.	31/03/2014	Invoice from Regiments for R 6 127 500.00 (Vat incl.) paid by Transnet
12.	31/03/2014	Invoice from Regiments for R 1 225 500.00 (Vat incl.) paid by Transnet
13.	June 2015	Regiments slide presentation
14.	03/06/2015	Invoice from Regiments for R 189 240 000.00 (Vat incl.) paid by Transnet
15.	18/11/2015	Invoice from Trillian for R 93 480 000.00 (Vat incl.) paid by Transnet
16.	11/11/2017	McKinsey Media Statement
17.	February 2019	Consultative Report: Transaction Advisor Analysis related to the Advisory Services and Fees for the Procurement of 1064 Diesel and Electric locomotives by Transnet compiled by Dr. Jonathan Bloom (Multipurpose Business Solutions)
18.	13/09/2018	MNS investigation into the appointment of the transaction advisors and the acquisition of the 1064 Locomotives interview held with Mr P Ramosebudi (transcript)

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Chapter 1: Introduction

1.1 Appointment of Mncedisi Ndlovu and Sedumedi Attorneys

1.1.1 On 20 February 2018, Mncedisi Ndlovu and Sedumedi Attorneys ("MNS Attorneys") was instructed to conduct investigations into the alleged irregularities relating to the appointment of the transaction advisors in respect of the acquisition of the 1064 Locomotives and the financial transactions pursuant thereto.

1.1.2 In October 2018 MNS Attorneys submitted to the Transnet Board, its Volume 1 report, which specifically dealt with the outcome of its investigations into the irregularities relating to the procurement and award of the 1064 Locomotive tender.

1.1.3 This Volume 2 Report is divided into two parts, Volume 2(a) and Volume 2(b).

1.1.4 Volume 2(a) is a legal analysis on the procurement, relating to whether:

1.1.4.1 the procurement process followed in appointing the transaction advisors was in compliance with South African procurement laws and Transnet's procurement policies;

1.1.4.2 the agreements concluded with the transaction advisors were legally valid;

1.1.4.3 Transnet received value for money from the services provided by the transaction advisors;

1.1.4.4 there were any overpayments or payments made without cause to some of the transaction advisors;

1.1.4.5 Transnet can attribute any blame to its former or current employees for any damages it suffered; and

1.1.4.6 claims can be instituted to recover overpayments and/or payments made without legal cause.

1.1.5 Volume 2(b) will provide a comprehensive technical analysis of the:

1.1.5.1 transaction advisory services provided to Transnet for the procurement of the 1064 Locomotives;

1.1.5.2 fees charged by the transaction advisors in comparison to the services rendered;

1.1.5.3 financial transactions executed by Transnet on the basis of the transaction advisory services it received and more specifically in relation to the:

(a) capital raising for the acquisition of the 1064 Locomotives;

(b) the interest rate swaps taken out to hedge Transnet's debt;

(c) the cross-currency swaps; and

(d) the contingent credit default swaps.

1.2 Qualifications

1.2. 1 As was the case in the MNS volume 1 report, this Report is to be used solely for the purpose and subject to the limitations set out in this section.

1.2. 2 Although we have, to the best of our professional ability, examined all documentation made available to us, the information contained in this Report is subject to the following:

1.2.2.1 the conformity to the original documentation of all copied documents submitted to us has been assumed;

1.2.2.2 except in instances where we deemed it necessary, we have not verified the authenticity or validity of the documentation made available to us; and

1.2.2.3 where MNS Attorneys has not seen a document following a request to Transnet; in those instances, we assumed that a record of the said document has not been kept.

1.2. 3 MNS Attorneys will not accept any responsibility should this Report be disclosed or released to any party, other than the intended recipient.

1.2. 4 MNS Attorneys does not accept any liability for any loss, either directly or indirectly, suffered by any third party arising from the fulfilment of the mandate.

1.3 Procedures performed

1.3. 1 The procedures followed in producing this Report included:

1.3.1.1 collation of information, documentation and data from Transnet which was perused and analysed;

1.3.1.2 interviews conducted with both former (not all former employees interviewed) and current employees of Transnet;

1.3.1.3 expert opinion sought from financial and locomotive experts who advised on locomotives, commercial and financial related issues as well as Senior Counsel;

1.3.1.4 publicly available information sourced regarding legal entities and individuals identified during the investigation; and

1.3.1.5 the investigation focused on the analysis of documentation, information, and data relevant to Transnet, the OEMs and the Transaction Advisors.

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Comments:

Chapter 2: Procurement and Contractual Compliance

2.1 Introduction

2.1.1 Pursuant to the decision to procure 1064 Locomotives, Transnet issued a confined[1] Request for Proposal ("RFP")[2] in order to procure the services of transaction advisors to assist with the following:

2.1.2 Business case development;

2.1.3 Contracting strategy;

2.1.4 Technical services;

2.1.5 Procurement and Legal; and

2.1.6 Funding and financing transaction advisory services.

2.2 Background

2.2.1 On 7 May 2012, Mr Garry Pita ("Mr G Pita")[3] submitted a memorandum[4] to Mr Brian Molefe[5] (Mr B Molefe), requesting approval for appointing service providers for the provision of transaction advisory services related to the 1064 Locomotives acquisition tender through a confinement process.

2.2.2 Transnet's Procurement Policy Manual[6] ("PPM") provides that confinement[7] is permissible under the following circumstances:

2.2.2.1 where a genuine urgency has arisen, which is not due to bad planning;

2.2.2.2 where the services are only obtainable from one or a limited number of suppliers;

2.2.2.3 for reasons of standardisation or compatibility with existing services; and

2.2.2.4 when the services being procured are highly specialized and largely identical to those previously executed by that supplier, and it is not in the interest of the public or the organization to solicit other offers, as it would result in wasted money and/or time for Transnet.

1 Confinement is a procurement process provided for in the Transnet Procurement Policy Manual akin to the deviation procurement method provided for in the Treasury Regulations, Regulation 16A.6.4
2 Part D Exhibit 1, RFP for the Appointment of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender.
3 Former Transnet Group Chief Supply Chain Officer in 2012.
4 Part C Exhibit 1: Memorandum dated 07 May 2012.
5 Former Transnet Group Chief Executive Officer (2012 – 2015).
6 Part E Exhibit 2: Dated August 2012 (Version 1 - effective 1 October 2012).
7 Part E Exhibit 1: Paragraph 15.1.2, page 100 of the PPM

2.2. 3 According to the memorandum[8], the appointment of transaction advisors by way of confinement was solely based on the ground of urgency and was set out as follows:

2.2.3.1 the 1064 Locomotives were part of the plan to fulfil the Market Demand Strategy ("MDS");

2.2.3.2 in order to meet the MDS and Corporate Plan targets, the first tender was to be awarded in November 2012; and

2.2.3.3 as a result, Transnet had to immediately source Transaction Advisors to assist with all the services required in pursuance of the 1064 Locomotives acquisition.

2.2. 4 On 10 May 2012, Mr B Molefe approved the confinement process.

2.2. 5 On 30 May 2012, Transnet issued a Request for Proposal (GSM/12/05/0447) ("the RFP") for the appointment of transaction advisory services related to the procurement of the 1064 Locomotives.

2.2. 6 On the tender closing date[9], the following bidders submitted Proposals in response to the RFP:

2.2.6.1 KPMG Consortium – KPMG, Nkonki Inc, Norton Rose, Arcus Gibb;

2.2.6.2 PWC Consortium – PWC, Siyaya DB Engineers, Cliff Dekker Hofmeyer Inc;

2.2.6.3 McKinsey Consortium – McKinsey, Letsema, Utho, Koikanyang, Nedbank, Edward Nathan Sonnensbergs and ART (David Potter); and

2.2.6.4 Webber Wentzel Attorneys - submitted a proposal for Procurement and Legal services only.

2.3 Evaluation of McKinsey Consortium Proposal

2.3. 1 The transaction advisory tender was awarded to the McKinsey Consortium. Our analysis of the evaluation of the McKinsey Consortium Proposal concludes that the award to the McKinsey Consortium was irregular on the basis that it did not meet the requirements of an acceptable tender. McKinsey should have been disqualified at stage 1 as set out herein below.

2.3. 2 The evaluation criteria[10] entailed 4 evaluation stages, namely:

2.3.2.1 Administrative Responsiveness (Step 1);

2.3.2.2 Substantive Responsiveness (Step 2);

2.3.2.3 Technical/Functionality (Step 3); and

2.3.2.4 Price and B-BBEE Scorecard (Step 4).

8 Part C Exhibit 1: Memorandum dated 07 May 2012.
9 7 June 2012.
10 Part D Exhibit 1: Bidders were required to pass each stage and progress sequentially; the RFP provides that any bidder that does not meet the requirements of an earlier stage in the adjudication process may not progress to the next level. Page 16, paragraph 8.1 of the RFP.

2.3.3 The test for Administrative Responsiveness required, amongst other things, that all returnable documents and/or schedules be returned. These returnable documents included audited financial statements for the previous three years.

2.3.4 The leader of the McKinsey Consortium (McKinsey Incorporated) failed to comply with Step 1 which required all bidders to submit the mandatory previous three years audited financial statements but, instead, submitted a letter[11] stating the following:

> *"Policy on provision of Annual Financial Statement*
>
> *McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South Africa branch is a privately held entity.*
>
> *In terms of the internal governance regarding the provision of Annual Financial Statements, McKinsey provides such statements only in terms of statutory or regulatory requirements, or when compelled to do so through any legal requirement.*
>
> *In order to provide details of the financial bona fides of McKinsey Incorporated, an original statement from the auditors of the entity is provided. Please refer to the original "Report of Factual Findings" as prepared by Price Waterhouse Coopers, covering the financial period, as required.*
>
> *In the event that McKinsey Incorporated is successful and it remains a requirement to view the Annual Financial Statement, the Annual Financial Statements can be viewed through an on-site inspection."*

2.3.5 In terms of the PPM, the purpose of submitting audited financial statements is to assess the financial stability of bidders[12].

2.3.6 The Preferential Procurement Policy Framework Act[13] ("the PPPFA") defines an "acceptable tender" as any tender which in all respects, complies with the specifications and conditions of tender as set out in the tender document.

2.3.7 The **Dr J S Moroka Municipality v Betram (Pty) Ltd**[14] case, confirmed the PPPFA's definition of an "acceptable tender" and went on further to state that the condonation of a bidder's failure to comply with a peremptory requirement offends the principle of legality[15].

2.3.8 In the **Allpay Consolidated Investments Holdings v CEO of SASSA**[16] case, the Court held that in circumstances where the materiality of compliance with legal requirements must be assessed, it is essential *"to link the question of compliance to the purpose"*.

2.3.9 Transnet could not achieve the purpose of the PPM, due to the fact that McKinsey failed

11 Part A Exhibit 1: McKinsey's letter (undated).
12 Part E Exhibit 1, para. 13.2.6.
13 Section 1(i) of Act 5 of 2000.
14 Dr J S Moroka Municipality v Betram (Pty) Ltd & another 2014 (1) SA 545 (SCA).
15 Para. 18 *supra*.
16 (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC).

to submit its audited financial statements or any document reflecting verifiable financial stability as required in terms of the RFP and as such did not submit an "acceptable tender".

2.3.10 Accordingly, the decision to appointment McKinsey Consortium was irregular due to McKinsey's failure to submit the mandatory returnable documents.

2.4 The Letter of Intent (06 December 2012)

2.4.1 Despite Mckinsey submitting a Proposal that was not in compliance with the RFP requirements, on 26 July 2012 the Transnet Acquisition Council ("TAC") awarded the contract for the provision of transaction advisory services to the 1064 Locomotives to the McKinsey Consortium[17].

2.4.2 On 22 August 2012, Mr B Molefe approved a memorandum[18] from Mr Anoj Singh ("Mr A Singh") that due to the potential conflict of interest between Letsema and Barloworld, Transnet would advise the McKinsey Consortium to partner with another service provider for the procurement elements of the RFP.

2.4.3 After the decision to award the 1064 transaction advisory services tender to the McKinsey Consortium, Transnet and McKinsey concluded a Letter of Intent ("LOI")[19] on 06 December 2012.

2.4.4 The LOI described the parties as:

2.4.4.1 Transnet, being the procurer of the services; and

2.4.4.2 McKinsey, being the supplier, as well as "*the other members of the consortium, namely, Regiments Capital, Advanced Rail Technologies, Nedbank Capital and Utho Capital.*[20]"

2.4.5 Pursuant to the approval by Mr B Molefe that McKinsey partner with another service provider, Regiments was included as a member of the McKinsey Consortium despite not having properly tendered as part of the McKinsey Consortium.

2.4.6 The appearance of Regiments' name as a member of the McKinsey Consortium and accordingly a service provider to Transnet at this stage of the procurement process was irregular for the following reasons:

2.4.6.1 Regiments was not a member of the McKinsey Consortium when it submitted its Proposal for the 1064 transaction advisory tender;

2.4.6.2 the 1064 transaction advisory tender was awarded by the TAC to the McKinsey Consortium based on its stated composition at the time of submission of its Proposal. The capabilities of the McKinsey Consortium members to perform the various aspects of the 1064 transaction advisory tender; and accordingly, the McKinsey Consortium's eligibility for the award was assessed based on the verification and evaluation of the claims

17 Part B Exhibit 1: TAC Resolution dated 26 July 2012.
18 Part C Exhibit 2: Memorandum dated 20 August 201, page 4 paragraph 19.1
19 Part F Exhibit 1: LOI signed on 6 December 2012.
20 Part F Exhibit 1: paragraph 2 of the LOI.

made by its constituent members, of which Regiments was not one; and

2.4.6.3 Transnet has a statutory duty to ensure that when it contracts for goods and services, it does so in accordance with a system that is fair, equitable, transparent, competitive and cost effective. To this end, Transnet has in place a PPM, which states, *inter alia*, that *"all procurement within Transnet shall be done in line with these Procedures.*[21]" The inclusion of Regiments as a member of the Consortium was not transparent, competitive and ultimately not in accordance with any of the PPM's stipulated procurement paths[22].

2.4.7 It is apparent from the inclusion of Regiments as a member of the McKinsey Consortium in the LOI that after the adjudication and award of the tender by Transnet, the McKinsey Consortium was permitted to change its composition and to introduce a new member, viz Regiments. As such the capabilities and other credentials of Regiments were not subjected to the rigour of the verification, evaluation and adjudication process inherent in the tender process.

2.4.8 This was in clear violation of the principles of transparency, fairness and competitiveness that form a necessary part of public sector procurement.

2.4.9 In the circumstances, the appointment of Regiments was unlawful for being inconsistent with the Constitution, and was further irregular for failure to comply with Transnet's own PPM.

2.4.10 The terms of the LOI briefly provided for the following:

2.4.10.1 that the LOI would regulate the relationship between Transnet and the McKinsey Consortium until the Master Services Agreement ("MSA") was concluded;

2.4.10.2 a validity period of 90 days or when the MSA was finalised, whichever came first; (own emphasis)

2.4.10.3 that the transaction advisory services to be performed under the MSA would be for 9 months (viz. 15 January 2013 – 15 October 2013) or sooner if completed; (our emphasis)

2.4.10.4 that if any deliverables were not completed by 15 October 2013, the provision of services would continue at no cost to Transnet[23]; (our emphasis) and

2.4.10.5 that McKinsey agrees to partner with Regiments Capital, *"for the procurement and supplier development elements"* of the 1064 Locomotives tender.

21 Paragraph 1.1 of the PPM, dated 26 May 2009

22 Paragraphs 2.2 to 2.6 of the PPM, dated 26 May 2009: the procurement paths include: open tender process; procurement/credit card purchases; the 3-quote system for values below R2m; confinement; and approved list purchases.

23 The LOI expressly provides that the transaction advisory services where to be provided at a fixed price and that any extension of the duration of the agreement would be at the expense of the Transaction Advisors.

The first addendum to the LOI (4 March 2013)

2.4. 11 The validity of the LOI was for 90 days (viz. 06 December 2012 to 06 March 2013) or when the MSA was finalised, whichever of the two events occurred first. As at 04 March 2013, the MSA was still not finalised and therefore the LOI expired on 06 March 2013.

2.4. 12 To avoid the expiry of the LOI, Transnet and McKinsey concluded the First Addendum to the LOI which extended the validity of the LOI from 6 March 2013 to 15 October 2013.

The second addendum to the LOI (14 October 2013)

2.4. 13 A day before the expiry of the LOI, on 14 October 2013, Transnet and McKinsey concluded a Second Addendum[24] to the LOI which extended the LOI's validity period from 15 October 2013 to 30 November 2013, to allow the parties to conclude the MSA.

2.4. 14 As at 30 November 2013, Transnet and McKinsey had neither concluded the MSA nor an addendum to extend the validity period of the LOI and as a result, the LOI lapsed due to effluxion of time.

2.4. 15 There was no valid agreement governing the relationship between Transnet and McKinsey as at 1 December 2013. Therefore, all agreements concluded pursuant to the lapsed LOI are invalid.

The third addendum to the LOI (04 February 2014)

2.4. 16 In May 2013, Transnet raised a conflict of interest involving Nedbank Capital[25] as part of the McKinsey Consortium. In a letter[26] dated 12 June 2013, McKinsey confirmed that Nedbank Capital was indeed conflicted. On 19 November 2013, Mr A Singh wrote a letter[27] to McKinsey and confirmed the replacement of Nedbank Capital with Regiments in accordance with McKinsey's request.

2.4. 17 Despite the LOI having lapsed[28], Transnet and Regiments concluded the Third Addendum[29] to the LOI on 04 February 2014. The Third Addendum to the LOI dealt with the transfer of the funding and financing scope of services from Nedbank Capital to Regiments.[30] (our emphasis)

2.4. 18 The Third Addendum stipulates that:

2.4.18.1 it amends the LOI and increased the scope of work regarding the

24 Part F Exhibit 3: Second Addendum to the LOI.
25 Nedbank Capital led by McKinsey was responsible for the transactional advisory and procurement execution.
26 Part A Exhibit 2: Letter dated 12 June 2013.
27 Part A Exhibit 3: Letter dated 19 November 2013.
28 The Second Addendum to the LOI lapsed on 30 November 2013, which effectively resulted in the contractual relationship between Transnet and McKinsey terminating.
29 Part F Exhibit 6.
30 Ibid, Page 1, para 1.2.

funding and financing aspect of the transaction;

2.4.18.2 the LOI and the Third Addendum constitute the sole agreement between the parties in as far as the transaction advisory services were concerned;

2.4.18.3 the object of the financing work was to raise the required funding at a competitive interest rate and to achieve an optional funding structure with minimal pressure on Transnet's liquidity;

2.4.18.4 the original contract value of R35.2 million will increase to R41.2 million; and

2.4.18.5 the increase of R6 million will augment the fees allocated to the funding and finance scope of work to R15 million.

2.4. 19 In a letter[31] dated 16 April 2014 from McKinsey to Transnet, Mr Sagar confirmed that McKinsey had ceded[32] its rights and obligations under the 1064 Locomotives transaction advisory services contract to Regiments on 5 February 2014[33]. The letter stated the following:

> *"Pursuant to our discussions and agreement on February 5, 2014 we hereby confirm that the mandate awarded to McKinsey Incorporated and all rights and obligations created thereby was, on February 5, 2014, ceded and/or delegated to Regiments Capital in accordance with such discussion and agreement. On account of, and pursuant to, the aforementioned cession and delegation, all related to, and in respect of, the mandate was conducted by Regiments Capital and not by McKinsey Incorporated."*

2.4. 20 This cession was invalid on the basis that at the time when McKinsey purported to cede the contract, McKinsey's rights in respect of the transaction advisory services had lapsed[34].

2.4. 21 In **Brayton Carlswald (Pty) Ltd v Gordon Donald Brews**[35], the court held that the "transfer of a 'right' which has been extinguished is a nullity as there is nothing which can be transferred. I agree with the principle that as a matter of logic, a non-existent right can never in law be transferred as the subject matter of a cession."

2.4. 22 In light of the above, McKinsey had no rights and obligations to cede to Regiments or any other third party on the basis that the LOI had lapsed. The cession was therefore null and void.

2.4. 23 Transnet confirmed the purported cession in a memorandum[36] dated 19 May

31 Part A Exhibit 10, a letter from McKinsey's Mr Vikas Sagar (Senior Partner at McKinsey).

32 In this instance, Mckinsey and Regiments purported to enter into an out-and-out cession. An out-and-out cession takes place when there is a transfer of rights from the cedent to the cessionary and is effected by a mere agreement irrespective of the prior knowledge or consent and/or subsequent notification of the debtor. Generally, no formalities are required for the act of cession and as such a cession may be concluded either expressly or tacitly, or may be inferred from the conduct of the parties.

33 We have not been provided with any other documents to refute the date on which the alleged cession between Mckinsey and Regiments occurred and as such our analysis of the cession is based on the date of the cession as provided in the letter mentioned above.

34 The LOI had lapsed on 30 November 2013.

35 (245/2016) [2017] ZASCA 68.

36 Part C Exhibit 8: Page 1 para 3 of the Memorandum.

2015 compiled by Mr A Singh and approved by Mr Siyabonga Gama ("Mr S Gama"), which stated, inter alia, that:

> "3. Upon phase 2 of the engagement being reached it was decided by Mckinsey and agreed by Transnet that Mckinsey would cede the principal lead role in the contract to Regiments Capital since phase 2 consisted of finance and deal structuring deliverables. As such Regiments Capital assumed the principal lead role in the contract. The Letter of Intent (LOI) was then amended, by value, to reflect additional scope of work to ensure better implementation and management of risks.
>
> 4. Subsequent to the cession agreement the contract period was extended by twelve (12) months from January 2014 until January 2015 or until the successful completion of the revised deliverables as mandated by Transnet. (Refer to Annexure B)
>
> 5. Regiments then indicated to Transnet that their preferred operating model for such engagements is usually based on a risk sharing model or success fee. A submission was approved by the GCE on 17 April 2014 in support of changing the remuneration model. The agreement was then amended, by value, to reflect a change in the remuneration model as proposed by Regiments"

2.4. 24 The significance of Transnet's memorandum of 19 May 2015 is that it refers to the cession agreement concluded between Mckinsey and Regiments. It is worth noting that though this memorandum refers to the cession agreement, we have not had sight of this agreement.

2.4. 25 Both the Third Addendum to the LOI as well as the purported cession were null and void.

2.4. 26 The Third Addendum to the LOI was null and void for the following grounds:

2.4.26.1 it was concluded pursuant to the lapsed LOI[37]; and

2.4.26.2 even if the LOI had not lapsed, the Third Addendum would be null and void as Regiments had no legal authority to amend the LOI unless proper cession between McKinsey and itself had taken place.

2.4. 27 The purported cession of the 1064 Locomotives transaction advisory services contract had not occurred between McKinsey and Regiments at the time when Transnet and Regiments concluded the Third Addendum to the LOI[38].

2.4. 28 The consequence of the invalid cession is that all contractual agreements concluded on the strength of the aforementioned cession are also invalid.

2.5 The Master Services Agreement between Transnet & McKinsey

2.5. 1 Subsequent to the purported cession, on 21 February 2014 Transnet and

37 The Second Addendum to the LOI had lapsed on 30 November 2013.

38 The Third Addendum was concluded on 4 February 2014 and McKinsey purported to cede its rights and obligations on 5 February 2014.

McKinsey concluded the MSA[39] for the provision of transaction advisory services related to the acquisition of the 1064 Locomotives Tender.

2.5.2 If the purported cession between McKinsey and Regiments was valid then McKinsey did not have legal authority to conclude the MSA with Transnet as it had ceded its rights and obligations, in terms of the cession, to Regiments.

2.5.3 Accordingly, the conclusion of the MSA is null and void for the following grounds:

2.5.3.1 it was concluded pursuant to the lapsed LOI; and

2.5.3.2 even if the LOI had not lapsed, the Third Addendum would be null and void as Regiments had no legal authority to amend the LOI unless proper cession between McKinsey and itself had taken place.

The First Addendum to the MSA

2.5.4 Both the LOI and the MSA allocated R 13.5 million for technical evaluation and execution services.[40]

2.5.5 Technical evaluation and execution services included, amongst other things, the calculation of escalation and hedging costs[41] pursuant to the finalisation of the Locomotive Supply Agreements with the OEMs.

2.5.6 The price for all the technical evaluation and execution services that would be provided by Regiments was agreed to through a competitive bidding process by the McKinsey Consortium and Transnet.

2.5.7 On 16 April 2014, Mr Tewodros Gebreselasie[42] ("Mr T Gebreselasie") sent an email to Mr Yousef Laher ("Mr Y Laher") enclosing a draft closeout letter[43] and requesting that Mr Y Laher provide his inputs and comments thereon before the closeout letter is made final. The closeout letter states, amongst other things, that due to the services rendered by Regiments, Transnet received *"significant savings"* as a result of the *"ensuing negotiations with the bidders"*.

2.5.8 On the same day, Mr Y Laher responded to Mr T Gebreselasie's email[44] and informed him that the use of the word *"significant"* savings in the circumstances was misplaced as Transnet *"merely dropped the warranty bond from certain bidders"* where it considered it appropriate.

2.5.9 Surprisingly, on 16 April 2014, Mr A Singh wrote a memorandum[45] to Mr B Molefe to approve a change in the remuneration model of Regiments and that Transnet pay Regiments an amount of R 78 400 000.00 excluding Vat.

2.5.10 According to the 16 April 2014 memorandum, Transnet secured the following

39 Part F Exhibit 7.
40 Part F Exhibit 1: Annexure A of the LOI provides a breakdown of the fees for in respect of the services.
41 Part F Exhibit 8: paragraph 3.1.1.
42 Mr Tewodros Gebreselasie former Senior Economic Advisor at Regiments.
43 Part A Exhibit 11.
44 Part A Exhibit 12.
45 Part C Exhibit 4.

savings due to Regiments' services:

2.5.10.1 the delivery schedule was accelerated, to ensure that the locomotives are delivered earlier, resulting in savings in future inflation related escalation costs and foreign exchange hedging costs "of approximately R20 billion (before the break costs)"; and

2.5.10.2 the overall cost of the transaction reduced from R68 billion to R50 billion.

2.5. 11 Mr A Singh further recorded that Regiments secured the above savings utilising its "intellectual property and complex techniques" and motivated for the change of the remuneration model for Regiments as follows:

"21. The Regiments operating model for such engagements is usually based on a risk sharing model or success fee (25% of value created or saved).

22. In this case, Regiments was transferred a mandate and remuneration model already accepted by Mckinsey.

23. Regiments initial indications were that they would have preferred to be engaged on the model consistent with para. 21 above.

24. This initial request was rejected. However, based on the significant value created/saved as well as risks mitigated as noted above, a request to amend the remuneration model was submitted.

25. Consequently, an additional fee of R 78.4 million excluding Vat is recommended to Regiments, representing 0.042% of the total savings.

26. Once approval is obtained for the revised remuneration model a contract amendment will be made." (our emphasis)

2.5. 12 On 17 April 2014, Mr Ajay Mistry[46] ("Mr A Mistry") sent an email[47] to Mr Y Laher stating that Regiments had attached an amended closeout letter, however, the signed[48] closeout letter still mentioned that there were "significant savings" received by Transnet as a result of the work done by Regiments.

2.5. 13 On 17 April 2014, Mr B Molefe approved the request to pay Regiments on a risk sharing basis.

2.5. 14 On 23 April 2014, Mr Edward Thomas ("Mr E Thomas"), drafted a memorandum[49] further opposing the proposal to amend Regiments' payment structure. The memorandum reasoned as follows:

"11. The benefits that Transnet obtained from the transaction advisor contract was as a result of the contracted for deliverables being provided in terms

46 Mr Ajay Mistry is a Senior Consultant at Regiments
47 Part A Exhibit 13.
48 The letter was signed on 17 April 2014 by Mr Wood.
49 Part C Exhibit 5.

of the current fixed fee agreement Transnet has with the service provider.

12. The fact that Regiments Capital operating model is based on a risk sharing model or success fee is irrelevant. Regiments Capital willingly accepted the rights and obligations of an existing contract, whose fee is fixed fee for the delivery of the deliverables. Regiments also agreed to an increased fixed fee for the detailed deliverables that they delivered on.

13. Based on the above, notwithstanding the GCE'S approval, we do not agree to the implementation of the change in remuneration model as the service provider has been sufficiently remunerated for the services provided as per the agreement."

2.5. 15 In our interview with Mr E Thomas, he confirmed that he had drafted a memorandum to Mr G Pita, objecting to Regiments' payment on a risk sharing basis. However, Mr E Thomas could not confirm whether Mr G Pita shared the memorandum with Mr A Singh and Mr B Molefe.

2.5. 16 On 24 April 2014, Transnet and Regiments concluded the First Addendum to the MSA, which provided for a fixed fee of R 78 400 000.00 excluding Vat.

2.5. 17 On 23 April 2014, Mr D Smit sent an email[50] to Mr E Wood stating that:

"Eric it is extremely difficult for us to consider signing off on the attached as we have not seen the engagement letter. I am not sure if Anoj has requested this and if yes, pse let me know so that I can discuss more detail with him.

From my personal point of view you guys have done a lot in developing the cost escalation models that assisted us in discussing the principles with the suppliers and to understand the cost drivers in the different markets. It also assisted the team in making a decision to decide on the economical amount of the locos that need to be assembled by TE driven from a cost perspective. Niven also came forward with a very practical approach to determine the indicative cost of fixing escalation.

The approach on the delay penalties calculations was also done quite well as the team needed to develop an approach from a clean sheet.

On the costing and hedging, I fully agree that different alterations have been done by you guys to calculate the possible cost of hedging should we consider the various option structures at different participation levels.

You will recall that a decision was made not to pursue this route and to rather go with an FEC structure as options remain expensive and does create some risk for suppliers.

The idea of transferring the FX risk to the balance sheet of suppliers was a Transnet idea and was included in the conditions of the RFP and we have done many of these in the past. (our emphasis)

50 Part A Exhibit 14.

> *The cost of calculating forwards on FEC's is a simple technique (can get directly from Bloomberg and or Reuters) and similar information was obtained from our dealers as well. In some instances, your forwards were slightly higher and in some slightly lower. (our emphasis)*
>
> ...
>
> *I am not 100% sure why you guys are saying on the FX it resulted in significant savings to Transnet, but pse help me if I am wrong on this one.*
>
> *On the performance guarantees we did not achieve any savings as only one small amount was involved. I fully agree that you guys did do a benchmarking exercise and the majority of the bond costs were market related.*
>
> *The main reason for me trying to summarise my observations is to try and ensure that ultimately all costs can be audited by our auditors once payments have been made and we get challenged. "*

2.5. 18 On 30 April 2014, Regiments was paid an amount of R 79 230 000.00 (Vat incl.) for "Risk share – 1064 Locomotives foreign exchange and warranty bonds".

2.5. 19 The Estimated Total Costs for the 1064 Locomotives was R 38.6 billion whilst Transnet ended up paying an amount of R 54.5 billion. As a result, Transnet paid an additional amount of R 15.9 billion. Our analysis is that, the reasonable cost for the 1064 Locomotives should have been at most R 45.7 billion and therefore, the difference of R 8.8 billion cannot be justified.[51]

2.5. 20 There were no savings that Regiments secured for Transnet in that:

2.5.20.1 JP Morgan hedged the financial risks that Regiments purports it derived significant saving for Transnet;

2.5.20.2 the idea to transfer the FX risk to the balance sheet of the suppliers came from Transnet and not Regiments; and

2.5.20.3 the performance guarantees did not result in savings due to the small amount used and the majority of the bonds were market related.

2.5. 21 Consequently, not only did Regiments not secure any savings for Transnet, but rather caused Transnet to suffer unreasonable financial loss.

2.5. 22 In **Glenrand MIB Financial Services (Pty) Ltd** the Court held that an unjustified enrichment liability will arise once a minimum of four requirements have been met, namely:

2.5.22.1 the defendant must be enriched;

2.5.22.2 the plaintiff must be impoverished;

2.5.22.3 the defendant's enrichment must be at the expense of the plaintiff; and

51 See Chapter 4 of Volume 1 of The Procurement of Transnet's 1064 Locomotives Report by MNS.

2.5.22.4 the enrichment must be unjustified (sine causa).

2.5.23 Regiments had already been paid the agreed fixed fee of R36 765 000.00 for the services it rendered to Transnet. Accordingly, Regiments was unjustifiably enriched with an amount of R 79 230 000.00 (Vat incl.) at Transnet's expense as there was no legal basis for the payment of this amount.

2.6 The Second Addendum to the MSA

2.6.1 On 28 April 2015, Transnet Group Treasurer, Mr Phetole Ramosebudi ("Mr P Ramosebudi") compiled a memorandum[52], which was recommended by Mr A Singh as well as Mr S Gama, and submitted to the BADC.

2.6.2 The memorandum provides the following:

2.6.2.1 a request to the BADC to "*approve the contract extension from R99.5 million to R265.5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction*";

2.6.2.2 a summary of the services provided by Regiments in relation to securing the China Development Bank ("CDB") loan in the amount of USD1.5 billion; and

2.6.2.3 a motivation for the risk-sharing basis payment of R166 million (excl. VAT) to Regiments on the basis that the services provided by Regiments for a period of more than 12 months were at risk.

2.6.3 On 29 April 2015, the BADC approved[53] the recommendation by Mr S Gama and on 11 June 2015, Transnet paid Regiments R 189 240 000.00 (Vat incl.)[54].

2.6.4 Pursuant to the approval of the memorandum by the BADC, Transnet and Regiments concluded the Second Addendum to the MSA on 14 October 2014.

Regiments

2.6.5 The services to be provided by Regiments in terms of the Second Addendum to the MSA were:

2.6.5.1 "*technical support including building cost escalation models and total cost of ownership models to inform and guide Transnet throughout the negotiation process;*

2.6.5.2 *develop a detailed funding plan for the acquisition of the 1064 Locomotives Transnet from GE, Bombardier, CNR and CSR considering the following:*

2.6.5.2.1 *evaluation of all funding sourcing including US Exim, EDC, Bond Issuance under Transnet's DMTN and*

52 Part C Exhibit 7. The memorandum recommends that the BADC approve the extension of the contract from R99.5 million to R265.5 million.
53 Part B Exhibit 2.
54 Part G Exhibit 14.

GMTN, China Development Bank (CDB), Sinosure and China Exim;

2.6.5.2.2 Matching of assets and liabilities; and

2.6.5.2.3 Identification and management of all financial risk (including liquidity, interest rate, credit and currency risks);

2.6.5.3 Assist Transnet in the negotiations with all the identified Chinese potential funders and in particular the CDB;

2.6.5.4 Assist Transnet in negotiating with a number of potential Chinese sources of ZAR funding including:

2.6.5.4.1 ICBC;

2.6.5.4.2 Bank of China;

2.6.5.4.3 2China Construction Bank;

2.6.5.4.4 Sinosure;

2.6.5.5 Recommendation, advice and assistance post the successful conclusion of negotiations with the abovementioned sources on the following aspects:

2.6.5.5.1 Amortisation;

2.6.5.5.2 Interest rates;

2.6.5.5.3 Cross Currency Swaps;

2.6.5.5.4 Calculations and forecasts;

2.6.5.5.5 Blended funding models."

2.6. 6 There was no legal cause for this payment due to the fact that on 4 February 2014 Transnet and Regiments concluded the Third Addendum to the LOI, which allocated a fixed fee of R 15 million for all the funding and financing services.

2.6. 7 The raising of the USD 1.5 billion funding fell under the scope of the Third Addendum to the LOI, and therefore, Regiments should have been remunerated in accordance with the fees set out in the Third Addendum to the LOI.

An assessment of the scope of work in the Third Addendum to the LOI and the Second Addendum to the MSA

2.6. 8 Dr Jonathan Bloom ("Dr J Bloom") opines[55] that most of the services performed under the Second Addendum to the MSA were envisaged and covered by the Third Addendum to the LOI.

2.6. 9 Dr Bloom goes on further to state that the scope of work in the Second Addendum to the MSA is similar to the scope of work allocated to Regiments in the Third

55 Part G Exhibit 17: Consultative Report: Transaction Advisor Analysis Related to the Advisory Services and fees for the procurement of 1064 Diesel and Electric Locomotives by Transnet, by Dr Jonathan Bloom. (paragraph 2.10.1, page 6)

Addendum to the LOI concluded on 4 February 2014 but wordsmithed to imply either an extension of the scope of the LOI or a totally revised scope of tasks stated in the said LOI.

2.6. 10 Based on Dr Bloom's evaluation of the services provided in the Third Addendum to the LOI and the scope of work provided in the Second Addendum to the MSA, he opines that the following services are a duplication of work:

2.6.10.1 the cost escalation risk management services provided in the Second Addendum of the MSA is a duplication of the cost escalation risk management services provided in the Third Addendum to the LOI;

2.6.10.2 in developing a funding plan for the acquisition of the 1064 Locomotives in terms of the Second Addendum to MSA, the following scope of work provided in the Third Addendum to the LOI would have been done and is therefore a duplication of services:

(a) *"conducting a collateral assessment to the component level to determine the potential for securing concessionary funding..."*[56];

(b) *"investigate how the asset/component can be secured in order to optimise balance sheet and cost of financing within the context of Transnet policy"*[57]; and

(c) *"Balance sheet impact - the balance sheet posy acquisition and post financing will be evaluated and any necessary responses will be detailed and executed"*[58];

2.6.10.3 the scope of work related to the evaluation of all funding sources in the Second Addendum to the MSA is a duplication of scope of work in Third Addendum to the LOI which provides that *"all potential funding sources and mechanism"*[59] should be evaluated; and

2.6.10.4 the identification and management of all financial risks in the Second Addendum to the MSA overlaps by at least 95% with the scope of work related to developing and implementing a best practice risk management and developing an optimal risk management solution provided in the Third Addendum to the LOI.

2.6. 11 There was no legal basis for Transnet to conclude an agreement for paying Regiments on a risk sharing basis for the services rendered in relation to the funding secured from the CDB.

56 Part F Exhibit 6: Third Addendum to the LOI, paragraph 3.1.2 page 2.
57 Ibid, paragraph 3.1.4 page 2
58 Ibid, paragraph 3.1.5.d page 2
59 Ibid, paragraph 3.1.7 page 2

2.6. 12 Regiments was, accordingly, unjustifiably enriched by the payment of R 151 000 000.00 (Vat excl.) and Transnet was impoverished in relation thereto as there was no legal basis for paying this amount.

2.7 JP Morgan

2.7. 1 Pursuant to the Transnet Board's approval of the CDB[60] loan facility for USD 2.5 billion to fund the acquisition of the locomotives from China South Rail[61] ("CSR") and China North Rail[62] ("CNR") through the 1064 Locomotive transaction, Transnet had to secure the appointment of a service provider to hedge[63] the forex in respect of the CDB loan.

2.7. 2 Although there was no contractual nexus between Transnet and JP Morgan[64] in respect of the transaction advisory services; in March 2015 Messrs A Singh, P Ramosebudi, E Wood and Frank Vein (Executive director at JP Morgan) travelled to China to try reignite negotiations[65] with the CDB. (our emphasis)

2.7. 3 On 28 April 2015 Mr S Gama submitted a memorandum[66] to the BADC recommending the following:

2.7.3.1 Approval of the confined appointment of JP Morgan, to hedge the financial risks (interest rate; credit and currency risk) emanating from the USD 1.5 billion China Development Bank ("CDB") loan back into ZAR;

2.7.3.2 approval of the confined appointment of JP Morgan to lead and underwrite the equivalent syndicated ZAR loan of USD1.5 billion;

2.7.3.3 approval of the contract extension from R 99.5 million to R 265.5 million for the appointment of Regiments Capital for the transaction advisory services and support to Transnet on the 1064 locomotive transaction; and

2.7.3.4 that the delegation of authority be given to the Acting GCE to approve all documentation related to this confinement.

2.7. 4 Mr S Gama further provides that there was an *"unforeseeable urgency that had arisen, which was not attributable to bad planning"*. In motivating for the confined procurement of JP Morgan, Mr S Gama stated amongst others that:

2.7.4.1 Transnet's risk management policies require currency exposure to be hedged into Rands;

60 The CDB loan facility was approved by the Transnet Board in August 2012 to fund the acquisition of the locomotives from China South Rail and China North Rail through the 1064 Locomotives transaction. The CDB loan facility is tied to procurement of products from China and as such the CDB, as a development finance institution, provided export credits in the form of direct loans to CSR and CNR respectively.

61 CSR is a Chinese locomotive manufacturer.

62 CNR is a Chinese locomotive manufacturer.

63 A foreign exchange hedge is a method used by companies to eliminate or "hedge" their foreign exchange risk resulting from transactions in foreign currencies.

64 JP Morgan is an American multinational investment bank and financial services company, which provides amongst others, hedging of securities and lead arranger and underwriting services to it clients.

65 Comrie S. (2018) 'Guptas siphoned R100m-plus from China loan, evidence shows' Daily Maverick, 10 September. Available at: https://www.dailymaverick.co.za/article/2018-09-10-guptas-siphoned-r100m-plus-from-china-loan-evidence-shows/ (accessed 22 February 2019).

66 Part C Exhibit 7: Memorandum compiled by Mr S Gama regarding the confined appointment of JP Morgan.

2.7.4.2 the size of the tenor of the loan was "*exceptionally large for the South African market*";

2.7.4.3 a 1bps[67] move higher in the USD: ZAR basis market would have cost Transnet R 15 000 000.00 on a loan of USD2.5 billion, which could translate to additional costs of R 600 000 000.00;

2.7.4.4 the uncertainty of counterparty unwillingness could delay full execution, "*leaving Transnet exposed to broader FX and rate risk on the USD exposure*";

2.7.4.5 "*to secure the lowest Rand funding, Transnet should instead work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence*"[68]; and

2.7.4.6 Transnet had successfully executed cross currency swaps to hedge currency risk exposure with JP Morgan in the past.

2.7.5 On 29 April 2015, the BADC approved[69] the recommendation to:

2.7.5.1 appoint JP Morgan on confinement, to hedge the financial risks emanating from the USD 1.5 billion CDB loan into South African Rands;

2.7.5.2 "*contract for the appointment of Regiments for transaction advisory services and support to the company on the 1064 Locomotive transaction from R99.5 million to R 265 million*"; and

2.7.5.3 delegate authority to Mr S Gama "to approve all documentation relating to the confinement process".

2.7.6 On 06 May 2015 Transnet issued the RFP for the Provision of Hedging Financial Risks (Interest Rate, Credit and Currency) and to Lead and Underwrite the Equivalent Syndicate ZAR Loan[70].

2.7.7 In response to the RFP for the Provision of Hedging Financial Risks and ZAR Loan Syndicate[71] JP Morgan tendered that:

2.7.7.1 the approximate cost of hedging the USD 1.5 billion loan facility would be R 40 million and R 24 million for its services as lead arranger and underwriter of the Club loan; and

2.7.7.2 based on the above estimates 35% of contract value for the supplier development would be R 22.4 million.

2.7.8 Having regard to the reasons put forward for the confined procurement of JP Morgan in the memorandum no case for urgency has been properly made out, in that:

67 1bps is equivalent to 0.01%
68 Ibid paragraph 30.
69 Part B Exhibit 3.
70 Part D Exhibit 2.
71 Part D Exhibit 3.

2.7.8.1 the memorandum does not address what aspects of the economic crisis would affect the transaction;

2.7.8.2 the consideration of Eskom's credit rating as a ground for urgency has no causal nexus to the rating that Transnet has, as it is a separate legal entity and as such its credit rating would be assessed separate from that of Eskom's;

2.7.8.3 the consideration that the currency exposure must be hedged back into Rand, is not unique to JP Morgan and can be negotiated with other international banks; and

2.7.8.4 the consideration that the size and tenor of the loan was too large for the South African market does not preclude Transnet from using other international banks.

2.7.9 The Guideline on Cost Containment Measures[72] provides that:

2.7.9.1 a gap analysis[73] must be conducted by accounting authorities "when appointing and managing consultants[74] and consultancy projects... to ensure that value for money is achieved when making use of consultants[75];" and

2.7.9.2 the reason for a gap analysis "is to establish whether the institution needs the use of consultants.[76]"

2.7.10 The Transnet DoA Framework[77] provides that the exercise of powers granted to persons in terms of the DoA Framework is subject to the provisions of, amongst others, the PFMA and the Enterprise Risk Management Framework.

2.7.11 In terms of the PPM dated October 2013:

2.7.11.1 "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.[78]"

2.7.11.2 "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,

72 National Treasury Instruction 01 of 2013/2014

73 Guideline on Cost Containment Measures National Treasury Instruction 01 of 2013/2014, paragraph 21 page 6, "A gap analysis in relation to this guideline may be defined as gaps identified between current available human resources and human resources required to complete a specific project. This means that institutions should first conduct a skills gap analysis within its structures prior to seeking the use of consultants."

74 Ibid, paragraph 4 page 2, defines a consultant as "a professional person appointed to provide technical and specialist advice or to assist with the design and implementation of projects and/or programmes".

75 Ibid, paragraph 20 page 6

76 Ibid, paragraph 48 page 13

77 Part E Exhibit 4.

78 Part E Exhibit 8: PPM dated October 2013, paragraph 8.1 page 51.

particularly those from previously disadvantaged communities"[79];

2.7.11.3 one of the grounds under which confinement will be considered for the procurement of goods and/or services is "where a genuine unforeseeable urgency has arisen[80]" that was not due to the lack of proper planning;

2.7.11.4 only the Transnet Board has the authority to authorise a confinement that exceeds R 1 billion[81]; and

2.7.11.5 "in instances where a confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority"[82].

2.7.12 The Guideline on Cost Containment Measures[83]; the DoA Framework of 01 September 2014; and the PPM (October 2013) all make reference to the use of internal skills and resources before the procurement of external consultants. It is only in the event that there are no skills and/or resources internally that a public institute such as Transnet may then procure external consultants.

2.7.13 Further to the fact Transnet is required to ensure that there are no internal skills and resources available to it before procuring external consultants, the Transnet DoA Framework also places an obligation on Transnet employees/business units to "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 email. Once the above approvals are obtained the Treasury Traders will provide sign off on the rate acceptance."

2.7.14 The exclusion of Transnet Treasury in terms of the CDB facility was in contravention of the Guideline on Cost Containment Measures[84] and the DoA Framework. The use of Regiments should not have been approved without having obtained the Treasury Traders sign off on the rate acceptance.

2.7.15 Transnet could have requested other international banks to tender for the hedging of the CDB loan and in that way ensure that they have a more competitive bidding process as well as the benefit of competitive quotes whilst still working in strict confidence and without the knowledge of the local market.

2.7.16 The PPM further makes provision for Transnet to "accept a foreign exchange risk and hedge itself accordingly"[85], in circumstances where the cost of the hedge by an international supplier is deemed excessive so as to ensure that Transnet has a fixed Rand liability.

79 Ibid, paragraph 15.1.1 page 105.
80 Ibid paragraph 15.1.2(a), page 105.
81 Ibid paragraph 15.1.4(b)(iii), page 106.
82 Ibid paragraph 15.1.4(c), page 106.
83 National Treasury Instruction 01 of 2013/2014
84 National Treasury Instruction 01 of 2013/2014
85 Ibid paragraph 21.6.8 page 174.

2.7.17 In an email from Ms M Makgatho's email[86], she states that "*Transnet has proved its ability to raise funds from diverse funding sources even under trying circumstances*" and as such the assertion made by Mr S Gama in his memorandum on 28 April 2015[87] "*that to secure the lowest Rand funding Transnet should work with a single bank*" was incorrect. In fact, based on Ms M Makgatho's calculations if Transnet had secured funding from other sources in the domestic market the overall pricing from such sources would be much better than the CDB facility even in the worst-case scenario.

2.7.18 Our analysis is that there was no urgency and/or no reason for the confined procurement of a single bank. Therefor the appoint of JP Morgan was irregular as there was no compliance with the procurement processed prescribed in section 217 of the Constitution as well as the PPM.

Replacement of JP Morgan by Trillian

2.7.19 Five months after the request to appoint JP Morgan on confinement based on urgency, on 17 September 2015 Mr S Gama submitted a memorandum[88] to the BADC which recommended that the BADC approve the following:

2.7.19.1 the appointment of Trillian Asset Management ("Trillian") to replace JP Morgan as a Lead Manager of the USD 1 billion ZAR equivalent Club Loan;

2.7.19.2 approval of the termination of JP Morgan on the ZAR Club Loan; and

2.7.19.3 the delegation of authority to the then GCE to approve all documentation related to this confined award.

2.7.20 Mr S Gama proposed that JP Morgan be replaced with Trillian and further submitted that the reasons for the appointment of Trillian were as follows:

2.7.20.1 Trillian had worked on the 1064 contract as a supplier development beneficiary of Regiments; and

2.7.20.2 Trillian would be able to deliver on Transnet's requirement for a Club Loan deal at a price and tenor which was most comparable to both the CDB loan and JP Morgan proposal.

2.7.21 The memorandum further provides:

> "*Regiments Capital was appointed as a 1064 locomotive funding advisor and had SD obligations to Transnet on their contract.*
>
> *one of their SD initiatives is the development of other small black owned organisations in the industry and Trillian is one of the beneficiaries of this initiative.*
>
> *when it became apparent that JP Morgan would not be able to deliver the*

86 Part A Exhibit 14: An email from Ms M Makgatho to Mr A Singh and Mr B Molefe explaining that Transnet has the ability to source funding from various banks. Ms Makgatho further provides that the CDB loan is too expensive and that Transnet would be able to secure the funding required in the domestic market at a lower rate than that charged by the CDB.

87 Part C Exhibit 7.

88 The memorandum was compiled by Mr Ramosebudi and recommended by Mr E Thomas and Mr G Pita.

ZAR loan, Regiments engaged with its SD beneficiary to see if there were options available to Tran snet. It became apparent that Trillian would be able to deliver on Transnet's requirement for a Club loan deal at a price and tenor which was most comparable to both the CDB loan and JP Morgan proposal."

2.7. 22 On 1 October 2015, the BADC resolved that:

2.7.22.1 Trillian would be appointed to replace JP Morgan as Lead Manager of the USD 1 billion ZAR equivalent Club loan which was previously confined to JP Morgan; (our emphasis)

2.7.22.2 JP Morgan should be terminated on the ZAR syndication loan; and

2.7.22.3 the Group Chief Executive be granted the delegation of authority to approve and sign all the documentation related to the confined appointment of JP Morgan.

2.7. 23 In the accordance with the resolution of the BADC, on 18 November 2015, Mr S Gama and Mr Daniel Roy on behalf of Trillian, concluded an agreement[89] for the "ZAR 12, 000, 000, 000,00 Club Loan facility for the purchase of Locomotives and general banking".

2.7. 24 In light of the fact that the approval of the confined appointment of JP Morgan was only to hedge the financial risks of the USD 1.5 billion CDB facility it follows that the replacement of JP Morgan could only have been for hedging.

2.7. 25 As was the case of Regiments and McKinsey, at best Trillian could have been a sub-contractor to Regiments as it has no contractual nexus to Transnet in respect of the 1064 advisory tender.

2.7. 26 In a memorandum[90] dated 24 November 2015 Mr P Ramosebudi requested Mr S Gama and Mr G Pita sign off on Trillian invoice for the services it rendered as "Transnet's Originating and Co-ordinating Mandated Lead Arranger" for the ZAR Club loan.

2.7. 27 Mr S Gama approved[91] the recommendation that Trillian be paid[92] an amount of R 93 480 000.00 (Vat incl.) for work related to structuring the Club loan. In justifying the payment to Trillian, the services previously performed by Regiments and detailed in the memorandum[93] dated 28 April 2015 were fraudulently attributed to Trillian[94].

2.7. 28 The following documentary evidence points to Regiments having done the work:

2.7.28.1 various e-mails[95] from Regiments personnel, namely, Ms Mosilo

89 Part F Exhibit 10. The agreement between Transnet and Trillian in respect of the Club loan fac
90 Part C Exhibit 10: Memorandum compiled by Mr P Ramosebudi requesting that Transnet pay Trillian R 93 480 000.00
91 Ibid
92 Part G Exhibit 15: Trillian Invoice, signed as paid on 03 December 2015
93 Part C Exhibit 7.
94 Part C Exhibit 7: para. 66 – 73 and compare with Part C Exhibit 9: para.16 – 24.
95 Part A Exhibit 22: These emails provide a list of the deliverables performed by Regiments in respect of the Club loan and as such demonstrate that the Club Loan work was done by Regiments.

Mothepu ("Ms M Mothepu") and Mr Eric Wood ("Mr Wood") to Transnet's Mr Pita;

2.7.28.2 a memorandum[96] from Mr A Singh and Mr G Pita stating that Regiments "assisted Transnet in negotiating with a number of potential Chinese sources of ZAR funding for the ZAR syndicated loan facility"; and

2.7.28.3 the Regiments slide presentation[97] dated June 2015.

2.7.29 Furthermore, in our interview with Ms Mothepu[98], she confirmed that all the work done in relation to the Club Loan was executed by Regiments. By the same token, Messrs P Ramosebudi and Rhulani Madale confirmed in our interview[99] that they only dealt with Ms Mothepu and Mr Wood from Regiments.

2.7.30 In our interview[100] with Mr P Ramosebudi, he claimed to have solely drafted the memorandum[101] recommending the appointment of Trillian and the payment to Trillian based on the advice and information provided by his colleagues but he never dealt with any personnel from Trillian.

2.7.31 On 12 September 2016, Regiments wrote a letter[102] to Transnet and recorded the following in relation to the Club Loan:

> "9. The payment of R 93 million for the Club Loan
>
> *This fee relates to work done by Regiments for the capital raising, transaction management and hedging advisory services related to the 1064 locomotive funding together with the club loan, for which Regiments invoiced and was paid the relevant fee in June 2015.*
>
> *While it was originally anticipated that JP Morgan would be appointed lead managers for the club loan and Regiments would assist JP Morgan in the execution thereof, as you are aware, Regiments at the Request of Transnet ultimately took over full responsibility as lead managers, with all the incumbent work being performed by Regiments,*
>
> *This work was completed by Regiments in December 2015."*

2.7.32 On 03 December 2015, Mr S Gama approved a memorandum[103] requesting authorisation to pay Trillian's invoice for services relating to raising the CDB Loan and approved the payment of Trillian's invoice[104] on the same date. This payment was unlawful due to the fact that Trillian did not perform any services relating to the above transaction, as the work was executed by Regiments.

2.7.33 It must also be noted that JP Morgan had already provided some of the services in respect of negotiating the ZAR Club loan and if anything, JP Morgan's replacement

96 Part C Exhibit 8.
97 Par G Exhibit 13.
98 Part G Exhibit 16.
99 Part D Exhibit 18.
100 Part G Exhibit 18.
101 Part C Exhibit 9.
102 Part A Exhibit 21.
103 Part C Exhibit 10: Mr Gama approved the memorandum compiled by Mr P Ramosebudi and signed the invoice on 03 December 2015.
104 Part G Exhibit 15: Mr Gama signed the invoice on 03 December 2015.

by Trillian should have been only for the services that JP Morgan had not done and by implication should have been for less than the R 24 000 000.00.

2.7. 34 The R 93 480 000.00 (Vat incl.) paid to Trillian was R 69 000 000.00 more than the agreed amount that Transnet paid to JP Morgan in respect of the lead arranger and underwriting services. This deviation amounts to irregular expenditure.

2.7. 35 Mr S Gama, Mr P Ramosebudi and Trillian knew that the representations they made to Transnet were false, and as a result, clearly had an intention to defraud Transnet.

2.7. 36 The legal requirements for fraudulent misrepresentation were set out in **Stoop and Another v Rand Water**[105] as follows:

"*(i) The representer must make a factual representation by omission or commission*

(ii) Knowledge by the person making the representation that the representation is false; and

(iii) The representation induced the representee to act in a certain way."

2.7. 37 Accordingly, Mr S Gama, Mr P Ramosebudi and Trillian's conduct amounted to fraud, and the payment made to Trillian was based on a fraudulent misrepresentation resulting in Trillian being unjustifiably enriched.

2.7. 38 The appointment of Trillian was unlawful and irregular on the following grounds;

2.7.38.1 it was inconsistent with Constitution as well as the PFMA;

2.7.38.2 Transnet did not comply with the proper procurement provision under confinement in terms of the PPM; and

2.7.38.3 in light of the fact that the basis for the appointment of Trillian was to replace JP Morgan as lead manager the replacement would have had to be preceded by JP Morgan being appointed as lead manager and as this was not the case, there could not have been a replacement.

2.7. 39 Our analysis is that the work referred to in the memorandum of 17 September 2015 was performed by Regiments and to some extent JP Morgan as neither Transnet personnel nor the available documentation can demonstrate proof of any work being done by Trillian in respect of the CDB Loan.

2.8 Legal Analysis

2.8. 1 As set out in the preceding paragraphs, a number of irregularities occurred in respect of the appointment of the following service providers as transaction advisors to the 1064 Locomotives tender:

2.8.1.1 the McKinsey Consortium;

2.8.1.2 Regiments;

105 Stoop and Another v Rand Water [2013] ZALCJHB 258.

2.8.1.3 JP Morgan; and

2.8.1.4 Trillian.

McKinsey Consortium

2.8. 2 The RFP provides that the failure to provide all returnable documents viz. audited financial statements, results in the disqualification of a bid.

2.8. 3 McKinsey did not submit its audited financial statements and as such the McKinsey Consortium Proposal was unresponsive for lack of compliance with the mandatory requirements of the RFP.

2.8. 4 Accordingly, the decision to appointment McKinsey Consortium was irregular due to McKinsey's failure to submit the mandatory returnable documents.

Regiments

2.8. 5 All organs of state are bound by the Constitution as well as other legal prescripts in the procurement of goods and services.

2.8. 6 When the McKinsey Consortium submitted its Proposal in response to the RFP, Regiments was not a member. However, on 6 December 2012 when the LOI between Transnet and the McKinsey Consortium was signed, Regiments was included as a member of the McKinsey Consortium.

2.8. 7 2.All procurement within Transnet must be conducted in accordance with the PPM[106].

2.8. 8 Regiments did not submit a proposal to Transnet on or before the closing date of the RFP as was required in order for it to be evaluated by Transnet in a fair and competitive procurement process and in a manner prescribed by the PPM as well as section 217 of the Constitution.

2.8. 9 Had Transnet applied the PPM and the RFP to the letter, Regiments would not have been considered as a possible transaction advisor let alone be included as a member of the McKinsey Consortium.

2.8. 10 The non-compliance with the procurement prescripts is a clear breach of the principle of legality.

2.8. 11 2The decision to appoint Regiments is invalid due to the fact that it was taken in contravention of section 217 of the Constitution.

Misrepresentation:

2.8. 12 On 23 January 2014, Mr A Singh signed an agreement[107] between Transnet and Regiments ("the Agreement")[108] setting out the "updated scope of transaction advisory work that Regiments" was assigned to render, as a result of Nedbank no longer forming part of the McKinsey Consortium.

106 Part E Exhibit 2: Chapter 3, paragraph 3.2 page 17.
107 Part F Exhibit 4.
108 The Agreement, amongst others, provides that Regiments would render the transaction advisory work for 12 months and that Regiments was entitled to a 20% performance fee "of the savings achieved against the benchmark interest rate".

2.8. 13 Mr A Singh makes the following hand-written amendments[109] to the Agreement:

2.8.13.1 that Transnet has contracted with McKinsey in respect of the 1064 transaction advisory tender;

2.8.13.2 that Regiments is a sub-contractor of McKinsey;

2.8.13.3 that there is no performance fee and as such the clause providing for a performance fee must be removed from the Agreement;

2.8.13.4 that any expense incurred by Regiments "will be capped at 10% and paid on approved actual costs in terms of Transnet's policies and procedures";

2.8.13.5 that payments will be made to McKinsey; and

2.8.13.6 that the "costs and payment against the scope may not be made above R 9 million, without specific approval from Transnet".

2.8. 14 The Agreement as well as the email confirms that as early as January 2014, before the MSA was concluded, Regiments, Mr E Thomas and Mr A Singh knew that there was no contractual nexus between Regiments and Transnet and that Regiments was in fact a sub-contractor of McKinsey.

2.8. 15 In direct contrast to the handwritten comments that Mr A Singh made on the 23 January 2014 agreement, he compiled a memorandum[110] motivating to Mr B Molefe that Regiments be remunerated by Transnet on a risk sharing model or success fee.

2.8. 16 On the basis of the motivation by Mr A Singh, Mr Molefe approved the recommendation that Regiments be paid on an success fee.

2.8. 17 As a result of Mr A Singh's misrepresentation[111], Regiments was paid R79 230 000.00 (Vat incl.). This payment amounts to fruitless and wasteful expenditure[112].

JP Morgan

2.8. 18 The appointment of JP Morgan was irregular based on the fact that the motivation for confinement due to urgency was unfounded and as such failed to comply with the PPM.

The appointment of Trillian

2.8. 19 As was the case with Regiments, the appointment of Trillian did not follow lawful procurement processes, albeit the irregularities were different.

2.8. 20 No procurement method under the PPM was followed for the appointment of Trillian. Mr S Gama merely submitted a memorandum requesting that Trillian replace JP Morgan and on the basis of his memorandum Trillian was appointed.

109 Mr Thomas sent an email to Mr Niven Pillay enclosing the amended signed copy of the Agreement. In the email Mr Thomas alerts Mr Pillay of the handwritten amendments made by Mr Anoj Singh.

110 Part C Exhibit 4: paragraph 3.1.1

111 Ibid paragraph 2.7.36

112 Fruitless and wasteful expenditure is defined in section 1 of the PFMA, as expenditure which was made in vain and would have been avoided had reasonable care been exercised.

The decision to appoint Trillian, was not in compliance with the Constitution and the PPM and is thus irregular.

2.9 Recoveries

McKinsey

2.9.1 McKinsey submitted two invoices to Transnet for professional fees in respect of the validation of the business case development.

2.9.2 The invoices from McKinsey include out of pocket expenses and support services totalling R 11 003 389.01, for the period 04 March 2013 to 17 May 2013.

2.9.3 In terms of the LOI R 6.6 million (excluding Vat and out-of-pocket expenses) was allocated to McKinsey for business case validation. However, McKinsey invoiced Transnet R 8 656 588.00 for the services it rendered in terms of the business case validation and therefore exceeded the allocated amount by R 2 056 588.00 (Vat excl.).

2.9.4 There was no legal basis for paying McKinsey an extra R 2 056 588.00 as the LOI allocated R 6 600 000.00 excluding Vat for the validation of the business case. McKinsey was unjustifiably enriched by this payment at Transnet's expense.

2.9.5 In relation to the out-of-pocket expenses, the LOI stipulates that expenses should be "capped at 10% of the value of the engagement for the Supplier and its sub-contractors" and would further be billed on an actual basis. McKinsey charged 11.5% of its fees as out-of-pocket expenses - R 986 507.62 (Vat excl.) instead of R 857 658.80

2.9.6 McKinsey therefore overbilled its out-of-pocket expenses by 1.5% totalling R 120 848.82.

2.9.7 Both the overpayments made in respect of work done under the business case validation and the overcharge by McKinsey on its out-of-pocket expense amount to unjustified enrichment[113].

Regiments

2.9.8 In light of the findings of the preceding paragraphs as well as on scrutiny of the circumstances that led to the conclusion of the agreements between Regiments and Transnet, it is clear that:

2.9.8.1 Regiments was only entitled to R 15 000 000.00 of the R 189 240 000.00 (Vat incl.) paid to it by Transnet in respect of the funding and financing scope. However, Regiments without legal cause received R 189 240 000.00 (Vat incl.) at the expense of Transnet;

2.9.8.2 the processing of the payment by the Transnet officials in respect of R 189 240 000.00 (Vat incl.) was effected under the misguided and incorrect belief that the payment was due and payable;

113 Ibid paragraph 2.5.21

2.9.8.3 Regiments was further unjustifiably enriched by the payment of R 79 230 000.00 (Vat incl.) due to the change of the remuneration model to a risk sharing fee. Transnet was impoverished as there was no legal basis for paying the aforesaid amount, especially because Regiments had already been paid under the LOI in respect of the fixed fee.

Trillian

2.9. 9 As stated in the preceding paragraphs in this report that Trillian was paid for work that was executed by Regiments. The amount that was paid to Trillian in this regard had no legal basis is R 93 480 000.00 (Vat incl.).

2.9. 10 The undue payment to Trillian was induced as a result of fraudulent misrepresentation[114] and constitutes unjustified enrichment[115].

2.10 Recommendation

2.10. 1 The general principle in terms of the law of contract read with the judgement in **Oudekraal**[116] is that, an "*invalid administrative action may not simply be ignored, but may be valid and effectual, and may continue to have legal consequences, until set aside by proper process*" (our emphasis).

2.10. 2 **However, in the current circumstances all the contracts that Transnet entered into** with McKinsey; Regiments; JP Morgan; and Trillian have lapsed as a result of each of the parties having complied with their respective obligations.

2.10. 3 The legal principle in **Oudekraal** has no application in the current set of facts. "Courts should and ought not to decide issues of academic interest only. That much is trite.[117]"

2.10. 4 The only available remedy in law to Transnet for the recovery of any overpayments made to McKinsey, Regiments and Trillian would be to institute civil proceedings based on unjustified enrichment[118]. Consequently, Transnet is entitled to recover the monies paid under the following transactions:

2.10.4.1 The payment of R 79 230 000.00 (Vat incl.) to Regiments - this payment was made on the strength of the First Addendum to the MSA and had no legal cause as Regiments had already been paid under the LOI in terms of a fixed fee.

2.10.4.2 The payment of R 189 000 000.00 (Vat incl.) to Regiments on a risk sharing basis - This payment, made on the strength of the Second Addendum to the MSA, must be recovered as Regiments was adequately remunerated under the fixed fee of R15 million that was specifically allocated to the funding and financing services provided for under the third addendum to the LOI.

2.10.4.3 The payment of R 93 480 000.00 (Vat incl.) paid to Trillian - this payment had no legal cause because Trillian did not render any services towards securing the Club loan.

114 Ibid paragraph 2.7.36
115 Ibid paragraph 2.5.21
116 Oudekraal Estates (Pty) Ltd v The City of Cape Town and others (25/08) [2009] ZASCA 85.
117 Legal-Aid South Africa v Mzoxolo Magidiwana (1055/13) [2014] ZASCA 141, paragraph 2.
118 Ibid paragraph 2.5.21

MNS

Comments:

Chapter 3: Corporate Governance

3.1 Applicable legislature

3.1.1 Transnet is a state-owned company established in terms of section 2 of the Legal Succession to the South African Transport Services Act, 9 of 1989, and incorporated in terms of the company laws of the Republic of South Africa.

3.1.2 Transnet is also listed under Schedule 2 of the PFMA. As a result, Transnet must comply with the provisions of the PFMA and the Companies Act, 71 of 2008, as amended ("the Companies Act").

3.1.3 Section 83(1) of the PFMA provides that *"the accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently- fails to comply with a requirement of section 50, 51...; or makes or permits an irregular expenditure or a fruitless and wasteful expenditure"*.

The Companies Act outlines the following standards of director's conduct

3.1.4 In terms of section 76(1) a director must not use a position of a director to knowingly cause harm to the company;

3.1.5 in terms of section 76(2) a director must:

"(a) not use the position of director, or any information obtained while acting in the capacity of a director:

(i) to gain an advantage for the director, or for another person other than the company or a wholly-owned subsidiary of the company; or

(ii) to knowingly cause harm to the company or a subsidiary of the company; and

(b) communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director:

(i) reasonably believes that the information is:

(aa) immaterial to the company; or

(bb) generally available to the public, or known to the other directors; or

(ii) is bound not to disclose that information by a legal or ethical obligation of confidentiality.

3.1.6 in terms of section 76(3) a director of a company, when acting in that capacity, must exercise the powers and perform the functions of a director:

3.1.6.1 in good faith and for a proper purpose;

3.1.6.2 in the best interests of Transnet; and

3.1.6.3 with a degree of care, skill, and diligence expected from a person occupying a similar position and having the general knowledge, skill, and experience.

3.1.7 In **Bristol and West Building Society v Mothew**[119], the court summarised a director's fiduciary duty as follows:

> *"The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are defining characteristics of the fiduciary."*

3.1.8 Section 76(4) of the Companies Act provides that in relation to any matter arising in the exercise of a director's powers or in the performance of a director's duties, a director would have satisfied the duty to act in good faith and in the best interests of the company and with the necessary care and skill, if the director:

3.1.8.1 took reasonably diligent steps to become informed about the matter;

3.1.8.2 made or supported a decision which he believed on a rational basis to be in the best interests of the company;

3.1.8.3 made a decision or supported a decision of a committee or the board in relation to a particular matter based on rational basis for believing and did believe that the decision was in the best interests of the company, and in reaching this decision, a director is entitled to rely on an opinion or recommendation of a relevant colleague and or a professional advice from a suitably qualified professional in a particular field.

3.1.9 The word "director" is defined in Section 1 of the Companies Act to include any person occupying the position of a director or an alternate director, by whatever name designated.

3.1.10 The word "includes" in the definition of a director indicates that the list of persons who qualify as directors is inclusive and not exhaustive. As a result, one's title is not a determining factor in establishing whether a person is a director but it is the substance of a person's activities that determines whether or not a person is a director.[120]

3.1.11 The above view is supported by Regulation 38 of the Companies Regulation[121], 2011, which stipulates that a person is a prescribed officer of a company:

> *"a) if that person exercises general executive control over and management*

119 [1996] 4 All ER 698 (CA) 711
120 See definition of a "director" in Cassim "Contemporary Company Law" Second Edition, at page 404.
121 Companies Regulations (2011) in terms of the Companies Act, 71 of 2008.

of the whole or a significant portion, of the business and activities; or

b) regularly participates to a material degree in the exercise of general executive control over and management of the whole, or a significant portion, of the business and activities of the company."

3.1.12 The aim of designating a person with executive power in a company as a "prescribed officer" is to ensure that the same duties and accountability of a director are transferred to such an individual. [122]

3.1.13 The King III Report[123] requires all actions of the BADC to be based on the following four values:

3.1.13.1 responsibility;

3.1.13.2 accountability;

3.1.13.3 fairness; and

3.1.13.4 transparency.

3.1.14 Paragraph 13 of the Introduction of the King III states that the King Code applies to all entities regardless of the manner or form of incorporation or establishment and whether in the public, private sectors or non-profits sectors. It goes on further to state that all entities should apply the principles in the Code and consider the best practice recommendations in the King Code.

3.1.15 In light of the duties, powers, and seniority of the positions held by the persons mentioned below, we are of the view that they qualify as directors:

3.1.15.1 all the BADC members[124] involved in the transactions mentioned above;

3.1.15.2 Mr B Molefe[125] (Former Group Chief Executive Officer);

3.1.15.3 Mr S Gama[126] (Former Chief Executive Officer of TFR and Group Chief Executive Officer);

3.1.15.4 Mr A Singh[127] (Former Group Chief Financial Officer);

3.1.15.5 Mr G Pita (Former Group Chief Supply Chain Officer); and

3.1.15.6 Mr P Ramosebudi[128] (Group Treasurer).

3.1.16 This section will outline the key corporate governance failures that occurred in Transnet's dealings with the transaction advisors on the 1064 Locomotives Project, as follows:

3.1.16.1 approval of the payment of R 79 230 000.00 (Vat incl.) to Regiments

122 See Cassim "Contemporary Company Law" Second Edition, at page 414 and 415.
123 Chapter 1, paragraph 14 of the King III Report 2009.
124 SD Shane; LC Mabaso; ZA Nagdee; SI Siyabonga Gama; G Garry Pita; A Anoj Singh; MR Seleke.
125 Mr B Molefe became a director of Transnet by virtue of his position.
126 Mr S Gama became a director of Transnet by virtue of his position.
127 Mr A Singh became a director of Transnet by virtue of his position.
128 Mr S Gama became a director of Transnet by virtue of his position.

on a risk sharing basis;

3.1.16.2 recommendation and approval to pay Regiments the amount of R166 million on a risk sharing basis;

3.1.16.3 BADC Approval of the appointment of JP Morgan and Regiments to raise the USD 1 billion ZAR equivalent;

3.1.16.4 BADC Approval of the replacement of JP Morgan with Trillian; and

3.1.16.5 the payment of R 93 480 000.00 (Vat incl.) to Trillian.

Approval of the payment of R 79 000 000.00 to Regiments on a risk sharing basis

3.1. 17 On 17 April 2014, Mr B Molefe approved a request for payment to Regiments in the amount of R 78.4 million for technical evaluation services based on a memorandum dated 17 April 2014 prepared by Mr A Singh.

3.1. 18 There was no legal basis for Transnet to pay Regiments an additional fee on a risk sharing basis since Regiments was bound by the agreement that had been ceded to it by McKinsey. (our emphasis)

3.1. 19 The MSA had already provided a remuneration fee for the services rendered by Regiments. In approving this payment, Mr B Molefe and Mr A Singh failed in their fiduciary duties[129] as directors of Transnet to act in good faith, exercise their power for a proper purpose and instead, used their positions to knowingly cause harm to Transnet. (our emphasis)

3.1. 20 In addition, their conduct led to irregular and/or, fruitless and wasteful expenditure in terms of section 57 of the PFMA being incurred by Transnet.

BADC Approval of the payment of R 189 million to Regiments

3.1. 21 On 28 April 2015, Transnet Group Treasurer, Mr P Ramosebudi compiled a memorandum, which was recommended by Messrs A Singh and S Gama, and submitted to the BADC. The BADC approved the recommendation on 29 April 2015.

3.1. 22 The purpose of the BADC is:

> *"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.[130]" (our emphasis)*

3.1. 23 The roles and responsibilities of the BADC are to operate *"as an overseer of the acquisition and disposal function within Transnet [131]".*

3.1. 24 If the BADC had properly scrutinised the request for confinement, it would have established that there was no basis for paying R 189 240 000.00 (Vat incl.) to Regiments since the Third Addendum to the LOI already provided for a fixed fee of

129 Ibid, paragraph 3.1.6
130 Part E Exhibit 2: Clause 24.5 of the PPM 2012.
131 Part E Exhibit 2: Clause 24.5.3 of the PPM 2012.

R 15 000 000.00 for funding and financing services to be provided by Regiments under the contract for transaction advisory services for the 1064 locomotives acquisition tender.

3.1.25 The BADC members also failed to take reasonable steps to be informed of the matter under consideration because had all the relevant documentation, such as the Third Addendum, been considered, it would have been clear that there was no basis to pay the proposed fee since the Third Addendum provided for R 15 000 000.00 for funding and financing services of Regiments.

3.1.26 In light of the above, the members of the BADC failed to exercise the reasonable degree of care, skill, and diligence as could be expected from persons in similar positions and with the knowledge and experience[132] of the directors in question. (our emphasis)

3.1.27 Furthermore, the BADC (with the delegated authority from the accounting authority) committed an act of financial misconduct by negligently permitting an irregular expenditure and or a fruitless and wasteful expenditure.

Recommendation and approval to pay Regiments the amount of R189 million (Vat incl.) on a risk sharing basis

3.1.28 On 28 April 2015, Mr S Gama and Mr A Singh recommended that the BADC approves the appointment of JP Morgan and Regiments Capital. It was further recommended that Regiments be paid a fee of R 189 240 000.00 (Vat incl.) for services rendered to Transnet.

3.1.29 The memorandum motivated for the change in the remuneration model by stating that Regiments had been working with the risk management office of Transnet Treasury for the past 12 months (prior to the memorandum) and had performed advisory services with regard to Transnet's Financial Risk Management Framework ("FRMF").

3.1.30 However, an email[133] from Mr D Smit dated 21 May 2015, where he attaches the tracked version of the 2013 Transnet FRMF, proves Transnet's FRMF had long been in place and Regiments could not have performed, and would not be performing, any advisory services in relation thereto.

3.1.31 There was no legal basis for Mr S Gama and Mr A Singh to recommend that Regiments be paid on a risk sharing basis when the Third Addendum already provided for an increased fixed fee for the services that Regiments would perform in securing the loan facility for Transnet.

3.1.32 In approving this payment, Mr S Gama and Mr A Singh failed to act in good faith and to exercise their powers for a proper purpose, failed to act in the best interests of Transnet, and used their position to knowingly cause harm to Transnet[134] and therefore violated their fiduciary duties owed to Transnet. They also contravened

132 Ibid paragraph 3.1.8
133 Part A Exhibit 16.
134 Ibid paragraph 3.1.6

the provisions of the PFMA dealing with irregular expenditure and or fruitless and wasteful expenditure.

Mr S Gama, Mr A Singh and Mr P Ramosebudi's recommendation of the replacement of JP Morgan with Trillian Asset Management

3.1.33 On 1 October 2015, the BADC approved the replacement of JP Morgan with Trillian on the strength of a memorandum submitted by Mr S Gama. The memorandum outlined the services that Trillian had rendered and recommended that Trillian be paid a hefty fee of R 82 million.

3.1.34 The directors failed to act in good faith and for a proper purpose when recommending the replacement of JP Morgan with Trillian for the following reasons:

3.1.34.1 the memorandum of 17 September 2015 submitted by Mr S Gama was a copy and paste of the previous memorandum of 28 April 2015. All the services attributed to Trillian had been rendered by Regiments in accordance with the memorandum of 28 April 2015;

3.1.34.2 had the directors acted in the best interests of Transnet, they would have recognised that JP Morgan had been partnered with Regiments on this transaction for purposes of empowering Regiments and enabling skills transfer and, as a result, commercial sense demanded that Regiments takeover the transaction should JP Morgan be replaced; and

3.1.34.3 the memorandum dated 17 September 2015 recommending the appointment of Trillian stated that Trillian had provided financial services and negotiation support for 5 months and all these services were provided at risk. This statement was misleading and false as Trillian was not involved in the transaction, but only JP Morgan and Regiments were involved. (our emphasis)

3.1.35 In submitting this recommendation, Mr S Gama and Mr A Singh failed to act in good faith and to exercise their power for a proper purpose, failed to act in the best interests of Transnet[135]. (our emphasis)

The BADC's approval of the recommendation to replace JP Morgan with Trillian Asset Management

3.1.36 On 1 October 2015, the BADC approved the replacement of JP Morgan with Trillian Asset Management on the strength of a memorandum submitted by Mr S Gama and recommended by the directors. The memorandum outlined the services that Trillian had rendered and recommended that Trillian be paid a hefty fee of R 82 million.

3.1.37 The BADC members failed to apply their minds when recommending the replacement of JP Morgan with Trillian for the following reasons:

135 Ibid paragraph 3.1.6

3.1.37.1 the memorandum[136] submitted by Mr S Gama was a copy and paste of the previous memorandum of 28 April 2015;

3.1.37.2 all the services attributed to Trillian had previously been attributed to Regiments in the memorandum of 28 April 2015. This could have been easily picked up had the BADC members considered all the relevant documentation;

3.1.37.3 the examination of the memorandum of 28 April 2015 was a necessary exercise as the BADC would be required to study the services initially required from JP Morgan and the qualities that qualified JP Morgan from carrying out this task and then determine if Trillian had similar capacity; and

3.1.37.4 the BADC's approval of JP Morgan was for hedging the CDB loan facility and not for lead manger therefore Trillian could not have replaced JP Morgan with a mandate it did not have.

3.1. 38 For example, the BADC on 29 April 2015 resolved that JP Morgan be appointed to hedge the financial risks emanating from the CDB loan facility only. The BADC did not approve the recommendation that JP Morgan lead and underwrite the Club loan, therefore Trillian could not have replaced JP Morgan in terms of a mandate that does not exist. The BADC should have properly appraised themselves of JP Morgan's mandate.

3.1. 39 Had the BADC members perused the memorandum in full of 28 April 2015, they would have recognised that JP Morgan had been partnered with Regiments on this transaction for purposes of empowering Regiments and enabling skills transfer and as a result, commercial sense demanded that Regiments takeover the transaction should JP Morgan be replaced.

3.1. 40 The memorandum dated 17 September 2015 recommending the appointment of Trillian stated that Trillian had provided financial services and negotiation support for 5 months and all these services were provided at risk. The BADC members should have noted that this cannot be correct as Trillian was not involved in the transaction but only JP Morgan and Regiments were involved.

3.1. 41 The BADC members failed to properly interrogate the request[137] to replace JP Morgan with Trillian, and as a result, negligently recommended the payment of R 82 million on a risk sharing basis. (our emphasis)

3.1. 42 If the BADC members had interrogated the above memorandum, they would have established that all the services attributed to Trillian had been performed by Regiments, and that Regiments was the suitable entity to perform the task in question, and therefore, rejected the submission to replace JP Morgan with Trillian.

136 Ibid, footnote 133.
137 Ibid, footnote 133.

3.1. 43 In light of the above, the BADC members failed to exercise a reasonable degree of care, skill, and diligence as could be expected from persons in a similar position and with the knowledge and experience of the directors[138] in question. The directors failed to make decision in the best interests of Transnet, and as a result, violated their fiduciary duties.

3.1. 44 The negligent conduct of members of the BADC for failing to take effective and appropriate steps to prevent the irregular and/or fruitless and wasteful expenditure resulted in Transnet incurring a loss and as such those responsible should be held accountable.

3.1. 45 The unlawful payment of R82 million in this instance amounted to irregular expenditure on the part of Transnet due to the fraudulent conduct of these officials.

3.2 Recommendation

3.2. 1 In the preceding paragraphs our conclusions have revealed that the irregular award of the tenders to the various transaction advisors and the conclusion of illegal contracts arose as a result of the negligent, reckless and fraudulent misrepresentation by some of the former Transnet Board members; former executive directors and current employee.

3.2. 2 The current Board of Transnet is enjoined by law to:

3.2.2.1 institute civil claims to recover all overpayments paid to the previous transaction advisors[139];

3.2.2.2 recover all overpayments that emanate from the negligent, reckless and fraudulent conduct of the former Transnet Board members and executive directors[140];

3.2.2.3 lay criminal charges[141] against those suspected of having been implicated in corrupt activities in terms of the Promotion and Combating of Corrupt Activities Act, 12 of 2004;

3.2.2.4 lay criminal charges against the BADC members[142] who were involved in the contravention of the PFMA; and

3.2.2.5 Institute disciplinary proceedings against Mr E Thomas.

3.2. 3 In conclusion, the current Board of Transnet has a moral obligation to all South Africans to ensure that those directors that are suspected to have committed misrepresentation should be declared delinquent directors in terms of section 162 of the Companies Act.

138 Ibid paragraph
139 McKinsey, Regiments and Trillian
140 Section 77(2) of the Companies Act
141 Regiments, Trillian, Messrs A Singh, Mr S Gama, P Ramosebudi, N Pillay, G Pita, B Molefe, E Thomas and E Wood
142 SD Shane; LC Mabaso, ZA Nagdee, SI Gama, G Pita, A Singh, MR Seleke

MNS

Comments:

Comments:

MNS

LEGAL
EXPERTISE
IN **YOUR**
CORNER

MNS

Mncedisi Ndlovu & Sedumedi Attorneys
2nd Floor, 16 Fricker Road
Illovo, Sandton, 2196
South Africa

REPORT 2(A)

PART A

PART A

MNS

PART A: LETTERS AND EMAILS		
EXHIBIT NO.	DATE	DESCRIPTION OF EXHIBITS
1.	Undated	Letter from McKinsey to Transnet regarding McKinsey's refusal to provide its financial statements to Transnet
2.	12/06/2013	Letter from McKinsey regarding the potential conflict of interest of Nedbank Capital
3.	19/11/2013	Letter from Transnet's Mr Anoj Singh to McKinsey confirming the replacement of Nedbank Capital with Regiments
4.	20/01/2014	Email from Mr Indheran Pillay to Mr Anoj Singh enclosing the updated scope agreement from Regiments, for Mr Singh's signature
5.	27/01/2014	Email from Mr Edward Thomas to Mr Niven Pillay, enclosing a signed agreement with amendments made by Mr Anoj Singh
6.	06/02/2014	Letter from Regiments to Transnet regarding appointment of Regiments as financial advisors for the 1064 Locomotives project
7.	27/03/2014	Email from Mr Wood to Mr Singh enclosing Regiment's invoice for the forex and warranty bonds
8.	02/04/2014	Email from Mr Yousuf Laher to Ms Cindy Felix regarding the additional work taken on by McKinsey in respect of the negotiations
9.	15/04/2014	Closeout out letter from Mr Wood and addressed to Mr Singh stating that Regiments had secured significant savings for Transnet
10.	16/04/2014	Letter from McKinsey to Transnet regarding the cession agreement between itself and Regiments
11.	16/04/2014	Email from Mr Tewodros Gebreselasie to Mr Yusuf Laher enclosing Regiments closeout letter.
12.	16/04/2014	Email from Mr Yusuf Laher to Mr Tewodros Gebreselasie advising Regiments to amend its closeout letter
13.	17/04/2014	Email from Mr Ajay Mistry to Mr Yousuf Laher enclosing the amended closeout letter from Regiments.
14.	23/04/2014	Email from Mr Danie Smit to Mr Eric Woods regarding their closeout letter and the work Regiments alleges it has done
15.	21/08/2014	Email from Ms Mathane Makgatho to Mr Anoj Singh and Mr Brian Molefe regarding her disagreement with the use of Regiments as transaction advisors for the negotiations with the CDB.
16.	21/05/2015	Email from Mr Danie Smit to Neo Vantyi confirming that the Transnet Financial Risk Management Framework had been done internally by Transnet
17.	09/06/2015	Email from Mr Phetole Ramosebudi to Mr Eric Wood enclosing the draft termination letter addressed to JP Morgan
18.	16/09/2015	Email from Mr Edward Thomas to Mr Phetole Ramosebudi confirming that the JP Morgan hedged the financial risks emanating from the CDB loan.

REPORT 2(A) – PART A – EXHIBIT 1

McKinsey&Company

McKinsey Incorporated

Policy on provision of Annual Financial Statements

McKinsey Incorporated (Incorporated in the State of Delaware United States of America) South African branch is a privately held entity.

In terms of the internal governance regarding the provision of Annual Financial Statements, McKinsey provides such statements only in terms of statutory or regulatory requirements, or when compelled to do so through any legal requirement.

In order to provide details of the financial *bona fides* of McKinsey Incorporated, an original statement from the auditors of the entity is provided. Please refer to the original 'Report of Factual Findings' as prepared by PriceWaterhouseCoopers, covering the financial period, as required.

In the event that McKinsey Incorporated is successful in its submission, and it remains a requirement to view the Annual Financial Statements, the Annual Financial Statements can be viewed through an on-site inspection.

McKinsey, Incorporated, trading as McKinsey & Company
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Telephone +27 (0) 11 506 8000 Fax +27 (0) 11 506 9000

Incorporated under the General Corporation Law of the State of Delaware USA Shareholder Liability Limited Registered Agent Corporation Service Company Delaware USA
Registered in South Africa No 1995/002398/10 Directors S Bear (Canadian) NJ Dörr (German) Virginia L. Molino (American)

REPORT 2(A) – PART A – EXHIBIT 2

McKinsey&Company

June 12, 2013

CONFIDENTIAL

Mr Anoj Singh
Group Chief Financial Officer
Transnet

Dear Anoj,

Response to your letter: "Potential Conflict of Interest Identified – Nedbank Capital"

This letter refers to the conflict of interest identified for Nedbank Capital regarding the 1064 Locomotive Transaction Adviser services (GSM/12/03/0428).

In terms of the existing Letter of Intent (GSM/12/05/0447), McKinsey & Company was to lead the consortium and run the Programme Management Office (PMO). To date, phase one of the Transaction Advisory services has been completed (business case integration and approved investment decision by Board and DPE). Phase two awaiting Transnet internal stakeholder approval before we commence. During the phase 1 process, Transnet decided to implement strict confidentiality measures and manage governance risks. This decision, ratified on Tuesday April 2nd 2013 at the Locomotive Transaction steering committee meeting chaired by the GCEO, disaggregated the original consortium as described in the Letter of Intent and approved the following changes:

- The PMO and data room would in future be housed and run within the office of the TFR CE, and Regiments Capital would provide additional support if required
- The PMO would assume the formal integration role, and hence manage the interfaces with each consortium partner separately
- Transnet Treasury and the TFR Finance department would deal directly with the financial service providers, Nedbank Capital and Utho Capital

The project plan assigned a key role to the financial service providers during phase two. Since the timing and scope of phase two are still uncertain, however, Nedbank Capital and Utho Capital have had limited interaction with Transnet regarding the 1064 Locomotive Acquisition, except for two discussion meetings held on March 1st and March 12th 2013 as a part of phase 1.

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Registered in South Africa No 1995/002398/10 Directors S Bear (Canadian) NJ Bohr (German) Virginia L Molino (American)

We understand Nedbank Capital has also since expressed interest in providing other services to Transnet regarding the 1064 Locomotive Acquisition, resulting in a potential conflict of interest.

Given this situation, the timing of events and the fact that McKinsey had originally requested Nedbank Capital to join the consortium in the proposal document submitted on June 7th 2012, we will communicate the conflict of interest to Nedbank Capital. While technically this communication should be handled by Transnet, business protocol dictates it should be our responsibility. We will also convey Nedbank Capital's response to Transnet.

To resolve the conflict of interest, McKinsey proposes that Regiments Capital takes responsibility for the scope of work originally designed for Nedbank Capital. We also request that the agreed changes in the structure of the consortium, as described above, are reflected in the Letter of Intent.

Sincerely,

Shrey Viranna Vikas Sagar Michael Kloss

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Anoj Singh, Group Chief Financial Officer

TRANSNET

Mr. Michael Kloss
McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

Dear Mr Kloss

POTENTIAL CONFLICT OF INTEREST IDENTIFIED – NEDBANK CAPITAL

This letter serves to inform you of the potential conflict of interest identified with Nedbank Capital on the 1064 locomotive Transaction Adviser (GSM/12/03/0428).

The conflict is primarily based on Nedbank Capital being appointed as part of the McKinsey led consortium to provide Transnet with Advisory services related to the acquisition of 1064 locomotives tender as well as their interest in providing funding for other related services to Transnet for the same transaction.

If Nedbank Capital chooses to continue to express an interest to provide other services related to Transnet for the 1064 locomotives transaction, thereby resulting in a conflict, I suggest that McKinsey source an alternative service provider as it relates to the original scope envisaged for Nedbank Capital (funding for advisory services).

I would appreciate a response to this letter by 15 June 2013 to enable Transnet to evaluate the credentials and scope of work of the alternate service provider

Kind Regards

Anoj Singh
Group Chief Financial Officer
Date: 22/05/13

REPORT 2(A) – PART A – EXHIBIT 3

Annexure C

TRANSNET

McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

19 November 2013
Reference: LOI/GSM/12/05/0447

Dear Mr. Michael Kloss

RE: LETTER CONFIRMING A CONFLICT OF INTEREST (NEDBANK CAPITAL) AND THE RECOMMENDED ALTERNATIVE (REGIMENTS CAPITAL) IN REGARDS TO ADVISORY SERVICES TO ACQUISITION OF THE 1064 LOCOMOTIVES TENDER OVER A PERIOD OF 9 MONTHS. REFERENCE NO: GSM/12/05/0447

1. Mckinsey Incorporated (McKinsey) and other members of the consortium was awarded the business to provide advisory advice to Transnet for the Acquisition of the 1064 locomotives.

2. McKinsey was awarded the business and Nedbank Capital (Nedbank) was its partner to provide financing, funding options and deal structures for the acquisition of the 1064 locomotives tender.

3. In May 2013 a potential conflict of interest was raised with McKinsey concerning Nedbank to which a response from McKinsey confirmed the conflict and an alternative solution to provide the services to Transnet was proposed in terms of Regiments Capital to provide the services.

4. The 1064 locomotives tender is entering Phase 2 which will now include the funding and deal structuring work envisaged by Transnet for the Acquisition of the 1064 Locomotives.

5. It is thus in the best interest of Transnet and McKinsey to confirm the proposed alternative of Regimens Capital.

6. This letter serves to confirm Transnet's agreement to McKinsey's request for Regiments Capital to provide the required services in place of Nedbank .

Anoj Singh
Group Chief Financial Officer
Date 19/11/13 .

Transnet SOC Ltd
Registration Number
1990/000900/30

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Street
Johannesburg
2001

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Directors: HE Mpofana (Chairman) B Molefe* (Group Chief Executive) NK Choubey# MA Fanaroff Y Forbes HD Garrendam N Mnxiwa AR Rasmeniya IM Sharma
TB Skosana E Tshabalala DLJ Tshepe A Singh* (Chief Financial Officer)
*Executive #Indian

Group Company Secretary: MC Cele

www.transnet.net

REPORT 2(A) – PART A – EXHIBIT 4

Mncedisi Ndlovu

From: Indheran Pillay <IndheranP@regiments.co.za>
Sent: 20 January 2014 17:36
To: anoj.singh@transnet.net
Cc: Eric Wood; Niven Pillay; Tewodros Gebreselasie
Subject: 1064 Transaction Advisory Agreement with Updated Scope
Attachments: 1064 Agreement -Regiments-TRansnet-20Jan2014.pdf

Hi Anoj,
Attached please find the 1064 Transaction Advisory agreement with the updated scope for your signature.

Please let me know if you need anything further.

Thanks.

Regards,

REGIMENTS CAPITAL

Indheran Pillay

91 Central Street, Houghton 2198 Postnet Suite 25, Private Bag X11, Birnam Park 2015
Tel: +27 11 715 0300 Direct: +27 11 715 0372 Fax: +27 11 715 0352
Mobile: +27 83 307 2663 Email: indheranp@regiments.co.za www.regiments.co.za

ANNEXURE B

TRANSNET
delivering freight reliably

REGIMENTS CAPITAL

[redacted]

Transnet (SOC) Limited
Carlton Centre
150 Commissioner Street
Johannesburg
2001

Date: 20 January 2014
Reference: GSM/12/05/0447

Dear Anoj Singh,

RE: Transaction advisory services related to the acquisition of the 1064 locomotives over a period of 12 (twelve) months

Transnet had expressed its intent to procure transaction advisory services from a consortium of firms (namely, McKinsey Incorporated, Regiments Capital, Advanced Rail Technologies, Nedbank Capital and Utho Capital) pursuant to its letter of intent dated 30 November 2012. The various services that were foreseen at the time are grouped under four categories (contracting strategy, business case validation, technical evaluation and execution, and PMO, integration and stakeholder management). Subsequent to the issuance of the original letter of intent, the realisation for a conflict of interest arising from engaging Nedbank Capital has made the reallocation of the tasks that were originally thought to be handled by Nedbank to other members of the consortium.

This document is therefore intended to clarify the updated scope of transaction advisory work that Regiments Capital will perform in relation to the acquisition of the 1064 locomotives.

The Parties to this agreement are:

(1) Transnet SOC Limited (Transnet), a State Owned Company and the procurer of the transaction advisory services (Registration Number 1990/000900/30); together with
(2) Regiments Capital (Regiments).

Transnet wishes to contract with Regiments for the provision of the following transaction advisory services. The services will be offered over a period of 12 (twelve) months.

NOW THEREFORE IT IS AGREED

1. **Conditions Precedent**

In line with the original LOI dated 30 November 2012 and the subsequent changes in reallocation of tasks, Transnet wishes to finalize the details of the services to be provided by Regiments. The undermentioned conditions precedent will apply:

1.1. The Parties agree to work towards concluding the Agreement for the Provision of Transaction Advisory services for a period of 12 (twelve) months, commencing 22 January 2014, in relation to the structuring and efficiency of the funding required for the acquisition of the 1064 locomotives. The work may extend beyond the 12 (twelve)

month period, at no additional cost to Transnet if the deliverables are not achieved for whatever reason, as this engagement is output-based as opposed to time based.

1.2. Regiments agrees to promptly commence with the provision of the services as detailed in section 2 below.

2. Contract Fees and Deliverables

The proposed fee structure for the services to be rendered is understood by both parties to involve a retainer applicable every month and a performance fee on the funding raised at interest rates below the benchmark.

2.1. **Fees and related costs** are quoted in South African currency and are exclusive of Value Added Tax (VAT). Expenses will be capped at 10% of the value of the total retainer.

2.1.1. Deliverables (except the actual fund raising) must be executed for a fee of R15 million over a period of 12 (twelve) months.

2.1.2. A performance fee equal to 20% of the savings achieved against the benchmark interest rate. The benchmark interest rate is the interest rate at which Transnet was able to raise its most recent funding prior to 1 January 2014.

2.2. **Payment** will be effected at equal monthly instalments by Transnet, against presentation by Regiments of undisputed Tax Invoices.

2.3. **Key deliverables and project timeframe.**

The key project deliverables over the 12 (twelve) month period include the activities and deliverables described below that enhance the cost and structuring of the funding for the acquisition of the 1064 locomotives.

The objective of this specific project is to conduct all the necessary studies and preparatory work to enhance Transnet's ability to raise the required funding at a competitive interest rate and to achieve an optimal funding structure with minimal pressure on Transnet's future liquidity.

The deliverables include:

2.3.1. Determining the development and sustainability impact of the acquisition by:

2.3.1.1. Conducting socio-economic impact studies

2.3.1.2. Determining the acquisition's impact on the environment

2.3.1.3. Examining the project's contribution to regional integration

2.3.2. Conducting a collateral assessment

2.3.2.1. Conduct collateral assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promotion funds/agencies and in the form of vendor finance.

2.3.2.2. Present a detailed analysis with specific recommendations to be pursued and executed.

written consent of the other party, and then only to the extent required to facilitate progression of the start-up procedures.

3.2. This agreement may only be amended or modified in writing by the authorised signatories of the Agreement.

Thus duly signed at ....., South Africa on this ..... day of ..... 20..... on behalf of:

TRANSNET SOC LIMITED

NAME: Anoj Singh

DESIGNATION: Group Chief Financial Officer

WITNESSES

1. .....

2. .....

Subject to terms listed below

Thus duly signed at HOUGHTON, South Africa on this 20th day of JAN 20 14 on behalf of:

REGIMENTS CAPITAL

NAME: Niven Pillay

DESIGNATION: Executive Director

WITNESSES

3. .....

4. .....

- The contract for the supply of these services is with Mckinsey and Regiments Capital is contracted to them
- In terms of section 2 there will not be a performance fee for fundraising thus 2.1.2 will be removed as well.
- Expenses will be capped at 10% and paid on approved actual costs in terms of Transnets policies & procedures
- Payment will be made to Mckinsey
- Costs and payment against this scope may not be made above R9 million without specific approval by Transnet

REPORT 2(A) – PART A – EXHIBIT 5

Marenda Maphanga

From: Edward Thomas Transnet Corporate JHB <Edward.Thomas@transnet.net>
Sent: Monday, 27 January 2014 17:54
To: nivenp@regiments.co.za
Cc: Anoj Singh Corporate JHB
Subject: Fwd: Signed Copy Loco Advisory - Transnet
Attachments: image001.gif; ATT00001.htm; image002.gif; ATT00002.htm; image003.gif; ATT00003.htm; image004.gif; ATT00004.htm; Loco Advisory Signed Copy.pdf; ATT00005.htm

Dear Niven,

Please find the Loco advisory LOI.

Please note the comments from Anoj on the last page.

Kind regards

Edward Thomas

Sent from my iPhone

Begin forwarded message:

> **From:** "Duran Balbathur Transnet Corporate JHB" <Duran.Balbathur@transnet.net>
> **To:** "npillay@regiments.co.za" <npillay@regiments.co.za>
> **Cc:** "Cindy Felix Transnet Corporate" <Cindy.Felix@transnet.net>, "Edward Thomas Transnet Corporate JHB" <Edward.Thomas@transnet.net>
> **Subject: Signed Copy Loco Advisory - Transnet**
>
> Good Day Niven,
>
> I trust that you are well.
>
> Please find attached the signed copy. Please take note of the "subject too" items included as written text on the signed copy.
>
> Thanks
>
> Regards,
>
> Duran

REGIMENTS CAPITAL

Anoj Singh
Group Chief Financial Officer
Transnet
150 Commissioner Street
Johannesburg
2001

06 February 2014

APPOINTMENT OF REGIMENTS CAPITAL (PTY) LTD AS FINANCIAL ADVISORS FOR TRANSNET 1064 LOCOMOTIVES PROJECT

Regiments Capital is currently mandated to act as Transaction Advisors for the Transnet 1064 Locomotives Project.

- **Scope of work**

Regiments Capital is expected to timely and diligently carry out tasks that include a financial risk management framework and a funding proposal outlining funders suited for the type of transaction to be undertaken by Transnet as all as identify all inherent risks to Transnet. The mandate makes provision for execution of the recommendations to be remunerated on a success fee basis (subject to agreement from Transnet at the time).

The mandate is extended to include:

a) The analysis of the performance guarantees provided by the bidding suppliers and propose and execute a cost effective solution which solution is proposed to be executed at a cost to Transnet below the current quoted cost of 125bp payable annually in advance.
b) The analysis of the cost of the forex hedging provided by the suppliers and propose and execute a cost effective solution to be executed at a cost to Transnet below the cost of the hedging quoted by the suppliers.

We propose that Regiments success fee be determined as 25% of the value created (savings achieved) relative to the current cost as. The value created will be determined as follows:

- Suppliers will be asked for the pricing of performance guarantees and the forex hedging cost related to the locomotive procurement in ZAR.
- These ZAR cash flows will be provided to Transnet Treasury for validation.
- The difference between the total validated cashflows and the cost at which Regiments can secure the performance guarantees and forex hedges will be deemed the "Value Created".
- Regiments Capital will share in 25% of this value created.

We believe that the proposed approach will significantly reduce the cost of the 1064 locomotive transaction to Transnet.

Physical Address
91 Central Street, Houghton 2198
Postal Address
Postnet Suite 25, Private Bag x11, Birnam Park 2015
Telephone
+27 11 715 0300
Facsimile
+27 11 715 0352
Email
info@regiments.co.za
Regiments Capital (Pty) Ltd
Reg No (2004/023761/07)
Directors: Litha Nyhonyha, Niven Pillay, Eric Wood
www.regiments.co.za
Regiments Capital (Pty) Ltd is an authorised financial services provider: FSP No 16831

- **Obligations of Transnet**

Transnet undertakes to disclose to Regiments all relevant information in relation to executing this mandate, and by their signature hereto indemnify Regiments against all claims which may arise from or be based upon any inaccuracy or omission in any statement made, or information provided, to Regiments by Transnet.

This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa and the parties submit to the jurisdiction of the Courts of South Africa.

- **Confidentiality**

Regiments Capital shall treat as strictly confidential all the information and documents it may obtain from Transnet in relation to the execution of this mandate.

Regiments Capital acknowledges that all the information and documents being made available to it shall be made available solely for the purpose of execution this mandate.

Regiments Capital shall not disclose any information and documentation obtained by it to any person whomsoever other than as may be required by law, and directly or indirectly use for its benefit or the benefit of any other person such confidential information and documentation, unless such information or documentation is or becomes public knowledge and is in the public domain by reason of becoming public property other than through an act or omission of its part.

- **Key individuals**

Regiments Capital warrants that the following key individuals will have overall responsibility for the project and will be fully involved in the execution of the mandate:

- Mr. Eric Wood
- Mr. Niven Pillay
- Mr. Tewodros Gebreselasie

Regiments Capital warrants that it shall perform the obligations under this Agreement with reasonable care and skill.

- **Domicilia**

The parties hereby appoint the following addresses as their respective *domicilia citandi et executandi* for all purposes arising out of or in connection with this agreement:

- Transnet, 150 Commissioner Street, Johannesburg 2001
- Regiments Capital (Proprietary) Limited, 91 Central Street, Houghton 2198

- **Signature**

This agreement is signed by the parties on the dates and at the places indicated opposite their respective names.

This agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

Signature: _____ Date _____

Authorised Signatory of the TRANSNET
Name: _____
Position: _____

Signature: _____ Date 06/02/2014

Authorised signatory of Regiments Capital
Name: ERIC WOOD
Position: EXECUTIVE DIRECTOR

REPORT 2(A) – PART A – EXHIBIT 6

REPORT 2(A) – PART A – EXHIBIT 7

Marenda Maphanga

From: Eric Wood <EricW@regiments.co.za> <EricW@regiments.co.za>
Sent: Thursday, 27 March 2014 08:54
To: Anoj Singh Corporate JHB
Subject: FW: Risk Share invoice
Attachments: RC invoice - Transnet 1064 - Risk Share 27Mar2014.pdf

Hi Anoj
As discussed, I have attached the risk share invoice for the 1064 forex and warranty bonds.
Thank You
Eric Wood

REGIMENTS CAPITAL

Eric Wood
Executive Director
91 Central Street, Houghton 2198 Postnet Suite 25 Private Bag X11 Birnam Park 2015
tel +27 11 715 0300 Direct +27 11 715 0339 Fax +27 11 715 0352
Mobile +27 83 626 0857 E-mail ericw@regiments.co.za www.regiments.co.za
Regiments Capital (Pty) Ltd is an authorised financial services provider (FSP No. 2004/021743/07)

From: Yvonne Mokone
Sent: 27 March 2014 08:52 AM
To: Boitumelo Mapasa
Cc: Eric Wood; Kyansambo Vundla
Subject: Risk Share invoice

Morning Tumi,

Please print this invoice for Mr Wood in colour and send to Transnet.

Regards,

REGIMENTS CAPITAL

Yvonne Mokone
Junior Accountant
www.regiments.co.za

REGIMENTS CAPITAL

Tax Invoice

Invoice: TRX1064RISK01
VAT #: 4620216665
Date: 27 Mar 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Risk Share - 1064 Locomotives **Foreign exchange and warranty bonds**	**R 120,000,000.00**
VAT (14%)	**R 16,800,000.00**
Total	**R 136,800,000.00**

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

Regiments Capital (Reg No. 2004/[illegible])
Directors: EM Nyampyla MA Pillay FA Wood ESP [illegible]

REPORT 2(A) – PART A – EXHIBIT 8

Mncedisi Ndlovu

From: Yousuf Laher Transnet Freight Rail JHB <Yousuf.Laher@transnet.net>
Sent: 02 April 2014 15:40
To: Cindy Felix Transnet Corporate
Cc: Edward Thomas Transnet Corporate JHB; Danie Smit Transnet JHB
Subject: FW: Advisory Locomotives Tender_Regiments scope of work

Dear Cindy, refer feedback below from Danie and Mathane regarding the funding structure work.

I cannot comment on the fee structure as I was not involved with that.

The additional work taken on from Mckinsie for the negotiations included:

1. Escalation risk mitigation
2. Deferral of delivery calculations
3. TCO benchmarking

Best Regards

Yousuf Laher CA (SA)
Transnet Freight Rail

From: Danie Smit Transnet JHB
Sent: 31 March 2014 09:59 AM
To: Mathane Makgatho Corporate JHB
Cc: Yousuf Laher Transnet Freight Rail JHB
Subject: RE: Advisory Locomotives Tender_Regiments scope of work

Hi Yusuf,

Unfortunately we have not seen the letter of appointment and that's why I only included the two items as reflected below but I also recommend that you ask Cindy to rather talk to Mathane on the funding related matters as this must still happen.

Regards

Danie

From: Mathane Makgatho Corporate JHB
Sent: 31 March 2014 09:53 AM
To: Danie Smit Transnet JHB
Cc: Yousuf Laher Transnet Freight Rail JHB
Subject: RE: Advisory Locomotives Tender_Regiments scope of work

Hi Danie, I am not able to provide insights as the matter was handled by Anoj.

Kind regards

TRANSNET

Mathane Makgatho
Group Treasurer
Transnet SOC Ltd

(011)308-2613 083-270-7651
(011)308-2699 Mathane.Makgatho@transnet.net
www.transnet.net

From: Danie Smit Transnet JHB
Sent: 31 March 2014 09:50 AM
To: Mathane Makgatho Corporate JHB
Cc: Yousuf Laher Transnet Freight Rail JHB
Subject: RE: Advisory Locomotives Tender_Regiments scope of work

Hi Mathane,

Not sure if you be able to assist on the funding related matters pse so that we can respond to GSCS.

Regards

Danie

From: Yousuf Laher Transnet Freight Rail JHB
Sent: 31 March 2014 09:04 AM
To: Danie Smit Transnet JHB
Subject: FW: Advisory Locomotives Tender_Regiments scope of work

Hi Danie, refer below, please give me your views before I respond to Cindy.

Regards

Yousuf Laher CA (SA)
Transnet Freight Rail

From: Cindy Felix Transnet Corporate
Sent: 28 March 2014 11:20 AM
To: Yousuf Laher Transnet Freight Rail JHB
Cc: Edward Thomas Transnet Corporate JHB
Subject: Advisory Locomotives Tender_Regiments scope of work

Greetings Yousuf,

Hope you are well!

By way of background I joined Transnet in October last year from TIA (HVT) as the Procurement Manager. Garry has asked me to contact you.

I have been tasked in sorting out the contracts for McKinsey and the Locos Advisory being one of them. My understanding is that Regiments was appointed to perform aspects of the scope of work initially as a partner with McKinsey and more recently as the principal lead.

With this in mind I am required to finalise paperwork to be aligned to actual delivery of the scope of work.

Please find attached the details related to the funding structure work per the RFP and subsequent LoI and kindly indicate whether all is applicable if not indicate which portion of work was assigned to Regiments at the time:

The deliverables include:

1. Determining the development and sustainability impact of the acquisition by
    a. Conducting socio-economic impact studies
    b. Determine the acquisition's impact on the environment
    c. Examining the projects contribution to regional integration
2. Conducting a collateral assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promoting funds/agencies and in the form of vendor finance.
3. Present a detailed analysis with specific recommendation to be pursued and executed.
4. Investigate how asset/component can be secured in order to optimise balance sheet and cost of financing within the context of Transnet policy with respect to asset ownership and control
5. Developing and implementing a best practice risk management to the transaction:
    a. A financial risk assessment framework (including risk identification, risk assessment, risk response, risk monitoring, performance measurement, risk control, risk reporting and compliance) will be developed and implemented. ASSIGNED TO REGIMENTS
    b. Cost escalation risk management REGIMENTS
    c. Legal and regulatory risks.
    d. Balance sheet impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.
6. Developing an optimal risk management solution by examining solution that are embedded in the acquisition agreement, funding agreement and separate risk overlays
7. Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute. The full spectrum of funding opportunities that will be evaluated include:
    a. Local and international Banks
    b. Local and international development finance institutions
    c. Export credit agencies
    d. Vendor financing
8. Provide execution support programme management and support in respect to funding:
    a. Assist in the preparation and management of capital raising related tenders/RFPs and RFIs
    b. Participate in roadshows and assisting with the preparation of information memorandums
    c. Participate in the fulfilment of conditions precedent required by the funders
    d. Participate in due diligence exercise and responding to all credit queries raised by the funders

Furthermore it is my understand that they also performed the contracting strategy work.

Also confirm the final fees agreed with Regiments for their full scope of work. Below is an extract of the last agreed fees however this still included the McKinsey portion which now has to be excluded from the final amount to be billed.

3.1 As a result of the additional scope of work required on the financial phase of this contract, the initial price of R35 200 000.00 (Thirty five million and two hundred thousand rand only) will therefore increase by R6 000 000 (Six Million Rands only) This increase will bring the total Contract value to the fixed amount of R41 200 000.00 (Forty One Million andTwo Hundred Thousand Rands only) .

Kind regards
Cindy

Procurement Manager
Integrated Supply Chain Management
Transnet Corporate Centre,
Room 3932, 39th Floor
Carlton Centre
Tel: +27 11 308 2360/1285
Email: Cindy.Felix@transnet.net

TRANSNET

REPORT 2(A) – PART A – EXHIBIT 9

REGIMENTS CAPITAL™

Mr. Anoj Singh
Group Chief Financial Officer
Transnet SOC Ltd Treasury
Carlton Centre
150 Commissioner Street
Johannesburg
2001

15 April 2014

Dear Anoj

Submitted for your consideration:

TRANSNET: TRANSACTION ADVISORY FOR THE ACQUSITION OF 1064 LOCOMOTIVES

This letter confirms that the above mentioned assignment was successfully completed by Regiments Capital within the specified timeframe. The mandate required Regiments Capital to assist Transnet with, inter alia, the following:

- **Cost escalation**
  - Build a robust cost escalation model to be used as a tool in the negotiation process with the locomotive bidders
  - Validate the cost escalation formulas and drivers for each locomotive bidder as captured in the bid documents
  - Compare the cost escalation value obtained from the Regiments model against the locomotive bidder's cost escalation values and suggest areas for negotiation
- **Cost of foreign exchange hedging**
  - Determine the foreign exchange cashflow profiles obtained from the cost escalation model that takes into account the agreed payment milestone events
  - Obtain the relevant currency swap curves and build the associated foreign exchange forward curve
  - Conduct market sounding to determine the appropriate margin/spread

Physical Address
91 Central Street, Houghton 2198

Postal Address
Postnet Suite 25, Private Bag x11, Birnam Park 2015

Telephone
+27 11 715 0300

Facsimile
+27 11 715 0352

Email
info@regiments.co.za

Regiments Capital (Pty) Ltd

Reg No (2004/023761/07)

Directors : Litha Nyhonyha, Niven Pillay, Eric Wood

www.regiments.co.za

Regiments Capital (Pty) Ltd is an authorised financial services provider. FSP No 16831

- Highlight any major discrepancy between the foreign exchange hedging cost obtained from bidders and the ones determined from the Regiments model

- **Cost of performance guarantees**

  - Determine the optimal size of the performance guarantee to be arranged by each locomotive bidder based on the projected cashflow profile

  - Conduct market sounding to determine the market related cost of these performance guarantees

  - Compare these market related costs against the locomotive bidders proposed costs and highlight opportunities for negotiation

During the course of Transnet's negotiations with bidding suppliers, Regiments has achieved the objectives as set out in the mandate:

- Calculation of value created per mandate

  - **Foreign exchange hedging**

- Determine the foreign exchange cashflow profiles obtained from the cost escalation model that takes into account the agreed payment milestone events Following the intense negotiations, Regiments recalculated the foreign exchange cost after Transnet was provided with the following:

  - ✓ The final and best offer purchase price for the locomotives

  - ✓ The renegotiated payment milestone events

  - ✓ The forward curve plus margin provided by each locomotive bidder

- Regiments' calculated the foreign exchange cost on the basis of the latest cashflows (as provided by Transnet) and the latest foreign exchange forward curves as provided by Regiments Securities on the basis of the swap curve generated from Bloomberg
- Regiments' ran various iterations of the foreign exchange hedging cost calculation and hedging strategies and thereafter proposed detailed structure and pricing. This was a useful

tool during the negotiation process and assisted Transnet to optimize the cost of hedging the foreign exchange risk.

- Regiments' proposed structure assumed the foreign exchange hedging to be contained on the locomotive bidders' balance sheets thereby avoiding balance sheet impairment, cash flow and accounting implications for Transnet
- Regiments' recommendations and the ensuing negotiations with the bidders resulted in significant savings to Transnet

Performance guarantee

- Performance guarantee benchmarking was done by establishing the market related costing of warranty bonds and applying this market related costing to the locomotive bidders' pricing
- Regiments' benchmarking exercise and the ensuing negotiations with the bidders resulted in recommendations that resulted in savings for Transnet

This closeout letter is an acknowledgement by Transnet that the services provided by Regiments Capital meet the expectations of Transnet.

Signature: _____ Date _____

Authorised Signatory of the TRANSNET
Name: _____
Position: _____

Signature: _____ Date 17/04/2014.

Authorised signatory of Regiments Capital
Name: ERIC WOOD
Position: EXECUTIVE DIRECTOR.

REPORT 2(A) – PART A – EXHIBIT 10

McKinsey&Company

Transnet (SOC) Limited
Carlton Centre
150 Commissioner Street
Johannesburg
2001

Date: 16 April 2014
Reference: GSM/12/05/0447

Part A

Dear Anoj Singh,

RE: Transaction advisory services related to the acquisition of the 1064 locomotives ("the mandate")

Pursuant to our discussions and agreement on February 5, 2014 we hereby confirm that the mandate awarded to Mckinsey Incorporated and all rights and obligations created thereby was, on February 5, 2014, ceded and/or delegated to Regiments Capital in accordance with such discussion and agreement. On account of, and pursuant to, the aforementioned cession and delegation, all work related to, and in respect of, the mandate was conducted by Regiments Capital and not by McKinsey Incorporated.

Regards,

Vikas Sagar
Principal

REPORT 2(A) – PART A – EXHIBIT 11

My only comment being that regarding the benefits on the warranty bond work, I'm not sure if we can say that "significant" savings were achieved.

We merely just dropped the warranty bond from certain bidders, where we considered this appropriate. As these were included in the price anyway, it reduced the price of the loco. I would rather just say "savings" and drop the word "significant" as the numbers were not large in the context of the values we were dealing with.

Best Regards

Yousuf Laher CA (SA)

Transnet Freight Rail

From: Tewodros Gebreselasie [mailto:TewodrosG@regiments.co.za <mailto:TewodrosG@regiments.co.za>]
Sent: 16 April 2014 08:56 AM
To: Yousuf Laher Transnet Freight Rail JHB
Cc: Neo Mohohlo; Ajay Mistry; Eric Wood
Subject: Project 1064_closeout letter (Draft)

Dear Yousuf,

Here is attached the draft close out letter for your inputs. Please review and provide us with your comments before I send you the final copy for your signature.

Kind regards

Tewodros Gebreselasie

REGIMENTS CAPITAL™

Mr. Anoj Singh
Group Chief Financial Officer
Transnet SOC Ltd Treasury
Carlton Centre
150 Commissioner Street
Johannesburg
2001

15 April 2014

Dear Anoj

Submitted for your consideration:

TRANSNET: TRANSACTION ADVISORY FOR THE ACQUSITION OF 1064 LOCOMOTIVES

This letter confirms that the above mentioned assignment was successfully completed by Regiments Capital within the specified timeframe. The mandate required Regiments Capital to assist Transnet with, inter alia, the following:

- **Cost escalation**
  - Build a robust cost escalation model to be used as a tool in the negotiation process with the locomotive bidders
  - Validate the cost escalation formulas and drivers for each locomotive bidder as captured in the bid documents
  - Compare the cost escalation value obtained from the Regiments model against the locomotive bidder's cost escalation values and suggest areas for negotiation
- **Cost of foreign exchange hedging**
  - Determine the foreign exchange cashflow profiles obtained from the cost escalation model that takes into account the agreed payment milestone events
  - Obtain the relevant currency swap curves and build the associated foreign exchange forward curve
  - Conduct market sounding to determine the appropriate margin/spread

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Regiments Capital (Pty) Ltd

Reg No (2004/023761/07)

Directors : Litha Nyhonyha Niven Pillay, Eric Wood

www.regiments.co.za

Regiments Capital (Pty) Ltd is an authorised financial services provider FSP No 15831

- Highlight any major discrepancy between the foreign exchange hedging cost obtained from bidders and the ones determined from the Regiments model

- **Cost of performance guarantees**

  - Determine the optimal size of the performance guarantee to be arranged by each locomotive bidder based on the projected cashflow profile

  - Conduct market sounding to determine the market related cost of these performance guarantees

  - Compare these market related costs against the locomotive bidders proposed costs and highlight opportunities for negotiation

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- Calculation of value created per mandate

  - **Foreign exchange hedging**

- Determine the foreign exchange cashflow profiles obtained from the cost escalation model that takes into account the agreed payment milestone events Following the intense negotiations, Regiments recalculated the foreign exchange cost after Transnet was provided with the following:

  - ✓ The final and best offer purchase price for the locomotives

  - ✓ The renegotiated payment milestone events

  - ✓ The forward curve plus margin provided by each locomotive bidder

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- Regiments' ran various iterations of the foreign exchange hedging cost calculation and hedging strategies and thereafter proposed detailed structure and pricing. This was a useful

tool during the negotiation process and assisted Transnet to optimize the cost of hedging the foreign exchange risk.

- Regiments' proposed structure assumed the foreign exchange hedging to be contained on the locomotive bidders' balance sheets thereby avoiding balance sheet impairment, cash flow and accounting implications for Transnet
- Regiments' recommendations and the ensuing negotiations with the bidders resulted in significant savings to Transnet

✦ Performance guarantee

- Performance guarantee benchmarking was done by establishing the market related costing of warranty bonds and applying this market related costing to the locomotive bidders' pricing
- Regiments' benchmarking exercise and the ensuing negotiations with the bidders resulted in recommendations that resulted in savings for Transnet

This closeout letter is an acknowledgement by Transnet that the services provided by Regiments Capital meet the expectations of Transnet.

Signature: _____ Date _____

Authorised Signatory of the TRANSNET
Name: _____
Position: _____

Signature: _____ Date 17/04/2014.

Authorised signatory of Regiments Capital
Name: ERIC WOOD
Position: EXECUTIVE DIRECTOR.

REPORT 2(A) – PART A – EXHIBIT 12

From: Yousuf Laher Transnet Freight Rail JHB
Sent: 17 April 2014 05:38 PM
To: Danie Smit Transnet JHB
Subject: Fwd: Project 1064_closeout letter (Draft)

Hi Danie, please see if you can attend to this. I am on leave until the 5 th of may.

Begin forwarded message:

From: "Ajay Mistry" <AjayM@regiments.co.za>
To: "Yousuf Laher Transnet Freight Rail JHB" <Yousuf.Laher@transnet.net>, "Tewodros Gebreselasie" <TewodrosG@regiments.co.za>
Cc: "Neo Mohohlo" <NeoM@regiments.co.za>, "Eric Wood" <EricW@regiments.co.za>
Subject: RE: Project 1064_closeout letter (Draft)

Dear Yousuf

I trust you are well.

Please find attached for Transnet's' signature the amended close out letter that includes your change mentioned below. Apologies for the delayed response as Ted was off sick for yesterday and we have been having some technical issues with our mail server.

With regards to the slide pack, we are busy compiling the slide pack as we need to consolidate the various iterations that was provided.

I hope the above is in order and wishing you a happy long weekend.

Kind regards

[RC EMS Ajay M]

From: Yousuf Laher Transnet Freight Rail JHB [mailto:Yousuf.Laher@transnet.net]
Sent: 16 April 2014 09:26 AM
To: Tewodros Gebreselasie
Cc: Neo Mohohlo; Ajay Mistry; Eric Wood
Subject: RE: Project 1064_closeout letter (Draft)

Dear Teddy, the letter looks fine.

My only comment being that regarding the benefits on the warranty bond work, I'm not sure if we can say that "significant" savings were achieved.

We merely just dropped the warranty bond from certain bidders, where we considered this appropriate. As these were included in the price anyway, it reduced the price of the loco. I would rather just say "savings" and drop the word "significant" as the numbers were not large in the context of the values we were dealing with.

Best Regards

Yousuf Laher CA (SA)
Transnet Freight Rail

From: Tewodros Gebreselasie [mailto:TewodrosG@regiments.co.za]
Sent: 16 April 2014 08:56 AM
To: Yousuf Laher Transnet Freight Rail JHB
Cc: Neo Mohohlo; Ajay Mistry; Eric Wood
Subject: Project 1064_closeout letter (Draft)

Dear Yousuf,

Here is attached the draft close out letter for your inputs. Please review and provide us with your comments before we send you the final copy for your signature.

Kind regards

Tewodros Gebreselasie

REPORT 2(A) – PART A – EXHIBIT 13

Mncedisi Ndlovu

From: Ajay Mistry <AjayM@regiments.co.za>
Sent: 17 April 2014 13:49
To: Yousuf Laher Transnet Freight Rail JHB; Tewodros Gebreselasie
Cc: Neo Mohohlo; Eric Wood
Subject: RE: Project 1064_closeout letter (Draft)
Attachments: image001.jpg; Project 1064_closeout letter (Final)_Signed Regiments.pdf

Importance: High

Dear Yousuf

I trust you are well.

Please find attached for Transnet's' signature the amended close out letter that includes your change mentioned below. Apologies for the delayed response as Ted was off sick for yesterday and we have been having some technical issues with our mail server.

With regards to the slide pack, we are busy compiling the slide pack as we need to consolidate the various iterations that was provided.

I hope the above is in order and wishing you a happy long weekend.

Kind regards

RC EMS Ajay M

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Sent: 16 April 2014 09:26 AM
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Cc: Neo Mohohlo; Ajay Mistry; Eric Wood
Subject: RE: Project 1064_closeout letter (Draft)

Dear Teddy, the letter looks fine.

REGIMENTS CAPITAL™

Mr. Anoj Singh
Group Chief Financial Officer
Transnet SOC Ltd Treasury
Carlton Centre
150 Commissioner Street
Johannesburg
2001

15 April 2014

Dear Anoj

Submitted for your consideration:

TRANSNET: TRANSACTION ADVISORY FOR THE ACQUSITION OF 1064 LOCOMOTIVES

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  - Build a robust cost escalation model to be used as a tool in the negotiation process with the locomotive bidders
  - Validate the cost escalation formulas and drivers for each locomotive bidder as captured in the bid documents
  - Compare the cost escalation value obtained from the Regiments model against the locomotive bidder's cost escalation values and suggest areas for negotiation
- **Cost of foreign exchange hedging**
  - Determine the foreign exchange cashflow profiles obtained from the cost escalation model that takes into account the agreed payment milestone events
  - Obtain the relevant currency swap curves and build the associated foreign exchange forward curve
  - Conduct market sounding to determine the appropriate margin/spread

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Regiments Capital (Pty) Ltd

Reg No (2004/023761/07)

Directors : Litha Nyhonyha, Niven Pillay, Eric Wood

www.regiments.co.za

Regiments Capital (Pty) Ltd is an authorised financial services provider: FSP No 16831

- Highlight any major discrepancy between the foreign exchange hedging cost obtained from bidders and the ones determined from the Regiments model

- **Cost of performance guarantees**

  - Determine the optimal size of the performance guarantee to be arranged by each locomotive bidder based on the projected cashflow profile

  - Conduct market sounding to determine the market related cost of these performance guarantees

  - Compare these market related costs against the locomotive bidders proposed costs and highlight opportunities for negotiation

During the course of Transnet's negotiations with bidding suppliers, Regiments has achieved the objectives as set out in the mandate:

- Calculation of value created per mandate

  - **Foreign exchange hedging**

- Determine the foreign exchange cashflow profiles obtained from the cost escalation model that takes into account the agreed payment milestone events Following the intense negotiations, Regiments recalculated the foreign exchange cost after Transnet was provided with the following:

  - ✓ The final and best offer purchase price for the locomotives

  - ✓ The renegotiated payment milestone events

  - ✓ The forward curve plus margin provided by each locomotive bidder

- Regiments' calculated the foreign exchange cost on the basis of the latest cashflows (as provided by Transnet) and the latest foreign exchange forward curves as provided by Regiments Securities on the basis of the swap curve generated from Bloomberg
- Regiments' ran various iterations of the foreign exchange hedging cost calculation and hedging strategies and thereafter proposed detailed structure and pricing. This was a useful

tool during the negotiation process and assisted Transnet to optimize the cost of hedging the foreign exchange risk.

- Regiments' proposed structure assumed the foreign exchange hedging to be contained on the locomotive bidders' balance sheets thereby avoiding balance sheet impairment, cash flow and accounting implications for Transnet
- Regiments' recommendations and the ensuing negotiations with the bidders resulted in significant savings to Transnet

Performance guarantee

- Performance guarantee benchmarking was done by establishing the market related costing of warranty bonds and applying this market related costing to the locomotive bidders' pricing
- Regiments' benchmarking exercise and the ensuing negotiations with the bidders resulted in recommendations that resulted in savings for Transnet

This closeout letter is an acknowledgement by Transnet that the services provided by Regiments Capital meet the expectations of Transnet.

Signature: _____ Date _____

Authorised Signatory of the TRANSNET
Name: _____
Position: _____

Signature: _____ Date 17/04/2014.

Authorised signatory of Regiments Capital
Name: ERIC WOOD
Position: EXECUTIVE DIRECTOR.

REPORT 2(A) – PART A – EXHIBIT 14

Mncedisi Ndlovu

From:	Danie Smit Transnet JHB
Sent:	23 April 2014 11:41
To:	ericw@regiments.co.za; nivenp@regiments.co.za
Cc:	Yousuf Laher Transnet Freight Rail JHB
Subject:	FW: Project 1064_closeout letter (Draft)
Attachments:	image001.jpg; ATT00001.htm; Project 1064_closeout letter (Final)_Signed Regiments.pdf; ATT00002.htm

Morning guys,

Trust you are doing fine.

Yousuf is on leave and has asked me to assist.

I trust that you will find this e mail well.

Eric it is extremely difficult for us to consider signing off on the attached as we have not seen the engagement letter. I am not sure if Anoj has requested this and if yes, pse let me know so that I can discuss more detail with him.

From my personal point of view you guys have done a lot in developing the cost escalation models that assisted us in discussing the principles with the suppliers and to understand the cost drivers in the different markets.
It also assisted the team in making a decision to decide on the economical amount of locos that need to be assembled by TE driven from a cost perspective. Niven also came forward with a very practical approach to determine the indicative cost of fixing escalation.

The approach on the delay penalties calculations was also done quite well as the team needed to develop an approach from a clean sheet.

On the cost of hedging, I fully agree that different alterations have been done by you guys to calculate the possible cost of hedging should we consider the various option structures at different participation levels.

You will recall that a decision was made not to pursue this route and to rather go with an FEC structure as options remain expensive and does create
some risk for the suppliers.

The idea of transferring the FX risk to balance sheet of suppliers was a Transnet idea and was included in the conditions of the RFP and we have done many of these in the past.

The cost of calculating forwards on FEC"s is a simple technique (can get directly from Bloomberg and or Reuters) and similar information was obtained from our dealers as well. In some instances your forwards were slightly higher and in some instances slightly lower.

Both Ajay and Teddy were always available almost day and night when we needed them for assistance and Eric did not mind stepping out of a Board meeting taking my calls.

I am not 100% sure why you guys are saying on the FX it resulted in significant savings for Transnet, but pse help me if I am wrong on this one.

On the performance guarantees we did not achieve any savings as only one small amount was involved. I fully agree that you guys did do a benchmarking exercise and the majority of the bond costs were market related.

The main reason for me trying to summarise my observations is to try and ensure that ultimately all costs can be audited by our auditors once payments have been made and we get challenged.

If you want to further discuss pse do not hesitate to call me.

Kind regards

Danie

REPORT 2(A) – PART A – EXHIBIT 15

Kanabo Skhosana

From: Danie Smit Transnet JHB <Danie.Smit@transnet.net>
Sent: Wednesday, 21 May 2014 11:23 AM
To: Neo Vantyi Transnet Corporate JHB
Subject: COPY OF FRMF FOR BOARD AS REQUESTED
Attachments: FRM_DRAFT_01APRIL2014_FINAL.docx

Hi Neo,

It must be submitted in tracker so that the Board can see all changes.

REgards

TRANSNET

Danie Smit
Deputy Treasurer : Middle Office
Group Treasury
Transnet SOC Ltd

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(011)308-2700 Danie.Smit@transnet.net
www.transnet.net

TRANSNET

TRANSNET FINANCIAL RISK MANAGEMENT FRAMEWORK (FRMF)

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~~DECEMBER~~MARCH 201~~3~~4 FINAL

(DRAFT)

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FINANCIAL RISK MANAGEMENT FRAMEWORK

1. BACKGROUND AND DEFINITIONS

Treasury in Transnet is a centralised division tasked with three main objectives, namely:

- Ensuring that the Group is cost effectively and timeously funded in support of the Group's Market Demand Strategy(MDS), which are mainly executed by the operating Divisions;
- Manage both financial and operational risks; *and*
- Lower the overall cost of doing business and add value to the overall business of Transnet.

All of these objectives are performed in a professional and ethical manner in line with Transnet's governance framework.

It is important that the FRMF is read in conjunction with the approved Delegations of Authority Framework (DOA) as a number of Treasury execution limits are contained in the DOA and are not repeated in the FRMF. The FRMF is supported by procedures within the different areas of Treasury that explain the detail of calculations and processes and this should be updated when processes change.

The following words and expressions bear the following meanings, unless the context indicates otherwise:

"**ACTSA**" means the Association of Corporate Treasurers of South Africa;
"**Board**" means the Board of Directors of Transnet;
"**Operating Division**" means all the operating divisions of Transnet;
"**CAPIC**" means the Capital Investment Committee, a committee of the Group Executive Committee established to make decisions regarding capital expenditure;
"**Code**" means Code of Ethics;
"**DOA**" means the Transnet Delegation of Authority Framework;
"**EBITDA**" means Earnings before Interest, Taxes, Depreciation and Amortization;
"ERM" means Enterprise Risk Management;
"Group **EXCO**" means the Executive Committee established to take responsibility for the day to day execution of strategy and running of Transnet;
"**FINCO**" means the Transnet Finance Committee;
"**FRMF**" means the Transnet Financial Risk Management Framework;
"**GCE**" means the Transnet Group Chief Executive;
"**GCFO**" means the Transnet Group Chief Financial Officer;
"**Group**" means Transnet SOC Ltd together with its divisions and any remaining subsidiaries;
"**Group Risk Co**" means the Group Risk Committee focusing on risk management;
"ISDA" means the "International Swaps and Derivatives Association, Inc"
"KING III" means King Report on Corporate Governance"
"**Long Term Investment Grade**" means a minimum long term issuer default credit rating (international counterparties), or National Long Term credit rating (local counterparties) of A3 (Moodys), A- (Standard and Poors), A- (Fitch Ratings) or equivalent rating from other rating agencies acceptable to Transnet;
"**JSE**" means the Johannesburg Securities Exchange;
"**NGP**" means the National Growth Path;
"**PCGPS**" means the Protocol on Corporate Governance in the Public sector;
"Quantum" means the Treasury Management System;

"**Quantum Q Risk**" means the risk management module of the Treasury Management System;
"**SARB**" means the South African Reserve Bank;
"**Shareholder**" means the Department of Public Enterprises;
"**Short Term Investment Grade**" means a minimum short term issuer default credit rating (international counterparties), or National Short Term credit rating (local counterparties) of P-1 (Moodys), A-1(Standard and Poors),F-1 (Fitch Ratings) or equivalent rating from other rating agencies acceptable to Transnet;
"**SOC**" means a State Owned Company;
"**Transnet**" means Transnet SOC Ltd inclusive of its operating divisions, with registration number 1990/000900/30;
"**Treasury**" means the Transnet Group Treasury;
"**Treasurer**" means the Transnet Group Treasurer;
"**VaR**" means Value-at-Risk; *and*
"**WACD**" means the weighted average cost of debt.

2. RISK MANAGEMENT PHILOSOPHY

The overall risk management philosophy of Transnet is to the extent possible, avoid undue risks and manage business risks effectively. However, given the nature of Transnet's business and its ~~major capital investment programme~~Market Demand Strategy (MDS), it is not always possible to avoid risks all together.

In pursuit of its business, the Group is exposed to a myriad of risks, including but not limited to market, credit, liquidity, and operational risks. The long term viability, continued success and reputation of Transnet are dependent on the credibility of risk management, and commitment to applying leading practice in risk management.

3. SHAREHOLDER MANDATE

Transnet's mandate is to assist in lowering the cost of doing business in South Africa, enabling economic growth and security of supply through providing appropriate port, rail and pipeline infrastructure, as well as operating in an efficient and cost-effective manner, within acceptable benchmark standards. Transnet's mandate and strategic objectives are aligned with the Government's New Growth Path (NGP), National Development Plan (NDP) ~~and~~ Statement of Strategic Intent issued by the Minister of Public Enterprises.

4. STRATEGY

Transnet will continue to refine and roll out the Market Demand Strategy (MDS) with the focus on un-constraining the freight logistics system in South Africa by creating capacity that would meet demand over the medium to long term and beyond. The financial strategy was developed to ensure that the objectives of the MDS will be achieved within the Board approved financial parameters without compromising the long-term financial sustainability of the Company.

~~The strategic objectives of Transnet as agreed with the Shareholder fall into six main areas, namely:~~

- ~~Volume and revenue;~~
- ~~Capital and financial efficiency;~~
- ~~Operational efficiency and effectiveness;~~
- ~~Infrastructure investments;~~
- ~~Developmental objectives; and~~
- ~~Safety, health and environment.~~

The financial strategy takes cognisance of the fundamental freight transport infrastructure principles of which the main focus areas are depicted below:

- Long term infrastructure;
  - Average life expectancy of port, rail and pipelines
  - Seven to 30 years planning horizon
  - Creating capacity ahead of demand
  - Investing through economic cycles

- Meeting National Demand
  - Meeting existing customer demand
  - Increase market share – existing business
  - Capturing new business
  - Service delivery and customer satisfaction

- Financial Sustainability
  - Financial stability gearing and cash interest cover within norms
  - Sustainable Business: ROE> WACC over the long term
  - Stable cash flow from operations.

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~~Transnet is self-funding and does not receive subsidies and has not utilised government guarantees for its debt since 2004. As such, the Company must earn an appropriate return on invested capital to maintain a strong balance sheet to enable it to access the debt capital markets for funding at cost effective levels. This in turn will provide the capacity for Transnet to maintain and expand its port, rail and pipeline infrastructure. However, to meet ever increasing customer demand and to support economic growth in the country, Transnet will need to engage with the private sector for alternative funding sources to create the additional capacity required.~~

5. TRANSNET CORPORATE GOVERNANCE STRUCTURE

Board of Directors

~~The purpose of the Committee is to enhance the leadership of Transnet, creating greater alignment of and focus on major strategic programmes. The Company's Articles of Association provide that there shall be no less than ten and no more than fourteen Directors, of whom no less than eight shall be Non-Executive Directors and two Executive Directors. Non-Executive Directors are appointed to the Board by the Shareholder Representative, generally on a three year term which is confirmed annually at the Annual General Meeting (AGM). The Board's primary mandate is to ensure the sustainable and successful continuation of business activities by providing strategic direction to Transnet.~~

The Board's purpose is to ensure that the Company is a sustainable organisation capable of fulfilling its objectives, statutory and otherwise. In order to fulfil this purpose, the Board must direct and control the business of the Company.

The Directors owe a fiduciary duty to the Company both under common law and statute, more particularly the PFMA and the Companies Act and are accountable to the Shareholder.

The Directors are also responsible, within the structures of corporate law and legislation, to the other stakeholders of the Company. Directors are required to exercise due care, skill and utmost good faith in the performance of their duties.

The Companies Memorandum of Incorporation provides that the Board shall consist of a minimum of 10 directors and a maximum of 14 directors comprising of not less than 8 independent non-executive directors and not less than 2 executive directors whom shall include the Group Chief Executive and the Group Chief Financial Officer of the Company.

The Board has established the following committees:

- Board Audit Committee;
- Board Risk Committee;
- Remuneration, Social and Ethics Committee;
- Corporate Governance and Nominations Committee; and
- Board Acquisitions and Disposals Committee.

~~Group EXCO deals with the execution of strategy and is chaired by the Group Chief Executive.~~ The Group Chief Executive has the authority to manage the Company within the powers delegated to the Group Chief Executive by the Board of Directors. The Group Executive Committee is constituted to assist the Group Chief Executive in the management of the Company. The Group Executive Committee assists the Group Chief Executive to guide and control the overall direction of the business of the Company and acts, through the Group Chief Executive, as the medium of communication with the Board of Directors.

~~The members of Group EXCO consist of the Group Chief Executive, Group Chief Financial Officer, Group Executive: Transnet Property, Group Executive: Group Legal Services, Group Executive: Commercial, Group Executive: Transnet Capital Projects, Chief Risk Officer, Group Executive: Planning and Monitoring, Group Executive: Human Resources, Chief Audit Executive (Ernst & Young) and the Chief Executives of the five major operating divisions of Transnet.~~

Group EXCO has established subcommittees for the following key functional areas: Finance Committee, Human Resources Committee, Capital Investment Committee, Risk Management Committee, ~~45 Days Operational Review Committee,~~ NMPP Governance Steering Committee, Group BBBEE Committee ~~Forum~~, ~~Public~~ Policy and Regulation Committee, ~~and~~ Business Information Management Committee, Group Results Management Office Review Session and Property Forum.

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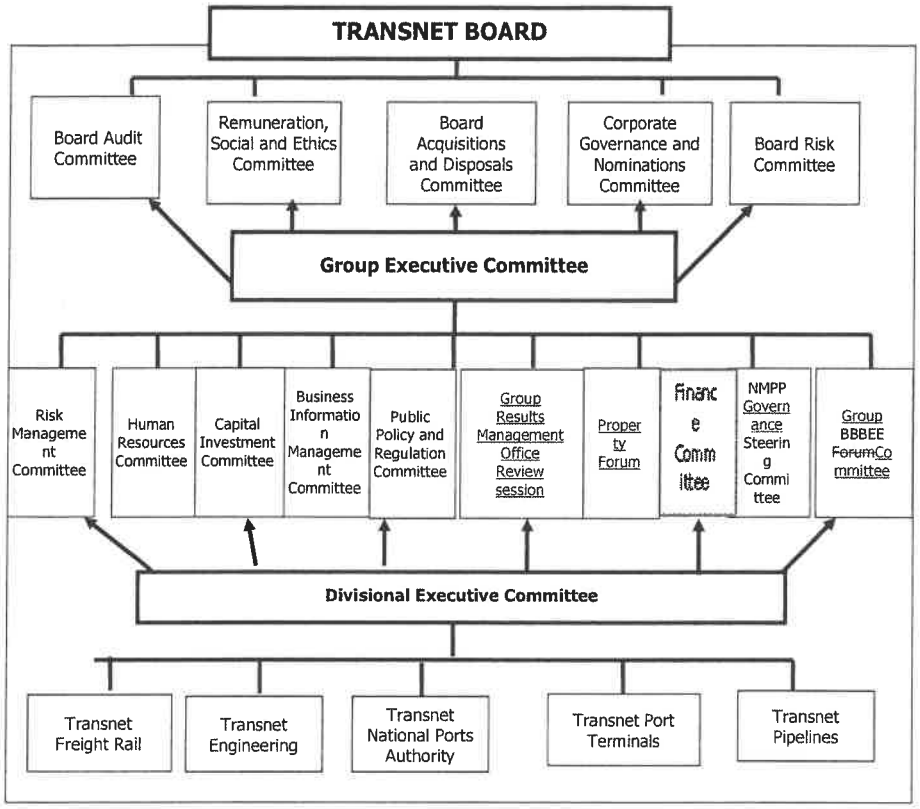
~~The extended EXCO consists of the Transnet Group EXCO, the EXCO's of the five core operating divisions and the Group General Managers~~

Guideline Statements on Treasury Best Practice issued by National Treasury states that

"The Board of the company should conduct a periodic (at least every 3 years) review of the effectiveness of the Treasury Risk Management System". It is the responsibility of Group Treasury to initiate the 3 yearly review and inform the Board accordingly of the outcome.

Risk Management is, as set out in the King III code and the PFMA, ultimately the responsibility of the Board and the governance structure is reflected below: The Board has delegated the responsibility for providing assurance on the integrity, quality and reliability of the Group's risk management to the Group Risk Committee and Group Finance Committee.

5.1. The Transnet Governance Structure is as follows:



5.2. Code of Ethics

The Company continues to instil a culture of entrenched values, which form the basis of the expected behaviour of its employees towards all its stakeholders. These values are reflected in the approved and published Code of Ethics (Code). All management employment contracts make reference to this code. The Code is reviewed annually and, commits the Company's Directors and employees to the highest standards of ethical behaviour when engaging with both internal and external stakeholders. The Code applies to all Transnet employees. In instances where an employee breaches the Code, the necessary disciplinary action is instituted in terms of the Company's Disciplinary Code and Procedure. The existence and adherence to the Code at Company level does not necessitate a requirement to include any additional code of ethic behavioural requirements in the FRMF.

The following ~~7~~seven elements form the core of a Culture Charter which was adopted by employees to steer towards a winning culture.

- We have a safety mindset;
- We are business focussed;
- We deliver on our promises;
- We treat each other with dignity and respect;

- We have good communication;
- We recognise and reward good work; and
- We are empowered to perform in our jobs.

5.3. Summarised Roles and Responsibilities of Risk Committees

5.3.1. Risk Management Committee (Riskmanco)

Terms of reference:

RiskManco is responsible for overall risk management policy setting, monitoring and control, as well as review of compliance.

The specific responsibilities of the Riskmanco:

- Develop, and ensure compliance with risk philosophies, strategies and policies, frameworks and procedures and delegation of risk management responsibility and authority and regulatory requirements;
- Review the adequacy and overall effectiveness of the Group's risk management and its implementation by management; and hence ensure risk is appropriately considered in decision making throughout the Group;
- Review a summary of the Group Risk Committee Minutes and other issues of corporate governance (e.g. compliance with requirements regarding the appointment of directors);
- Determine the structures and systems to be used by the Group to prudently manage risks;
- The specific risks to be reviewed at RiskManco include:
    - Country risks;
    - Technological risks ;
    - Disaster recovery risks;
    - Reputational risks;
    - Legal Risks;
    - Sensitivity risks, e.g., environmental impacts;
    - Human resources risks;
    - Compliance risks;
    - IT risks; and
    - Insurance risks

- The following risks, predominately reviewed by the Finance Committee, may be referred to RiskManco should they become material for the Group:
    - Interest rate risks;
    - Counterparty risk, including provisioning risks;
    - Exchange rate/currency risks;
    - Price risks;
    - Investment risks;
    - Commodity (fuel) risks; and
    - Liquidity risks

5.3.2. Capex Investment Committee (CAPIC)

Terms of reference:

~~CAPIC shall approve individual business cases after matching requirements from operations with funding constraints; prioritise capital investments to optimise return for available capital; and assess risks associated with projects individually and collectively as a portfolio. In addition, CAPIC shall review the progress of individual capital projects according to approved warrant and timelines.~~

~~The specific responsibilities of CAPIC shall be to:~~

- ~~Ensure capital expenditure is in accordance with the budget and business plans approved by the Board;~~
- ~~Determine the criteria for prioritising capital expenditure projects;~~
- ~~Monitor the implementation of project plans to ensure that approved capital expenditure projects are carried out with minimum delays;~~
- ~~Review and amend project expenditure plans where necessary, subject to Group Limits of Authority and the limitations of the Board approved budget;~~
- ~~Ensures capital investment projects comply with applicable risk management processes;~~
- ~~Ensures capital projects are fit for purpose and the associated costs are optimised; and~~
- ~~Conduct post implementation reviews.~~

CAPIC shall act as the final point of accountability for:

- Investment decisions within the CAPIC mandate, subject to the Group Delegation of Authority Framework.
- Go/no-go decisions for projects, in excess of the CAPIC Delegation of Authority to proceed to Group Exco, Board Acquisitions and Disposals Committee, Board of Directors and the Department of Public Enterprises.
- Approve individual business cases after matching requirements from operations with:
  - Funding constraints; and
  - Prioritising capital investments to optimise return for available capital.
  - Review and amend project expenditure plans where necessary subject to
  - Group limits of Authority and the limitations of the Board approved budget.
  - Approve the portfolio of planned capital investments annually, including timing of projects;

Approve changes to the capital portfolio, including acceleration, delay or cancellation of projects/programmes;

Determine the criteria for prioritizing capital expenditure projects/programmes for optimisation;

Ensure decisions relating to capital expenditure are consistent with the strategic focus of the Group;

Provide guidance and make decisions to alter project scope as required to ensure business cases remain robust in the face of changing internal and external factors over time;

Be responsible for the capital management of the current capital portfolio in order to achieve the short and long term objectives of the company.

Monitor the implementation of project/programmes plans to ensure that approved capital expenditure projects are:

- Carried out with minimum delays;
- Governed appropriately;
- Fit for purpose and value optimised;
- Carried out with minimum delays;

- Expected to deliver agreed business outcomes and socio-economic benefits. - -

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- Ensure that capital programmes are executed in a cost and resource efficient Way;

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5.3.3. Finance Committee (FINCO)

Terms of reference:

- Review overall governance procedures in relation to financial disciplines;
- Identify measures, monitor all financial risks, including but not limited to interest rate, exchange rate, price, liquidity, taxation risks;
- Identify measures, monitor all shared service, procurement and supply chain associated risks;
- Ensure appropriate financial management frameworks, policies and procedures are adopted in the Group;
- Review the accuracy, validity and completeness of financial results; and
- Assess the performance of the financial and business services structures and any supporting service providers reporting into these structures;

Specific responsibilities

FINCO shall ensure that -

- Limits are set for acceptable levels of risk and that no risk exposures are entered into outside these limits without full disclosure to, and the express authority of FINCO;
- The likely effect of risk exposures on the Group's earnings are assessed and appropriate action is taken;
- Financial results and Key Performance Indicators are monitored and reviewed;
- There is an identification of the accuracy of projected cash flow;
- There is proper focus on cash flow risks and the funding structure in order to properly structure liabilities;
- The profile of funding and related liquidity risk is assessed;
- Liquidity and interest rate mismatches are reviewed;
- Boundary conditions are set for the Group's investment strategy, including hurdle rate for investments and funding constraints;
- The reputation of the Group is upheld at all times in the financial markets;
- Asset and liability management frameworks, policies and procedures are periodically audited and reviewed to confirm that they remain appropriate;
- There is a balance sheet strategy that takes account of, amongst others, the assets and liabilities strategy and market share analysis;
- Off-balance sheet activities and contingent liabilities are reviewed;
- Through a process of limits setting, strategic positioning and the continuous monitoring of exposures, determine/control the amount of earnings at risk and how the risk appetite of the Group is split among the Operating Divisions of the Group.
- Appropriate financial and operational controls are designed and implemented throughout the Group;
- Review progress reports produced by Internal Audit and by management internal control function and in doing so ensure Transnet and its operating divisions comply with the expected timelines for addressing all control issues;
- Develop the one year operational and three year strategic internal control plan which cover all areas of focus including internal audit, forensic (prevention, detection and investigation) as well as enhancement activities;
- Provide the Internal Control department and Transnet Internal Audit with guidance to ensure that the focus of Internal Control is aligned to the Group strategy;
- Comment on and recommend documents that will govern the Internal Audit activities for approval by the Audit Committee; Review the effectiveness of Critical Financial Reporting Controls (CFRC's) and the Business Critical Controls (BCC's) and recommend actions where these are not operating effectively;
- Provide guidance and direction to line management via Operating Division ICSC's as to how to resolve identified control issues;

- Escalate, as appropriate, control issues and other information to the Group Executive Committee and Audit Committee;
- Provide guidance on the management and implementation of the PFMA including compliance thereof, review the outcome of the PFMA compliance assessments and request corrective action including the initiation of disciplinary action against officials where there are instances of non-compliance;
- Review the disciplinary and other actions taken against employees where there has been a breach of control;
- Provide guidance to the Internal Control Department and Transnet Internal Audit regarding possible Group wide enhancement projects to address control breakdowns that are prevalent across the Group;
- Provide guidance and direction on the forensic process, including reviewing the outcomes of fraud prevention, detection and investigation elements;
- Formally review Internal Audit performance at least twice a year;
- Advise Internal Audit and management on the best way to resolve any conflicts that may have arising through the course of their work;
- Produce appropriate reports for the Group Executive Committee, Board of Directors and the Audit Committee when requested to do so;
- Review Transnet's quarterly self-assessment (CSA), after service questionnaire results and ICSC effectiveness ratings;
- Review the half yearly and annual process of certification of the adequacy and proper application of internal controls by line management;
- ~~Provide guidance and direction to Shared Services and Procurement and Supply Chain functions to ensure that their focus is aligned to the Group strategy~~;
- Recommend the overall certification of Transnet's internal financial and operational controls for approval by the Group Chief Financial Officer and Group Chief Executive with or without qualification; and
- With regards to the Scrap metal virtual team, approve the mandate of the team, the governance process to be followed for engaging with the market, the Delegation of Authority for entering into and signing of contracts to dispose of Scrap metal, the disposal framework (rules of how scrap metal can be disposed of), the Scrap metal strategy, and projects and initiatives that support the approved strategy.

5.3.4. Group Risk Management Function

Development and or review of the ERM framework and strategy across the Group; facilitating and monitoring the implementation of the ERM policies frameworks and strategies; analysing operating risk reports and compiling monthly, quarterly and annual risk reports for Group Risk Committee and the Group Executive Committee; and embedding the ERM culture within the Group.

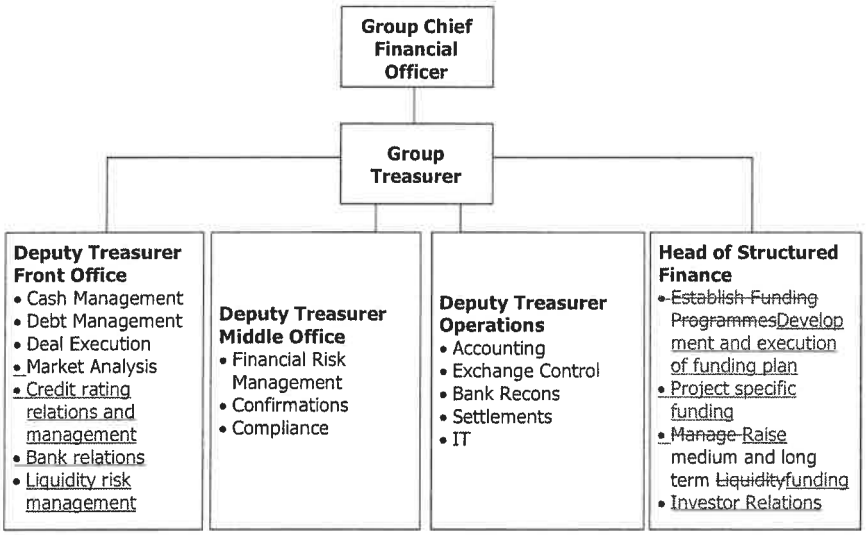
5.3.5. Group Chief Financial Officer (GCFO)

The Group Chief Financial Officer is responsible for the development and implementation of the financial strategy; the management of corporate finance; management of compliance with legislative requirements i.e. Companies Act, Public Finance Management Act and IFRS; The GCFO contributes towards the content -and finalisation of the financial statements and corporate plan; manages the strategic funding and capital investment process of the Group; manages audit and internal control processes~~; manages Corporate Governance~~ and the Group's taxation position.

5.3.6. Reporting line of Group Treasury

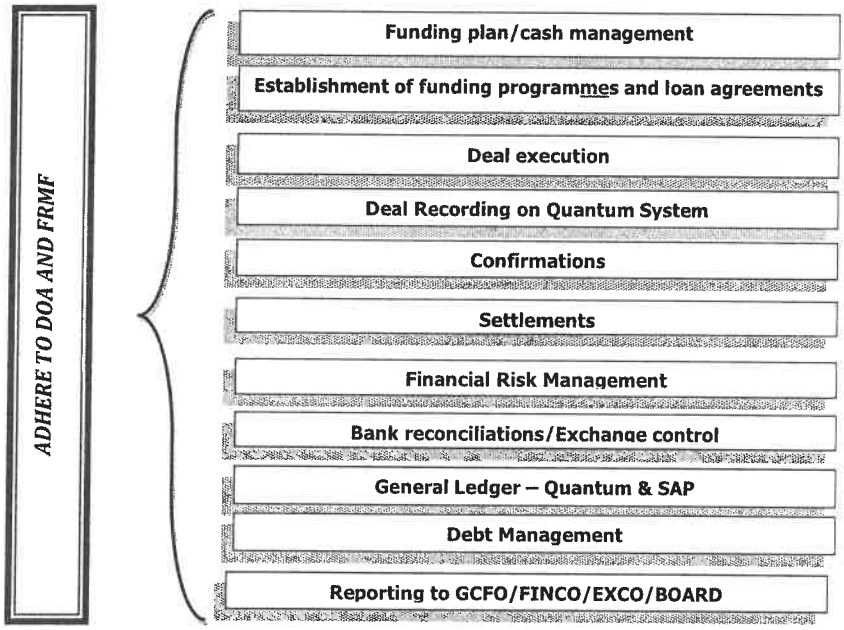
Group Treasury has a direct reporting line to the GCFO as per diagram below and the GCFO oversees all the activities of Treasury. Treasury reports the status of the Group's financial risks and all other reporting as required by the FRMF to FINCO, EXCO and the BOARD at scheduled meetings through the office of the GCFO in line with the reporting structure. Financial risks are escalated to RISKMANCO if they become material for the Group.

5.3.7. Structure and Functions of Group Treasury



5.3.8. Segregation of Duties

Segregation of duties within a Treasury environment is essential and all financial market transactions entered into should always be executed in this manner. The high level processes below provide guidance of the roles and activities in the different areas of responsibilities:



6. BEST PRACTICE IN RISK MANAGEMENT

As an SOC, Transnet must comply with the PFMA and the PCGPS. This framework was updated with the intention of promoting adherence to these by aligning the guidelines contained within this framework to the aforementioned.

6.1. Public Finance Management Act (PFMA)

Section 51 (1) a (i) of PFMA states that:" An accounting authority for public entity must ensure that the public entity has, and maintains effective, efficient and transparent systems of financial and risk management and internal control."

In addition the Treasury Regulations paragraph 27.2.2 further states" The accounting authority must ensure that a risk assessment is conducted regularly so as to identify emerging risks of the public entity. A risk management strategy must include a fraud prevention plan, must be used to direct internal audit effort and priority and to determine the skills required of managers and staff to improve controls and manage the risks. The strategy must be clearly communicated to all employees to ensure that the risk management strategy is incorporated into the language and culture of the public entity."

6.2. Protocol on Corporate Governance in Public Sector (PCGPS)

Item *5.2.18.1* of PCGPS: "Directors must ensure that the SOC has and maintains effective, efficient, and transparent systems of financial, risk management and internal control. Directors should therefore establish processes and practices within the SOC to manage all risks associated with the SOC's operations."

Item *5.2.18.2* of PCGPS: "Directors should keep the Executive Authority informed of risk management strategies by outlining them in corporate plans and progress reports, and other reports when necessary. In addition, and unless otherwise qualified because of circumstances applying to a particular SOC, corporate plans and progress reports should contain a statement from the Board that the Board has appropriate risk management policies and practices in place and that adequate systems and expertise are being applied to achieve compliance with those policies and procedures."

Item *5.2.18.3* of PCGPS: "The Government, as a shareholder, is sensitive to commercial risk. In some circumstances, it may therefore choose to set limits on the activities of particular SOC's: for example on liabilities, financial exposures, use of derivatives instruments, etc."

Item *5.2.18.4* of PCGPS: "Subject to the relevant provisions of PFMA, as a general rule, Government will not provide formal guarantees in respect of SOC liabilities. Accordingly, Directors should take this policy into account when making decisions that affect an SOC's operations and performance."

In addition to the above requirements, the Financial Risk Management Policy must be aligned to the country's laws and regulations and must follow best practice standards as set out in the following bodies and risk management standards;

- The King III Code and the Protocol on Corporate Governance;
- Public Finance Management Act of 1999, as amended;
- The Association of Corporate Treasurers of South Africa (ACTSA Charter of Best Practice);
- Treasury Regulations in terms of the PFMA; and
- All relevant laws and regulations of The Republic of South Africa and all the Countries in which Transnet do business.

6.2.1. King III Recommended Practices

- Item 4.4.1, – The Board's risk strategy should be executed by management by means of risk management systems and processes.
- Item 4.4.2 – Management is accountable for integrating risk in the day-to-day activities of the Company.
- Item 4.5.1 – The Board should ensure effective and ongoing risk assessments are performed.
- Item 4.5.2 – A systematic, documented, formal risk assessment should be conducted at least once a year.
- Item 4.5.3 – Risks should be prioritised and ranked to focus responses and interventions.
- Item 4.5.7 – The Board should ensure that key risks are quantified where practicable.
- Item 4.8.1 – The Board should ensure that effective and continual monitoring of risk management takes place.

7. RISK MANAGEMENT METHODOLOGY AND MEASUREMENT

7.1. Introduction

The overall financial risk exposure of the Group is defined as the potential exposure of the business to normal market conditions, over a specified period of time, and within a specified confidence interval, this exposure is known as either Market Value-at-Risk **(VaR)** or Cash flow at-Risk **(CFaR)** against the approved budgets or Income Statement volatility at risk **(ICSaR)**. Financial market risk tolerance levels are typically defined in terms of one or more of the following: Net cash flows or earnings expressed as a percentage of EBITDA

Transnet's individual financial risk tolerance levels are defined as a percentage of earnings (EBITDA) not greater than that which can threaten the achievement or maintenance of strategic financial ratios of the Group, but not less than that which the business planning and risk management practices can support.

Due to the unique nature of the Group's asset and liability portfolios, the huge importance of cash flow, liquidity, budgets and income statement volatility, the Board therefore approves the individual and collective financial risk exposure tolerances as reflected in paragraphs 7.2.1 and 7.3θ. The Boards' mandate defines risk tolerance relative to the latest budget or forecast, which are the maximum limits on the exposure of Transnet over a defined time horizon and within a certain confidence interval. It is the responsibility of management to ensure that the potential exposure (**CfaR, ICSaR and VaR**) of Transnet does not exceed the individual and or collective risk tolerances set by implementing risk management measures and mitigating strategies.

The Group is exposed to the following financial risks; interest rates, commodity prices (e.g. Brent crude oil), foreign exchange and income statement volatility. Different measurement tools are used to measure changes to these risks on all treasury transactions and these include limits and sensitivity scenarios against approved budget inclusive of stress testing. The measurements can either be operational or tactical. These risks are not necessarily correlated and their degree of impact also differs proportionally.

7.2. Operational and Tactical Risk Measures

These measures are used in the day-to-day analysis of financial risk exposures and determine the pricing of risk management strategies used for hedging. Treasury Middle Office produces a range of risk measures and reports that are appropriate to the requirements of Transnet. These measurements include the following for the respective risk exposures:

- Fair Value or Marked-to-Market of existing risk management instruments;
- Sensitivity Analysis;
- Stress Testing under extreme and volatile market conditions
- Duration;
- FX exposure hedged/unhedged; *and*

A range of tactical risk measures are used to generate scenarios that quantify and illustrate the effect of various market fluctuations on the range of underlying Transnet exposures and on Transnet's Operating Divisions as a whole. A range of risk scenarios are used as critical input into the financial risk management decision-making process.

7.2.1. Financial Risk Tolerance:

7.2.1.1. Interest Rate Risk

Sensitivity analysis is used to determine the impact of interest rate movements on approved external finance cost budget per financial year (existing liability portfolio plus new funding to be raised). Stress testing is included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative cash flow impact against the latest approved annual external finance cost budget (including capitalised borrowing cost) is more than **5%** (134/145 budget: R~~78~~ 867~~535~~m * 5% = **R~~375~~445 m**). The limit includes the actual YTD performance as recorded in the General Ledger and should be updated when new budgets are approved.

7.2.1.2. Commodity Risk (fuel)

Sensitivity analysis is used to determine the negative impact of commodity (like Brent Crude oil) and exchange rate movements (including fuel levy income) on the approved fuel budget. Stress testing is included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative cash flow impact against the latest approved Fuel budget is more than **~~10~~ 12.5 %** (134/145 budget:
R~~23~~ ~~545~~161 m * ~~10~~ 12.5 %= **R~~255~~ 400 m**). This limit includes the actual YTD performance as recorded in the General Ledger and should be updated when new budgets are approved.

7.2.1.3. Value at Risk (FX)

The emphasis at Transnet is mainly on cash flow, liquidity and budget management and hence **VaR** ***will only be used on a limited basis and calculated on committed, unhedged FX risk exposures.***

The calculation of **VaR** is a risk management tool and will not necessarily have a direct visible impact on the bottom line of the Group's income statement. Corrective action should be taken if **VaR** is more than **0.5%** of the latest approved budgeted EBITDA (134/145 budget: R~~26 374~~ 29 477 m*0.5% = **R1350m**). This should be updated when new budgets are approved.

7.2.1.4. Fair Value Analysis (ICSaR)

Sensitivity analysis is used to determine the impact on the net fair market values of all financial instruments. Stress testing to be included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative impact on the fair value line of the income statement, is more than 4 % of latest approved budgeted EBITDA (134/145 budget: R 29 477 mR~~26 374 29 477 m~~*4% = **R1 ~~050~~180 m**). This should include actual numbers recorded per financial year and should be updated when new budgets are approved. The major reasons could be ineffective hedges (hedge accounting).

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7.3. Collective Financial Risk Management Tolerance

The Board approves the overall financial risk tolerance which is defined as **2.50% of the latest annual budgeted EBITDA**. The table below defines the calculation.

Parameter	Value
Underlying exposure	12-month Budgeted exposures
Confidence Interval	95%
Risk Horizon	90 days
Maximum Risk Tolerance (Collectively)	~~134~~/145 budget: R 29 477 m~~R26 374 29 477 m~~ * ~~2.503~~ % = **~~R660~~ 8**
Exposures included	par~~7.2.1.1~~7.2.1.1, par 7.2.1.2~~7.2.1.2~~ and par 7.2.1.3~~7.2.1.3~~

The performance against the **Financial Risk Tolerance** limits as well as the **Collective Financial Risk Management Tolerance** limits must be reported to FINCO and Audit Committee at their scheduled meetings.

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8. FINANCIAL RISK MANAGEMENT LANDSCAPE

8.1. Introduction

Transnet's ERM approach rests on three pillars, namely; the King III, COSO framework, and PFMA. The Board has entrusted the responsibility of robust risk management processes to the GCE.

Risk management, as defined in the ERM approach, focuses on operational risks, business/ commercial risks, financial/market risks as well as Asset and Liability management. The focus of this FRMF is on market risk (which includes credit risk) as described in detail below.

8.2. The Objective of the Policy

The objective of this policy is to provide clear guidelines to effective risk management by ensuring that:

- Risks are independently identified, assessed, quantified, mitigated and monitored regularly;
- Mitigating hedging strategies are developed and implemented;
- The effectiveness of hedging strategies are monitored monthly; and
- Risk exposures are performance measured and formally reported to appropriate authorities.

8.3. Credit Risk

Credit Risk is defined as the risk that a counterparty will fail to honour its financial obligations to the Transnet Group. ~~Credit risk consists of the following types:~~

Credit risk arises in many of Transnet's business activities through the services rendered by the Operating Divisions to customers and Treasury's hedging and investments activities. The financial risk owing to credit extension could have a profound impact on earnings, capital reserves as well as profitability.

The management of credit risk is undertaken through the setting of Counterparty risk limits in terms of the policy, taking into consideration the relationship amongst all the risks to which Transnet is exposed to and Transnet's risk appetite.

Credit risk consists of the following types:

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8.3.1. Country Risk

The risk that a counterparty is unable to meet its foreign financial and or contractual obligations because the country is either unable to or unwilling to meet its financial obligations.

8.3.2. Settlement/Delivery Risk

Is the risk that a counterparty cannot deliver on its contractual commitment on the contracted maturity date. This includes settlement of cash, and or the delivery of securities (Notes).

8.3.3. Investment Risk

The risk of losing the nominal value plus accrued interest on an investment done with a counterparty in the event of default by that counterparty.

8.3.4. Price Risk

The risk that the price of a market security, investment or any financial instrument changes as a result of changes in the underlying economic market conditions like interest rates, exchange rates, credit risk, commodity prices, volatility etc before maturity date, and thereby forcing the underlying transaction to be closed-out at a market value loss (this includes bonds and derivative financial instruments) due to the inability of the counter party to honour the transaction.

8.4. Market Risks

Market risk consist of trading and investment risk, interest rate risk, liquidity risk, foreign exchange risk, commodity risk and to a limited extent, gap (mismatches in maturities and interest rates) risk.

8.4.1. Interest Rate Risk

Interest rate risk refers to the potential variability in Transnet's financial condition owing to changes in interest rate levels. The standard measure of interest rate risk includes the repricing of floating rate debt and interest rate shocks on liability portfolio to determine potential impact on the external finance cost budget.

8.4.2. Liquidity Risk

Liquidity risk is the risk that Transnet is not able to generate sufficient cash to honour its financial commitments. In essence liquidity risk is due to a weak balance sheet structure, which has no cushion of resources to provide cash to cope with unexpected events. Cash flow management and quick access to additional cash through committed bank facilities are therefore crucial to liquidity risk management. In Transnet it refers particularly to the risk of Transnet's inability to advance funds for capital expenditure, redeem and service loans in money and capital markets, finance operational costs and generate cash for unanticipated financial commitments.

Liquidity Risk Management Includes:

- Prudent asset and liability management;
- Setting up high target of accuracy on actual versus forecasted cash flows;
- Diversification of funding sources;
- Maintaining sufficient levels of funds in cash or near-cash investments; and
- Adequate committed bank facility lines.

8.4.3. Commodity Risk

Commodity risk refers to the potential variability in Transnet's financial conditions owing to the changes in commodity prices such as Brent crude oil, steel, iron ore, electricity and others used in the operations of Transnet. The strategic emphasis on commodity risk management is to protect budgeted levels at both capital expenditure and operational level.

9. Counterparty Risk Management Policy

9.1. Purpose of Policy

The purpose of the counterparty risk policy is:

- To mitigate counterparty risk exposures;
- To diversify counterparty risk exposures;
- To set limits for the different types of counterparty risk exposures; and
- To ensure that financial transactions are done with approved high credit quality counter parties.

9.2. Background and Terms of Reference

ACTSA best practice charter principle # 14 – Creditworthiness, states that "EXCO should be responsible for the evaluation of customer and counterparty credit worthiness and the setting of individual credit limits".

In Transnet, this requirement is achieved by:

9.3. Determining Limits for Rated Institutions

9.3.1. Selection of Counterparties through Credit Risk Analysis

A rated counterparty is defined as a counterparty that is rated by a reputable rating agency such as Moody's Investor Services, Standard & Poor's, Fitch Ratings, Global Credit Ratings or any other rating agency acceptable to Transnet. When selecting rated financial institutions for the allocation of investment and price risk limits for ***Treasury related financial instruments***, the following minimum criteria applies:

- Minimum net equity of **R5 billion**.
- Long term Investment Grade credit rating.

Exceptions to the above will be allowed to accommodate operational bank account balances in foreign jurisdictions (which is very limited in Transnet's case).

The following **second tier** limit structures are applied to diversify counterparty risk exposures.

- Limit the cash exposures to **40%** of overall cash available in respect of counterparties where the long term credit ratings are single A* ratings.
- Only invest cash with counterparties that have a **Short Term Investment Grade** credit rating (excluding bank account balances in foreign jurisdictions).
- No more than 33% of total cash available may be invested with a single counterparty within the approved limits. This excludes overnight operational bank balances as a one day grace period is allowed to enable Treasury to move funds. As a result of the unpredictability of daily cash balances, this will be monitored per investment category.

9.3.2. Establishment of Investment Limits per Institution

Transnet uses a credit risk scoring model to calculate the limits. The basic principles of the model are to calculate an overall credit score per counterparty by using a number of variables like long and short term credit ratings and financial ratios across the balance sheet and income statement.

The credit score is then applied to the net worth and adjusted by a factor (haircut), to calculate the overall limit per counterparty. The purpose of the haircut is to determine the limits required to accommodate cash on hand, also taking into account the impact of a pre-funding strategy as well as the Group's normal hedging and funding programmes.

Domestic counterparties are allocated a higher haircut than international counterparties due to the huge difference in balance sheet sizes. The haircut may be reduced for individual banks in instances where a new relationship is established or where there are clear indications that the bank have a limited credit risk appetite for Transnet or is only willing to transact in certain instrument types.

A maximum haircut of **18%** for local banks and **3%** for international banks should be applied. This will be reviewed during the annual update of the FRMF and may change due to a result of overall limit requirements for the successful execution of MDS.

Detail of the application of the credit risk scoring model and the haircut application will be recorded in a procedure manual for reference and audit purposes. Limits are established at Company level for both international and domestic counterparties.

Price risk limits in respect of derivative financial instruments for international banks may only be established if the international bank is a local authorised dealer unless specific approval has been obtained from the SARB. This is in line with SARB's rules on these transactions.

9.3.3. Establishment of Investment Limits per Investment Instrument

To manage and control investments per investment instrument, the following limits will be applicable per investment category.

Fixed limits are not feasible as the total amount of cash on hand cannot be controlled by Transnet Treasury. As a result of the unpredictability of daily cash balances, (ii) and (iii) below are calculated on the day when the investments are done and Traders will have a grace period of 10 business days to rectify positions, before a limit breach is deemed to have occurred.

Investment Category	Limit
(i) Call investments and operational bank balances.	A maximum of **100%** of overall cash available.
(ii) Fixed Deposits.	A maximum of **80%** of overall cash available.
(iii) Liquid Tradable Assets i.e. NCD's, BA's, Promissory notes etc.	A maximum of **10%** of overall cash available.
(iv) Money Market Funds in total	A maximum of **R8 billion**
(v) Money market funds (individual)	A maximum of **R3 billion** per single fund limited to **33%** of cash available or **10%** of the size of the fund.
(vi) Repo's on Funding Portfolio	**R3 billion**

9.3.4. Monitoring of Investments against Limits

All exposures are monitored against approved limits on a daily basis. The only exception is bank balances in foreign jurisdictions, which are only available on a monthly basis, and are monitored as such.

9.3.5. Re-Assessment of Counterparty Credit Risk Based on Credit Ratings

Counterparty credit risk is reviewed and assessed on a regular basis, and if any material financial deterioration is detected on any approved counterparty, like a credit down grade, the Treasury Middle Office assesses and scales down the limits (if necessary), to reduce any possible risk.

Any downscaling of limits needs to be reported to the Treasurer, GCFO and to FINCO as and when it occurs, but no later than one month (due to monthly reporting to Committees). Treasury should perform a formal analysis and review of counterparties at least twice a year or as necessary.

9.3.6. Assessment of Investment Instruments Based on Liquidity Requirements

All new investments and financial instruments must go through a testing and approval process before they can be utilised. Liquidity requirements need to be considered before entering into the transaction to ensure the availability of cash as and when required.

9.3.7. Determining Limits for Unrated Institutions

Transnet strives to apply best efforts to open bank accounts with rated counterparties in foreign jurisdictions.

Exceptions will only be allowed if rated counterparties are not available in the particular foreign jurisdiction and or if a rated bank is not located in close proximity to the operations of the Operating Division.

Minimum balances must be maintained for operational purposes and excess cash should be repatriated on a monthly basis. The only exception to this rule will be regulatory constraints and explicit approval for this arrangement must be obtained from the GCFO. No investments with unrated counterparties are allowed.

A formal risk credit risk assessment may not be possible in respect of unrated counterparties due to the lack or unavailability of audited financial information. All efforts should be made to obtain as much information as possible and to compare results amongst unrated counterparties for benchmarking purposes.

Counterparty risk limits are formulated by Treasury Middle Office and presented for approval in terms of the approved DOA. Where limit types are not included in the approved DOA, the Deputy Treasurer Operations, Middle Office and or Treasurer (Or other delegates formally mandated by the Group Treasurer) can approve all types of counterparties where limits are not necessary i.e. investors in bonds and commercial paper, lenders, suppliers of goods and services etc.

9.3.8. Determining limits for issuers of guarantees

Where credit risk arises due to guarantees issued by external parties (banks, financial institutions, insurance companies etc) as a risk mitigation in supplier agreements (advance payment guarantees (APG), performance bonds (PB), retention bonds (RB) etc, the following criteria will apply:

9.3.8.1. Issuers with limits for Treasury related financial transactions

Where counterparty limits have been approved for Treasury related financial transactions in accordance with DOA, the credit risk will be offset against the overall approved limit.

9.3.8.2. Issuers for non-Treasury related financial transactions

When an Issuer requires a limit for non-Treasury related financial transactions, (i.e APG's, PB's RB's etc) only the credit rating requirement will apply. Issuers must have a long term investment grade rating as defined in the definitions.

- Limits will be calculated based on financial and credit rating information and
- Allocated limits will be reviewed annually or adjusted downwards, should adverse information become available.

9.4. Settlement Risk Limits

The settlement limits for approved counterparties should be set at **1.5 times** of the approved credit limits in line with authority as stipulated in the DOA.

Settlement limits will not apply to settlements relating to guarantees issued in relation to *"9.3.8 Determining limits for issuers of guarantees"* above.

9.5. Bond Issue and Bond Issuer Risk Limits for the Investment of surplus cash on repo portfolio.

Only bonds and bond issuers approved in terms of the DOA may be used as the underlying instrument/issuer when surplus cash is invested for short periods with JSE members.

9.6. Repo Limits for JSE Members

One annual limit in respect of all JSE members will be calculated for the repo portfolio as listed bonds and members of the exchange are protected by the JSE Guarantee Fund.

9.7. Repo Limits for JSE Clients (Price Risk)

Repo trades will not be allowed with JSE clients (Non – JSE members) due to the outsourcing of the market making function to the external market making panel. Repo transactions may only be done with JSE members.

9.8. Money Market Funds

Money market funds have been in existence for about thirteen years in South Africa and these funds create an opportunity for Transnet to earn a higher return relative to the other investment types, like call and fixed deposits. There are approximately R242 billion of assets managed by Money Market Funds in South Africa. Money Market Funds further diversify the risk of default as the assets of the funds are spread amongst a number of issuers, instruments, banks and or financial institutions.

Some money market funds are rated, whilst the assets and or issuers of the paper in others are rated. Treasury can invest in Money Market funds under the following approved criteria:

- The Money Market fund must be governed by the Financial Services Board (FSB).
- The Money Market fund must be regulated by the Collective Investment Scheme Control Act (CISCA).
- The fund must be in existence for at least three years.
- The fund must have a policy limit that prohibits investments of more than 30% with a single counter party.
- The fund's objective should be capital preservation.
- Either the Fund must have a **Long Term Investment Grade** credit rating or
- The assets of the Fund must be rated with a minimum **Short Term Investment Grade** rating or the Fund may only invest in assets where the issuers/banks/financial institutions, have a minimum **Long Term Investment Grade** credit rating. The Fund should have approved limits either per instrument, per counter party or per rating category.

9.9. Master Agreements

ISDA master agreements shall be concluded before any derivative financial instruments can be traded with an approved counter party. The approval of ISDA and ISMA master agreements, where applicable, should be done in line with the DOA and all efforts must be made to ensure standardisation across these legal agreements. ISDA covenants must be monitored at least on a quarterly basis to mitigate the risk of potential breaches.

9.10. Margining and Collateral

Transnet is not allowed to post any type of collateral and or margining as security with banks and or financial institutions in respect of any hedging transactions. This also prohibits Treasury to sign Credit Support Annex Agreements (CSA) with any of its counter parties that

require such posting of collateral. The main reason is to ensure that cash is not utilised ineffectively during a prolonged period when Transnet is a net borrower of funds. Transnet must always strive to enter into hedging arrangements without any break clauses. Any ISMA agreements entered into with Repo counterparties should exclude any margining arrangements.

As a result of the implementation of Basle III, financial institutions may provide hedging and lending facilities to Transnet at a reduced cost should posting of collateral and the resultant signing of a CSA be considered. Any such consideration can only be approved by the GCFO after careful consideration of the benefits and risks involved, with specific reference to liquidity risk.

9.11. Breaching of Counterparty Limits

All counterparty limit breaches should be reported to the Treasurer and GCFO as and when they occur and monthly to FINCO and the Audit Committee. When the limit is breached, the Treasurer shall decide whether the position should be closed immediately or, be maintained for a limited period within the authority as outlined below.

LIMIT TYPE	TREASURER	GCFO	GCE
Investment Risk Limits	≤ 1 Week	≤ 1 Month	> 1 Month
Marginal Risk Limits	≤ 1 Week	≤ 1 Month	> 1 Month
Bond Issue and Issuer Limits	≤ 1 Week	> 1 Week	-
Settlement Risk Limits	<= 1 Day	> 1 Day	-
Investment limits per investment instrument	≤ = 1 Week	> 1 Week	-
2nd Tier limits	≤ = 1 Week	> 1 Week	-

9.12. Credit Risk Assessment of Debtors

The credit risk assessment of commercial debtors is done at Operating Division level and these limits are approved in terms of the DOA.

10. LIQUIDITY RISK MANAGEMENT POLICY

10.1. Objectives

The main objective of the liquidity risk management policy is to ensure adequate availability of funds in all currencies, to enable Transnet to meet all expected and unexpected financial commitments cost effectively through the achievement of the following:

- To manage the contractual maturity gap between assets and liabilities;
- To manage current and projected cash flows;
- To maintain an adequate level of cash holdings;
- To diversify funding sources and have funding programmes available to reduce reliance on particular sources to support effective liquidity risk management;
- To spread the maturity of debt issues to reduce refinancing risk;
- To do pre-funding of major capital redemptions to mitigate liquidity risk; and
- Where needed, extend the debt portfolio to match the underlying assets.

10.2. Level of Liquidity

The appropriate level of liquidity requires a balancing of two conflicting objectives, namely maintaining an adequate level of liquidity holdings, while minimising financial risks, such as credit risk, interest rate risk, re- investment risk and cost of carry.

The role of committed credit lines in addition to surplus liquidity levels is ~~also~~crucially important to ensure credit rating is not negatively impacted.~~.~~ It is therefore critical to establish an appropriate mix of credit/investment alternatives to meet liquidity demands. Multiple use of credit facilities that can be used for overdraft, and/or term capital transfers provide this flexibility without incurring unnecessary credit line or commitment expenses. Transnet has banking credit facilities (committed and uncommitted) available with a number of banks.

~~**10.3. Investment of Liquidity Funds**~~

~~There are opportunity costs attached to the miscalculation of liquidity levels and thresholds, in particular those, which emanate as a consequence of deciding how and when to invest. There are basically five types of investment mechanisms normally found in money markets.~~

~~10.4.~~10.3. Liquidity Risk Thresholds

~~10.4.1.~~10.3.1. Threshold 1

~~Transnet is required to hold at any given time a daily amount of liquid assets, cash balances, investments, and available credit (bank) facilities (committed and uncommitted) in South Africa that is no less than **8 times** the twelve month average monthly operational expenses (excluding depreciation and amortisation). The Corporate Plan should be utilised for limit setting.~~

Strive to maintain a minimum of 1.2 times sources versus uses ratio (A/B) on a rolling 12 month basis to meet Standard and Poor's liquidity requirement.

~~10.4.2.~~10.3.2. Threshold 2

Available/surplus funds can only be invested in capital market instruments under the following conditions;

- A requirement to invest ring fenced cash for longer periods in the capital markets, where the cash is dedicated for utilization on a specific project. Transnet's intention is to match the maturity of the capital market instrument with the requirements for cash to avoid capital loss.
- Surplus cash that is available for periods longer than three months can be invested in capital market instruments issued by Issuers with a long term investment grade credit rating by utilising approved instruments in paragraph 19.1 with the intention to maintain the investment until maturity to avoid any capital losses.
- The result of an investment condition as stipulated by a Regulator.

Where circumstances beyond Transnet's control, forces Transnet to liquidate the portfolio before its original maturity date, the GCFO's approval should be sought for any possible capital loss that may be incurred as a result of this premature liquidation. The purpose of investing in these instruments is to enhance return.

~~10.4.3.~~10.3.3. Threshold 3

Maximum tenor of money market investments not to exceed **365 days** to ensure that cash is not tied up for long periods of time and defeat liquidity risk management principles.

~~10.4.4.~~10.3.4. Threshold 4

Treasury will strive to maintain a cash liquidity buffer of approximately **R1 000 million** during the current phase of intensive capital investments. The buffer will fluctuate over month ends as a result of debtor receipts and creditor payments. The buffer should be included in all cash forecasts. A minimum of **R150 million** should be kept in accounts that are available for same day value to cater for unforeseen disbursements.

~~10.4.5.~~10.3.5. Threshold 5

Available (committed) short term facilities of **R ~~5~~8 billion** during the ~~capital expenditure~~MDS phase. Committed facilities include cash on hand and short term investments that can be used ~~for debt re-payments~~ to meet working capital and debt redemption obligations.~~.~~

10.3.6. Threshold 6

Available (committed) medium term facilities of **USD 250 million** to cover any expected foreign currency commitments. This can be covered by a revolver credit facility.

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10.3.7. Threshold 7

Diversify committed facilities between different global markets to act as buffer when economic stress is encountered in certain regions.

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~~10.4.6.~~10.3.8. Threshold ~~6~~8

All major capital redemptions of a single maturity which are more than **R2 billion** should be fully funded six weeks in advance to minimise liquidity risk.

~~10.5.~~10.4. Liquidity Crisis Process

Guideline Statements on Treasury Best Practice issued by National Treasury states under liquidity risk reporting, "In the event where a liquidity crisis becomes likely it is the duty of the Treasurer immediately to notify the Board officially of the situation".

In the Transnet context and in line with the reporting structure, the Group Treasurer will inform the Board through the office of the GCFO when a liquidity crisis becomes likely. Full disclosure should be done of the possible impact in reports to FINCO, EXCO and Board at scheduled meetings. The CFO will construct a task team with immediate effect to consider alternatives and recommend appropriate action to the Board. If the crisis is of a serious nature, the Board need to inform the Shareholder accordingly.

11. CASH MANAGEMENT

11.1. Background

Cash management activity is driven by the cash needs of underlying business.

The main activities being:

- Working capital; *and*
- Capital expenditure.

11.2. The Objective of the Cash Management Policy

- Maximise liquidity and control cash flows by ensuring that;
  - the operational cash requirements of the Group are adequately met;
  - short-term financing requirements are satisfied by means of approved short-term financing products;
- Maximize the value of funds while minimizing the cost of those funds;
- Ensure that unplanned cash surpluses or shortages are kept to a minimum; *and*
- Monitor and report on the overall cash flow of the Group.

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To achieve the above objectives Treasury requires efficient short, medium and long-term cash forecasting and planning. This implies that Treasury must have direct interface with the Operating Divisions in order to understand the sources of cash generation and cash consumption and the underlying drivers of both. This data is then synthesised into a cash management strategy which is executed and performance-managed by Treasury. The integration of cash management strategy and liquidity management solutions remains a paramount objective.

11.3. Centralisation of Bank Balances

The aggregate of all transactions arising in RSA based bank accounts for the Group (the end of day balance) except petty cash accounts and benevolent accounts, are transferred (rolled up) daily to a Group account managed by Treasury.

The main characteristics therefore are that the cash resources and the cash requirements of the Group are managed on a central, pooled basis by Treasury. The balances are posted to the inter-group current accounts of the businesses, which are operated as an exact replica of an external bank account.

11.4. Cash Flow Forecasting

Cash flow forecasting is paramount to prudent and effective cash management. Forecasts are split into inflows and outflows. The forecasts are then consolidated at the Division's head office level and passed through to Treasury once a week for a rolling ninety (90) day forecast. These are further reviewed daily for any substantial movements/adjustments, which are communicated to Treasury to enable funding and investment decisions to be made by Treasury timeously.

Accurate cash forecasting is an essential tool to the cash management process, but reliability of the data is paramount for each of the processes.

A range of forecasts with different time horizons are required by Treasury to reflect different cash management decisions i.e., short-term, medium-term and long-term horizons.

11.4.1. Short Term Forecast

Short-term forecasts (3 months rolling) are used to support day-to-day decisions on cash management. A one day forecast is used to identify actual cash flows through the company's bank accounts to inform funding and investment decisions.

11.4.2. Medium Term Forecast

Medium term forecast is the twelve month rolling cash flow forecast (by month), used to plan major draw-downs and repayments of funding or investment of short/medium-term surpluses. This is used for the annual funding/borrowing plan.

Although the budgeting process information is used, the receipts and disbursement method is the basis of calculating the forecasts.

11.4.3. Long Term Forecast

This is a five year forecast per annum, which is used to manage overall funding requirements in line with the Corporate Plan. These forecasts are based on the corporate budgeting and planning system and are incorporated into the corporate plan projections submitted annually to the Shareholder. There is a close relationship between all these forecasts and the projected Income Statement and Balance Sheet.

11.4.4. Cash Flow Variances

Divisions compare their updated forecasts to actual on a monthly basis and any variances are explained, reported to FINCO and used to enhance the cash management processes. Targets of variances and accuracy levels that need to be achieved are recorded in the Group's cash management policy number CM1/2009 of which the last version was approved by EXCO during April 2010.

In addition to the processes outlined above, the businesses are also expected to maintain constant daily dialogue with Treasury regarding expected changes to the timing of their cash flows.

12. INTEREST RATE RISK POLICY

12.1. Policy Objectives

The main objective of the Interest Rate Risk policy is to minimise the Group's external finance cost through the following:

- Manage the ratio of floating rate exposures versus fixed rate exposures;
- Reduce the WACD to ensure the gap to prevailing market rates is reduced;
- Take advantage of interest rate cycles;
- Support the business strategy in so far as interest rates are concerned;
- Minimize the negative impact of adverse interest rate movements on the Group's net income, cash flows and external finance cost within an acceptable risk profile;
- Minimize the market making cost on the repo facilities granted to the external market making panel under the DMTN programme;
- Manage the basis risk exposure where interest rate risk is netted between investments and borrowings; and
- Manage the duration of the debt portfolio (including derivatives) to try and achieve alignment with the duration of the average payback periods of the assets.

12.2. Interest Rate Risk Exposures

Interest rate risk exposures at Transnet are primarily the result of the Group's financing agreements entered into at either a fixed and or a floating rate that attracts an interest rate risk exposure and needs to be managed. Apart from the existing liabilities, all new funding

requirements and or investments are exposed to interest rate risk and negative movements in interest rates can have a material impact on external finance charges. Furthermore movements in swap and or yield curves will have an impact on the fair values of all types of derivatives and loans/investments that are fair valued.

12.3. Investments

The surplus funds of the Group are invested in the short-term liquidity portfolio with prices mainly in a floating rate form and fixed for short periods of time (money market).

12.4. Fixed Versus Floating Interest Rate Composition

The correct interest rate mix is different for each company, industry, differing leverages, acquisitive versus stable entities and differing credit quality companies.

To enable Treasury to manage interest rate trends in both a rising and falling environment, the fixed portion of interest rates may be managed between **70% and 90%.** The floating interest rate portion can therefore vary between **10% and 30% (after hedging).** The calculation of the composition will include debt of all currencies translated into Rand. The rationale for setting these limits is the result of the long term nature of Transnet's assets. When reporting, Treasury will report on both pre and post hedged debt. The fix/float composition will be reviewed annually as part of this policy review.

12.5. Hedging of Interest Rate Risk

Both floating and fixed rate exposures carry an interest rate risk as fixed rates that are higher than prevailing markets rates create an opportunity loss and need to be managed.

Interest rate hedges entered into over long periods can create volatility in the income statement of the Group if not hedge accounted for. The preferred option will be to enter into a loan with the fix/floating characteristics as required. Interest rate risk hedges can be done at a later stage when markets or trends have changed. Where ever possible Treasury will incorporate interest rate hedging instruments as part of the original funding agreements. Input and review of the proposed loan and or hedging structure should be made by Accounting and the Hedge Accounting specialist to ensure alignment to accounting standards and avoid unacceptable volatility in the Group's financials.

The market conditions (interest rate cycles) play an important role in determining the timing of interest rate risk hedges. Yield curves shapes normally do not support the hedging of interest rate risks over very short periods and it is for this reason that relative long tenors are allowed. Interest rate risk hedges are approved in terms of the DOA.

Although no limits are set in respect of the duration of the overall funding portfolio, the duration should be calculated on a monthly basis and reported to FINCO since short versus longer durations react differently in a high versus low interest rate environment.

13. BREACHING OF LIMITS

Calculation of exposures is measured against exposure limits and breaches of limits are reported to the Treasurer and the GCFO as and when they occur and monthly or in the next meeting of FINCO and the Audit Committee. The breach of any interest rate limit may only be approved by the higher level of authority as outlined in the DOA.

14. MARKET MAKING

14.1. Objective of a Market Making Policy

The objective of the Market Making Policy is to:

- Guide the management of the variability of the spread between the Transnet curve and the Government benchmark curve.
- Improve overall liquidity of Transnet's notes under the DMTN programme.
- Monitor the activities of external market makers closely.
- Ensure limited risk is carried by Transnet as a result of repo - facilities that will be offered by Transnet to the external market makers and or JSE Members.

14.2. Background

External Market Makers were appointed during 2007 to do market making on bonds issued by Transnet under the DMTN programme, to improve the marketability, liquidity and tradability of Transnet bonds so as to optimise financing costs over the long term. The external market makers and or JSE members are used to facilitate the bond auction processes under the DMTN programme. The Dutch auction methodology is used for bond auctions where all bids allocated are cleared at the same spread/all in rate.

The outsourcing arrangement has reduced the risk for Transnet from a balance sheet perspective and this will continue until maturity of the bonds or until such time there is a clear indication that the spreads on bonds issued under DMTN programme has increased only as a result of the inability of the Market Making Panel to assist Transnet in containing the spreads above Government benchmark.

Market Makers are remunerated on an auction participation and performance fee basis. Transnet is only required to make available short term repo facility (buy & sellbacks and sell & buy backs) on Transnet bonds issued under DMTN, with limited risk to Transnet.

14.3. Market Making in Transnet Bonds

14.3.1. Annual Loss on repo portfolio.

The maximum annual loss to accommodate repo trades with the external market making panel and or JSE members should not exceed **R2.5 million** per financial year. This includes the net result of all activities on the repo portfolio, inclusive of carry costs.

Transactional limits applicable on market making spot and repo transactions are defined in the DOA.

14.3.2. Procedure when Breaching of Limit Occurs

Any limit breaches on the repo portfolio should be reported to the Treasurer and GCFO as it happens and to FINCO and the Audit Committee on a monthly basis, or in the next meeting, whichever comes first.

The following approvals are applicable in respect of any repo limit breaches:

	Deputy Treasurer Front Office	Treasurer	GCFO
Amount	< 5%	< 20%	>20%
Tenor	< One week	< Two weeks	> Two weeks

14.3.3. Investments in Transnet Commercial Paper

Investments by Transnet in Transnet Commercial Paper are not allowed as it defeats the utilisation purpose of the funding instrument.

14.3.4. Commercial Paper Auctions

Commercial paper auctions under the DMTN programme are facilitated by the Treasury dealing team and are allocated on a best bid, ascending basis.

15. FOREIGN EXCHANGE (FX) RISK POLICY

15.1. Objectives of the Policy

The main objectives of the FX risk management policy are:

- To mitigate foreign currency risk exposures;
- To bring certainty about future Rand cash flows where FX is involved; and
- To insulate the Groups' income statement against exchange rate fluctuations.

15.2. Foreign Exchange Risk Management

The following principles should be applied within the Group when supplier agreements are concluded. These are critical to ensure that foreign currency risk exposures are minimised on the day of origin.

- Whenever possible foreign currency risk exposures should be eliminated by entering into **fixed RAND** contracts/funding agreements with both local and/or international based suppliers/lenders. Where an international and or local supplier/lender/arranger does the hedging, the pricing needs to be compared with Treasury's pricing to ensure that the hedge is reasonable and market related. The acceptance of pricing needs to be done in accordance with the DOA.
- Where the cost of the hedge by the international supplier/lender/arranger is deemed excessive, Transnet will accept the FX risk and hedge itself accordingly. This will ensure that Transnet has a fixed RAND liability. If foreign currency funding is used, the foreign exchange rate risk will be hedged to Rand as soon as the exposure is committed or the Treasurer can obtain approval from the GCFO if there is a need to delay hedging for a short period of time due to un-favourable market conditions.
- If locally registered suppliers are used where imported components are involved, invoices can only be issued in RAND as exchange control regulations prohibit local suppliers from invoicing Transnet in a foreign currency. BU's must request the local supplier to hedge the imported portion where ever practical, possible and or to fix the price in RAND for minimum periods as these indirect FX exposures cannot be hedged by Transnet due to SARB regulations. There will be some exceptions where small business enterprises do not have sufficient credit lines to accommodate FX hedging on their balance sheet and or if their cost of hedging is unacceptable to Transnet. For these exceptions, specific SARB approval needs to be obtained by the local supplier to allow them to issue FX invoices to Transnet, after which Transnet will hedge on it's own balance sheet.
- If locally registered incorporated/un-incorporated joint ventures (JV) are utilised, SARB's approval should be obtained by the JV for permission to issue invoices in a foreign currency. This approach should be followed if RAND contracting cannot be achieved.
- All contracts/funding agreements with a foreign currency component of more than **R50m** should be reviewed by Treasury, Group Finance and Group Tax during the establishment process and Operating Divisions should get the sign off from all the

respective sections before agreements are concluded. Contracts with a foreign currency component of more than **R100m** should also get the sign off by the GCFO.

- Embedded derivatives in supplier/funding agreements must be identified, risk analysed and avoided before agreements are concluded, as this can add to volatility in the Group's financials. All embedded derivatives should be declared to Treasury and Group Financial Reporting on a monthly basis.

Foreign exchange risk should be managed on a net basis including operating and capital exposures (both income and expenditure), although the FX income for Transnet is minute. FX exposures are determined from budgeted FX Exposures, FX quarterly updates from Operating Divisions, and FX cash flows directly submitted by the Operating divisions to Treasury and or obtained by Treasury as a result of their involvement during the contracting process. The net FX position should be monitored on a monthly basis. Foreign currency risk exposures should be updated on at least a quarterly basis and or earlier if new/additional information is available from capital contracts. The accuracy of the foreign currency risk exposures is of critical importance when hedging strategies are designed.

The accounting and financial risk implications should be fully analysed before a hedging strategy is implemented. The purpose of hedging strategies should be to bring certainty of future Rand payments and receipts and to minimise volatility in the Groups' income statement. The correct application of hedge accounting on all major hedges is paramount as hedges can create material volatility in the Group's financials if not hedge accounted for. Hedging also enables Operating Divisions and Treasury to prepare more accurate cash flow budgets.

The foreign versus domestic currency funding decision (loans/leases) should be executed within the approved annual borrowing plan and the DOA.

Foreign exchange hedging should match specific cash flow requirements if there is relative certainty of payment dates. If cash flows are uncertain as a result of uncertain delivery schedules, hedging may be dealt in quarterly/ semi-annual, and/ or in annual buckets and early take ups allowed to facilitate the actual payments. No pooling of hedging over various exposure types is allowed as it defeats the object of hedging specific foreign cash flows per project.

The decision to manage capital FX exposures (such as leases and loans on the Transnet balance sheet) should be combined with the business strategy and funding decisions to ensure that funding and FX risk management strategies are complimentary to the business strategy.

No speculative foreign exchange transactions are allowed and Treasury is the only approved participant on behalf of Transnet in the currency markets.

A foreign currency exposure will arise once an agreement/letter of acceptance and or purchase order has been concluded and signed by both parties and agreement on FX cash flows and delivery dates have been agreed upon. With specific approval from the GCFO, pre FX hedging up to **70%** can be approved on future purchase orders on "as and when" based supply agreements over a twelve month period to bring cost certainty in RAND. The approval must be accompanied by evidence from the OD that there is a high certainty that exposures will realise over such period. Furthermore such pre-hedging must be within exchange control regulations.

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The Operating Division is expected to submit approved FX cash flows to Treasury within 10 business days after the agreement/purchase order are signed to enable Treasury to arrange hedging within the approvals of DOA.

15.3. Foreign Exchange Hedging

15.3.1. Operational Exposures

All direct committed foreign currency operational expenses (Opex) should be hedged, subject to the limits below. The limits are based on **0.5%** of the latest annual Opex budgeted (excluding depreciation and amortisation) with a **minimum of R20 million**.

The cumulative committed un-hedged position in respect of Opex shall not exceed the following limits per Operating Division.

In cases where an Operating Division has submitted approved FX cash flows to Treasury with a request to hedge, the exposure will be considered hedged for reporting purposes. This is to not penalise operating divisions unfairly since hedge approvals can take time and might not have gone full circle before reporting at month end, especially where requests are submitted just before reporting date. All other un-hedged positions will however be reported to FINCO on a monthly basis.

The amounts below are based on the 20134/20145 budgets and will be updated once approved budgets for the new financial year become available.

Core Operating Division	Net Budgeted Operating Expenses (excluding depreciation and amortisation)	Committed Un-hedged Limit
Transnet Freight Rail	R201 771616 m	R1039 m
Transnet Engineering	R112 106980 m	R60 m
Transnet Port Terminals	R56 91791 m	R305 m
Transnet Corporate Centre	R3 457954 m	R20 m
Transnet National Ports Authority	R3 419537 m	R20 m
Transnet Capital Projects	R2 506 mR3 534 m	R20 m
Transnet Pipelines	R97211 m	R20 m
Transnet Property	R531 mR500 m	R20 m

15.3.2. Capital Exposures

All direct committed foreign currency exposures in respect of capital projects should be hedged as soon as the exposure is committed, subject to the aggregate limits below. The cumulative committed un-hedged position in respect of capex should not exceed the following limits per Operating Division. The limits are based on **1%** of the annual budgeted capital expenditure programme, including capitalised borrowing costs with a minimum of **R25 million.**

In cases where an Operating Division has submitted approved FX cash flows to Treasury with a request to hedge, the exposure will be considered hedged for reporting purposes. This is to not penalise operating divisions unfairly since hedge approvals can take time and might not have gone full circle before reporting at month end, especially where requests are submitted just before reporting date. All other un-hedged positions will however be reported to FINCO on a monthly basis.

The amounts below are based on the 20134/20145 budgets and will be updated once approved budgets for the new financial year become available.

Core Operating Division	Budgeted Capex (excluding capitalised borrowing costs)	Committed Un-hedged Limit
Transnet Freight Rail	R19 01921 555 m	R190216 m
Transnet Pipelines	R3 268 1 865 m	R3319 m

Transnet National Ports Authority	R2 554369 m	R264 m
Transnet Port Terminals	R1 859909 m	R25 m
Transnet Engineering	R9541 094 m	R25 m
Transnet Corporate Centre	R6251 469 m	R25 m
Transnet Property	R268322 m	R25 m
Transnet Capital Projects	R3029 m	R25 m

All foreign currency hedging and operational transactions will be executed in terms of the approvals in the DOA.

Monthly feedback should be given to FINCO on the status and performance of the hedges executed by Treasury against the underlying exposure. The cumulative un-hedged position should be reported to FINCO on a monthly basis.

The Operating Division which creates a foreign creditor on their balance sheet should take the responsibility for FX hedging arrangements through Transnet Treasury. This is also applicable in so far as inter group transactions are concerned.

15.3.3. Exchange Control

In the past foreign exchange hedging could only be implemented once a firm and ascertainable commitment was established as required by Exchange Control Regulations. A commitment, from an exchange control perspective, is established once a purchase order/supplier contract/letter of acceptance has been signed by both Transnet and the supplier. During the middle of 2010 the SARB granted permission to allow local companies/residents/corporates to actively manage currency hedging facilities, in line with international best practice. The SARB now allows the pre hedging of future commitments, the hedging of balance sheet translation risk, foreign investment risk and the restructuring of economically inefficient hedges with residual maturities shorter than six months. These changes can only be considered and implemented by Transnet Treasury once there is a high degree of certainty that the hedge accounting process will still be highly effective, the FX risk is not jeopardised and with the specific approval from the GCFO and in line with the DOA.

All foreign currency hedges may only be entered into with local authorised dealers unless specific approval has been obtained from the SARB to deviate from this ruling. Proof of documentation is now only required by the bank doing the cross-border pay away and not the bank that establishes the contract. Currency contracts that do not result in a physical pay away under existing exchange control rulings, or contracts that are cancelled, may only be settled locally in RAND.

Transnet Treasury is the only Business Unit within the Group that is allowed to action foreign currency payments.

All requests from Operating Divisions to the SARB to obtain certain approvals/exemptions should only be done by Treasury.

15.3.4. Procedure in Limit Breaches

All foreign currency limit breaches are to be approved by the higher level of authority as stipulated in the DOA and should be reported to the Treasurer and the GCFO on a daily basis as they happen as well as to FINCO and the Audit Committee.

16. FUNDING POLICY

16.1. Objectives

Transnet's funding strategy aims to ensure that the Group has sufficient liquidity to meet all its operational and capital investment funding requirements by raising its required funding ahead of demand cost-effectively from diverse funding sources.

16.2. ACTSA Charter of best Practice Principle No 16: Funding Strategies

The above principle states the following:" Alternative strategies to meet liquidity needs arising from either a loss of market liquidity or market access should be incorporated into the company's contingency planning process".

16.3. Transnet will execute its Borrowing Programme on the following broad Principles:

Government Guarantees- Transnet will raise its required funding on the strength of its own balance sheet without any Government Guarantees.

Matching Assets and Liabilities – Wherever possible matching the payback period of the asset (not the economic life) with the liability. The tenor of funding will generally be between 7 and 25 years depending on the asset being financed as well as the availability of credit lines and investor appetite for different yield curve maturities. Long term debt will be used for capital expenditure and short term debt for operational cash flow requirements.

Flexibility of Markets and Instruments - Movements in interest rates, characteristics of the different markets, the shape of the yield curves, all in cost achieved, swapping of foreign funding to RAND are factors that will be considered when deciding on the appropriate funding instrument. Treasury must ensure that the funding instruments used should enable them to achieve alignment with the Group's overall strategy as approved in the Corporate Plan. Treasury will take advantage of any window of opportunity offered by the interest rate environment and the yield curve.

Execution of Funding Plan - Transnet will ensure~~execute the~~ funding is acquired ahead of demand ~~plan~~ within the guidelines as stipulated in this FRMF of ensuring that all financial risks exposures are ~~minimised~~mitigated such as liquidity, refinancing, interest rate and foreign exchange rate risk. All loans or borrowings denominated in a foreign currency will be hedged to Rand. Preference will be to fund in Rand where possible.

Diversify the Investor Base – Treasury will endeavour to diversify its investor base through deal, non-deal road shows and market making (locally), not only locally but also abroad in markets and countries where Treasury is of the opinion that they can successfully issue debt instruments at cost effective rates.

Cost Effectiveness of Funds - Transnet's strategy of reducing the WACC by reducing the WACD will be the primary objective to utilising the most cost effective funding instrument.

Debt/Equity and cash interest cover ~~R~~ratios – Transnet will manage these~~is~~ ratios within the pre-agreed thresholds as agreed with Shareholder in sShareholder's eCompact. ~~(Target [redacted] for 13/14) *Cash Interest Cover – Transnet will manage this ratio as agreed with Shareholder in shareholder's compact (*~~ [redacted]

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Extend Duration of Debt Portfolio – The ~~F~~funding strategy will include the extension of the duration of the debt portfolio due to the long term nature of the Group's assets and payback periods.

Innovative funding solutions

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Treasury will explore innovative funding solutions with the aim to reduce WACD as well as impact on gearing and cash interest cover ratios.

Building the Transnet Yield Curve – Treasury will continue building Transnet's yield curve at the lowest possible spread above the Government benchmark for fixed rate funding and the lowest possible spread above the floating rate benchmark for floating rate funding (JIBAR, ~~J~~LIBOR, EUROBOR etc) and smooth out the maturity profile along the curve to reduce re-financing risk.

Credit Rating - Maintain or improve Transnet's long term investment grade credit rating as this is imperative to ensure availability of credit lines and lower cost of funding. A non-investment grade long term credit rating will have serious implications for Transnet and will trigger certain loan covenants causing a possible cross default across Transnet's loans.

Funding strategies - Will be affirmed on an annual basis through the Corporate Plan.

Reputational risk – To be considered when availability of credit lines are considered.

16.4. Funding Requirement

The size of the funding requirement is driven principally by five factors, namely; capital expenditure programme, loan redemptions, debt service, cash flows from operations, investment activities and an adequate cash buffer ~~due to a pre-funding strategy~~ necessary for prudent liquidity risk management.

16.5. Diversify Funding Sources

Transnet will seek to expand and diversify its funding sources through the funding initiatives as listed below.

- Bank credit lines.
- Commercial paper for short term funding under DMTN programme.
- Domestic capital markets for note issuance under the R55 billion DMTN programme in order to complete the Transnet yield curve: Tapping existing note issues which have not reached a self-imposed capped limit (to manage re-financing risk) New bond issues to supplement existing issues.
- Long dated project specific bonds to fund designated projects.
- Tied/Untied ECA supported financing for imports.
- Development Finance Institutions (DFI's) and International Finance Institutions (IFI's)/ multi-lateral organisations to create further alternative funding base.
- Issuing bonds in other markets either as public or private placements such as the YEN, US$, Euro, Australian Dollar, Swiss Franc and Sukuk markets thereby ensuring further diversification of funding sources. The cost of possible funding to be raised will be compared with Rand funding.
- Index linked notes under the DMTN programme.
- Asset-backed finance and other related finance solutions.
- Exploring ways of working with customers and or interested parties to part fund certain of the capital investments.
- Offshore borrowing programmes (Global Medium Term Note Programme (GMTN)).
- Bonds guaranteed by ECA's/DFI's.
- Domestic and International bank loans.
- Syndicated loan markets in both local and international markets.
- Innovative forms of project finance (including PPP's and others), to create additional capacity on the Transnet balance sheet.
- Working with customers and/or interested parties to part fund certain of the capital investments using private sector participation mechanisms.
- Re-payment and or re-financing and or re-structuring of existing old expensive debt and implementing more economically viable financing structures.
- Sharia compliant funding.
- Leasing as an alternative funding solution.

- Global infrastructure and sovereign wealth funds.
- Hybrid funding structures including equity.
- Debt redemption fund ensuring Transnet's large loan redemptions are met, thus minimising refinancing risk.

The approvals required for signing of loan documentation and drawdown notices per funding category/instrument per financial year are defined in the DOA and the aggregate total may not exceed the total funding amount as approved by the Board through the annual Corporate Plan.

16.6. Pricing in Illiquid Markets

Where markets are illiquid Treasury should stress test pricing of funding requirements to determine the subsequent impact on external finance costs per financial year.

16.7. Reporting

Monthly feedback should be given to Finco and EXCO on the portfolio duration, the amount of funding executed, spreads achieved and ultimate funding levels obtained as well as an overall WACD for the funding portfolio.

17. DEBT MANAGEMENT

17.1. Letters of Credit

Letters of credit (LC) in a Transnet context are normally requested by certain suppliers of goods and services to ensure payment is received as contractually agreed. Any LC in a foreign currency should be hedged by Treasury and not the issuer of the LC. LC's may only be issued by Treasury in line with the approvals as stipulated in the DOA.
The Issuer of the LC must at have **Long Term Investment Grade** credit rating. The issuance of an LC should not be promoted as it will increase cost for the Group, but is then acceptable if supplier is not willing to contract without an LC. All endeavours must be put in place to obtain an LC at the lowest possible cost for the Group.

17.2. Borrowing Powers and Guarantees

In terms of section 66 of the PFMA a ~~s~~Schedule 2 ~~p~~Public ~~entities~~ Entity such as Transnet may only borrow money and or issue guarantees through its ~~the~~ ~~a~~Accounting ~~a~~Authority, which is the Transnet Board. The ~~a~~Accounting ~~a~~Authority may not delegate this without prior written approval from the Minister. Transnet ~~did get~~ received written approval on 28 March 2001 (borrowing powers) and on 28 February 2002 (guarantees) from the Minister to enable the Board to sub delegate its borrowing powers and its ability to issue guarantees.

The limits applicable in respect of borrowing powers and the issuing of guarantees are defined in the DOA.

The Issuer of the Guarantee must have a **Long Term Investment Grade** credit rating.

17.3. Standard Loan Documentation

The loan documentation should be aligned with the funding strategy. Transnet Treasury negotiates for terms and conditions that support financial stability, risk reduction, flexibility and cost effectiveness of funding instruments. All funding agreements entered into by Treasury should get sign off from Group Legal, Tax, and all the respective areas within Treasury to ensure that financial risks are effectively analysed and mitigated.

17.4. Advance Payment Guarantees and Performance Bonds

Operating Divisions should approach Treasury to provide sign off and acceptance on the "Issuer" of Advance Payment Guarantees and Performance Bonds in supplier agreements to manage the counter party risk exposures. The Group should endeavour to always ensure that the issuers of these bonds have a "long term investment grade credit rating". Exceptions to the above may only be approved by the GCFO.

17.5. Relationships with Financial Institutions

Treasury's ability to successfully raise funding and hedging depends mainly on Transnet's credit rating and the strength of its relationships with investors and other stakeholders. It is therefore imperative to communicate Transnet's business and funding strategy to these institutions effectively and timeously. Road shows by Transnet Executives serve an important role in keeping the investor community/funders abreast of Transnet's strategic objectives. The relationship with financial institutions is important, and it should focus on institutions from which mutual benefit is to be achieved.

17.6. Financial Covenants

Monitoring of key financial ratios i.e. cash interest cover and gearing are important especially during the market demand strategy phase. Treasury needs to monitor the impact of financial covenants in loan agreements, funding and hedging programs at least on a quarterly basis to try and determine in advance the likelihood of breaching and the resultant cost implication thereof. The outcome of the analysis should be reported to FINCO and Group Audit Committee at least quarterly. Stress scenarios should be performed to cover different market events and when early redemption of debt is considered, when information is requested from Group and impact on covenants are assessed. The following ratios should be monitored:

- Maximum gearing of 50% and
- Minimum cash interest cover of 3 times.

17.7. Asset and Liability Management

Although Treasury will always endeavour to match liabilities with pay back periods of the assets as reflected above, the Treasury function will not incorporate full ALCO (Asset and Liability Committee) responsibilities where liability matching is done against assets, inclusive of re-pricing gap analysis, scenario analysis, stress testing and duration management.

17.8. Treasury Compliance

The formulation of the Compliance Risk Management Framework and Policy is the responsibility of Transnet Group Compliance. The Board approved Policy and Framework are adopted and applied at Group Treasury. A dedicated Compliance Officer is resident within Treasury who assists Treasury Management in complying with the laws/regulations/directives/rules/standards that are relevant to Treasury (The Treasury Universe).

17.9. Contractual Compliance

Contractual compliance in respect of supplier agreements is managed at Operating Divisional level.

17.10. Regulatory Compliance

The management and monitoring of regulatory compliance within the Group is managed by Group Economic Regulation.

17.11. Intergroup Financing

17.11.1. Objective

The objective of the Intergroup Financing policy is to provide guidelines and directives within which Treasury can establish inter group loans to Operating Divisions.

17.11.2. External Funding

The Operating Divisions of Transnet are not allowed to obtain direct funding from external sources except for operational leases. Treasury is the only Business Unit mandated and authorised to enter into external financing agreements.

17.11.3. Back to Back Intergroup Loans

To enable Treasury to recover the costs from the Operating Divisions, back-to-back loans between Treasury and the Operating Divisions are concluded. As Transnet Treasury is not a profit centre, no margins should be added by Treasury to ensure that the pricing remains cost effective. It is not practical to establish inter group loans on an occasional basis and the Operating Division can utilise their current account facility to fund operational expenses and small capital expenses on a daily basis. Short, medium and long term inter group loans can be established quarterly as more clarity will then be available on the cash flow stream of capital projects.

17.11.4. Approval of Intergroup Loans

Operational and capital budgets of all the Operating Divisions are approved by the Board on an annual basis and this approval enables Treasury to provide funding to the Operating Division in amounts equal to the approved budgets as the consolidated results of the budgets are incorporated into the annual borrowing plan. Increases in estimated total cost per project are approved in terms of the DOA.

The granting of interest bearing inter group loans can only be done in line with the approvals as defined in the DOA.

17.11.5. Operational Leases in Foreign Currency

Any operational leases that are not Rand denominated need specific approval from the GCFO before it can be concluded. This should only be allowed in exceptional cases where Rand denominated operational leases cannot be utilised as with over-border activities.

18. COMMODITY RISK POLICY (FUEL)

18.1. Objective of the Policy

The objective of this policy is to set specific risk management directives and guidelines within which Treasury should manage the Commodity (fuel) risk exposure of the Group and to create more certainty in terms of cash flows to allow the Operating Division to establish tariffs on sound principles and still be competitive.

18.2. Basis Risk

Basis risk is important when commodity fuel hedges are entered into. It can be defined as the relationship between the underlying products used in the hedges versus the actual commodity consumed by Transnet. The products underlying the hedging transactions could be ICE Gasoil or Brent crude oil, for example, whilst the basic fuel price (BFP) is based on Mediterranean and Arab Gulf based products.

Basis risk will always be part of a fuel hedging program and a tool available to mitigate basis risk is to ensure that the historic price correlation over a twelve-month period between the underlying products utilised in the hedges and the petroleum products consumed by Transnet has a historic correlation greater than **80%** at the outset of the hedge.

18.3. Margining and Collateral

The majority of commodity-hedging transactions are subject to daily/monthly margining agreements, which are governed by credit support annex (CSA's) to the main ISDA agreements. Transnet will not enter into any CSA's with counterparties as there should be counterparties available who are willing to enter into fuel hedging transactions without margining arrangements.

To ensure that no unnecessary pressure is put on the cash resources of the Group; fuel-hedging transactions may only be executed with approved counterparties who do not require margining agreements. This is to avoid the posting of any collateral and the tying up of cash for extended periods of time. Position will be reviewed on an annual basis.

18.4. Compliance and Exchange Control Regulations

The South African Reserve Bank only allows RAND based fuel hedges as Transnet is not a natural generator of foreign currency income. Fuel hedges in any foreign currency are not allowed. In addition to this the SARB does not allow the USD/RAND component of fuel to be hedged separately from the commodity component.

18.5. Hedging Program

RAND based fuel hedging products simultaneously hedge both the commodity and exchange rate risk of fuel exposures. Available hedging instruments only allow the hedging of the basic fuel price (BFP) as add-ons, such as taxes, levies and margins and these cannot be hedged. Although it varies from month to month, the basic fuel price constitutes around 60% of the overall price of diesel and petrol, and it is this portion that is exposed to movements in oil prices and the USD/ZAR exchange rate.

The ultimate product chosen for a specific strategy will depend on pricing, best mitigation of the risk exposure and after consideration of the accounting and tax treatment. For effective hedging the following are imperative:

- No speculative transactions may be entered into and transactions can only be used for hedging purposes.
- The liquidity of the financial instrument and the underlying commodity must be high with transparent and accessible pricing.
- Only vanilla type of instruments is allowed and no exotic instruments like extendibility of structures in terms of volumes and tenor by choice of the counterparty and double-up functionality are allowed.
- No physical exchange of the commodity is allowed and all hedges must be cash settled.
- The tenor of fuel hedges may not exceed eighteen months on a rolling basis.
- The hedges may not exceed **75%** of annual budgeted consumption to allow for variability in actual consumption.
- The natural hedge in the form of the energy levy that is incorporated into certain customer agreements at TFR will be used to mitigate part of the fuel risk exposures and this should be considered when hedging strategies are developed to ensure that both the hedges and the energy levy do not exceed the **75%**.
- Should hedging be done and the levels have not been set for the energy levy per the financial year (as this is only done on 01 April annually), energy levy should be excluded. Any hedges done after levy has been set, should include impact of energy levy.
- The hedging programme's main emphasis is to ensure that the risk limits as contained in paragraph 7.2.1.2 are not exceeded per financial year to maintain fuel costs due to commodity and exchange rate movements.

18.6. Hedging Instruments

The type of instruments utilised in the hedging programme will determine the level of possible volatility in the Group's income statement due to monthly fair value movements. The utilisation of swaps and zero cost structures will add to volatility in the financials as a result of movements in currencies, oil prices and volatilities.

Buying Call options limit the volatility to the premium paid over the life of the option, but depending on market conditions, may be expensive to utilise. Volatility in the financials can be experienced over reporting periods if hedge accounting is not applied or fully effective.

It should be noted that an offsetting value would be achieved through the actual purchase of the physical fuel by the Operating Divisions. This will be recorded as part of operating expenditure.

The application of hedge accounting on fuel hedging structures will be considered for implementation after adoption of IFRS9 due to the complex nature of commodity driven hedging requirements as contained in IAS39.

FINCO will be informed on a monthly basis of the fair value movements and the subsequent impact on the income statement to enable them to monitor this impact and the overall performance of the hedges.

The hedging of commodity risk (fuel must be done in accordance with the limits stipulated in the DOA.

18.7. Transfer Pricing and Transactional Requirements

Hedging transactions entered into on behalf of the Operating Division will be recorded in the Treasury system under the dedicated Operating Divisional entities.

Treasury is the only authorised participant in the financial markets to enter into fuel hedging transactions with external counterparties. Sufficient monthly information on fuel hedges will be provided to the respective Operating Divisions to facilitate proper disclosure in general ledger.

18.8. System Requirements

Commodity transactions need specialised systems to calculate the correct fair market values on a daily/weekly/monthly basis and as such this can only be done by Treasury. The Treasury operational system can price vanilla commodity transactions. In practice where Treasury is not capable of using its systems to price accurately, it is common practise to outsource such services and Transnet will explore using the services of a reputable bank/financial institution to provide such services to it, should it be necessary.

19. OTHER COMMODITY RISKS (SUPPLY AGREEMENTS)

The MDS will require continuous establishment and conclusion of supply agreements to procure goods and services for both capital and operational risk purposes. The majority of supply agreements will contain price escalation clauses that need to be managed as part of the procurement process.

The following processes should be followed to mitigate the financial risk exposures as a result of price escalation clauses:

- Wherever possible the preference should always be to establish a fixed rate Rand contract to avoid any price escalation over the tenor of the contract.
- This should be done by transferring the cost of price escalation to the balance sheet of the supplier.
- The above should not be done at all cost to Transnet and an analysis should be done to establish reasonability of difference between the variable price quoted and by fixing the price with the supplier.
- Only if no agreement can be reached with supplier to fix the pricing and or the cost of fixing appears to be unacceptable high, a floating price should be accepted and the potential expected variable costs over the duration of the contract should be disclosed under the risk analysis and included under the estimated total cost of the project.

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~~19.~~20. NEW FINANCIAL INSTRUMENTS

Treasury can only transact in instruments listed in this FRMF. This list is reviewed from time to time. The Treasurer can motivate the use of new financial instruments that are not included under par 18.1 to the Group CFO for approval and inclusion in the FRMF. Any new instrument that was not utilised by Treasury before in the production environment, needs to go through a formal and detailed system testing process.

The testing process should at least include the following; Instrument description, deal execution, confirmation, financial risks, operational risks, cash flows, accounting, hedge accounting (if applicable), legal (including confirmation and master agreements), taxation, controls, systems, settlements, limit structures, and pricing.

An official test pack should be prepared, providing evidence that all the disciplines within Treasury have tested the detailed impact of the new financial instrument in their area of

responsibility. The test pack should be structured in such a way that it follows the normal transactional flow with full segregation of duties through the Front Office, Middle Office, Operations, Hedge Accounting and finally Group Tax.

The Treasury information system should be able to accurately price all the financial instruments in paragraph 0 below. If any new financial instrument is considered for approval and the pricing cannot be accurately determined by the Group Treasury system, a detailed workaround of the processes to be followed, should be included in the test pack.

All the Deputy Treasurers, the Head of Structured Finance and the Group Treasurer should sign off the test pack before the instrument can be utilised in the production environment.

~~19.1.~~20.1. Approved Financial Instruments

The following financial instruments can be utilised for funding, hedging, investments and or market making purposes (depending on portfolio type)

- Commodity (fuel) swaps (Asian style option, averaged daily and settled monthly/quarterly) in ZAR;
- Commodity (fuel) options in ZAR;
- Commodity (fuel) collar structures in ZAR;
- Commodity (fuel) call spread options in ZAR;
- Commodity (fuel) put spread options in ZAR;
- Bonds in Rand and or a foreign Currency (Domestic or International);
- Transnet commercial paper;
- Interest rate options, including bond options;
- Repurchase agreements (buy and sell back, sell and buy back and repo's);
- Index linked bonds;
- Term loans in foreign currency and Rand;
- Banking facilities i.e. overdrafts;
- Operational bank balances;
- Structured finance transactions;
- Financial Leases;
- Operational leases;
- All instruments included under the DMTN programme;
- All instruments included under the ECA umbrella facility;
- All instruments included under the GMTN programme;
- Letters of credit;
- Bonds/notes issued by Government and major banks in South Africa.
- Commercial paper/notes issued by Government and major banks in SA.
- Treasury bills of the SA Government;
- Bonds/notes issued by State Owned Companies in SA;
- Commercial paper/notes issued by State Owned Companies in SA.
- Negotiable certificates of deposits issued by banks if an approved counter party for investment purposes;
- Call and term deposits;
- Interest rate swaps;
- Rand overnight deposit swaps;
- Interest rate options, caps and collars;
- Forward rate agreements;
- Foreign currency spot transactions;
- Foreign currency forward transactions;
- Participation foreign currency forward transactions;
- Cross currency interest rate swaps;
- Foreign currency options and collars;
- Foreign currency deposits; and
- Foreign currency operational bank accounts.

- Hybrid funding structures including equity.

It can be seen from the list above that the intention is always to utilise vanilla type financial instruments. "Naked" short (written) option positions are not allowed on any instrument type, unless the notional amount is offset with a long option position within a hedging structure as approved by the GCFO.

~~20.~~21. HEDGING AND ACCOUNTING IMPLICATIONS

~~20.1.~~21.1. Background

Transnet is required to report in ZAR under IFRS accounting standards. Certain costs (fuel, operational and capital expenditure, leases and loans) are directly or indirectly foreign currency denominated. Transnet is therefore exposed to the balance sheet and income statement effects of exchange rate, interest rate and commodity price movements for items denominated in foreign currency. The following accounting statements apply to financial instruments:

IAS 39 - Financial Instruments: Recognition and Measurement

IAS 21 - The Effects of Changes in Foreign Exchange Rates

IAS 32 - Financial Instruments: Presentation

IFRS 7 - Financial Instruments: Disclosures

IFRS 9 – Financial Instruments (partially released)

IFRS 13 – Fair Value Measurement

~~20.2.~~21.2. Objective of the Policy

The objective is to show the economic effect of hedging activities, whilst complying with IFRS. A further objective is to minimise income statement volatility. To this end, the use of hedge accounting is required on all large capital projects which expose the company to significant currency risk over extended periods of time.

~~20.3.~~21.3. Hedge Accounting

Transnet hedges its risk exposures by using financial derivatives. In terms of IAS39, derivatives used for hedging are marked to market, and changes in market value are recognised in profit or loss. Hedge accounting enables Transnet to reduce income statement volatility caused by changes in the fair value of derivatives that are used for hedging.

Transnet's accounting policy allows for both fair value and cash flow hedge accounting. Hedge Accounting is only permitted if all the conditions prescribed in IAS 39 for Hedge Accounting have been complied with. Furthermore, hedge accounting must be approved by the General Manager Group Finance, who approves on behalf of the Transnet Hedge Accounting Committee, (a sub-committee of the Finance Committee). The Hedge Accounting Committee will determine the threshold that will be utilised for the enforcement of hedge accounting on individual projects.

~~20.4.~~21.4. Fair Value Hedge Accounting

Fair value hedges are hedges of an exposure to changes in the fair value of a recognised asset or liability or an unrecognised firm commitment attributable to a particular risk that could affect profit or loss. The application of hedge accounting results in both the exposure(s) being hedged and the hedging instrument(s) being recognised on the balance sheet at fair value with changes in the their fair value recognised in profit or loss. If the hedge is perfectly effective, the net effect in the income statement should be nil. Deviations from 100% effectiveness (i.e. hedge ineffectiveness) are automatically recognised in the income statement on a monthly basis as long as the effectiveness stays within the 80% to 125% range. Hedge accounting is discontinued prospectively when the hedge effectiveness moves outside the 80% to 125% range. One exception to this rule is the law of small numbers where the ineffectiveness results from small and immaterial amounts being used in the hedge effectiveness calculation for a certain period which is provided for in the hedge documentation.

~~20.5.~~21.5. Cash Flow Hedge Accounting

Cash flow hedges are hedges of an exposure to variability in cash flows attributable to a particular risk associated with a recognised asset or liability or a highly probable forecast transaction that could affect profit or loss. To the extent that the hedge is effective in terms of IAS 39, the change in the fair value of the derivative is booked to Equity, thus reducing Income Statement volatility. For hedges of forecast transactions to acquire capital assets, the amount recognised in equity is subsequently included in the initial cost of the asset on the invoice date. For hedges of recognised financial assets or liabilities (e.g. foreign currency denominated loans) the amount recognised in equity is reclassified to the income statement in the same period that the asset or liability affects profit or loss. Over effectiveness i.e. amounts in excess of ~~Deviations from the~~ 100% hedge effectiveness are recognised in the income statement on a monthly basis as long as the effectiveness stays within the 80% to 125% range. Hedge accounting is discontinued prospectively when the hedge effectiveness moves outside the 80% to 125% range. One exception to this rule is the law of small numbers as explained under fair value hedges above.

~~20.6.~~21.6. Hedge Accounting Criteria

The following criteria are applied by Treasury:

- The hedged risk must be an exposure to changes in fair value or variations in cash flows attributable to a particular financial risk and that could affect profit or loss.
- At inception, the hedge relationship is formally designated and documented in accordance with Transnet's risk management objectives and strategy for undertaking the hedge.
- The hedge is expected to be highly effective in achieving offsetting changes in fair values or cash flows attributable to the hedged risk.
- For cash flow hedges, the forecast transaction that is subject to the hedge must be highly probable and must present an exposure to variations in cash flows that could ultimately affect profit or loss.
- Hedge effectiveness can be reliably measurable.
- The hedge must remain highly effective during the whole period of the hedge.

~~20.7.~~21.7. Hedge Accounting Documentation

Formal hedge documentation is required at inception of the hedge and must include the following:

- Identification of the hedging instrument and the hedged item or transaction.
- The nature of the risk being hedged.

- The risk management objective and strategy for undertaking the hedge.
- How effectives will be assessed and at what intervals.

~~20.7.1.~~21.7.1. Assessment of Hedge Effectiveness

Prospective Assessment - must be done at inception and throughout the life of the hedge. It must be highly effective in offsetting changes in fair value or cash flows. Testing methods to be used include dollar offset (including the hypothetical derivative method and ratio analysis) critical terms match, regression analysis, risk-reduction test, etc. The hedging results must be within the range of **80% to 125%.**

Retrospective Assessment - must be done at each reporting date and throughout the life of the hedge. Testing methods to be used include the dollar offset method, regression analysis etc. The hedging results must be within the **80% to 125%** range.

~~20.8.~~21.8. Hedge Accounting and Hedge Documentation

To qualify for hedge accounting designation, the hedged item should create an exposure to risk that ultimately affects profit or loss.

The following can be designated as hedged items:

- A single or group of recognised assets or liabilities.
- Unrecognised firm commitments or highly probable forecast transactions.
- A portion of the cash flows or fair value of a financial asset or liability.
- Net investment in foreign operations.

Net positions cannot be designated as hedged items.

The following **hedge able risks** are normally found in Transnet associated with financial assets/liabilities:

- Interest rate risk;
- Foreign currency risk;
- Commodity risk; or
- Credit risk.

~~The following **hedge able risks** are normally found in Transnet associated with non-financial assets/liabilities:~~

- ~~Entity wide risk~~
- ~~Foreign currency risk component~~

The following can be designated as hedging instruments:

- All derivative financial instruments with third parties.
- Non derivatives for a hedge of foreign currency risk i.e. receivables, debtors etc.
- Combination of the above two except for net written options.

A portion of the hedging instrument can be used in the designation but a hedging instrument cannot be designated for only a portion of its life.

~~20.9.~~21.9. The Role of Treasury and Group Finance

Treasury must record both the hedging instrument and the hedged item on the Treasury Management system, maintain them on a regular basis, ensure correctness of data, adhere to all the conditions of this FRMF and provide the Operating Divisions with all the required information on a monthly basis to enable them to properly account for the value of the assets/liabilities, including the fair values of the hedging instrument (derivative). Group Finance should provide the fair values of the hedged item as well as the amounts on the journal entries that need to be passed by the Operating Divisions.

~~20.10.~~21.10. Valuation of Financial Instruments

ACTSA Charter of Best Practice Principle No 11: Valuation

"All positions should be independently valued at fair value using approved policies and procedures at least daily/weekly"

Guideline Statements on Treasury Best Practice issued by National Treasury – Formally documented and approved policies and procedures should be used for the revaluation of positions. Valuations should be based on an appropriate bid or offer level obtained from a recognised provider of market data. This should be in compliance with internationally accepted accounting standards. Prices and rates used for revaluation should be taken from independent sources. Where in-house prices are used, independent review procedures should be in place, including independent models".

~~21.~~22. TAX RISK POLICY

- The tax consequences of the deal must be evaluated and quantified before any financing or hedging deal is concluded.
- Group Tax must sign off on the deal before any financing transaction is concluded.
- Transnet will not enter into any structures that have a high probability of breaching the provisions of sections 80A and 103 of the Income Tax Act, no 58 of 1962 or any equivalent legislation that may be promulgated in the future.
- Transnet will not accept any tax risk being transferred from the counterparty to Transnet.
- Transnet will not accept any risk of a structure being queried by SARS and this risk will be for the account of the counterparty.
- The risk of future changes in tax laws making a structure less attractive than what it initially was is for the account of the counterparty or Transnet must have a cost-effective exit strategy.
- Tax implications must be taken into account in the budgeting process.
- Financial and Performance reporting must be done pre-tax and post-tax.
- Proposed funding strategies must be analysed, and the results must be tabled pre-tax and post tax.
- The funding plan should be formulated pre-tax and post-tax.
- Transnet will not provide security or accept liability in respect of foreign tax jurisdictions.
- Transnet will not provide or accept so-called evergreen security or liability.

~~22.~~23. FINANCIAL RISK MANAGEMENT PERFORMANCE AND EVALUATION

In adopting a Financial Risk Management policy framework and setting limits structures surrounding the effect of changes in counterparty risks and market rates which have an effect on net income, Transnet has a dual objective. Firstly, to optimize performance relative to its long-term financial goals including net income in the expected rate environment.

Secondly, to contain variance in net income, ROA and ROE to a level acceptable to its Board and one that will ensure a continuing acceptable return to its shareholder.

~~23.~~24. PERSONAL ACCOUNT TRADING POLICY

~~23.1.~~24.1. Purpose

This policy is designed to regulate and control the trade in financial instruments by Transnet employees in particular those employees who are employed in the Treasury Department as they can access financial market information that would give them an undue advantage over other financial market participants.

~~23.2.~~24.2. Objectives

Transnet recognises that in executing its trading business it cannot totally forbid it's employees from engaging in "personal account" trading. Transnet also recognises that a balance must be maintained between Transnet's rights as an employer and the employee's rights to manage their personal investments in a manner they deem fit. Transnet further recognises that if "personal account" trading is permitted, certain internal control procedures must be put in place and that the Board of Directors through the Executive Management and

Treasury Management must accept responsibility for the establishment of the systems and controls to avoid:

- Conflict of interest;
- Prejudice towards clients; and
- Prejudice towards Transnet ~~SOC Ltd~~.

The primary objectives of this policy are

- To provide guidance to Treasury Employees on how personal account trading is to
- be conducted.
- To promote transparency, integrity, honesty, and objectivity of judgement and
- avoid conflict of interest.
- To ensure that no financial prejudice will be suffered by Transnet when a Treasury Employee engages in "personal account" trading.
- To ensure that no financial prejudice will be suffered by any of the clients of Transnet when an affected employee conducts "personal account" trading.
- To avoid personal account trading that prevents an employee from discharging his or her employment obligations as expected of him or her by Transnet ~~SOC Ltd~~.

~~23.3.~~24.3. Scope

This policy applies to all Transnet Treasury employees.

~~23.4.~~24.4. Definitions

"Front Running" means trading for one's own account where the employee has insider knowledge of sizeable orders and uses this information to trade to his or her personal advantage.

"Insider Information" means specific or precise information, which has not been made public and which;

- is learned or obtained as an insider and
- if it were made public would likely to have a material effect on the price or value of any security listed on a regulated market.

"Insider" means a person who has inside information through;

- being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates, or
- having access to such information by virtue of employment, office or profession.

"Regulator" means the Johannesburg Securities Exchange.

~~23.5.~~24.5. Principles

No Transnet Treasury employee shall;

- For his or her account or for an account in which such employee has a beneficial interest, trade in any Transnet bonds and or any financial instruments that are issued by Transnet.
- For his or her own account or for an account in which such employee has a beneficial interest, trade in any bonds and or any financial instruments issued by other state owned companies;
- Trade in any financial instrument whatsoever without having signed and acknowledged to be bound by the conditions of this policy;
- Engage in "front running";
- Engage in any "insider trading"; *or*
- Use Transnet's ~~SOC Ltd's~~ equipment and resources excessively to conduct personal account trading.

Treasury employees may trade in equities for their own personal account subject to the conditions of paragraphs 23.2.1 and 23.5 and need not disclose these trades to the Compliance Manager.

All "personal account" trades by Treasury employees **s**hall be reviewed and signed off by both the Line Manager and respective functional Deputy Treasurer before it is reported to the Compliance Manager. The frequency of trades and values will be subject of the review process.

All "personal account" trades by Treasury employees **s**hall be reported to the "Compliance Manager" within 10 business days after execution of the trade.

All "personal account" trades by Treasury employees shall be reported by the Compliance Officer;

- Monthly in the Treasury Management Report to the Group Chief Financial Officer and the Transnet Executive Committee.
- Bi- Annually to the Transnet Board of Directors.

All Treasury employees who engage in personal account trading shall disclose the information required in terms of the Personal Account Trading Template which is Annexure "A" hereto to the Compliance Officer.

This policy is acknowledged by every Treasury employee to amend each and every Treasury employee's contract of employment as if specifically incorporated therein.

~~23.6.~~24.6. Personal Account Trading Register

- The Treasury Compliance Manager must ensure that a personal account trading register is maintained.
- The personal account trading register shall be kept for a minimum of five years after the conclusion of each trade.

~~23.7.~~24.7. Contravention Of The Policy

Non compliance with this policy is misconduct and any non compliance will be subject to a disciplinary process.

Non compliance with this policy shall be deemed to be a contravention of an employees' contract of employment.

~~24.~~25. REVIEW OF POLICIES

Financial risk management policies should be reviewed annually and recommended through FINCO and EXCO for ultimate approval by the Transnet Board of Directors.

~~25.~~26. CONCLUSIONS

Transnet recognizes that no policy can anticipate all the conditions, situations and opportunities that may arise in the normal course of operations. Management therefore is expected to exercise prudent judgement in the implementation of this policy. All deviations from the guidelines established by this policy will be reported to FINCO, RISCO, EXCO and the Board on a regular basis.

Annexure 'A"

Personal Account Trading Report – template.

Type of Security:

Type of Transaction:

Nominal Value: **R**

Unit Price or Yield:

Transaction Date and Time:

Settlement Date:

Settlement Value: **R**

Repo: Settlement Date (Leg 2):

Repo: Price or Yield (Leg 2):

Repo Rate:

Agent:

Name of Employee:

Employee Number:

Signature of Employee:

Date Reported:

REPORT 2(A) – PART A – EXHIBIT 16

Marenda Maphanga

From: Mathane Makgatho Corporate JHB
Sent: Thursday, 21 August 2014 12:54
To: makgathom@telkomsa.net
Subject: FW: China Development Bank

Importance: High

From: Mathane Makgatho Corporate JHB
Sent: 21 August 2014 12:54 PM
To: Brian Molefe Transnet Corp; Anoj Singh Corporate JHB
Cc: Yusuf Mahomed Transnet Corporate JHB; Dorothy Kobe Transnet Corporate JHB
Subject: China Development Bank
Importance: High

ear Brian and Anoj

I trust that all is well with both of you.

This email is a follow up of various discussions I had with yourselves and in some instances with Regiments included where I had indicated my discomfort and disagreement on how the China Development bank facility negotiations are being handled, Regiment's pricing methodology as well as my disagreement of the appointment of Regiments as the Transaction advisor for the facility. For the avoidance of doubt I would like to bring the following to your attention:

1. Overall governance

I respect your Executive Authority and powers that go with it, but I also believe that it is my responsibility as the current Transnet Group Treasurer to advise you on matters relating to Treasury activities. As I indicated, I was not consulted nor was I aware that Regiments was appointed as the Transaction advisor and lead negotiator for the facility as I believe there was no need for them to be appointed given progress that we had made. I do not support that a R26 billion facility be negotiated and led by a transaction advisor, as we cannot and should not negotiate a loan facility in isolation of Transnet's current R90 billion debt portfolio. When we negotiate and enter into agreement with nders and investors, we make certain undertakings and covenants that should apply to future facilities as well. The act that Transnet's biggest ever transaction, is negotiated and decided by outsiders (Regiments) is a cause for concern as it exposes the Company to undue risk. When we negotiate a facility of this magnitude, we assemble a multi-disciplinary team that includes legal, tax, accounting, structured finance and risk management team members. This is to ensure that all potential risks relating to the facility are identified and mitigated to the extent possible.

2. Fees
    a. Interest expense

The current pricing indication is not in line with other DFI's; asset backed or even tied facilities. The main reason Transnet has opted to diversify its funding sources to include ECA's and DFI's in its funding portfolio is to increase maturity profile of our debt portfolio and achieve cost effective funding. As China development bank facility is tied to procurement from China, as it is supposed to support CNR and CSR locomotive contracts, the terms and conditions should mirror that of tied facilities as well as asset backed facilities. These two elements (tied and security) should translate into cost effective funds which should be close to local funds as well as simpler terms and conditions. This facility cannot be compared to a GMTN global bond as a GMTN bond is unsecured and untied and does not have other DFI related fees. The pricing of a global bond is transparent and in line with other international bond issuance of similar rated entities. The same is not true with CDB facility.

The table below is a calculation of fixed interest rate based on Jibar + 400 and Jibar + 260 basis points. I have added an additional 50 basis points as a fair price is around 210 and took into consideration size of the facility. In the current market, the proposed CDB structure costs R3.5 billion more in interest expenses.

	3m libor +257		
Year	3m Jibar + 400	3m Jibar + 260	Difference
1	3 187 862 136.99	2 814 300 000.00	373 562 136.99
2	3 205 377 863.01	2 829 720 821.92	375 657 041.09
3	3 196 620 000.00	2 806 589 589.04	390 030 410.96
4	3 122 339 309.06	2 726 734 404.83	395 604 904.23
5	2 822 806 381.41	2 492 584 644.82	330 221 736.59
6	2 557 758 415.16	2 264 541 530.30	293 216 884.86
7	2 299 282 349.33	2 035 375 779.94	263 906 569.39
8	2 033 505 728.87	1 784 990 978.63	248 514 750.24
9	1 767 729 108.43	1 551 643 101.37	216 086 007.06
10	1 514 199 483.61	1 325 376 465.54	188 823 018.07
11	1 231 607 766.18	1 087 686 084.82	143 921 681.36
12	966 741 963.49	853 857 077.92	112 884 885.57
13	703 529 645.32	622 779 145.64	80 750 499.68
14	438 860 018.76	383 781 079.24	55 078 939.52
15	172 747 096.36	151 087 044.82	21 660 051.54
TOTAL	**29 220 967 265.98**	**25 731 047 748.83**	**3 489 919 517.15**

b. Once off arrangement fee

i. The table below illustrates the amount of money that Transnet has to pay if we agree with Regiment's proposed once off fee of 118 basis points which is R313.3 million. I recommend that at worst, we should settle for 80 basis points which will save the company at least R101 million with the best case scenario being 60 basis points and saving of R154 million. This is in line with other DFI's that Transnet has facilities with.

Basis points	Amount in ZAR
118	313 290 000.00
110	292 050 000.00
90	238 950 000.00
80	212 400 000.00
70	185 850 000.00
60	159 300 000.00
50	132 750 000.00

3. Conclusion

It is my believe that the CDB facility in its current form is not in the best interest of the Company or the country given potential **capital leakage** of up to **R3.7 billion** in excessive interest expense and excessive arrangement fees which may be classified as PFMA violation given information at our disposal. The additional interest expense will have a negative impact on the already fragile cash interest cover ratio. I therefore recommend that we terminate discussions with China Development Bank and explore other sources of funds. Transnet has proved its ability to raise funds from diverse funding sources even under trying circumstances. In 2008-09, we were able to raise over R22 billion even when the market was "closed" for other issuers. The latest example is our ability to raise R8 billion for the locomotive deposit at short notice. As indicated in the

Company's June 14 going concern document, the Company has sufficient facilities to meet all its obligations as they fall due. The resuscitation of Transnet's domestic bond program and availability of short term facilities will assist in alleviating any potential cash flow problems. Even if domestic spreads can widen, overall pricing will still be much better that the CDB facility.

Sincerely;

TRANSNET

Mathane Makgatho
Group Treasurer
Group Treasury
Transnet SOC Ltd

+27 11 308-2613
+27 83 270 7651
+27 11 308-2699
Mathane.Makgatho@transnet.net
www.transnet.net

REPORT 2(A) – PART A – EXHIBIT 17

Marenda Maphanga

From: Phetolo Ramosebudi Transnet Corporate JHB <IMCEAEX-_O=TRANSNET_OU=EXCHANGE+20ADMINISTRATIVE+20GROUP+20+28FYDIBOHF23SPDLT+29_CN=RECIPIENTS_CN=PHETOLO+20RAMOSEBUDI69A@eurprd04.prod.outlook.com>
Sent: Tuesday, 09 June 2015 14:30
To: 'EricW@regiments.co.za'
Subject: JP Morgan Termination letter
Attachments: JP Morgan Termination letter.doc

Hi Eric,

Do you mind reviewing this as per Anoj request.
Kind Regards

Anoj Singh, Group Chief Financial Officer

TRANSNET

Mr. Marc Hussey
Joint Managing Director
JP Morgan Chase
1 Fricker RD
Illovo
SANDTON

Dear Marc,

Re: Coordination of ZAR syndication loan and the Bridging facility

Further to our previous engagements on the request to coordinate the ZAR syndication loan with Regiments Capital, Transnet has realise that it made a wrong assumption that the Lead Coordinator will provide the under writing facility on the balance of the US$ 1 billion.

Now that the expectation is not in line with JP Morgan position, Transnet has decided that it will pursue the current offer received from the Bank of China and any other availability facility and balance will be drawn from the US$ 1 billion standby facility. Therefore the coordination of ZAR loan will not be required.

Transnet therefore regret to terminate the coordination arrangement of the ZAR syndication loan with JP Morgan.

Transnet appreciate your efforts

Thank you and Kind Regards,

Anoj Singh
Group Chief Financial Officer
Date:

REPORT 2(A) – PART A – EXHIBIT 18

From: Edward Thomas Transnet Corporate JHB
Sent: Wednesday, 16 September 2015 8:46 AM
To: Phetolo Ramosebudi Transnet Corporate JHB
Cc: Garry Pita Transnet Corporate JHB
Subject: RE: REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE R18 BILLION CLUB LOAN

Hi,

There are a couple of questions that need to be answered based on the previous submission and the new submission:

The financial were as follows:

From: Edward Thomas Transnet Corporate JHB
Sent: Wednesday, 16 September 2015 08:46
To: Phetolo Ramosebudi Transnet Corporate JHB
Cc: Garry Pita Transnet Corporate JHB
Subject: RE: REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE R18 BILLION CLUB LOAN
Attachments: REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE R18 BILLION CLUB LOAN.docx

Hi,

There are a couple of questions that need to be answered based on the previous submission and the new submission:

The financial were as follows:

FINANCIAL IMPLICATIONS

97. Given the invaluable contribution of Regime transaction, Regiments is due a success or Transnet or JP Morgan (or a portion thereof)
98. The fees for JP Morgan will be part of the m ZAR.

The ADC approved the following:

- It is recommended that the ADC:
  - Approve the confined appoi (interest rate; credit and c China Development Bank ((
  - Approve the confined appoi equivalent syndicated ZAR
  - Approve the contract exter appointment of Regiment: support to Transnet on the
  - Delegate authority to the A this confinement.

From our discussion:

- The first point is still in place and JP Morgan is still providing the service and the fees as described above will still be valid.
- The second point where JP Morgan had to lead and underwrite the syndicated ZAR loan is where JP Morgan failed to deliver. The document is silent on the fees for this and it is assumed that it would be included in the market related costs of the funding.
- If the fees for the Lead and underwriting is not included in the market related costs of the funding and there is a specific fee (as the one that we want to pay to Trillian) then that will also have to be disclosed to the ADC as an omission from the first submission.
- Does Trillian have the capacity and capability to underwrite the loan.
- Is Trillian going to provide the exact same services that JP Morgan was going to provide and why is their potentially different than that of JP Morgan?
- The Regimens fee was for the successful conclusion of the funding Transaction, thus I would interpret that being the hedging and loan, based on how I am seeing Trillian being paid is that not duplicate to what was paid to Regiments?
- The footer in the document must reference the correct value of the loan if different.

I have tracked changes in the memo, there are areas where you will have to provide further information.

Seeing that we are only changing the existing supplier for the loan on a previously approved confinement I don't think that we have to restate the grounds for confinement and can thus delete the whole section on the grounds for confinement and the confidentiality in the PPM. – Garry please comment.

Kind regards

TRANSNET

Edward Thomas
Acting Group Chief Supply Chain Officer
Group iSCM
Transnet SOC Ltd

(011) 308 2251 083 400 4295
(086) 758 3630 edward.thomas@transnet.net
www.transnet.net

From: Phetolo Ramosebudi Transnet Corporate JHB
Sent: 15 September 2015 06:13 PM
To: Edward Thomas Transnet Corporate JHB
Subject: REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE R18 BILLION CLUB LOAN

Hi eddy,

Please receive as promised.

Regards

REPORT 2(A) – PART A – EXHIBIT 19

TRILLIAN

BOUTIQUE ASSET MANAGEMENT

For: Transnet SOC Ltd
4th Floor, Carlton Centre
150 Commissioner Street
Johannesburg 2001
South Africa

Attn: Phetolo Ramosebudi

18 November 2015

Dear Sirs

ZAR 12,000,000,000 Club loan facility for the purchase of Locomotives and general banking.

This letter (the "**Engagement Letter**") sets out the terms and conditions on which Trillian (as defined below) is engaged by Transnet SOC Ltd (the "**Client**") to act as Originating, Co-ordinating Mandated Lead Arranger, in relation to a proposed ZAR 12,000,000,000 facility, to enable the Client to fund its payment obligations in connection with [the prospective] contract between the Client and [The Original Equipment] for the supply of locomotives and general banking (the "**Transaction**").

The terms of this Engagement Letter apply to all services provided by Trillian to the Client in connection with the Engagement.

The terms and conditions which are set out in the appendix to this Engagement Letter (the "**Appendix**") also form part of this Engagement Letter and any references to "Engagement Letter" herein and therein shall be construed accordingly. Terms defined in this cover letter have the same meaning when used in the Appendix.

1 **Engagement**

1.1 Scope: The Client hereby appoints Trillian (acting through its investment banking division or any Associate or other division thereof as it determines appropriate to perform the services described in this Engagement Letter) on an exclusive basis as Originating and Co-ordinating Mandated Lead Arranger, in connection with the Transaction. Accordingly, and subject to the terms of this Engagement Letter, Trillian acting through its Associates shall perform the following services in connection with the Transaction:

(a) acting as the principal and primary point of contact for the Client in respect of the structuring and documentation of the Club Loan Financing subject to the Client being included in all correspondence with Trillian;

(b) leading negotiations on behalf of the client (including co-ordination of lenders' positions) on the full documentation suite for the Club Loan Financing

(c) liaising on behalf of the Client with appropriate legal counsel, subject to the clients' review and approval (with caps if required by the Client), co-ordination of lenders' requests for advice and approval of legal opinions;

(d) such other services as Trillian considers expedient and reasonable for the efficient management and completion of the documentation process for the Club Loan Financing; and

Telephone +27 11 707 1367 Facsimile +27 86 767 1243
Block D, Rebel Square, 25 Rebel Road, Bryanston, 2021 Postnet Suite 488, Private Bag X1, Melrose Arch, Johannesburg, South Africa, 2076
Directors: Ian Fame, Daniel Roy
An Authorised Financial Services Provider Reg No 2000/021108/07 FSB number 42981
www.trillian.co.za

TRANSNET-REF-BUNDLE-05453

(c) Acting as Lead Arranger and coordinator in accordance with the executed documentation for the Club Loan Financing.

1.2 Exclusivity: The Client agrees not to award any other person any fees, title or role for carrying out any services contemplated by this Engagement Letter without the prior written consent of Trillian.

1.3 Mandate letter: Prior to commencement of the documentation process the Client will, and shall procure that all other Mandated Lead Arrangers, arrangers and lenders appointed or identified in connection with the Transaction will, enter into a mandate letter with regard to, inter alia, the Engagement substantially in the relevant LMA form and otherwise in form satisfactory to Trillian.

2 **Financing and Risk Management**

Nothing in this Engagement Letter shall be deemed to be a commitment by Trillian to provide or underwrite any financing. However Trillian commit to provide financial Risk Management solution in relation to the Transaction. This could also be provided through our alliance with Regiments Capital or any of our associates.

3 **Fees and Expenses**

3.1 Fees: In consideration of Trillian accepting and carrying out the Engagement, the Client agrees to pay Trillian the following fees:

Originating and Co-ordinating the Book Build in the Club Loan

ZAR 82,000,000 due and payable upon execution of a Club loan facility agreement relating to the Transaction (including, for the avoidance of doubt, any facility agreement pursuant to which Trillian and its Associates is the Advisor, coordinator and provider of financial risk management solution.

The Client acknowledges that Trillian would wish to review the structure of the remuneration to be paid to Trillian if the nature or structure of the Transaction alters materially from that contemplated in this Engagement Letter. However, this is subject to negotiation and should the proposed revised fee be unacceptable to the Client, the Client has the right to replace Trillian with another bank.

All fees payable pursuant to this Engagement Letter shall be paid in South African Rand (ZAR) and are in addition to any other fees payable to Trillian in connection with any other services or financing provided by Trillian to or for the Client in connection with the Transaction or otherwise.

3.2 Costs and Expenses: The Client agrees that it shall be responsible for all costs and expenses (including, but not limited to, any travel and accommodation expenses and the fees and disbursements of our legal and other professional advisers should their advice be required) reasonably incurred and adequately evidenced, together with any applicable value added tax or other similar taxes thereon, incurred by Trillian in connection with the Engagement, whether or not the Transaction is completed. Trillian may invoice the Client monthly for those costs and expenses incurred by Trillian for which the Client is responsible. The Client shall also be responsible for all costs of its own legal, accounting, tax and other agents or advisers as well as for all other expenses relating to the proposed Transaction.

4 **Termination**

Without prejudice to clause 9 of the Appendix, this Engagement Letter and the Engagement shall terminate on the earlier of

TRANSNET-REF-BUNDLE-05454

(a) The date of effectiveness of the Club Loan Facility agreement (excluding, for the avoidance of doubt, any facility agreement pursuant to which Trillian is a coordinator or advisor), or if there are multiple agreements, the date of effectiveness of the last such agreement; or

(b) The cancellation of the Transaction by the Client; or

(c) the date on which written notice is given by Trillian to the Client after Trillian has concluded, having taken professional advice, that it should cease to act in relation to the Engagement or the Transaction in order to comply with any legal, regulatory or similar enactment or after Trillian has concluded that it should cease to act in relation to the Engagement or the Transaction in order to protect its reputation; or

(d) the date on which written notice is given by Trillian to the Client that the Client has failed to comply to a material extent with any terms of this Engagement Letter; or

(e) or such other date agreed by both parties).

We look forward to working with you on the Transaction. Please confirm your agreement to the terms of this Engagement Letter by signing and returning the enclosed duplicate copy.

Yours faithfully,

For and on behalf of
TRILLIAN

Signed .....

Name:
Position:
Date:

We agree to the terms of this Engagement Letter.

For and on behalf of TRANSNET SOC LTD

Signed .....

Name: Siyabonga Gama
Position: Acting Group Chief Executive
Date:

Signed .....

Name: Garry Pita
Position: Acting Group Chief Financial Officer
Date:

TRANSNET-REF-BUNDLE-05455

1.1.1 APPENDIX

1.1.2 TERMS AND CONDITIONS

1 **Definitions**

In this Engagement Letter the following capitalised terms have the meaning set out below:

"**Associate**" means, in relation to Trillian, each of the subsidiaries, alliance and the ultimate holding company of Trillian and each of the subsidiaries of such holding company and each of their respective directors, officers, employees, representatives and agents;

"**Trillian**" means any or all of Trillian and any Associate thereof (as the case may be);

"**Communication**" means any document, announcement or statement (including any press release) published, issued or made by or on behalf of the Client in connection with the Engagement or the Transaction;

"**Engagement**" means the engagement of Trillian by the Client to provide assistance and services in connection with the Transaction, as provided for in this Engagement Letter.

"**Party**" and "**Parties**" means each of or both the Client and Trillian;

"**Risk Management**" means all risk management tools used in connection with the Transaction (including but not limited foreign exchange rate, interest rate, inflation linked and any commodity hedging).

2 **Nature of the Engagement**

2.1 Private Engagement: Trillian' appointment under this Engagement Letter is a private engagement. Accordingly, any assistance or advice rendered or provided by Trillian hereunder, in whatever form, will be solely for the use of the Board of Directors (or other equivalent governance body) of the Client in assessing the Transaction and may not be relied on or used by the Client for any other purpose.

The fact of the involvement of Trillian in connection with the Engagement, and all advice and assistance rendered or provided by Trillian in connection with the Engagement, in whatever form, is confidential and may not be disclosed to any third party, nor used or relied on by any third party, nor quoted, reproduced, summarised, described or referred to, without Trillian' prior written consent. Furthermore, the Client agrees that it shall not make, or permit or procure to be made or solicit or assist any other person to make use of Trillian' name or any name including the word "Trillian" for publicity or marketing purposes without Trillian' prior written consent

2.2 Other Assistance or Advice: The Client acknowledges and agrees that Trillian has been engaged to act only to the extent provided in this Engagement Letter. In carrying out the Engagement Trillian is an independent contractor and is not acting for the Client in any other capacity (including as agent or fiduciary to the Client or any of its affiliates). Nothing in this Engagement Letter, nor Trillian' performance hereunder, nor any previous or existing relationship between the Client and Trillian, will be deemed to create any fiduciary relationship. In addition, Trillian will not be responsible for providing or arranging for the provision of any general financial, strategic or specialist advice, including legal, regulatory, accounting, specialist asset valuation, model auditing, taxation or other technical advice or services which the Client may require. For the purpose of the Engagement, Trillian shall be entitled to rely on any advice provided by other advisers to the Client in connection with the Transaction. However, in no circumstance shall Trillian be responsible for any such advice or for any other work performed by persons other than Trillian

2.3 Instructions: Subject to any written instructions to the contrary, Trillian will have authority to do anything which it considers necessary or desirable to carry out the Engagement. Trillian may assume that instructions have been properly authorised by the Client if they are given or purport to be given by a person who is or purports to be and is reasonably believed by Trillian to be a director, employee or other authorised person of the Client.

TRANSNET-REF-BUNDLE-05456

2.4 Commercial Assumptions: The Client will remain solely responsible for the commercial assumptions on which any financial advice provided by Trillian is based and agrees that Trillian may rely on any commercial assessments conveyed to it by the Client or any director, employee, other authorised person, agent or representative of the Client. In addition, if Trillian agrees to provide any model to the Client in connection with the Transaction, the Client acknowledges and agrees that such model will have been prepared solely for use by Trillian, may not be suitable for us by the Client or any other party and accordingly Trillian shall have no liability whether in contract, tort (including negligence) or otherwise to the Client or any other person arising out of or in connection with the Client's or such other party's use of such model. Any valuation advice or model provided by Trillian will be subject to such assumptions and disclaimers as are considered appropriate by Trillian.

2.5 Independent Investigation: The Client shall be responsible for making its own independent investigation and appraisal of the risks, benefits, appropriateness and suitability to and for it of the Transaction and any other transactions contemplated by this Engagement Letter and Trillian is not making any recommendation (personal or otherwise) or giving any investment advice and will have no liability with respect thereto. The decision to proceed with any Transaction will be made by the Client in the light of its own commercial assessments and Trillian will not be responsible for such decision to proceed or such assessments. Unless expressly agreed otherwise in this Engagement Letter, Trillian will not be required to assist the Client in the co-ordination of due diligence work to be conducted by the Client and other advisers instructed by the Client. Trillian shall not in any circumstances be responsible for the adequacy of the Client's due diligence exercise and nor shall Trillian be required to either review the Client's due diligence or conduct any due diligence work itself. It is the responsibility of the Client to inform itself of the work performed by and the advice given by its other advisers and to make its own assessment of such work and advice.

2.6 Compliance: The Client will comply with, and will assist Trillian in complying with, all applicable legal and regulatory provisions relevant to the Transaction, including without limitation those of any stock exchange or other regulatory body applicable to this Transaction.

3 **Confidentiality**

3.1 Confidential Information: Subject to clauses 2.1 above and 7.5 below, all information received by each of the Parties from the other in relation to the Engagement shall not be used otherwise than for the purpose of the Engagement, shall be treated as confidential by the recipient and shall not be disclosed to anyone other than the parties to this Engagement Letter unless (i) it is or later becomes public knowledge other than by breach of this Engagement Letter, (ii) it is disclosed to the recipient by a third party reasonably assumed by the recipient not to have breached a duty of confidentiality to the Client or is already in the possession of the recipient and not subject to any duty of confidentiality, (iii) it is disclosed to the recipient's professional advisers (with the prior approval of Trillian) and employees provided that such advisers and employees are made aware of the confidential nature of the information, (iv) it is required to be disclosed by reason of any law, court or regulatory process or regulation or is necessary in the view of the recipient to establish any defence in such process or (v) it is disclosed by the recipient with the other party's prior consent.

3.2 Club Loan Product Enhancement: Any financial engineering undertaken or advice given by Trillian in relation to the structuring of any Club Loan Facility (i.e. over and above the relevant Club Loan's "plain vanilla" loan product) by Trillian in connection with the Transaction shall be treated as confidential by the Client and shall not be disclosed to third parties.

3.3 Inside Information: Trillian shall not be responsible for the creation or maintenance of insider lists other than Trillian own list of persons within Trillian acting on the Client's behalf and with access to inside information relating to the Client, as required by the appropriate rules or regulations.

4 **Intellectual Property**

Trillian and its affiliates retain the copyright and all other relevant intellectual property rights in their work products. If the Client makes any copies of the documents that Trillian prepares, the Client agrees that such copies will be used only for the purposes of the Transaction and not (unless otherwise agreed by Trillian) for other matters.

5 **Payment Terms**

Unless otherwise provided by this Engagement Letter, all fees, reimbursement of expenses and other sums payable to Trillian in connection with the Engagement are payable in cash and are due within ten business days of written demand by Trillian. Unless otherwise indicated, any fees or other prices quoted by Trillian to the Client are exclusive of value added tax or other similar taxes. All sums payable to Trillian shall be paid without deduction or withholding on account of tax of any nature unless such deduction or withholding is required by law. If the Client is required by law to make any deduction or withholding on account of any tax, the amount payable shall be grossed up to the extent necessary to ensure that, after such deduction or withholding, the amount received and retained by Trillian will equal the full amount which would have been received had no deduction or withholding been made.

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6 **No Obligation to Underwrite/Fund**

Trillian shall not be obliged by this Engagement Letter to sell, acquire, place or underwrite any securities or to lend moneys or provide any other commitment, facility, product, Risk Management solution or service in any way in connection with the Transaction, nor does Trillian represent by the Engagement Letter that it will be possible or advisable to arrange or provide any applicable financing or Risk Management solution for the Transaction or for any financing or Risk Management solution to proceed. Any such participation by Trillian in the Transaction would be the subject of separate documentation prepared and negotiated in accordance with international standards and would only be signed following (i) satisfactory completion of all documentation for the Transaction, (ii) receipt of all necessary internal approvals and (iii) in the determination of Trillian, the completion of satisfactory due diligence in respect of the Client or the subject matter of the Transaction, as applicable.

7 **Information, Communications and Publicity**

7.1 **Provision of Information:** The Client shall promptly provide or procure the provision to Trillian of all information concerning the Transaction, and the business and affairs of the Client and its affiliates which is relevant to Trillian for the proper performance of the Engagement (including information or advice provided to the Client by its other professional advisers) and all such further information as Trillian or its advisers may reasonably request. In particular, the Client shall provide Trillian and its advisors with such direct access to the directors and management of, and advisors to, the Client and its affiliates for the purpose of the Engagement as Trillian may reasonably request

7.2 **Accuracy of Information:** The Client shall ensure that any information supplied by it (the "**Information**") to Trillian, whether provided orally or in writing and including any expressions of opinion, shall be true, accurate, complete and not misleading in any material way and shall not intentionally omit any material information. The Client will promptly notify Trillian if it subsequently discovers something during the term of this Engagement Letter which renders any such information untrue, inaccurate or misleading in any material respect. The Client acknowledges that Trillian will be relying on the Information and any other information supplied to Trillian on the Client's behalf or available to Trillian from public sources without carrying out any independent verification. The Client agrees that any information furnished to Trillian in connection with the performance of its services under this Engagement Letter shall have been properly obtained and may be properly furnished to Trillian.

7.3 **Communications:** All Communications shall be true, fair and accurate and not misleading (whether by omission or otherwise) and shall be published, issued or made so long as they don't prejudice or negatively impact Trillian in any way Trillian (save in the case of any Communication which refers directly or indirectly to Trillian, in which case such Communication shall only be published, issued or made with the consent of Trillian). Save as otherwise expressly agreed in writing, Trillian will not be required to approve, issue, transmit or otherwise disseminate any Communication in connection with the Engagement for the purposes of any applicable legislation, regulation or otherwise

7.4 **Developments:** The Client undertakes that it shall at all times keep Trillian fully informed of all strategies, developments and discussions relevant to the Engagement and that no action which may directly or indirectly affect the Engagement will be taken without prior consultation with Trillian

7.5 **Publicity.** The Client expressly authorises Trillian to (a) disclose the existence of the Engagement and (b) advertise and publicise its role(s) with regard thereto in the ordinary course of its business. Trillian may do so by, inter alia, placing "tombstones" or similar advertisements in financial or other publications and in marketing and pitching materials provided to prospective clients. These advertisements and marketing materials may contain the Client's name and logo and may describe the services provided or to be provided by Trillian to the Client. They will be prepared and placed at Trillian' own expense.

8 **Indemnity**

8.1 **Indemnity:** The Client shall indemnify and hold harmless Trillian and its Associates (each, an "**Indemnified Person**") on an after-tax basis from and against all claims, actions, proceedings, demands, liabilities, losses, damages, costs and expenses (including legal fees, costs and expenses, and all costs and expenses incurred in connection with investigating, preparing for and defending any such claim, action or proceeding which is pending or threatened) of whatever nature and in whichever jurisdiction, which any Indemnified Person may suffer or incur arising out of or in connection with the Engagement, the Transaction or any other matter or activity referred to in or contemplated by this Engagement Letter, or arising out of any breach by the Client of any of its obligations, duties or any representations or warranties the Client may give or be deemed to have given under the terms of this Engagement Letter, save to the extent that any such liability, loss, damage, cost or expense is finally and judicially determined by a court of competent jurisdiction to have been directly caused by the fraud, gross negligence or wilful default of the Indemnified Person

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8.7 Limitation of Liability: Neither Trillian nor any of its Associates will be liable to the Client in relation to the Transaction or the Engagement, save to the extent that a court of competent jurisdiction finally and judicially determines that the Client has suffered a loss directly caused by the fraud, gross negligence or wilful default of Trillian or such Associate. The Client agrees that, without prejudice to any claim the Client may have against Trillian or its Associates, no claims may be brought, threatened or established against any director, officer, employee or agent of Trillian or its Associates in respect of the subject matter of this Engagement Letter or the Transaction.

8.8 Proportionality: Where any damage or loss is suffered by the Client for which Trillian is or would otherwise be liable with any other person including the Client (an "Other Liable Person"), the extent to which such damage or loss shall be recoverable by the Client from Trillian shall be limited so as to be in proportion to Trillian' contribution to the overall cause of such damage or loss, as agreed between the Client and Trillian or, in the absence of agreement, as finally determined by a court of competent jurisdiction. For the purposes of determining Trillian" proportionate contribution or liability for the damage or loss in question, no account shall be taken of (a) any limitation or exclusion of liability of any Other Liable Person under contract or law (including by virtue of the expiry of any applicable period of limitation or prescription) (a "Relevant Limitation"), or (b) any actual or potential shortfall in recovery from any Other Liable Person whether due to settlement, limitation of liability, or the insolvency, bankruptcy, death or dissolution of any Other Liable Person. The degree to which Trillian may rely on the work or advice of any other person will be unaffected by any Relevant Limitation.

8.9 Rights Additional: This clause 8 is in addition to any rights which Trillian or any of its Associates may have at common law or otherwise including, but not limited to, any right of contribution, and the benefit of this clause 8 is held by Trillian for itself and as trustee for its Associates.

9 Provisions Which Survive Termination or Expiry

Any termination or expiry of the Engagement shall be without prejudice to any accrued rights and obligations of the parties and shall not affect in any way the provisions of the following clauses, which shall survive any termination and / or expiry (as the case may be) and shall remain in full force and effect: paragraphs 2 (Financing and Risk Management) and 3 (Fees and Expenses) of the cover letter and clauses 2.1 (Private Engagement), 3.2 and 3.3 (Confidentiality), 4 (Intellectual Property), 5 (Payment Terms), 7.3 (Communications), 7.5 (Publicity), 8 (Indemnity), 10 (Conflicts of Interest), 11.1 (Governing Law and Jurisdiction),, 11.2 (Service of Process) and 11.3 (Assignment) of this Appendix

10 Conflicts of Interest

10.1 Trillian is involved in a wide range of commercial banking, investment banking and other activities out of which conflicting interests or duties may arise. The Client acknowledges and accepts that there may be situations in which parts of Trillian or their clients or their personnel either now or may in the future have interests, owe duties, or take actions, that could potentially conflict with the Client's interests or duties owed to the Client in relation to the Transaction. Trillian has in place policies and procedures to identify consider and manage such potential conflicts of interest.

10.2 The Client acknowledges and agrees that no part of Trillian is required to restrict its activities as a result of the Engagement or its participation in the Transaction, and that all parts of Trillian may undertake any activity without further consultation with or notification to the Client. Neither the terms or existence of this Engagement Letter, nor the receipt by any part of Trillian of confidential information, nor any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) that would prevent or restrict any part of Trillian from carrying on any activity, including providing services or advice to any person or engaging in any financing, Risk Management Solution or other transaction (on its own account or otherwise). Furthermore, the Client agrees that Trillian shall not be required to account to the Client for any revenue or profits obtained in connection with any activities of Trillian as referred to in this clause 10.

10.3 In relation to the Engagement, information which is held elsewhere within Trillian but of which none of the individual directors, officers or employees having conduct of the Engagement actually has knowledge (or can properly obtain knowledge without a breach of internal procedures), shall not for any purpose be taken into account in determining Trillian' responsibilities to the Client under the Engagement. No part of Trillian shall have any duty to disclose to the Client or utilise for the Client's benefit any non-public information acquired in the course of providing services to any other person, engaging in any transaction (for its own account or otherwise) or otherwise carrying on its business.

11 General

11.1 Governing Law and Jurisdiction: This Engagement Letter is and all matters, disputes, claims or non-contractual obligations arising under or in connection with it are governed by and shall be construed in accordance with South African law and the Parties hereby irrevocably submit to the exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division Johannesburg) , (or any successor to that division) to settle any dispute arising out of or in connection with this Engagement Letter (including a dispute relating to any non-contractual obligations arising out of or in connection with this Engagement Letter) or, notwithstanding the foregoing, either Party may elect by written notice to

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proceed by way of arbitration ("Arbitration") in South Africa under the Rules of the Arbitration Foundation of Southern Africa ("AFSA").

In the case of Arbitration, the arbitration rules of AFSA in place at the relevant time are deemed to be incorporated herein. Subject to the AFSA rules, the tribunal will consist of three arbitrators. The claimant shall nominate one arbitrator, the respondent shall nominate one arbitrator, and the third, who shall act as chairman, shall be selected and appointed by AFSA. The chosen arbitrators shall be practising attorneys or advocates with at least 15 years' experience in commercial and banking law. The seat of arbitration shall be Johannesburg, South Africa, all hearings shall take place in Johannesburg, South Africa, the arbitration proceedings shall be conducted in the English language and the Award shall be in English. The Parties agree decision of the tribunal shall be final and binding on the Parties.

The Arbitral Tribunal shall use its best efforts to produce a final and binding award within six months of the date on which the Arbitral Tribunal is fully constituted. The Parties shall use their best efforts to assist the Arbitral Tribunal in achieving this objective.

11.2 **Service of Process:** The Client agrees that the documents which start any legal proceedings and any other documents required to be served in relation to those proceedings may be served on it by delivery of those documents to 4th floor, 150 Commissioner Street, Johannesburg.].

11.3 **Assignment:** The Client may not assign or delegate any of its rights or obligations hereunder without the prior written consent of Trillian which consent will not be unreasonably withheld.

11.4 **Entire Agreement:** This Engagement Letter constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto, whether written or oral. This Engagement Letter may be executed in counterparts and may not be amended except in writing signed by all Parties hereto.

11.5 **Severability:** If any provision of this Engagement Letter is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

11.6 **Regulation:** Trillian is authorised by the Financial Services Board (FSB) and, to the extent required, the Client acknowledges that Trillian will have imposed on it certain resulting obligations.

TRANSNET-REF-BUNDLE-05460

REPORT 2(A) – PART A – EXHIBIT 20

From: Phetolo Ramosebudi Transnet Corporate JHB
Sent: Wednesday, December 2, 2015 12:50 PM
To: Garry Pita Transnet Corporate JHB
Cc: Danie Smit Transnet JHB
Subject: Re: R12 BN CLUB LOAN INTEREST RATE RISK

Hi Garry

Guess this is true if the Club loan is the only transaction Tnet is doing for the entire MDS period. Amid the volatile economic environment ahead of us, with higher inflationary environment, it is important to manage the interest rate expectations going forward to create that certainty in Tnet interest expense for the management of the CIC. It is therefore prudent in an high inflation environment and volatile exchange rate to fixed most of the commitment for the same reasons. This will help us to reduce the number of variables to manage the declining EBidta levels.

I am sorry that you received a conflicting message from Danie who didn't consult with me on this.

As the Head of Treasury I am concern with exchange rate and inflation expectations and it is prudent to mange this risk appropriately.

A proper submission is on the way for approval.

Regards
Phetolo

On 02 Dec 2015, at 10:46, Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net> wrote:

Thanks Danie

It is well written and I understand the logic.

Phetolo, are you in agreement that we don't enter into the swaps?

Regards
Garry

Sent from my iPad

On 02 Dec 2015, at 10:39 AM, Danie Smit Transnet JHB <Danie.Smit@transnet.net> wrote:

> Hi Garry and Phetolo,
>
> My humble opinion on the interest rate risk exposure of the Club Loan.
>
> Kind regards
>
> Danie
>
> <R12 BN CLUB LOAN INTEREST RATE RISK.docx>

REPORT 2(A) – PART A – EXHIBIT 21

REGIMENTS
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Mr G Pita
Chief Financial Officer
Transnet SOC Limited
By e-mail: Garry.Pita@Transnet.net

12 September 2016

Dear Mr Pita

Re: Execution of the agreement between TRANSNET SOC LTD and REGIMENTS CAPITAL (PTY) LTD ("Regiments") referenced as Agreement Number GSM/15/03/1255 commencing on 19 May 2015 and expiring on 18 May 2017

1. We refer to our letters dated 15 March 2016 ("our first letter") and 19 August 2016 ("our second letter") addressed to you, to which we have not yet had a response.

2. In our second letter we recorded that, *inter alia*, the restructuring of Regiments, and the consequential exiting of Mr Eric Wood's ("Mr Wood") family trust from its Regiments shareholding referenced in our first letter, had not come to fruition and that Mr Wood's family trust remains a shareholder and Mr Wood remains a director of Regiments, owing fiduciary duties to it.

3. Furthermore, we recorded that the portion of the Advisory Business, together with the specific set of contracts (including the above-referenced contract) remains with Regiments and that these contracts have not been ceded to Mr Wood, Trillian Capital (Pty) Ltd ("Trillian") or to any other party and Regiments retains all rights under the contracts, including the right to invoice clients in respect of these contracts for work and services executed thereunder. We further stated that Regiments wishes to pursue and advance the implementation of our

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Property Fund Structure with Transnet and that we would like to meet you to discuss this process going forward.

4. In the interim, an article published by amaBhungane on the internet on 28 August 2016 has come to our attention. In the article it is stated, that *"A Gupta-linked advisory group, Trillian, is sucking cash out of Transnet at a furious rate despite (sic) a reported treasury investigation into deals between the two companies"*. Copies of Trillian's invoices totaling R 74 million allegedly signed off by you at the end of June 2016 were attached to the article. We have downloaded copies of those invoices which indeed appear to bear your signature. We know from our dealings with Transnet that your signature is the final step to the process of payment. We are most concerned to learn of these invoices and the apparent payment thereof by Transnet, if this is the case, as the work invoiced by Trillian is in respect of work done by Regiments, or Trillian or its employees on behalf of Regiments, for which Regiments is entitled to be paid at the agreed commercial rate. We deal with each of these invoices separately below. In each case we address what we understand to be the circumstances surrounding each invoice to the best of the information currently available to us. A copy of the article and the invoices referred to therein are annexed hereto marked "A" to "G" respectively.

5. Invoices TCP-GFB01 dated 23 May 2016, TCP-GFB02 dated 23 May 2016 and TCP-GFB03 dated 7 June 2016 (attached marked "B", "C" and "D" respectively)

    a. These invoices in the amount of R 7 million each, the aggregate of which is R 21 million, are expressed to be for work ostensibly done by Trillian during the months of March, April and May 2016 relating to the GFB Agreement, being an agreement between Transnet and Regiments, which agreement is governed by strict fees, deliverables, measures, Baseline and targets as set out in Annexure "A" to the GFB Agreement.

    b. As is clear from what was set out in our second letter, the relevant portions for present purposes have been repeated in paragraphs 3 and 4 above, the GFB

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Agreement has not been ceded to Mr Wood, Trillian or to any other party. Accordingly, Regiments retains all rights to and under it, including the right to invoice Transnet in respect of the GFB Agreement and to be paid by Transnet. It goes without saying that there has been no variation or cancellation of the GFB Agreement. In the premises, there is no legitimate basis for Trillian to have rendered invoices to Transnet in respect of the work done by Trillian on behalf of Regiments or for Transnet to have paid Trillian.

c. In terms of the GFB Agreement, for the period April, May, June and July, Regiments, together with McKinsey Incorporated ("McKinsey"), can only invoice up to the amounts detailed in Annexure "A" of the GFB Agreement against delivery of handbooks to Transnet. Please can you explain why payments have been made to Trillian only, and for amounts in excess of the amounts set out in Annexure "A" of the GFB Agreement. Please also confirm that the handbooks were indeed supplied to Transnet and provide us with copies.

d. Furthermore, and as you will know, the work done in terms of the GFB Agreement was performed by Regiments and completed by Regiments up to 29 February 2016. Pursuant thereto Regiments invoiced Transnet for payment under Annexure A to the GFB Agreement. Two invoices, copies of which are attached for your convenience as "H1" and "H2" (invoice TRXGFB00009 dated 4 February 2016 ("invoice 9") and invoice TRXGFB00010 dated 29 February 2016 ("invoice 10")) totaling R 20,5 million plus VAT were rendered to Transnet and remain unpaid by Transnet.

e. In an email dated 2 August 2016 by Transnet, Kevin Weir stated that invoice 9 had *"been retracted as a result of variable payments made earlier in the contract (refer above), hence effectively Transnet overpaying in terms of deliverables"*. Additionally, he stated that invoice 10 "was never presented to Transnet and can only relate to "variable" work, as all fixed related work had been billed and paid". Mr Weir is however mistaken. The work invoiced and performed by Regiments indeed relates to

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the fixed fee component of the contract for the Transnet 2015/2016 financial year which, according to Annexure "A" of the GFB Agreement, was R 125 million. Regiments' share of this, based on the contracted fee split between Regiments and McKinsey is R 62,5 million. The total amount of the invoices raised by Regiments in this period is only R 56 million plus VAT. There is accordingly no basis for Transnet to apply Regiments' invoices in question to variable work deliverables. The amount of R 20,5 million plus VAT is accordingly due, owing and payable by Transnet to Regiments. We point out that in due course Regiments will raise the relevant invoices for its share of the variable fees in respect of:

i. "cost sweep and cash lab" and "driver based budgeting" (which as at 29 February 2016 were signed off by Mario van der Walt of Transnet - Group Finance as being 90% complete) (see Annexure "K"); and

ii. project office fees for March 2016

which are provided for in the schedule in Annexure "A" to the GFB Agreement.

6. Invoice TE2016-CP01 dated 19 February 2016 (attached hereto marked "E")

a. This invoice rendered by Trillian is said to be in respect of work done regarding *"Financial Structuring advisory services on the fund raising required to facilitate African and global sales of rolling stock"*.

b. This work was however in fact done by Regiments. The mandate was derived from the GFB mandate and was identified within the project management office and budget work streams, as is set out on page 8 in the Transnet Investment Property Portfolio discussion document dated 16 October 2015 (attached as "L").

c. This mandate has not been ceded to Trillian, Mr Wood or to any other party and accordingly remains that of Regiments. Furthermore it was never even contemplated that this mandate would be ceded to Trillian in the mooted restructuring of Regiments that was aborted.

d. We note with great consternation that at the footer of this invoice, the Trillian directors are listed as "E. Wood (CEO)" and "T. Leballo (CFO)" ("Mr Leballo"). The date of this invoice is 19 February 2016, at which time Mr Wood and Mr Leballo were still in the employ of Regiments. They only resigned at the end of February 2016. What confounds matters even more is that according to a search conducted at the offices of the CIPC, Mr Wood and Mr Leballo were only appointed as directors of Trillian on 1 March 2016. The work done and the invoice seems to have been improperly channeled to Trillian.

7. Invoice TCP-GCIA01 dated 20 May 2016 (attached hereto marked "F")

a. The work done in terms of this invoice was executed pursuant to the agreement between Transnet and McKinsey, for the provision of services related to RFP GSM/14/04/1052, to which agreement Regiments is the subcontractor of McKinsey. As you are aware, Regiments invoicing Transnet directly in terms of this agreement has been a longstanding practice between McKinsey, Transnet and Regiments, evidence of which can be seen from Annexure "A" to the GFB Agreement. As is set out above, this agreement has not been ceded to Trillian or to any other party and remains with Regiments as the subcontractor of McKinsey.

b. This invoice is expressed to be for the period 1 February 2016 to 1 April 2016. Until 29 February 2016 Mr Wood and other Trillian employees were still full time

employees of Regiments. The work is in respect of work done on the Transnet Capital Affordability model. This work was in fact performed by a Regiments team consisting of 4 people of which Charl Brill, a full time Regiments employee during March 2016, was a main contributor.

c. Pursuant to this work done by Regiments, Regiments transmitted invoices to Transnet, which are attached hereto marked "I1" and "I2".

8. Invoice TCPSWATII-01 dated 7 June 2016 (attached hereto marked "G")

a. As stated above, it has been a longstanding practice between McKinsey, Transnet and Regiments, for Regiments to invoice Transnet. As has been mentioned in paragraph 8.a above, this agreement has not been ceded to Trillian and remains with Regiments as the subcontractor of McKinsey.

b. Around the time of Mr Wood's departure from Regiments, Transnet advised Regiments that for the sake of continuity it wished to retain the Regiments team who had been working on this project. This team had been retained for some time until it was summarily and unjustifiably dismissed by Trillian who then brought in their own resources. The work that Regiments had done had been accepted and signed off as completed by Transnet. Any work done by Trillian for Transnet was on behalf of Regiments pursuant to the SWAT agreement.

c. The Regiments invoice for the work pursuant to this Trillian invoice is attached marked "J".

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9. The payment of R 93 million for the "Club Loan"

   a. This fee relates to work done by Regiments for the capital raising, transaction management and hedging advisory services related to the 1064 locomotive funding together with the club loan, for which Regiments invoiced and was paid the relevant fee in June 2015.

   b. While it was originally anticipated that JP Morgan would be the appointed lead managers for the club loan and Regiments would assist JP Morgan in the execution thereof, as you are aware, Regiments at the request of Transnet ultimately took over full responsibility as lead managers, with all the incumbent work being performed by Regiments.

   c. This work was completed by Regiments in December 2015.

   d. It now emerges from the article, however, that a fee of (ultimately) R 93 million or R 93.5 million was paid by Transnet to Trillian for the R 12 billion club loan. A corresponding invoice is not attached thereto. Please would you let us have same?

   e. This amount does indeed appear to be excessive when compared with the amount Regiments has invoiced for the same work.

10. In the circumstances, none of the aforementioned fees should have been paid by Transnet to Trillian. We therefore call upon you to render us an explanation as to why such fees were paid to Trillian. In the absence thereof we will be compelled to assume that there was no valid reason for payment to Trillian.

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11. We reserve all our rights, including the right to institute action against Transnet (and / or any other party) to recover any fees that should properly have been paid to Regiments pursuant to, but not limited to, the aforementioned payments made to Trillian.

Yours faithfully

Niven Pillay

Executive Director

REPORT 2(A) – PART A – EXHIBIT 22

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Wednesday, October 25, 2017 at 12:21:11 PM South Africa Standard Time

Subject: Fwd: Transnet Club loan POA
Date: Wednesday, 25 October 2017 at 11:52:28 AM South Africa Standard Time
From: Mosilo Mothepu
To: Daniel Witz, Dani Berman
Attachments: image002.png, image003.jpg

"Q"

From: Mosilo Mothepu
Sent: 24 August 2015 10:26 AM
To: Nswana Mwangu <nswanam@regiments.co.za>; Eric Wood <EricW@regiments.co.za>; Tewodros Gebreselasie <TewodrosG@regiments.co.za>; Raymond John <Raymondj@regiments.co.za>
Subject: RE: Transnet Club loan POA

Institution	R'bn	Responsibility
Libfin	1-2	Mosilo/Raymond (Libfin still having internal discussions regarding asset/liability matching and liquidating some assets to match the Transnet loan. Have requested a copy of the financing document. To Follow up end of week.
HSBC	1	Mosilo – Tenure too long (no)
Momentum	1	Raymond
Standard Chartered	1	Mosilo (tenure to long, pricing unattractive) (no)
AFD	1-2	Mosilo- sent audited financial results. Afd to revise indicative pricing. To follow up during the course of the week.
PIC	2	Mosilo/Eric- to set up meeting
KfW	1	Mosilo (No) focusing on ECA loan.
Others?		

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Mosilo Mothepu
[illegible]
+27 82 881 9611

REGIMEN

From: Nswana Mwangu
Sent: Wednesday, August 5, 2015 10:43 AM
To: Eric Wood <EricW@regiments.co.za>; Tewodros Gebreselasie <TewodrosG@regiments.co.za>; Mosilo Mothepu <mosilom@regiments.co.za>; Raymond John <RaymondJ@regiments.co.za>
Subject: Transnet Club loan POA

Dear all

See below plan of action as discussed this morning

Indicative commitments:

Institution	R'bn
BOC	7 (likely to be 3 committed)
Absa/Barclays	3
Nedbank/Omaflin/Futuregrowth	6
Sanlam	1
Total	17
Shortfall	Between 1 and 4

Institutions to approach:

Institution	R'bn	Responsibility
Libfin	1-2	Mosilo/Raymond
HSBC	1	Mosilo
Momentum	1	Raymond
Standard Chartered	1	Mosilo
AFD	1-2	Mosilo
PIC	2	Mosilo/Eric
KfW	1	Mosilo
Others?		

I will follow up with BOC today.

Best

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Nswana Mwangu
[illegible]
+27 [illegible]

CAPITAL MAS
REGIMENT
Leading Pro

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Wednesday, October 25, 2017 at 12:21:22 PM South Africa Standard Time

"R"

Subject: Fwd: Club Loan Pricing Motivation
Date: Wednesday, 25 October 2017 at 11:54:37 AM South Africa Standard Time
From: Mosilo Mothepu
To: Daniel Witz, Dani Berman
Attachments: Transnet ZAR funding Pricing motivation.docx

From: Mosilo Mothepu
Sent: 15 September 2015 05:44 PM
To: Eric Wood <EricW@regiments.co.za>
Subject: Club Loan Pricing Motivation

Hi Eric,

For your review, comments and input.

Regards
Mos

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1064 Locomotive Funding Strategy and Rationale

1. Background

In March 2014, Transnet embarked on acquiring 1064 locomotives at a cost of R55 billion to meet market demand and facilitate the road-to-rail migration of cargo transportation in line with government's objectives. Transnet has awarded CNR and CSR the contract to supply 239 and 459 locomotives, respectively.

2. 1064 Locomotive Acquisition and Funding Strategy

Transnet has secured a 15 year amortising loan of $2.5 billion from China Development Bank (CBD) to fund the locomotives to be acquired from CNR and CSR. The contractual terms between Transnet and the locomotive suppliers state that all payments are to be made in Rand, therefore all funding received in Dollars will then need to be converted to Rand to meet the supplier contractual obligations.

Given the high cost of the currency conversion, Transnet has decided to only drawdown $1.5 billion and raise Rand funding for the remaining R18 billion in the form of a club loan. The blending of the US$ pricing and ZAR pricing will go towards achieving a more palatable blended rate, which is in line with the Group's objective of issuing optimally priced debt.

To date Barclays/ABSA, Bank of China (BOC) and the Nedbank Consortium comprising of Nedbank, Futuregrowth and Old mutual have approved ZAR12 billion of the R18 billion to be raised. The salient terms of the loan is summarised in the table below.

Institution	Quantum (Rm)
Nedbank Consortium	R6,000
Barclays/ABSA	R3,000

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Bank of China (BOC)	R3,000
Total ZAR funding to date	R12,000

2.1 Tenor and Structure

Given the long-term nature of the underlying assets being financed, the tenor of the debt of 15 years with an amortising profile is optimal in order to achieve a liability/asset match.

Taking into cognisance the sheer volume of local funding required, limited appetite and mandate restrictions local financial institutions have for long-dated SOC debt, adding a pricing premium to the club loan was imperative to achieve market appetite and interest from the banks and to compensate for the longer duration.

2.2 Pricing

The final pricing of the club loan of 3-month Jibar+270 basis points (bps), had to be competitively priced and structured in order to attract the volumes Transnet requires. Transnet Treasury needed to trade volume for price, without the attractive pricing to investors, the sheer quantum would not have been achieved, which would have resulted in placing the 1064 locomotive acquisition programme in a funding risk.

2.3 DMTN Pricing

Counterparty	Maturity Date	Notional (Rm)	Floating Ref	Spread	Duration
Bond Type	Maturity	Size	Ref rate	Spread	Duration
TN25	19-Aug-25	5,640	3m Jibar	216	6.52
TN27	14-Nov-27	7,000	3m Jibar	210	7.15
TN30	9-Oct-30	1,831	3m Jibar	225	7.80
TN40	9-Oct-40	2,081	3m Jibar	242	8.97

Transnet has issued listed bonds under the DMTN programme with similar duration to the club

Quantum	R18 billion ($1.5 billion equivalent)
Structure	Fully amortising (quarterly) with equal capital repayment
Term	15 years
Availability period	24 months from the first utilisation date
Pricing	3-month Jibar +270 basis points
Capital grace period	54 months from the first drawdown
Security	Senior unsecured (ranking: parri passu with other senior lenders)

loan as depicted in the table above. While it may appear that the long dated bonds have tighte pricing, it is worth noting that individual bonds have a smaller notional value compared to the club loan and each bond has multiple investors. In order to achieve the notional value of the club loan from the individual banks, the price had to be pitched above Transnet listed bonds. In additional, raising the club loan outside the DMTN means the existing listed bonds will not be re-priced, doing so would have resulted in higher cost of debt for future and existing debt issues.

155

Wednesday, October 25, 2017 at 12:23:25 PM South Africa Standard Time

"S"

Subject: Fwd: Transnet - Legal opinions for the purposes of the Term Facility Agreement #0398485#
Date: Wednesday, 25 October 2017 at 12:02:50 PM South Africa Standard Time
From: Mosilo Mothepu
To: Dani Berman, Daniel Witz
Attachments: Certificate of Confirmation.pdf, Certificate of Incorporation.pdf, Certificate to Commence Business.pdf, Notice of Registered Office.pdf, Registration number change.pdf

From: Mosilo Mothepu
Sent: 17 September 2015 12:37 PM
To: feniedp@nedbank.co.za
Subject: Fwd: Transnet - Legal opinions for the purposes of the Term Facility Agreement #0398485#

Sent from my iPhone

Begin forwarded message:

> From: "Rhulani Madale Transnet Corporate JHB" <Rhulani.Madale@transnet.net>
> Date: 17 September 2015 at 9:57:35 AM SAST
> To: "mosilom@regiments.co.za" <mosilom@regiments.co.za>, 'Baron, E. (Efi) (EfiB@Nedbank.co.za)" <EfiB@Nedbank.co.za>, "joe@boc.co.za" <joe@boc.co.za>, "Kumalo, Thuli (thuli.kumalo@liberty.co.za)" <thuli.kumalo@liberty.co.za>, "thuli.zulu@absacapital.com" <thuli.zulu@absacapital.com>
> Cc: "Phetolo Ramosebudi Transnet Corporate JHB" <Phetolo.Ramosebudi@transnet.net>
> Subject: RE: Transnet - Legal opinions for the purposes of the Term Facility Agreement #0398485#
>
> Dear All
>
> Please find attached the following documentation in anticipation of CP satisfaction subsequent to financial close.
>
> - Articles of Association
> - Certificate of Confirmation
> - Certificate of Incorporation
> - Certificate to Commence business
> - Certified MIO part 1 & 2
> - Notice of Registered Office
> - Registration number change
>
> Due the size of the documents I will be forwarding them piecemeal.
>
> Kind Regards
> Rhulani

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157

Wednesday, October 25, 2017 at 12:24:59 PM South Africa Standard Time

Subject: Fwd: Transnet - Legal opinions for the purposes of the Term Facility Agreement #0398485#
Date: Wednesday, 25 October 2017 at 12:03:52 PM South Africa Standard Time
From: Mosilo Mothepu
To: Dani Berman, Daniel Witz
Attachments: Articles of Association.pdf

"T"

From: Mosilo Mothepu
Sent: 17 September 2015 12:38 PM
To: faniedp@nedbank.co.za
Subject: Fwd: Transnet - Legal opinions for the purposes of the Term Facility Agreement #0398485#

Sent from my iPhone

Begin forwarded message:

From: "Rhulani Madale Transnet Corporate JHB" <Rhulani.Madale@transnet.net>
To: "Mosilo Mothepu" <mosilom@regiments.co.za>, "'Baron, E. (Efi) (EfiB@Nedbank.co.za)'" <EfiB@Nedbank.co.za>, "'joe@boc.co.za'" <joe@boc.co.za>, "'Kumalo, Thuli (thuli.Kumalo@liberty.co.za)'" <thuli.Kumalo@liberty.co.za>, "'thuli.zulu@absacapital.com'" <thuli.zulu@absacapital.com>
Cc: "Phetolo Ramosebudi Transnet Corporate JHB" <Phetolo.Ramosebudi@transnet.net>
Subject: RE: Transnet - Legal opinions for the purposes of the Term Facility Agreement #0398485#

Part 2 -4

From: Rhulani Madale Transnet Corporate JHB
Sent: 17 September 2015 09:58 AM
To: mosilom@regiments.co.za; Baron, E. (Efi) (EfiB@Nedbank.co.za); joe@boc.co.za; Kumalo, Thuli (thuli.Kumalo@liberty.co.za); thuli.zulu@absacapital.com
Cc: Phetolo Ramosebudi Transnet Corporate JHB
Subject: RE: Transnet - Legal opinions for the purposes of the Term Facility Agreement #0398485#

Dear All,

Please find attached the following documentation in anticipation of CP satisfaction subsequent to financial close.

- Articles of Association

158

- Certificate of Confirmation
- Certificate of incorporation
- Certificate to Commence business
- Certified MIO part 1 & 2
- Notice of Registered Office
- Registration number change

Due the size of the documents I will be forwarding them piecemeal.

Kind Regards
Rhulani

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159

Wednesday, October 25, 2017 at 12:25:45 PM South Africa Standard Time

"U"

Subject: Fwd: Club Loan Closing
Date: Wednesday, 25 October 2017 at 12:04:55 PM South Africa Standard Time
From: Mosilo Mothepu
To: Dani Berman, Daniel Witz
Attachments: image001.png

From: Mosilo Mothepu
Sent: 06 October 2015 09:50 AM
To: 'Rhulani Madale Transnet Corporate JHB' <Rhulani.Madale@transnet.net>
Subject: Club Loan Closing

Morning Rhulani, hope you're feeling better. Below please find a summary of the Club loan closing deliverables. Let's chat later during the day.

1. Nedbank Consortium
   - Legal Agreement with credit-Rhulani to follow up on status
   - Credit Rating Ratchet- Phetolo/Rhulani to negotiate replacing credit rating ratchet with financial ratios
   - CPs-Borrowing Program/Board resolution: Rhulani to send to Efi

2. Absa/Barclays
   - Credit Rating Ratchet- Phetolo/Rhulani to negotiate replacing credit rating ratchet with financial ratios
   - Amortization schedule on ZAR3billion facility-Mosilo to send to Rhulani

3. BOC
   - Legal agreement- Rhulani to send Sanda/TGR legal agreements to review and flag any issues of concern
   - Credit Rating Ratchet- Phetolo/Rhulani to negotiate replacing credit rating ratchet with financial ratios

4. CPs
   - Mosilo to update and action CP tracking list

Mosilo Mothepu
Principal

ADVISORY

REG

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35 Ferguson Road, Illovo, Johannesburg, SA, 2196 | Postnet Suite 25, Private Bag X11 Birnam P

160

Wednesday, October 25, 2017 at 12:21:45 PM South Africa Standard Time

"Y"

Subject: Fwd: CPs- Club Loan
Date: Wednesday, 25 October 2017 at 11:56:00 AM South Africa Standard Time
From: Mosilo Mothepu
To: Daniel Witz, Dani Berman
Attachments: CP list.docx

-----Original Message-----
From: Mosilo Mothepu
Sent: 13 October 2015 05:21 PM
To: 'Rhulani Madale Transnet Corporate JHB' <Rhulani.Madale@transnet.net>
Subject: FW: CPs- Club Loan

Hi Rhulani,
Kindly note that the CPs highlighted in yellow are currently outstanding:

Mosilo Mothepu
Principal

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mosilom@regiments.co.za W www.regiments.co.za
35 Ferguson Road, Illovo, Johannesburg, SA, 2196 | Postnet Suite 25, Private Bag X11 Birnam Park, 2015

1. Borrower

1.1. A copy of the constitutional documents of the Borrower.

1.2. A certified excerpt of the minutes of the board of directors of the Borrower containing the resolution passed by the board of directors of the Borrower approving the Borrowing Programme and Corporate Plan.

1.3. A specimen of the signature of each person authorised to bind the Borrower to obligations in respect of borrowing by the Borrower by the resolution referred to in paragraph 1.2.

1.4. The Compliance Certificate duly executed by the Group Chief Executive of the Borrower.

2. Finance Documents

A duly executed original of each of this Agreement and the Utilisation Request.

3. "Know your customer" requirements

All information and documentation required by an Original Lender in relation to the Borrower to enable it to comply with its obligations under, and the requirements of, law and its own "know your customer" procedures.

4. Legal opinions

A legal opinion of Tshisevhe Gwina Ratshimbilani Incorporated, confirming, inter alia, the validity and enforceability of this Agreement as well as the Borrower's capacity and authority to enter into this Agreement.

5. Other documents, evidence and events

5.1.1. A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

5.1.2. The financial statements in respect of the end of the Borrower's financial half year ending on.

5.1.3. Tshisevhe Gwina Ratshimbilani Incorporated have inspected a copy of the Borrower's Corporate Plan and Borrowing Programme for the purposes of the provision of the legal opinion contemplated in paragraph 4 hereof.

5.1.4. Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 15 (Costs and expenses) have been paid or will be paid by the first Utilisation Date or such other period as shall be agreed by the Parties in writing.

5.1.5. No material change in the credit market conditions has occurred.

5.1.6. No event of default has occurred on the part of the Borrower prior to Utilisation.

6. Lender

Approval by the Lender's Investment, Executive and/or Credit Committee of the Facility.

162

Wednesday, October 25, 2017 at 12:22:13 PM South Africa Standard Time

"W"

Subject: Fwd: 1064 Club Loan.pptx
Date: Wednesday, 25 October 2017 at 11:58:08 AM South Africa Standard Time
From: Mosilo Mothepu
To: Daniel Witz, Dani Berman
Attachments: image001.png, 1064 Club Loan.pptx

:

From: Mosilo Mothepu <mosilo@tcp.co.za>
Date: 17 May 2016 at 10:55:00 GMT+2
To: mosilom@gmail.com
Subject: FW: 1064 Club Loan.pptx

From: Mosilo Mothepu
Sent: 18 November 2015 05:56 PM
To: Eric Wood <EricW@regiments.co.za>
Subject: FW: 1064 Club Loan.pptx

Mosilo Mothepu
Principal

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T +27 11 715 0300 D +27 11 715 0322 C +27 82 601 9613 E mosilom@regiments.co.za W www
35 Ferguson Road, Illovo, Johannesburg, SA, 2196 | Postnet Suite 25, Private Bag X11 Birnam P

From: Asanda Smith
Sent: Wednesday, November 18, 2015 5:28 PM
To: Mosilo Mothepu <mosilom@regiments.co.za>
Subject: 1064 Club Loan.pptx

163

Hi Mos,

Please find attached for your review. I tried to keep it as brief and to the point as possible.

Warm regards,
Asanda

164

TRANSNET

Cape Town Harbour Area

November 2015

MDS

The focus on rail growth and economic development has brought Transnet to this juncture

Brief review of the South African Rail Industry – Part of the following:

- Rail traffic volumes are expected to increase from approximately 210,4 million tons to 343,9 million tons by 2021 this is driven by;
  - Major commodities export that is expected to continue on a positive trajectory;
  - A drive towards a switch from road to rail in an effort to reduce costs, congestion and carbon emissions.

Therefore the current fleet size needs to be boosted to support the increased volumes.

Transnet's response to potential increase in demand:

- *MDS Strategy (2012 – 2019):* Focuses on continued financial performance and creating capacity ahead of demand (counter-cyclical investment strategy)
  - Contract for the supply of 95 Class 20E electric locomotives for GFB signed in October 2012
  - R173 million project to acquire 43 diesel locomotive for GFB is complete and all locomotives were accepted into operations by July 2013
- *Post MDS Strategy (2020 – 2027):* Building up capacity ahead of demand and a Road to Rail migration
- *Post MDS Strategy (2028 – 2035):* Reduce the cost of doing business and drive operational efficiency

In response to the expected market demand and to facilitate the Road to Rail migration in line with Government objectives, Transnet decided to acquire new rolling stock for growth plans.

- The objectives of the rolling stock procurement programme include:
  - Developing long-term procurement plans which satisfy the needs of both PRASA and Transnet; and
  - Simultaneously, establishing predictable demand which will make investment in local supply industries attractive.

MDS

TRANSNET-REF-BUNDLE-05491

The breakdown for the R55billion Funding

In response to the expected market demand and to facilitate the Road-to-Rail migration in line with Government objectives, Transnet embarked on an acquisition of 1064 locomotives at a cost of R55bn

- GE & Bombadier awarded the contract to supply 240 and 233 locomotives, respectively
- CNR and CSR awarded the contract to supply 232 and 359 locomotives, respectively
  - Contractual terms state that all payments are to be made in Rands
  - Therefore, all funding acquired in Dollars needs to be converted to Rands to meet the supplier contractual obligations

GE & Bombadier Locomotives	Funded through the Export Development Canada (EDC), US Exim and KfW
CNR & CSR Locomotives	Financed through the CDB loan concluded in June as well as a R12 billion ZAR club loan
Balance of Funding Requirement	To be funded through Transnet's treasury operations in the ordinary course of funding

TRANSNET-REF-BUNDLE-05492

Funding options available for CNR & CSR

Funding for CNR & CSR broken down as follows:

- 15 year amortising loan of $2,5 billion from China Development Bank
- Due to the high cost of currency conversion, Transnet decided to drawdown $1,5bn from the China Development Bank loan, this agreement was concluded in June 2015
- The remaining R12 billion of funding was raised as a club loan as it was believed that sourcing in local currency would result in significant savings fro Transnet in comparison to the facility availed by China Development Bank
- The ***funding mix provides a more palatable blended rate*** and allows Transnet to achieve effective asset/liability matching given the long dated life of the locomotives acquired

Funding Structure	[illegible]	[illegible]
Quantum	$2.5 billion facility	R12 billion
Structure	[illegible]	Fully amortising (quarterly) with equal capital repayment
Term	15 years	15 years
Drawdown	$1.5 billion utilisation	Initial drawdown to be confirmed
Availability period	54 month availability period	24 months from the first utilisation date
Pricing	LIBOR +257 bps translating to JIBAR +430 bps + 20 bps (credit and trading charges) less 112.5bps CCDS benefit	3-months Jibar+ 270bs
Capital grace period	54 month capital grace period	54 months from the first drawdown
Security	[illegible]	Senior unsecured (ranking: parri passu with other senior lenders)

MDS

167

TRANSNET-REF-BUNDLE-05493

The club loan, with a grouping of funders, is a preferred option due its optimal tenor, notional value and pricing characteristics

[illegible]	[illegible]	[illegible]	[illegible]
Nedbank Consortium *(Nedbank, Futuregrowth and Old Mutual)*	5¼ capital grace period 24 month availability period	JIBAR +270bps	R6 billion
Barclays/ABSA	Not specified	JIBAR +255bps	R3 billion
Bank of China (BOC)	Not specified	JIBAR +270bps	R3 billion
Total ZAR funding to date			**R12 billion**

Longer tenor & optimal structure

- The long-term nature (15 year tenor) of the underlying assets is optimal towards achieving an ***appropriate liability/asset match***
- The added premium to the club loan was important towards achieving the notional value required, compensating funders for the longer duration and for achieving market appetite and interest

Competitive pricing

- Final pricing had to be competitive and structured in a way that attracts the volumes required by Transnet
- Treasury had to effectively ensure a fair trade-off between price and volume in order to avoid funding risk

Opting for a higher notional value by re-opening listing bonds under the DMTN programme

- Transnet has previously issued listed bonds under the DMTN programme with a similar duration and even though these long dated bonds show tighter pricing relative to the club loan pricing it is important to note that:
  - The sizes of the total issues are raised over a prolonged period of time, via bi-weekly auctions (Approximately R200million per auction);
  - Individual bonds have a smaller notional value compared to the club loan and include with a multitude of investors;
  - Opting to raise outside the DMTN meant that the existing listed bonds will not be re-priced otherwise repricing would result in a higher cost of debt for future and existing debt issues

MDS

TRANSNET-REF-BUNDLE-05494

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TRANSNET-REF-BUNDLE-05495

170

Wednesday, October 25, 2017 at 12:22:50 PM South Africa Standard Time

Subject: Fwd: Club Loan Media Pack
Date: Wednesday, 25 October 2017 at 11:59:23 AM South Africa Standard Time
From: Mosilo Mothepu
To: Dani Berman, Daniel Witz
Attachments: image001.png, Club Loan_Reading Pack.pptx

"X"

From: Mosilo Mothepu
Sent: 19 November 2015 10:23 AM
To: 'Garry.Pita@transnet.net' <Garry.Pita@transnet.net>
Cc: Eric Wood <EricW@regiments.co.za>; Phetolo Ramosebudi Transnet Corporate JHB <Phetolo.Ramosebudi@transnet.net>
Subject: Club Loan Media Pack

Hi Gary,
Attached please find the Club loan media pack. Kindly note that Phetolo has reviewed the document in conjunction with the press release statement.

Kind regards

Mosilo Mothepu
Principal

REGIMENTS

T +27 11 715 0300 D +27 11 715 0322 C +27 82 601 9613 E mosilom@regiments.co.za W www
35 Ferguson Road, Illovo, Johannesburg, SA, 2196 | Postnet Suite 25, Private Bag X11 Birnam P

Climb Castle Kyalami Park

November 2015

EXHIBIT

The focus on rail growth and economic development has brought Transnet to this juncture

Brief review of the South African Rail Industry Market – the following:

- Rail traffic volumes are expected to increase from approximately 210,4 million tons to 343,9 million tons by 2021 this is driven by:
  - Market strategy to increase market share by 20% to 40%; and
  - A drive towards a switch from road to rail in an effort to reduce costs, congestion and carbon emissions.

Therefore the current fleet size needs to be boosted to support the increased volumes.

Transnet's response to potential increase in demand:

- *MDS Strategy (2012 – 2019):* Focuses on continued financial performance and creating capacity ahead of demand (counter-cyclical investment strategy)
- Transnet is investing in rail infrastructure by acquiring new fleet to replace old stock which will:
  - Build up capacity ahead of demand and enable the Road-to-Rail migration
  - Reduce the cost of doing business and drive operational efficiency

In response to the expected market demand and to facilitate the Road-to-Rail migration in line with Government objectives, Transnet decided to acquire new rolling stock for growth along:

- The objectives of the rolling stock procurement programme include:
  - Developing long-term procurement plans which satisfy the needs of both PRASA and Transnet; and
  - Simultaneously, establishing predictable demand which will make investment in local supply industries attractive.

MDS

TRANSNET-REF-BUNDLE-05498

The breakdown for the R55billion funding

In response to the expected market demand to facilitate the Coal-to-Rail migration in line with Government objectives, Transnet embarked on an acquisition of 473 locomotives at a cost of R55bn

- Bombardier Transportation and General Electric Technologies awarded contracts to supply 240 electric locomotives and 233 diesel locomotives, respectively
- CNR Rolling Stock and CSR Zhuzhou Electric Locomotive awarded the contracts to supply 232 diesel locomotives and 359 electric locomotives, respectively
    - Contractual terms state that all payments are to be made in Rands
    - Therefore, all funding acquired in Dollars needs to be converted to Rands to meet the supplier contractual obligations

GE & Bombardier Locomotives	Funded through the Export Development Canada (EDC), US Exim and KfW
CNR & CSR Locomotives	Financed through the CDB loan concluded in June as well as a R12 billion ZAR club loan
Balance of Funding Requirement	To be funded DMTN, GMTN, General Banking Facilitates (GBFs) and bilateral loans

TRANSNET-REF-BUNDLE-05499

Funding options available for CNR & CNR

Funding for CNR & CNR broken down as follows:

- 15 year amortising loan of $2.5 billion from China Development Bank;
- Due to the high cost of currency conversion, Transnet decided to drawdown $1.5bn from the China Development Bank loan, this agreement was concluded in June 2015; and
- The remaining R12 billion of funding was raised as a club loan as it was believed that sourcing in local currency would result in significant savings for Transnet in comparison to the facility availed by China Development Bank.
- The ***funding mix provides a more palatable blended rate*** and allows Transnet to achieve ***effective asset/liability matching*** given the long dated life of the locomotives acquired.

Funding options	[illegible]	[illegible]
Quantum	$2.5 billion facility	R12 billion
Structure	Fully amortising (quarterly) with equal capital repayment	Fully amortising (quarterly) with equal capital repayment
Term	15 years	15 years
Drawdown	$1.5 billion utilisation	Initial drawdown to be confirmed
Availability period	54 month availability period	24 months from the first utilisation date
Pricing	LIBOR +margin swapped into JIBAR plus a spread	3-months Jibar+ spread
Capital grace period	54 month capital grace period	54 months from the first drawdown
Security	Senior unsecured	Senior unsecured (ranking; parri passu with other senior lenders)

MDS

TRANSNET-REF-BUNDLE-05500

The club loan, with a grouping of [illegible], is a preferred option due its optimal tenor, notional value and pricing characteristics.

Institution	Quantum
Nedbank	R3 billion
Futuregrowth Asset Management	R1,5 billion
Old Mutual Specialised Finance	R1,5 billion
ABSA/Barclays	R3 billion
Bank of China (BOC)	R3 billion
Total ZAR funding to date	**R12 billion**

The 10B-4 loan funding strategy is inline with [illegible] funding objectives which are to:

- Diversify the investor base;
- Diversify funding sources; and
- Achieve optimal asset and liability matching.

MDS

TRANSNET-REF-BUNDLE-05501

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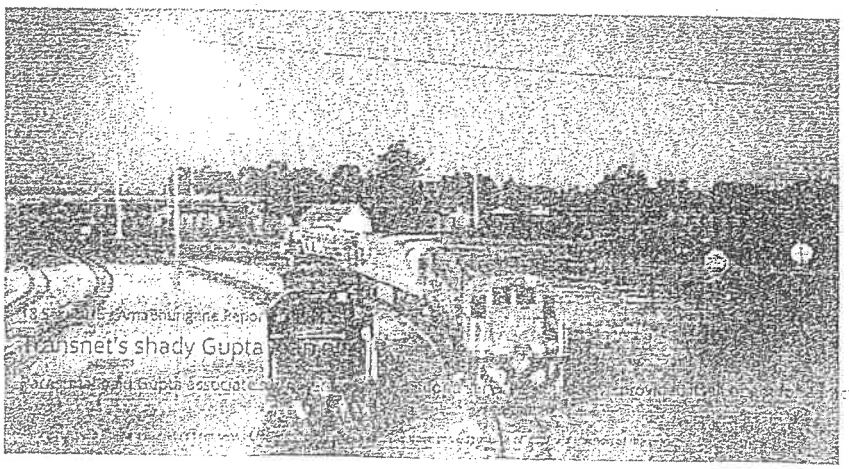
MDS

TRANSNET-REF-BUNDLE-05502

177

"Y"



SHARE (HTTPS://WWW.ADDTOANY.COM/SHARE#-URL=HTTPS%3A%2F%2FAMABHUNGANE.CO.ZA%2FARTICLE%2F2016-09-18-TRANSNETS-SHADY-GUPTA-LOAN-DEAL&TITLE=AMABHUNGANE%20-%20TRANSNET%27S%20SHADY%20GUPTA%20LOAN%20DEAL)

FACEBOOK (HTTPS://WWW.FACEBOOK.COM/SHARER/SHARER.PHP?U=HTTPS%3A%2F%2FAMABHUNGANE.CO.ZA%2FARTICLE%2F2016-09-18-TRANSNETS-SHADY-GUPTA-LOAN-DEAL) TWITTER (HTTPS://TWITTER.COM/INTENT/TWEET?URL=HTTPS%3A%2F%2FAMABHUNGANE.CO.ZA%2FARTICLE%2F2016-09-18-TRANSNETS-SHADY-GUPTA-LOAN-DEAL&TEXT=AMABHUNGANE%20-%20TRANSNET%27S%20SHADY%20GUPTA%20LOAN%20DEAL) GOOGLE PLUS (HTTPS://PLUS.GOOGLE.COM/SHARE?URL=HTTPS%3A%2F%2FAMABHUNGANE.CO.ZA%2FARTICLE%2F2016-09-18-TRANSNETS-SHADY-GUPTA-LOAN-DEAL) EMAIL (MAILTO:?SUBJECT=AMABHUNGANE%20-%20TRANSNET%27S%20SHADY%20GUPTA%20LOAN%20DEAL&BODY=HTTPS%3A%2F%2FAMABHUNGANE.CO.ZA%2FARTICLE%2F2016-09-18-TRANSNETS-SHADY-GUPTA-LOAN-DEAL)

Craig McKune, Stefaans Brümmer, Sam Sole
Picture: Salim Essa. (Delwyn Verasamy, M&G)

Transnet paid a whopping R3bn/loan without a tender to a small asset management firm – shortly after an opaque company led by a Gupta family aide – bought into it.

The state rail company paid Trillian Asset Management to arrange a multi-billion rand loan needed to buy locomotives.

But the rationale for paying Trillian was as thin as the fee appears exorbitant, adding to the body of evidence that state-owned companies had been "captured" for profit by the Gupta family and associates. Gupta lieutenant Salim Essa is the sole director of the company that controls Trillian after it acquired 60% of the latter last year.

But the controlling company's ownership remains opaque. Essa has not complied with an amaBhungane request to access its share register, even after the sheriff delivered demands two months ago. The Companies Act requires disclosure within 14 business days.

Red flags include:

- The fee was for arranging a "club loan", which insiders say Transnet's own treasury could easily have arranged.
- Internally, Transnet justified the tender-free award to Trillian on the ground that it was the "supplier development" partner of another company already contracted – which the other company, Regiments Capital, denies.
- There is evidence that Regiments, not Trillian, did the work and was paid for it – meaning Transnet may have paid double.
- The chair of Transnet's board procurement committee introduced Essa to Trillian.

Tender beginnings

The story has its roots in a tender Transnet issued in 2012 for 1 064 new locomotives to modernise its fleet.

That same year the rail company appointed a consortium led by consultants McKinsey to advise on the deal structure and how to fund it. Regiments Capital was soon included in McKinsey's consortium and allocated the fundraising part of the work.

Fast forward to 2014, when Transnet awarded the locomotive tender to four international suppliers; and mid-2015, by when it had raised over R30-billion in loans towards the R50-billion price tag. But Transnet needed more money.

At the time, Trillian Asset Management was a small firm of investment professionals owned by four men, including brothers Rowan and Ben Swartz.

Trillian worked with a second investment firm, whose principals included Stanley Shane. Shane in turn held two board appointments of note at Transnet, where he chaired the procurement committee, and at a third investment firm, where his co-directors included Essa, the Gupta lieutenant. He was well placed to make the introductions that followed.

A source acquainted with the deal says that when the Swartz brothers indicated they wanted to sell their 50% share in Trillian, it was Shane who introduced the buyer: an obscure shelf company named Lipshell 103.

Trillian's share register shows that the Swartz brothers' shares were transferred to Lipshell on September 1, 2015. Company records indicate that Essa was registered as Lipshell's sole director later that month, backdated to just before the acquisition.

Lipshell subsequently ramped up its stake to a controlling 69% of what became the Trillian group of companies, including the original Trillian Asset Management. It is Lipshell, now renamed Trillian Holdings, whose ownership Essa, still its only director, has failed to disclose.

"Club loan"

But back to Transnet's need for more funding: On November 23 2015 – not even three months after Essa bought into Trillian – the state rail company announced it had signed a R12-billion "club loan" with Absa, Nedbank, Bank of China, Futuregrowth Asset Managers and Old Mutual Specialised Finance.

Club loans are simpler than syndicated loans. In the latter a "lead arranger" assumes the risk of placing parts of the debt with other lenders and is rewarded accordingly. With club loans – and also in this case according to Transnet's announcement – each lender contracts directly with the borrower.

Insiders told amaBhungane that Transnet's own corporate treasury, one of the largest in the country, could easily have arranged the club itself.

Yet, Trillian invoiced Transnet R83-million – R93.5-million including VAT – and was paid in December 2015, the month after the loan was signed.

An internal memorandum from Phetolo Ramosebudi, Transnet's treasurer, motivated paying Trillian as "Transnet's originating and coordinating mandated lead arranger" for the club loan.

Explaining away the need for a competitive tender, it said: "Regiments Capital was appointed as the 1064 locomotive funding advisor and not supplier development obligations to Transnet on the contract.

"One of the SD (supplier development) requirements was the development of new black-owned organisations in the industry. Trillian was the beneficiary of that initiative."

"... absolutely nothing to do with Transnet ..."

But there's a catch. Until three months before, when Essa's company bought half of Trillian from the Swartz brothers, it was 100% white-owned and could not have qualified for supplier development.

The Swartzes confirmed in an email: "In our entire time of involvement in Trillian and prior to this date whether as shareholders or directors we had absolutely nothing to do with Transnet [or] Regiments."

And after the Essa takeover? Regiments executive Niven Pillay texted: "To confirm: Trillian was never a supplier development partner to Regiments."

Transnet did not respond specifically to questions about this contradiction, but said in a statement: "Regiments ... informed Transnet that it was in a process of restructuring its shareholding and that, as a result thereof, an integral part of the Regiments advisory business unit, assets, staff and certain contracts would be assigned ultimately to Trillian...

"Regiments also authorised Trillian to execute the work and services relating to the contract on its behalf."

In short, Transnet held that Regiments, one of whose founding partners left to join Trillian, had ceded some of its Transnet work to Trillian as part of an internal split.

"Scope creep"

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The Regiments founding partner and advisory unit left for Trillian on March 1 this year only – some three months after the club loan was signed. And it appears that Regiments did whatever "arranging" was done.

A banker involved in the club loan, who is not named as he was not authorised to speak to the press, said that Transnet had used Regiments, and not Trillian, as "consultant".

And a trade finance publication, publishing details of the deal earlier this year, credited Regiments as Transnet's "legal adviser" on the deal, without any mention of Trillian.

Regiments said in reply to questions that "we did the (fundraising) work that we were contracted to do and were duly paid". Due to "scope creep", it asked for an additional fee, which Transnet turned down. It was unaware that Transnet had paid Trillian until alerted by amaBhungane.

Trillian did not reply to specific questions, saying it felt they were "adequately covered" by Transnet's response. Why Trillian was paid at all remains unclear.

The parallel case of SAA's contentious but cancelled appointment of unknown BNP Capital to raise R15 billion at the even more exorbitant fee of R225-million, or 1.5% of the total loan, is instructive. BNP's appointment was cancelled after SAA's treasurer argued that the department could have arranged the loan itself. In court papers, the SAA treasurer cited hypothetical quotes from two local banks: one said 0.5%, and the other broke it down to 0.1% for arranging plus 0.35% to 0.4% for "participating".

To participate means to be among the lenders oneself. But Trillian was not, meaning a bank might have provided Trillian's supposed service for as little as 0.1% of the loan value. This would have translated to a R13.7-million fee inclusive of VAT – a fraction of the R32.5-million, or about 0.7% that Trillian got.

Essa and the Gupta family did not respond to detailed questions. Shiane did not reply to questions via Transnet.

Transnet reply

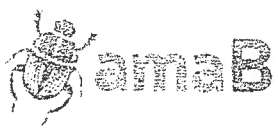
Transnet said in its statement that any evidence of wrongdoing – of which it was confident there was none – should be reported and it would cooperate with a probe.

"Transnet is satisfied that the transaction advisory and execution support has delivered significant and measurable benefits to Transnet in terms of speed of business case approval and contract negotiation, transparency of processes, cash flow management, significant savings related to the cost of funding and mitigating financing cost risk.

"Further, in terms of these processes, all service providers in this transaction were paid for services rendered after we had satisfied ourselves that all obligations were fulfilled in terms of agreed contractual scope. We have sufficient checks and balances to ensure we derive value from all contracts."

"Transnet assesses its need for specialised services on an ongoing basis and we award work to external parties based on these assessments, ensuring that there is no conflict of interest with Transnet employees.

"The grounds for utilising external service providers may range from level of expertise, cost required, to capacity to execute, etc. This is also enshrined within the Transnet procurement processes, which also prescribe the appropriate delegations or approval requirements ..."



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(mailto:team@amabhungane.org)

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"Z"

From: Mosilo Mothepu <mosilo@tcp.co.za>
Date: 24 March 2016 at 10:20:21 GMT+2
To: eric@tcp.co.za
Cc: susan@tcp.co.za, Tebogo Leballo <tebogo@tcp.co.za>, Clive Angel <clive@integratedcapital.co.za>, stanley.shane@tcp.co.za
Subject: Clarity Required: Faheema Badat's Resignation

Dear Mr. Wood,

Kindly receive my letter requesting clarity on the resignation of Faheema Badat.

Kind regards
Mosilo Mothepu

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Wednesday, October 25, 2017 at 12:20:39 PM South Africa Standard Time

"AA"

Subject: Fwd: Trillian Capital Partners - FICA
Date: Wednesday, 25 October 2017 at 11:48:31 AM South Africa Standard Time
From: mosilo mothepu
To: Daniel Witz, Dani Berman
Attachments: SPRINT-KWT-16012713120.pdf

---------- Forwarded message ----------
From: de la Rey, Jeanette <jeanette@integratedcapital.co.za>
Date: Wed, Jan 27, 2016 at 1:48 PM
Subject: Trillian Capital Partners - FICA
To: mosilo@tcp.co.za, mosilom@gmail.com

Hi Mosilo,

Herewith the FICA pack for TCP as well.

Regards

Thanking you

Jeanette de la Rey

From the office of Stanley Shane,

Integrated Capital Management Proprietary Limited
Unit 6 Ground Floor
1 Melrose Boulevard
Melrose Arch
Mobile: 084 251 2434
Office: 010 59

MNS

PART B: MINUTES OF MEETINGS		
EXHIBIT NO.	DATE	DESCRIPTION OF EXHIBIT
1.	26/07/2012	TAC Resolution: approval of the award of business for category 4&5
2.	29/04/2015	Excerpt from the Minutes of the BADC: approval of the appointment of JP Morgan and Regiments to secure the CDB loan
3.	01/10/2015	Excerpt from the draft Minutes of the BADC: approval of the appointment of Trillian

REPORT 2(A)

PART B

REPORT 2(A) – PART B – EXHIBIT 1

TRANSNET

TRANSNET ACQUISITION COUNCIL

Meeting: 26/07/2012

Agenda Item 9

RFP GSM/12/05/0447:
APPOINTMENT OF ADVISORY SERVICES RELATED
TO THE ACQUISITION OF THE 1064 LOCOMOTIVES
INFORMED ICT DECISIONS FOR THE GROUP
AWARD OF BUSINESS (CONSIDERATION) R50.00M

RESOLUTION/MINUTE 184/2012TAC

THE TAC APPROVED THE AWARD OF BUSINESS FOR CATEGORY 4&5 AS RECOMMENDED

Remarks:

Mr. Esterhuizen declared his non-personal interest in being a part of the evaluation team and recused himself.

The TAC, after discussion, agreed to revise its previous recommendation based on the new information provided. This information plus the previous submission i.e. the full comprehensive submission enabled the TAC to therefore approve the split award of the procurement component of category 4 to the McKinsey Consortium and the legal services within category 4 to Webber Wentzel, as recommended.

However, the TAC noted the following concerns:

- Cost for the project does not qualify for capital sanction in terms of IFRS.
- Group Finance must indicate whether there's budget available for this spend.

TRANSNET

The TAC requires to be informed at the next TAC meeting how this amount can be included into CAPEX, when it is an operating expense.

SECRETARY

Date: 27 July 2012

CHAIRPERSON

Date: 27 July 2012

REPORT 2(A) – PART B – EXHIBIT 2

Office of Bubele Ndlovu, Deputy Group Company Secretary

TO WHOM IT MAY CONCERN

CERTIFIED EXCERPT FROM MINUTES OF THE MEETING OF THE ACQUISITIONS AND DISPOSALS COMMITTEE NO 01-15/16FY HELD ON 29 APRIL 2015 AT 10:00 IN BOARDROOM 4902, 49TH FLOOR, CARLTON CENTRE, 150 COMMISSIONER STREET, JOHANNESBURG

Resolution No/
For Attention

5.4 Request to appoint *JP Morgan* and *Regiments Capital* to conclude on the *China Development Bank* Loan

5.4.1 Management distributed the documentation in the meeting. The documentation was taken as read. The purpose of the submission was to request the Committee to approve the following:

- The confined appointment of *JP Morgan* to hedge the financial risks (interest rate, credit and currency risk) emanating from the US$ 1.5bn *China Development Bank ("CDB")* Loan into South African Rands
- The contract extension for the appointment of *Regiments Capital* for transaction advisory services and support to the Company on the 1064 Locomotive transaction from R99.5m to R265m.
- Delegation of authority to the Acting GCE to approve all documentation relating to the confinement process.

5.4.2 Management indicated that the overall cost of debt will be within the Company's acceptable levels. The overall cost of the Chinese portion of the debt is approximately 10.5% compared to the current weighted average cost of debt of 9.7% with an average repayment profile of 7 years, subject to market conditions at the time of execution.

5.4.3 Management informed the Committee that the Board approved the *CDB* Loan in August 2014, and the Company was requested to hedge the Loan. The Procurement Procedure Manual ("PPM") is silent on the process to be followed. Management requested the Committee to approve the use of *JP Morgan's* services, and allow for *Regiments* to be remunerated at R166m for the contract services on 1064 Locomotives transaction. Given the invaluable contribution of *Regiments* to the successful conclusion of this transaction, *Regiments* success based fee will not exceed 15bps on the yield as reflected in the NPV calculation payable on conclusion of the funding and hedging documents with *CDB* and *JP Morgan*.

5.4.4 The Committee was further informed that paragraph 33 of the memorandum will be amended to read as "*JP Morgan would assume significant risks as part of the confidential solution to the Company*".

RESOLVED that the Committee approved the following

- The confined appointment of *JP Morgan* to hedge the financial risks (Interest rate, credit and currency risk) emanating from the US$ 1.5bn *China Development Bank ("CDB")* Loan into South African Rands
- The contract extension for the appointment of *Regiments Capital* for transaction advisory services and support to the Company on the 1064 Locomotive transaction from R99.5m to R265m
- Delegation of authority to the Acting GCE to approve all documentation relating to the confinement process

0 15/16FY 3

6.3 Update on Locomotives Programme risk management

6.3.1 Management took the Committee through the submission as contained in the meeting pack. The submission was taken as read. The purpose of the submission was to request the Committee to note the status of the risk monitoring and mitigating actions for the Company's Locomotive Build Programme

6.3.2 Management indicated that the Company was prepared to receive 150 Locomotives for the 2015/16FY. In response to the Committee's concerns regarding risks, Management indicated that mitigation plans to manage potential risks were implemented and progress reports were presented to this and the Risk Committees and respectively on a quarterly basis. Furthermore, Management has established a 1064 Locomotives Steering Committee which is chaired by the GCE. The Steering Committee is responsible for monitoring the 1064 Locomotives programme and all its associated risks. A similar divisional Steering Committees were established at TE and TFR respectively for operational purposes

The Committee noted the Report."

Certified as true excerpt

Kind regards

BUHLE NDLOVU
Deputy Group Company Secretary
Transnet SOC Ltd
Date:

CONFIDENTIAL

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GJ Pita* (Chief Financial Officer)
*Executive

Group Company Secretary: NE Khumalo

REPORT 2(A) – PART B – EXHIBIT 3

EXCERPT FROM THE MINUTES OF THE MEETING OF THE ACQUISITIONS AND DISPOSALS COMMITTEE NO. 5-15/16FY
HELD ON 1 OCTOBER 2015 AT 14:00 IN BOARDROOM 4902, 49th FLOOR, CARLTON CENTRE, 150 COMMISSIONER STREET,
JOHANNESBURG

"5.8 Change In Lead Manager for ZAR Club Loan

RESOLVED that the Committee approved the following:

- The appointment of *Trillian* to replace *JP Morgan* as a Lead Manager of the US$1bn ZAR equivalent Club loan which was previously confined to *JP Morgan*.
- The termination of *JP Morgan* on the ZAR syndication loan.
- The Delegation of authority to the Group Chief Executive to approve and sign all the documentation related to this confinement.

5-2015/16FY-7"

REPORT 2(A)

PART C

REPORT 2(A) – PART C – EXHIBIT 1

MNS

PART C: MEMORANDA		
EXHIBIT NO.	DATE	DESCRIPTION OF EXHIBIT
1.	07/05/2012	Memorandum compiled by Mr Garry Pita to Mr Brian Molefe requesting approval for appointing service providers for the transaction advisory services to the 1064 Locomotives acquisition tender through a confinement process
2.	20/08/2012	Memorandum from Mr Anoj Singh to Mr Brian Molefe regarding the replacement of Letsema Consulting arising from its association with Barlworld
3.	19/11/2013	Memorandum from Mr Anoj Singh to Mr Brian Molefe requesting approval to extend the contract periods for the confined transactions awarded to McKinsey
4.	16/04/2014	Memorandum from Mr Anoj Singh to Mr Brian Molefe requesting approval for the change in Regiment's remuneration model and for paying Regiments an amount of R 78.4 million
5.	23/04/2014	Memorandum compiled by Mr Edward Thomas, from Mr Garry Pita to Mr Anoj Singh opposing the proposal to amend Regiments' payment structure (unsigned).
6.	23/05/2014	Memorandum compiled by Mr Brian Molefe to the Transnet Board of Directors provides that the risk mitigation, forex and escalation contributed to an increase of R 9.5 billion (59% of the increase in the cost of acquisition)
7.	28/04/2015	Memorandum compiled by Mr Phetole Ramosebudi to the BADC recommending that the BADC approve the contract extension from R99.5 million to R 265.5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction
8.	19/05/2015	Memorandum compiled by Mr Anoj Singh and Mr Garry Pita to Mr Siyabonga Gama acknowledging the cession between McKinsey and Regiments
9.	17/09/2015	Memorandum compiled from Mr Siyabonga Gama to the BADC recommending the appointment of Trillian in the place of JP Morgan as a Lead Manager of the USD 1 billion ZAR equivalent Club Loan which was previously confined to JP Morgan
10.	24/11/2015	Memorandum compiled by Mr Phetole Ramosebudi to Mr Siyabonga Gama, Mr Garry Pita and Mr Ndiphiwe Silinga requesting Mr Siyabonga Gama and Mr Garry Pita sign off on the Trillian invoice in respect of the ZAR Club loan

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TRANSNET

www.transnet.net

MEMORANDUM:

To: **Anoj Singh, Acting Group Chief Financial Officer**
Brian Molefe, Group Chief Executive
From: **Garry Pita, Group Chief Supply Chain Officer**

CONFINEMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF 1064 LOCOMOTIVES TENDER.

PURPOSE OF SUBMISSION:

1. To obtain approval to confine the abovementioned business to any one or a combination of the following: KPMG, PWC, Aurecon, Letsema, McKinsey, Webber Wentzel, David Potter, Ledwaba Mazwai and MAC Consulting.

2. Approve the procurement strategy that will be used to assess the above companies.

3. Delegate authority to the Acting CFO to award business to the above after completion of the adjudication process.

BACKGROUND:

4. Transnet Board approved the TFR locomotive fleet plan in February 2012. 1202 GFB locomotives were approved as part of the TFR fleet strategy. Of the 1202 GFB locomotives, a contract was concluded for 43 diesels and a tender was issued for 95 electrics in December 2011.

5. TFR now requires 1064 (599 electric and 465 diesel) GFB locomotives. The locomotives are required to support the execution of the Market Demand Strategy (MDS) and achieve the projected increase in the MDS GFB volumes from 87.7 million tonnes in FY12/13 to 170.2 million tonnes by FY 18/19.

MOTIVATION:

6. Transnet Freight Rail has prepared a business case for the acquisition of 1064 locomotives. The business case was circulated on 26 March 2012 to members of CAPIC.

7. The investment for the 1064 GFB Locomotives is included in the 2012/13 Corporate Plan and is required to fulfill the aspirations of the Market Demand Strategy ("MDS") of ramping up GFB from 80mtpa to 170 mtpa by 2018/19 as well as to meet the capital investment expenditure targets.

8. In order to meet the Corporate plan targets for capital and volumes, the first tender award needs to be made by November 2012.

9. In light of the magnitude of the investment of R38,1 billion and the potential risks that such an investment poses to Transnet, further work is required to strengthen the current business case and mitigate associated risks.

10. TFR has conducted an extensive amount of work to support the business however further verification and validation of this work need to be conducted by Group, which include but are not limited to include the following:

    - Validating market demand for targeted commodities;
    - Mitigating the foreign exchange risks inherent in the acquisition of assets from foreign suppliers;
    - Funding options and other considerations;
    - Enhancing and detailing the procurement and contracting strategy (e.g. programmatic procurement)
    - Articulating the control and assurance processes to be built into the procurement process including key gate reviews.
    - Enhancing and detailing the socio-economic benefits (CSDP, Broad based Black Economic Empowerment, industrialization and localisation, environmental issues etc.);
    - Obtaining independent audit/review of financial, operational and technical assumptions (e.g. number of locomotives required and specifications).
    - Conducting comprehensive risk assessments (e.g. risk of double dip recession) and mitigating plans.
    - Assist with final contract drafting.

11. A full list of the various issues/risks is available on request based on the review conducted by Group Finance.

12. Due to time constraints and the need to address the critical issues listed above, it is recommended that a parallel process be followed as outlined below:

    - Enhancement of the Capital business case and financial risk mitigation;
    - RFP will be issued subject to BOD and PFMA approval and will be made clear that it could be cancelled should these approvals not be obtained;
    - Issuing of the RFP to procure 1064 locomotives by May 2012 and closing in July 2012;
    - Obtaining PFMA approval from DPE and National Treasury;
    - Obtaining PPPFA exemption from National Treasury if no tender respondents meet the local content thresholds.
    - Evaluation of the RFP between August 2012 and September 2012 – award by December 2012.

13. The BADC and BOD approved the above process and as a consequence, we require the abovementioned consultants to execute the work as stated in paragraph 10 above.

14. KPMG, PWC, Aurecon, Letsema, McKinsey has been selected based on prior Transnet SOC Ltd experience and extensive working knowledge and experience in project finance.

Webber Wentzel, David Potter, Ledwaba Mazwai and MAC Consulting have been selected as they were engaged by PRASA in the recent procurement of locomotives and coaches.

15. From a Supplier Development perspective, as a criteria, 30% of the awarded work will be subcontracted to BBBEE companies with a high level of black (including female) ownership, management control and employment equity.

GROUNDS FOR CONFINEMENT:

16. Appended below, for your easy reference, is an extract from the latest directive, dated 5 July 2011, stipulating the grounds for confinement. Group ISCM is of the view that this matter complies with grounds (a) and (d), and the request for confinement is therefore fully supported –

    a) where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;
    b) the goods/services are only obtainable from one supplier/limited number of suppliers. For instance, patented / proprietary goods or OEM spares and components. Operating Divisions are however required to satisfy themselves that there are no new entrants on the market who could also be tested;
    c) for reasons of standardisation or compatibility with existing products and services. A case must be made that deviation from existing standardized goods or services will cause major operational disruption. If not, confinements based on "standardization" will not be considered; or
    d) when the goods or services being procured are highly specialized and largely identical to those previously executed by that supplier and it is not in the interest of the public or the organization to solicit other tender offers as it would result in wasted money and/or time for Transnet. When this particular ground is intended to be used as a ground for confinement, it is important to note that all pre-requisites must be satisfied i.e. 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.

17. Specific emphasis is placed on grounds (a) due to the urgency of the tender being awarded by December 2012, as approved by the BADC and BOD.

PROCUREMENT STRATEGY – EVALUATION METHODOLOGY

18. Salient features of the evaluation is as follows:
    - The evaluation will follow a staged process with minimum thresholds:
        - Stage 1 – Technical Evaluation (70% threshold)
        - Stage 2 – Commercial including price (60%) and BBBEE (40%)

    The successful bidder will be required to partner with a black firm and subcontract a minimum of 30% of the business awarded.

FINANCIAL IMPLICATIONS:

17. The estimated value for the advisory services required is R50 million collectively for all services required as requested in paragraph 1 of this memo.

BUDGET IMPLICATIONS:

18. Sufficient funds are available in the budget as these costs will be capitalised to the cost of the asset ito IFRS.

APPROVALS AND DELEGATIONS

19. The confinement of business at an estimated cost of R50 million falls within the jurisdiction of the Group Chief Executive in terms of paragraph 5.4.3 of the Transnet DOA Framework dated 25 April 2012.

RECOMMENDATION:

22. It is recommended that the Group Chief Executive approves the following:
    a. confinement of business to the estimated valued of R50 million, for the advisory services required in the go to market strategy for the acquisition of 1064 Locomotives. The award of the business will be considered by the TCC TAC in the normal manner.
    b. the procurement strategy that will be used to asses the above companies
    c. Delegate authority to the Acting CFO to award business after completion of the adjudication process.

Submitted by:

Shantell Mackay
Manager, Procurement
Date: 7/05/2012

Recommended / ~~Not Recommended~~

Wynand Esterhuizen
Manager (Policy, Standards & Governance)
Date: 7/05/2012

Recommended / ~~Not Recommended~~

Peter Volmink
Executive Manager (Governance), ISCM
Date: 7/5/2012

Recommended / ~~Not Recommended~~

Edward Thomas
Executive Manager
Date: 7/5/12

Recommended / ~~Not Recommended~~

Garry Pita
Group Chief Supply Chain Officer
Date: 7/5/12

Recommended / ~~Not Recommended~~

Anoj Singh
Acting Group Chief Financial Officer
Date: 07/05/12

Approved / ~~Not Approved~~

Brian Molefe
Group Chief Executive
Date: 10/05/2012

REPORT 2(A) – PART C – EXHIBIT 2

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TRANSNET

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MEMORANDUM

To: Brian Molefe
Group Chief Executive

From: Anoj Singh
Chief Financial Officer

Subject: **APPOINTMENT FOR TRANSACTION ADVISOR ON THE 1064 LOCOMOTIVE TENDER**

PURPOSE

1. The purpose of this memorandum is to request approval of the Group Chief Executive for the appointment of the Mckinsey consortium for the complete advisory services and Webber Wenztel for the legal advisory work as Transaction advisors on the 1064 locomotive tender.

   1.1. For the Group Chief Executive to note that McKinsey will be advised to partner with another firm with equal or better credentials than Letsema, for the procurement elements, due to the potential conflict with Barloworld and Letsema.

BACKGROUND

2. The GCE previously approved a confinement for transaction advisors, dated 10th May 2012, to KPMG, PWC, Aurecon, Letsema, McKinsey, Webber Wentzel, David Potter, Ledwaba Mazwai and MAC Consulting for the advisory services.

3. The objectives of this work is to assist Transnet in successfully awarding contracts for the manufacture and supply of diesel and electric locomotives while maximising value for Transnet and securing localization and industrialization benefits for South Africa.

DISCUSSION

4. The scope of the engagement for the transaction advisors include:
   4.1. Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;
   4.2. End to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
   4.3. Identifying value optimisation potential and technical optimisation options;
   4.4. Setting up the tender process in line with all requirements applicable to State-owned-companies (SOCs);
   4.5. Developing a shortlist of potential suppliers;
   4.6. Developing the contracts for the tender; and
   4.7. Developing finance and funding options.

5. Key project deliverables include:
   5.1. Updated and improved business case and relevant documentation for submission to the Transnet Board of Directors and Department of Public Enterprises;
   5.2. The business case should include the end to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
   5.3. List of technical value optimisation levers and estimated value;

5.4. Design of an optimisation approach for joint value optimisation between Transnet and the selected supplier(s);
5.5. Overall tendering process design for the locomotives;
5.6. Request for proposal documentation;
5.7. Short list of potential suppliers;
5.8. Template contract for awarding of the tender; and
5.9. Documentation for the final selection of preferred supplier(s).

EVALUATION

6. Four proposals were received:
   6.1. KPMG consortium – KPMG, Nkonki Inc, Norton Rose, Arcus Gibb
   6.2. PWC consortium – PWC, Siyaya DB Engineers, Cliffe Dekker Hofmeyer Inc
   6.3. McKinsey consortium - McKinsey, Letsema, Utho, Koikanyang, Nedbank, ENS and ART (David Potter), and
   6.4. Webber Wentzel

7. The evaluation criteria was categorized into:
   7.1. Business Case;
   7.2. Technical Optimisation;
   7.3. Deal structuring and Finance for large capital investment projects;
   7.4. Procurement; and
   7.5. Legal.

8. The results of the Stage three evaluations are as follows:

Stage Three Evaluation – Technical Results (per category)	KPMG JV	PwC JV	McKinsey & Company / Letsema JV	Webber Wentzel
1. Business Case				
5. Experience	59.88%	75.60%	89.42%	N/A
2. Technical Optimisation				
5. Experience	63.96%	61.58%	90.74%	N/A
3. Deal Structuring and Financing				
5. Experience	61.32%	82.32%	77.44%	N/A
4. Procurement and Legal				
5. Experience	58.54%	70.09%	81.43%	70.34%

9. From the above, KPMG did not meet the technical threshold of 70% and is thus eliminated.

10. The results of Stage Four evaluations are as follows

Stage Four Evaluation – Price and BBEEE scorecard (per category)	PwC JV	McKinsey & Company / Letsema JV#	Webber Wentzel
1. Business Case 5. Experience	68.20%	86.24%	Not evaluated
2. Technical Optimisation 5. Experience	Not evaluated – threshold not met	86.24%	Not evaluated
3. Deal Structuring and Financing 5. Experience	65.51%	86.24%	Not evaluated
4. Procurement and Legal 5. Experience	28.50%*	86.24%	29.60%*

- Scores are the same as McKinsey scored the same for price and BBEE for all categories
* - PWC and Webbers scored 0 (as per PPM) for pricing as they are double the price compared to McKinsey. Scores shown are only for BBEEE

11. Group Finance and TFR Finance identified a key risk with regard to the legal services. On previous locomotive tenders, Webber Wentzel, assisted and drafted Transnet's negotiation strategy.

12. As Webber Wentzel is the recognised leader with regards to locomotive procurement and if not engaged by Transnet they would be engaged by one of the tenderes. This would put all of Transnet's previous knowledge regarding previous negotiation strategies potentially at risk.

13. The only reason Webber Wentzel scored low in the Stage Four evaluation was due to price but was rated highest in terms of technical ability.

14. The Tender evaluation process was concluded whereby the McKinsey consortium consisting of McKinsey, Letsema, Utho, Koikanyang, Nedbank, ENS and ART (David Potter) were the preferred bidder for four categories (1) to (4), into which the evaluation criteria was categorized. Webber Wentzel was evaluated the highest amongst all bidders/consortia from a technical perspective and was the preferred bidder for the legal advisory work.

15. The Transnet Acquisition Council (TAC) awarded the McKinsey consortium the complete advisory services and split the award regarding legal advisory to Webber Wenztel. Refer to attached TAC resolution.

16. As the Locomotive RFP's have been advertised and will be issued in tranches and it is imperative that the RFP's be reviewed from all aspects by the transaction advisors before the supplementary RFPs are issued.

FINANCIAL IMPLICATIONS

17. The estimated value for locomotive advisory services required is R50 million. The %split of work is anticipated to be as follows:

    17.1. McKinsey – 35%
    17.2. Procurement partner - (Letsema replaced due to conflict with Barloworld) – 20 %
    17.3. Utho and Nedbank - 10%
    17.4. Webber Wenztel – 20%
    17.5. Advanced Rail technologies – 15%

BUDGET IMPLICATIONS

18. Although these costs were not explicitly budgeted for, sufficient budget exists in the Corporate Centre budget.

RECOMMENDATIONS

19. It is recommended that the Group Chief Executive approve the appointment of the Mckinsey consortium for the complete advisory services and Webber Wenztel for the legal advisory work as Transaction advisors on the 1064 locomotive tender.

    19.1. It is recommended that the Group Chief Executive note that McKinsey will be advised to partner with another firm with equal or better credentials than Letsema, for the procurement elements, due to the potential conflict with Barloworld and Letsema.

COMPILED BY:

Yusuf Mahomed
Group Finance
Date: 14/8/2012

RECOMMENDED/~~NOT RECOMMENDED~~:

Garry Pita
GM: Integrated Supply Chain Management
Date: 15/8/12

RECOMMENDED/~~NOT RECOMMENDED~~:

Anoj Singh
Chief Financial Officer
Date: 20/8/12

APPROVED BY:

Brian Molefe
Group Chief Executive
Date: 22.8.12

REPORT 2(A) – PART C – EXHIBIT 3

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TRANSNET

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MEMORANDUM

To: Brian Molefe, Group Chief Executive

From: Anoj Singh, Group Chief Financial Officer
Garry Pita, Group Chief Supply Chain Officer

SUBJECT: REQUEST FOR APPROVAL TO EXTEND THE CONTRACT PERIODS FOR THE CONFINED TRANSACTIONS AWARDED TO MCKINSEY:

PURPOSE OF SUBMISSION:

1. To obtain approval for the extension of the timeline to 30 June 2014 for GSM/12/08/0527 so as to ensure full delivery of scope of work to Transnet.

BACKGROUND, MOTIVATION AND FINANCIAL IMPLICATIONS

GSM/12/05/0447: ADVISORY SERVICES RELEATED TO THE ACQUISITION OF 1064 LOCOMOTIVES

2. TFR is currently undertaking a procurement process to for the supply of 1064 (599 electric and 465 diesel) GFB locomotives which is required to support the execution of the Market Demand Strategy (MDS) and achieve the projected increase in the MDS GFB volumes from 87.7 million tons in FY12/13 to 170.2 million tons by FY18/19.

3. The objectives of the scope of work of the contract is to assist Transnet to successfully award contracts for the manufacture and supply of 465 diesel and 599 electric locomotives while maximizing value for Transnet and securing localization benefits for South Africa.

4. The contract period agreed to between Transnet and the Supplier expires 10 November 2013.

5. The work has not been completed as the procurement process i.e. evaluation, post tender negotiation and award gateways are in progress and it is envisaged that the process will require an extension to 30 June 2014.

6. The original contract value for the full scope of advisory services of R38.72 million for output based deliverables therefore remains unchanged for the extended period of the contract.

GSM/12/08/0527: THE SET UP AND OPERATION OF THE MDS EXECUTION SUPPORT OFFICE

7. The key project deliverables is for the provision of advisory services related to the set up and operation of the Market Demand Strategy executions support office.

8. The contract period agreed to between Transnet and the Supplier expires 10 November 2013.

9. The work has not been completed and it is envisaged that in order for the scope of services to be completed Transnet will require an extension to 31 March 2015.

10. The contract value for the services remains unchanged at R67.7 million.

GSM/12/10/0578: SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY

11. The key objective and measurable is the total capital reduction of least R51 billion and comprise R10 billion from discretionary projects and R41 billion reduction in capital expenditure for SWAT Projects through work performed in the Project Factories as well as SWAT support on key MDS procurement events.

12. The initial contract period agreed to between Transnet and the Supplier was 9 months, expiring 24 November 2013.

13. The work has not been completed and it is envisaged that in order for the scope of services to be completed Transnet will require an extension to 31 March 2015.

14. The contract value for the remains unchanged at R174.6 million components of the fee are subject to delivery of the key objective as defined in paragraph 11.

FINANCIAL IMPLICATIONS:

15. The original contract values in total for the full scope services in respect of all of the above-mentioned contracts of R281.02 million in total for the completion of the deliverables remains unchanged for the extended periods of the contracts.

BUDGET IMPLICATIONS:

16. Sufficient funds are available in the budget as these costs will be capitalized to the cost of the asset in terms of IFRS.

APPROVALS AND DELEGATIONS:

17. The approval for the confinement of business and subsequent contract amendments falls within the jurisdiction of the Group Chief Executive in terms of paragraphs 5.4.3, 5.5 respectively of the Transnet DOA Framework dated 1 June

2013 and paragraph 15.1.7 of the Procurement Procedures Manual dated October 2013.

RECOMMENDATION:

18. It is recommended that the Group Chief Executive approves the request for extension of the timeline to 30 June 2014 for GSM/12/05/0447 and 31 March 2015 for GSM/12/08/0527 and GSM/12/10/0578.

Submitted by:

Garry Pita
Group Chief Supply Chain Officer
Date: 29/11/13

Recommended/~~Not recommended~~:

Anoj Singh
Group Chief Financial Officer
Date: 29/11/13

Approved/~~Not approved~~:

Brian Molefe
Group Chief Executive
Date: 2 1 . 1 1 . 1 3

REPORT 2(A) – PART C – EXHIBIT 4

'Appendix 1'

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MEMORANDUM

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TO : Brian Molefe
Group Chief Executive

FROM : Anoj Singh
Group Chief Financial Officer

SUBJECT: 1064 LOCOMOTIVE TRANSACTION – ADVISORY SERVICES

PURPOSE OF SUBMISSION

1. The purpose of this memorandum is to request that the Group Chief Executive to:
   - 1.1 Note the deliverables executed by the transaction adviser on the locomotive transaction compared to the original scope per the Letter of intent (LOI);
   - 1.2 Ratify the amendment in the allocation of scope of work from Mckinsey to Regiments Capital;
   - 1.3 Ratify the amendment in the make-up in the transaction adviser consortium from Nedbank Capital with Regiments Capital;
   - 1.4 Approve a change in the remuneration model of the transaction adviser compared to the original remuneration model;
   - 1.5 Delegate power to the GCFO to give effect to the above approvals.

BACKGROUND

2. The GCE approved the appointment of the McKinsey led Consortium (Annexure A) to provide complete advisory services on the 1064 locomotive tender, and a Letter of Intent was signed by the Group CFO on 04 December 2012 for R35,2 million excluding VAT and disbursements (Annexure B).
3. A separate Letter of Intent was signed for Webber Wentzels for R10 million for the support on the contracting and legal strategies.
4. In May 2013 a potential conflict of interest was raised with Mckinsey concerning Nedbank Capital, to which a response from McKinsey confirmed the conflict and an alternative as Regiments Capital was proposed.
5. On 19 November 2013 the Group CFO confirmed Transnet's agreement to replace Nedbank Capital with Regiments Capital (Annexure C).
6. The entire scope of the engagement was allocated to Regiments with Mckinsey only responsible for the business case and limited technical optimisation aspects.
7. On 4 February 2014 the LOI scope for Regiments Capital was extended to reflect the above and ensure better implementation and management of risks (Annexure D).
8. The budgeted fees were also increased to R41,2 million excluding VAT and disbursements and R51,2 million including Webber Wentzels.

DISCUSSION

9. The high level scope, allocation as well as fees of the engagement for the transaction advisors is as follows:

Scope category	Description	Responsible	Comments	Budgeted Fees excluding VAT and disbursements	Actual excluding VAT
Transactional advisory and procurement execution	Leading a fair and precise process to maximise socio-economic impact for South Africa and Transnet • Designed tendering process in line with requirements applicable to State-owned-companies (SOCs) to ensure award on time; • Contracting strategy for programmatic approach and maximised localisation; • Contracts that maximise Transnet's flexibility if volume predictions are not met; • Supplier evaluation criteria and adjudication process; Overall integration of all stakeholder inputs and communication on process progress	McKinsey Regiments Webber Wenztel (WW) Ningiza Horner (NH) (sub-contracted by WW)	McKinsey involvement de-scoped due to the extensive involvement of the Transnet Executive team. WW and NH assisted under tight timelines with no prior notice at all. Teams were requested to avail themselves for this entire project 24/7 over a 60 day period – due to curtailed timelines.	WW – R6,5 million NH – R3,5 million Regiments–R6,1 million	WW–R6,7 million NH – R3,5 million Regiments–R6,1 million
Funding	Recommended deal structuring, financing and funding options to minimise risk for Transnet.	Regiments	Scope was extended to include: • Determining the development and sustainability impact of the acquisition • Conducting a collateral	Regiments–R15 million	Regiments–R15 million

TRANSNET-REF-BUNDLE-05538

			assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promoting funds/agencies and in the form of vendor finance. • Investigate how asset/component can be secured in order to optimise balance sheet and cost of financing within the context of Transnet policy with respect to asset ownership and control • Developing and implementing a best practice risk management to the transaction • Developing an optimal risk management solution by examining solution that are embedded in the acquisition agreement, funding agreement and separate risk overlays • Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute		
Technical evaluation	Lifecycle cost savings from technical improvement levers, and price	Mckinsey and ART	McKinsey involvement de-scoped.	McKinsey – R13,4 million	McKinsey – R3,3 million

TRANSNET-REF-BUNDLE-05539

and optimisation	reduction of locomotives • Technical evaluation levers and direct impact on loco lifecycle costs • Joint value optimisation between Transnet and the shortlisted suppliers based on levers already identified by ART and implementable in the given timeframe, e.g., highest local content at best value for money				
Business case integration	Re-write of the business case, approved by Board and DPE • Integrated end-to-end business case across commodities to validate loco quantities with recommendations to adjust ranges in the fleet plan and get ranges for the contracting • Scenario based modeling to inform contracting based on macro-economic scenarios and links to export coal and export iron ore business cases, and different capex	Mckinsey	Completed and DPE approved the business case. The Integrated end-to-end GFP business case was done at a high level and carried over to the Project Factory as part of the SWAT engagement.	McKinsey – R 6,7 million	McKinsey – R6,7 million

TRANSNET-REF-BUNDLE-05540

	outcomes • Adequately address DPE queries.				
PMO	• Monitor overall process timelines against milestones • Setting up and preparing documentation for steering committees and formal reviews • Escalate issues through regular project Steercos • Prepare external stakeholder communications	Regiments Mckinsey oversight	McKinsey and Regiments involvement de-scoped as this was fully executed internally.	-	-

TRANSNET-REF-BUNDLE-05541

Value created by Transaction advisor

10. Regiments assisted Transnet in computing the effects of hedging and escalation based on the original delivery schedule compared to an accelerated/revised delivery schedule as well as optimising the foreign exchange hedge and guarantee bond pricing.
11. This enabled Transnet to accelerate the delivery schedule resulting in savings in future inflation related escalation costs and savings in foreign exchange hedging costs.
12. The Transnet Board Acquisition and Disposal Council (BADC) approved an allocation of locomotives between the preferred bidders for the diesel locomotives on a 50/50 split basis i.e. 233 locomotives to GE and 232 locomotives to CNR and a 60/40 split basis for the electric locomotives i.e. 359 locomotives for CSR and 240 locomotives for BT.
13. This allocation resulted in an increase in the cost per locomotive due to bidders having to allocate more of the overhead costs to a smaller batch (break costs).
14. The net saving as a result of this decision as calculated by Regiments is reflected below.
15. Furthermore, the accelerated delivery of locomotives will result in the ability to deliver incremental volumes earning additional revenue.

Figure 1

Summary of Impact of reducing Batch Size	GE Per Loco	CNR Per Loco
Escalation if a batch of 465 was ordered based on original delivery schedule	7 416 495	3 140 096
Hedging cost if a batch of 465 was ordered based on original delivery schedule	3 451 690	5 793 762
Escalation if a batch of 233/232 is ordered based on revised delivery schedule	5 140 840	2 770 643
Hedging cost if a batch of 233/232 was ordered based on revised delivery schedule	2 393 702	5 073 921
Saving on escalation	2 275 655	369 453
Saving on hedging	1 057 988	719 841
Total Saving	3 333 643	1 089 294
Additional cost as submitted by Bidder to reduce batch size	3 133 715	269 975
Net saving	199 928	819 319

Notes:
The forecasts were based on using historical trends of appropriate indices as calculated by Regiments Capital.
The calculations above are based on information available at a point in time to Regiments.
The above calcualtions were prepared to demonstrate the impact of reducing the batch size and will not tie up to the final negotiated position.

Summary of Impact of reducing Batch Size	Bombardier	CSR
	Per Loco	Per Loco
Escalation if a batch of 599 was ordered based on original delivery schedule	13 648 715	11 578 427
Hedging cost if a batch of 599 was ordered based on original delivery schedule	7 509 396	7 012 405
Escalation if a batch of 240/359 is ordered based on revised delivery schedule	6 487 680	6 248 487
Hedging cost if a batch of 240/359 was ordered based on revised delivery schedule	3 424 108	3 607 263
Saving on escalation	7 161 035	5 329 940
Saving on hedging	4 085 288	3 405 142
Total Saving	11 246 323	8 735 082
Additional cost as submitted by Bidder to reduce batch size	5 859 171	1 618 500
Net saving	5 387 152	7 116 582
Notes:		
The forecasts were based on using historical trends of appropriate indices as calculated by Regiments Capital.		
The calculations above are based on information available at a point in time to Regiments.		
The above calcualtions were prepared to demonstrate the impact of reducing the batch size and will not tie up to the final negotiated position.		

16. As a result of the work done by Regiments the delivery schedule was accelerated thereby ensuring that the locomotives arrive earlier, resulting in savings in future inflation related escalation costs and savings in foreign exchange hedging costs of approximately R20 billion (before break costs). The overall cost of the transaction reduced from ~R68 billion to R50 billion.
17. In addition, Transnet through Regiments efforts achieved a total savings of approximately R2,8 billion for the performance based foreign exchange and guarantee bond.
18. Regiments also achieved direct benefit to Transnet of R219 million and indirect savings of over R500 million.

Impact on Transnet

19. If the savings were not achieved the following would have been at risk:
    19.1. 1064 locomotive acquisition transaction would be unaffordable at an amount in excess of R50 billion.
    19.2. As a consequence all MDS aspirations of a 350mt volume achievement on rail would not be met.
    19.3. A new strategic direction for Transnet would have needed to be developed.
    19.4. Potential impact on investor confidence and appetite.
    19.5. Significant socio-economic benefits would have been eroded as a result of the reduced capital expansion programme.
    19.6. An amount of R38 billion was included in the 2014/15 Corporate Plan and the financial ratios based on this spend accordingly.
    19.7. The increase in costs to R68 billion would have placed significant pressure on Transnet resulting in a potential ratings downgrade.

Change in remuneration model for the transaction advisor

20. Regiments implemented extensive intellectual property and complex techniques and methodologies to achieve the above benefits to Transnet, thereby mitigating the risks identified above.

21. The Regiments operating model for such engagements is usually based a risk sharing model or success fee (25% of value created /saved).
22. In this case, Regiments was transferred a mandate and remuneration model already accepted by Mckinsey.
23. Regiments initial indications were that they would have preferred to be engaged on a model consistent with para.21 above.
24. This initial request was rejected. However based on the significant value created/saved as well as risks mitigated as noted above, a request to amend the remuneration model was submitted.
25. Consequently an additional fee of R78,4 million excluding VAT is recommended to Regiments, representing 0,042 % of the total savings.
26. Once approval is obtained for the revised remuneration model a contract amendment will be made.

PPPM - GENERAL AMENDMENT PRINCIPLES

27. Amendments in excess of 40% of the original contract value or contract period will be dealt with as follows:
    - 27.1. In such cases PRIOR review and recommendation must be obtained from the appropriate AC first, as well as the original signatory. Thereafter the matter must be submitted for approval to the person with delegations one level higher than the original contract signatory (provided the cumulative value is still within his/her delegations of authority). This rule applies regardless of whether the amendment is still within the original signatory's delegation of authority. On approval, the amended contract will be signed off by the person with the delegation of authority to sign off the contract value concerned.
    - 27.2. However, this rule does not apply to amendments falling within the GCE, Board Acquisitions and Disposals Committee (BADC) or the Board's delegation of authority. For such contract amendments, the matter will be submitted to the GCE, BADC or the Board regardless of the value of the contract amendment (provided the cumulative value is still within their delegations of authority).
    - 27.3. The rules relating to contract amendment stated above apply to contracts awarded via open tender as well as those awarded via confinement and the appointment of consultants.
28. In terms of para.27.2 the content of this request falls within the delegation of the GCE.

FINANCIAL IMPLICATIONS

29. The breakdown per consortium partner including the additional fee from the revised remuneration model is as follows:

Partner	Budgeted Fees R million excluding VAT and disbursements	Actual R million excluding VAT
Webber Wenztel	6.5	6.7
Regiments	21.1	99.5
Ningiza Horner	3.5	3.5
McKinsey	20.1	10.0
Total	**51.2**	**119.7**

BUDGET IMPLICATIONS

30. Although the additional amount was not explicitly budgeted for, sufficient budget exists in the 2014/15 Capital budget.
31. The additional fee of R78,4 million has not been included in the Capital budget however significant savings were achieved.

RECOMMENDATIONS

32. It is recommended that the Group Chief Executive:
    - 32.1. Note the deliverables executed by the transaction adviser on the locomotive transaction compared to the original scope per the Letter of intent (LOI);
    - 32.2. Ratify the amendment in the allocation of scope of work from Mckinsey to Regiments Capital;
    - 32.3. Ratify the amendment in the make-up in the transaction adviser consortium from Nedbank Capital with Regiments Capital;
    - 32.4. Approve a change in the remuneration model of the transaction adviser compared to the original remuneration model;
    - 32.5. Delegate power to the GCFO to give effect to the above approvals.

Compiled by

Anoj Singh
Group Chief Financial Officer
Date: 16/04/14

Approved/ ~~Not Approved~~

Brian Molefe
Group Chief Executive
Date: 17.4.14

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Annexure A.

MEMORANDUM

To: Brian Molefe
Group Chief Executive

From: Anoj Singh
Chief Financial Officer

Subject: **APPOINTMENT FOR TRANSACTION ADVISOR ON THE 1064 LOCOMOTIVE TENDER**

PURPOSE

1. The purpose of this memorandum is to request approval of the Group Chief Executive for the appointment of the Mckinsey consortium for the complete advisory services and Webber Wentzel for the legal advisory work as Transaction advisors on the 1064 locomotive tender.

   1.1. For the Group Chief Executive to note that McKinsey will be advised to partner with another firm with equal or better credentials than Letsema, for the procurement elements, due to the potential conflict with Barloworld and Letsema.

BACKGROUND

2. The GCE previously approved a confinement for transaction advisors, dated 10th May 2012, to KPMG, PWC, Aimecon, Letsema, McKinsey, Webber Wentzel, David Potter, Ledwaba Mazwai and MAC Consulting for the advisory services.

3. The objectives of this work is to assist Transnet in successfully awarding contracts for the manufacture and supply of diesel and electric locomotives while maximising value for Transnet and securing localization and industrialization benefits for South Africa.

DISCUSSION

4. The scope of the engagement for the transaction advisors include:
   4.1. Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;
   4.2. End to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
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   4.4. Setting up the tender process in line with all requirements applicable to State-owned-companies (SOCs);
   4.5. Developing a shortlist of potential suppliers;
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5. Key project deliverables include:
   5.1. Updated and improved business case and relevant documentation for submission to the Transnet Board of Directors and Department of Public Enterprises;
   5.2. The business case should include the end to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
   5.3. List of technical value optimisation levers and estimated value;

   5.4. Design of an optimisation approach for joint value optimisation between Transnet and the selected supplier(s);
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   5.6. Request for proposal documentation;
   5.7. Short list of potential suppliers;
   5.8. Template contract for awarding of the tenders; and
   5.9. Documentation for the final selection of preferred supplier(s).

EVALUATION

6. Four proposals were received:
   6.1. KPMG consortium – KPMG, Nkonki Inc, Norton Rose, Arcus Gibb
   6.2. PWC consortium – PWC, Siyaya OD Engineers, Cliffe Dekker Hofmeyer Inc
   6.3. McKinsey consortium – McKinsey, Letsema, Ithio, Kolkanyana, Nedbank, ENS and ART (David Potter), and
   6.4. Webber Wentzel

7. The evaluation criteria was categorized into:
   7.1. Business Case;
   7.2. Technical Optimisation;
   7.3. Deal structuring and Finance for large capital investment projects;
   7.4. Procurement; and
   7.5. Legal.

8. The results of the Stage three evaluations are as follows:

Stage Three Evaluation – Technical Results (per category)	KPMG JV	PwC JV	McKinsey & Company / Letsema JV	Webber Wentzel
1. Business Case 5. Experience	59.89%	75.60%	80.42%	N/A
2. Technical Optimisation 5. Experience	63.96%	61.59%	90.74%	N/A
3. Deal Structuring and Financing 5. Experience	61.32%	82.32%	77.44%	N/A
4. Procurement and Legal 5. Experience	59.54%	70.09%	81.43%	70.30%

9. From the above, KPMG did not meet the technical threshold of 70% and is thus eliminated.

10. The results of Stage Four evaluations are as follows

Stage Four Evaluation – Price and BBBEE scorecard (per category)	PwC JV	McKinsey & Company / Letsema JV#	Webber Wentzel
1. Business Case 5. Experience	69.20%	86.24%	Not evaluated
2. Technical Optimisation 5. Experience	Not evaluated – threshold not met	86.24%	Not evaluated
3. Deal Structuring and Financing 5. Experience	65.51%	86.24%	Not evaluated
4. Procurement and Legal 5. Experience	28.50%*	86.24%	29.80%*

- Scores on the same as McKinsey since the same for price and BBEE for all categories
* - PWC and Webber scored 0 (as per RFP) for pricing as they are double the price compared to McKinsey. Scores shown are only for BBBEE

TRANSNET-REF-BUNDLE-05546

11. Group Finance and TFR Finance identified a key risk with regard to the legal services. On previous locomotive tenders, Webber Wentzel, assisted and drafted Transnet's negotiation strategy.

12. As Webber Wentzel is the recognised leader with regards to locomotive procurement and if not engaged by Transnet they would be engaged by one of the tenderes. This would put all of Transnet's previous knowledge regarding previous negotiation strategies potentially at risk.

13. The only reason Webber Wentzel scored low in the Stage Four evaluation was due to price but was rated highest in terms of technical ability.

14. The Tender evaluation process was concluded whereby the McKinsey consortium consisting of McKinsey, Letsema, Utho, Kolkanyang, Nedbank, ENS and ART (David Potter) were the preferred bidder for four categories (1) to (4), into which the evaluation criteria was categorized. Webber Wentzel was evaluated the highest amongst all bidders/consortia from a technical perspective and was the preferred bidder for the legal advisory work.

15. The Transnet Acquisition Council (TAC) awarded the McKinsey consortium the complete advisory services and split the award regarding legal advisory to Webber Wentzel. Refer to attached TAC resolution.

16. As the Locomotive RFP's have been advertised and will be issued in tranches and it is imperative that the RFP's be reviewed from all aspects by the transaction advisors before the supplementary RFPs are issued.

FINANCIAL IMPLICATIONS

17. The estimated value for locomotive advisory services required is R50 million. The %split of work is anticipated to be as follows:

    17.1. McKinsey – 35%
    17.2. Procurement partner - (Letsema replaced due to conflict with Barloworld) – 20 %
    17.3. Utho and Nedbank - 10%
    17.4. Webber Wentzel – 20%
    17.5. Advanced Rail technologies – 15%

BUDGET IMPLICATIONS

18. Although these costs were not explicitly budgeted for, sufficient budget exists in the Corporate Centre budget.

RECOMMENDATIONS

19. It is recommended that the Group Chief Executive approve the appointment of the Mckinsey consortium for the complete advisory services and Webber Wentzel for the legal advisory work as Transaction advisors on the 1064 locomotive tender.

    19.1. It is recommended that the Group Chief Executive note that McKinsey will be advised to partner with another firm with equal or better credentials than Letsema, for the procurement elements, due to the potential conflict with Barloworld and Letsema.

COMPILED BY:

Yusuf Mahomed
Group Finance
Date: 11/9/12

RECOMMENDED/NOT RECOMMENDED:

Garry Pita
GM: Integrated Supply Chain Management
Date: 15/9/12

RECOMMENDED/NOT RECOMMENDED:

Anoj Singh
Chief Financial Officer
Date: 2dec/12

APPROVED BY:

Brian Molefe
Group Chief Executive
Date: 22.9.12

TRANSNET-REF-BUNDLE-05547

TRANSNET

TRANSNET ACQUISITION COUNCIL

Meeting: 26/07/2012

Agenda Item 9

RFP GSM/12/05/0447:
APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES INFORMED ICT DECISIONS FOR THE GROUP AWARD OF BUSINESS (CONSIDERATION) R50.00M

RESOLUTION/MINUTE 184/2012TAC

THE TAC APPROVED THE AWARD OF BUSINESS FOR CATEGORY 4&5 AS RECOMMENDED

Remarks:

Mr. Esterhuizen declared his non-personal interest in being a part of the evaluation team and recused himself.

The TAC, after discussion, agreed to revise its previous recommendation based on the new information provided. This information plus the previous submission i.e. the full comprehensive submission enabled the TAC to therefore approve the split award of the procurement component of category 4 to the McKinsey Consortium and the legal services within category 4 to Webber Wentzel, as recommended.

However, the TAC noted the following concerns:

- Cost for the project does not qualify for capital sanction in terms of IFRS.
- Group Finance must indicate whether there's budget available for this spend.

TRANSNET

The TAC requires to be informed at the next TAC meeting how this amount can be included into CAPEX, when it is an operating expense.

SECRETARY

Date: 27 July 2012

CHAIRPERSON

Date: 27 July 2012

TRANSNET-REF-BUNDLE-05548

TRANSNET

10005/6

Annexure B

McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

30 November 2012
Reference: LOI/GSM/12/05/0447

Dear Mr Michael Klass

RE: **LETTER OF INTENT for the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender over a period of 9 months. LOI/Proposal Reference No: GSM/12/05/0447 ("the Mandate")**

Pursuant to our Request for Proposal (RFP Number 12/05/0447), we wish to inform you that your offer has been accepted and that your consortium has been awarded the contract for the provision of **Advisory Services related to the Acquisition of the 1064 Locomotives Tender** (the Services) to Transnet, subject to the conditions precedent set out in section 1 below.

The Parties to this agreement are:

(1) **Transnet SOC Ltd (Transnet)**, a State Owned Company and the procurer of the services, (Registration Number 1990/000900/30); together with

(2) **McKinsey Incorporated (the Supplier)**, (Registration Number 1995/002398/10) and the other members of the consortium, namely, **Regiments Capital (refer to 1.5)**, **Advanced Rail Technologies, Nedbank Capital and Utho Capital.**

Transnet wishes to contract with the Supplier for the provision of the Services as outlined in clause 3.3 below, which, if mutually agreed by the Parties, will be documented and effected in accordance with a **9** (nine) month Agreement between the Parties. It is agreed that the Supplier will play the lead role and take overall responsibility for the entire Mandate. This condition also applies to services specified in 1.5 and 1.6 herein.

The Parties are desirous of successfully concluding negotiations and thereafter executing a contract **(the Agreement)** to enable the Supplier to provide the Services detailed in section 3.3 below in a timely manner.

The Parties have identified the Services which Transnet would wish the Supplier to provide in the interim while execution of an Agreement between the Parties is being finalised. Conditions of this requirement are specified in sections 2 and 3 below.

The purpose of this Letter of Intent (LOI) is to document the intention of the Parties in respect of the required Services for **the provision of Advisory Services related to the Acquisition of the 1064**

2. **Interim Service Requirement**

2.1. The Supplier agrees to promptly commence with the provision of the Services as detailed in section 3.3 below, after this LOI's confirmation date, and in compliance with Transnet's interim purchase order.

2.2. Should negotiations between the Parties break down for any reason, the Supplier may immediately invoice **Transnet Group Finance** for all reasonable, actual costs incurred up until that date and such amount shall become due and payable by Transnet against presentation to Transnet of an undisputed Tax Invoice.

3. **Contract Fees and Deliverables** (inclusive of 2.1 above)

The proposed fees for the Services to be rendered, which the Parties in the interim accept, are understood by both Parties (subject to signing of the Agreement) and are as tabled in Annexure A hereto.

3.1. Fees and related costs are quoted in South African currency and are exclusive of Value-Added Tax (VAT). Expenses will be capped at 10% of the value of the engagement for the Supplier and its sub-contractors and billed on an actual basis capped at R35,2 million excluding disbursements.

3.2. Payment will be effected by Transnet, against presentation by the Supplier of undisputed Tax Invoices, within 30 (thirty) days from date of month-end statement for deliverables effected during that month.

3.3. **Key deliverables and project timescales.**

The key project deliverables for a period of 9 (nine) months are for the provision of **Advisory Services related to the Acquisition of the 1064 Locomotives Tender.** Please note that contract timeline maybe for a longer period, at no extra cost to Transnet if the deliverables are not executed for whatever reason as this engagement is output based, as opposed to time based.

The objective is to award the loco tender by the end of the third quarter of the calendar year 2013 on the back of

- a robust and de-risked business case that is fully supported and approved by the Board and the Shareholder
- a fully capacitated and flawless transaction process
- a commercial negotiation that maximises the value delivered to Transnet and South Africa.

The deliverables are covered in detail in annexure B, and include:

- **Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;**

- **Financial:**
  - Developing finance and funding options
  - Develop deal structure (financing, hedging and de-risking options);
- **Project Management Office:**
  - Proactive stakeholder engagement throughout process to ensure all are granted on time (e.g. PFMA)
  - Manage overall process to ensure all parts come together
  - Provide oversight of legal aspects from a project management perspective.

4. **Miscellaneous**

4.1. Neither Party shall reveal the content of this LOI or anything disclosed to the other Party in pursuance hereof to any third party, except with the prior express written consent of the other Party, and then only to the extent required to facilitate progression of the startup procedures.

4.2. This LOI may only be amended or modified in writing by the authorised signatories of the LOI.

Thus duly signed at ....Sandton...., South Africa on this ....01.... day of ....December.... 20..... on behalf of:

Transnet SOC Ltd

WITNESSES

1 .....

2 .....

NAME: Anoj Singh
Designation: Group Chief Financial Officer

ANNEXURE A –FEES/COSTS

Deliverables must be executed for a fee of R35.2m as per the fee note below. Any overrun in terms of time will not be for the account of Transnet as the engagement is output based and not time based. McKinsey will take overall responsibility for the deliverables and quality of the end products. Expenses will be capped at 10% of the value of the engagement for the Supplier and its sub-contractors and billed on an actual basis:

1064 Locos	Contracting strategy	McKinsey Regional/Durban	R1.4m
	Business case validation	McK	R5.2m
	Technical evaluation and execution	McK + ART	R13.5m
	PMO, integration and stakeholder management	Regional/Durban + McK	R7.4m
	Total Loco		R35.2m

LOI Reference No: GSM 12/05/0447

Business case integration and re-write	**Led by McK** **Re-write of the business case, approved by Board and DPE** • Integrated end-to-end business case across commodities to validate loco quantities with recommendations to adjust ranges in the fleet plan and get ranges for the contracting • Scenario based modeling to inform contracting based on macro-economic scenarios and links to export coal and export iron ore business cases, and different capex outcomes • Adequately address DPE queries.	Rewritten business case that is approved of by the Transnet Board and DPE
PMO	**Led by Regiments/Burlington with McK leadership oversight** • Monitor overall process timelines against milestones • Setting up and preparing documentation for steering committees and formal reviews • Escalate issues through regular project steercos • Prepare external stakeholder communications	Detailed project plan with milestones Clear governance structure that creates an integrated view of the entire process across all advisors Effective steering committee meetings- clear agenda with decisions to be made, all information required for decisions circulated beforehand, issues logged and resolved Aligned external stakeholders

TRANSNET-REF-BUNDLE-05553

Annexure C

TRANSNET

McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

19 November 2013
Reference: LOI/GSM/12/05/0447

Dear Mr. Michael Kloss

RE: LETTER CONFIRMING A CONFLICT OF INTEREST (NEDBANK CAPITAL) AND THE RECOMMENDED ALTERNATIVE (REGIMENTS CAPITAL) IN REGARDS TO ADVISORY SERVICES TO ACQUISITION OF THE 1064 LOCOMOTIVES TENDER OVER A PERIOD OF 9 MONTHS. REFERENCE NO: GSM/12/05/0447

1. Mckinsey Incorporated (McKinsey) and other members of the consortium was awarded the business to provide advisory advice to Transnet for the Acquisition of the 1064 locomotives.

2. McKinsey was awarded the business and Nedbank Capital (Nedbank) was its partner to provide financing, funding options and deal structures for the acquisition of the 1064 locomotives tender.

3. In May 2013 a potential conflict of interest was raised with McKinsey concerning Nedbank to which a response from McKinsey confirmed the conflict and an alternative solution to provide the services to Transnet was proposed in terms of Regiments Capital to provide the services.

4. The 1064 locomotives tender is entering Phase 2 which will now include the funding and deal structuring work envisaged by Transnet for the Acquisition of the 1064 Locomotives.

5. It is thus in the best interest of Transnet and McKinsey to confirm the proposed alternative of Regimens Capital.

6. This letter serves to confirm Transnet's agreement to McKinsey's request for Regiments Capital to provide the required services in place of Nedbank .

Anoj Singh
Group Chief Financial Officer
Date 19/11/13 .

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1990/000900/30

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Directors: NE Mawasha (Chairman) B Molefe* (Group Chief Executive) MK Chaubey* MA Fanaroff Y Forbes MD Gatsheni JL Hoole MC Mpahlwa MI Stofile
JB Skosana E Tshabalala OMJ Thepe A Singh* (Chief Financial Officer)
*Executive *Indian

Group Company Secretary: MC Cele

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REPORT 2(A) – PART C – EXHIBIT 5

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TRANSNET

MEMORANDUM

www.transnet.net

To: Anoj Singh, Group Chief Financial Officer

From: Garry Pita, Group Chief Supply Chain Officer

Date: 23 April 2014

SUBJECT: 1064 Locomotive Transaction – Advisory Services

PURPOSE:

1. The purpose of this submission to the Group Chief Financial Officer is to advise Group iSCM and Transnet Corporate Centre Procurement's position regarding the approval of the change of the remuneration model of 1064 Locomotive Transaction Advisory Services, GSM12/05/0447.

BACKGROUND:

2. Transnet entered into an agreement with Mckinsey Incorporated for a scope of work for Transaction Advisory Service on the 1064 Locomotive tender.

3. This scope of work is set out in the Letter of intent (LOI), attached as Annexure A, for a fixed fee of R35.2 million which is for the delivery of deliverables as per the LOI.

4. The part of the scope relating to the financial aspects of the tenders relating to Development of finance and funding options and the development of a deal structure (financing, hedging and de-risking options) was supposed to be delivered by Nedbank. There was a conflict of interest and McKinsey provided another service provider, Regiments Capital, to provide these services.

5. Transnet de-scoped certain parts of the scope as McKinsey did not deliver on these deliverables.

6. McKinsey consequently ceded the contract, including the incomplete remaining deliverables relating to the scope as mentioned in 3 above, to Regimens Capital.

7. Regimens Capital firmed up the detail scope relating to the scope as set out in point 3 above in a revised LOI, refer Annexure B.

8. This finalisation of scope came at an additional cost, with a total fixed price of R15 million for all the deliverables as per the LOI in Annexure B.

DISCUSSION:

9. On the 17th April the Group Chief Executive approved the various changes in scope and consortium members as well approved a revised remuneration model.

10. This revised remuneration model that was approved is a risk based model with a success fee.

11. The benefits that Transnet obtained from the Transaction Advisor contract was as a result of the contracted for deliverables being provided in terms of the current fixed fee agreement Transnet has with the service provider.

12. The fact that Regimens Capital operating model is based on a risk sharing model or success fee is irrelevant. Regimens Capital willingly accepted the rights and obligations of an existing contract, whose fee is a fixed fee for the delivery of the deliverables. Regimens also agreed to an increased fixed fee for the detailed deliverables that they delivered on.

13. Based on the above, notwithstanding the GCE's approval, we do not agree to the implementation of the change in remuneration model as the service provider has been sufficiently remuneration for the services provided as per the agreement.

FINANCIAL IMPLICATIONS:

14. Not applicable.

BUDGET IMPLICATIONS:

15. Not applicable

RECOMMENDATION:

16. That the GCFO note the position of Group iSCM and Transnet Corporate Centre Procurement regarding the implementation of the remuneration model as discussed in point 13 above.

COMPILED BY

_____

Edward Thomas
Executive Manager iSCM
Date:

APPROVED BY

_____

Garry Pita
Group Chief Supply Chain Officer
Date:

NOTED BY

_____

Anoj Singh
Group Chief Financial Officer
Date:

REPORT 2(A) – PART C – EXHIBIT 6

6.16

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TRANSNET

MEMORANDUM

www.transnet.net

To: Transnet Board of Directors (BOD)

From: Brian Molefe, Group Chief Executive

SUBJECT: INCREASE IN ESTIMATED TOTAL COST (ETC) OF THE ACQUISITION OF 1064 LOCOMOTIVES FOR TRANSNET FREIGHT RAIL'S GENERAL FREIGHT BUSINESS (GFB)

PURPOSE:

1. The purpose of this memo is:
   a) for the BOD to note the reasons for the increase in ETC.
   b) to request that the BOD approve an increase in the estimated total cost (ETC) for the acquisition of 1064 Locomotives for the General Freight Business of Transnet Freight Rail from R 38.6 billion to R 54.5 billion.

EXECUTIVE SUMMARY:

2. In summary the increase in ETC of R 15.9 billion can be attributed to the following:

Update of business case for updated economic factors	R 5.4 bn	34 %
Risk Mitigation - Forex and Escalation	R 9.5 bn	59 %
TE Scope	R 2.6 bn	16 %
Contingencies	R 4.9 bn	31 %
Lower capital acquisition cost of the locomotive obtained through the competitive tender and negotiation process less the batch pricing adjustment of R 2.7 billion.	R – 6.5 bn	- 41 %

3. 93 % of the ETC increase relates to changes in market conditions and the risk tolerance level of the company. Whilst 16 % of the ETC increase relates to strategic factors such as localisation and competition. These increases have been offset by a competitive tender and negotiation process that realised a benefit of 41 %.

4. On a like for like comparison the new price including TE scope of R 40.09 billion (excluding hedging and escalation) is only 3.89 % higher than the approved ETC of R 38.6 billion. The balance of the ETC increase relates to risk mitigation and strategic

concessions such as batch pricing.

5. Regiments Capital (using an international expert) benchmarked the Capital Acquisition Cost of the locomotives at the "best and final offer" stage of this transaction and the results indicate that the price being offered by the bidders is reasonable. Given that forex, escalation, economic factors and batch pricing impact is subject to market conditions it can be deduced that the final contract price is also reasonable.

6. The need to incur these costs has been justified and the associated costs are reasonable in the circumstances.

7. The NPV of the business case remains positive at R 11.68 billion.

8. Impacts on the 2014/15 corporate plan has been assessed and mitigated. Consequently the R 54.5 billion is affordable and reasonable.

9. Risk mitigation measures have been developed and are being implemented to ensure benefits are realised.

10. Significant socio economic benefits such as localisation and job creation will be realised.

11. Significant benefit will be achieved by the company including additional volumes earlier, additional cash flows, a stronger balance sheet, which should enable greater capital expansion in future.

12. This acquisition in conjunction with other locomotive acquisitions will significantly contribute towards the company achieving its original MDS targets of 350 mt by 2018/19 and consequently is fully aligned with the MDS of the company.

13. The strategic, commercial and socio economic benefits associated with this acquisition will significantly outweigh the capital cost.

BACKGROUND:

14. The acquisition of 1064 Locomotives was approved by the Board of Directors in April 2013 at a cost of R 38.6 billion. This excluded the following costs:

    a. The cost of changes in economic conditions (forex and inflation) between approval of the business case and award of the contracts
    b. The cost of hedging for foreign exchange movements;
    c. The cost for future inflationary escalations;
    d. The cost of additional scope for Transnet Engineering (TE);

15. The rationale for the investment is to increase the capacity of TFR's GFB from 80mt to 180mt in terms of the Market demand Strategy (MDS).

16. The acquisition of 1064 Locomotives for GFB was approved by the Shareholder Minister (Department of Public Enterprises) on 3 August 2013.

17. Although the approval from the Minister was not subject to a final cost of R 38.6 billion, for good governance and for information purposes a letter will be sent to the DPE

advising of the final ETC.

18. Four contracts to acquire 1064 locomotives were concluded on 17 March 2014 at a cost of R 49.5 billion including the cost of future escalations, including additional scope for TE and including foreign exchange hedging costs thus resulting in an increase in ETC of approximately R 15.9 billion (including a 10 % contingency).

19. As per the DTI codes for local content, the tender process required that bidders exceed a minimum Supplier Development (SD) threshold of 40 %. All bidders exceeded this threshold. All the bidders met the minimum thresholds for local content of 55 % for diesel locomotives and 60% for electric locomotives.

20. The locomotives will be delivered at a rate of 12 locomotives per month per bidder at peak production as per the summarised delivery schedule below (refer Table 1). In order to mitigate against late delivery risk, a penalty regime capped at 10 % of the contract price has been agreed to with all bidders.

Table 1

Delivery Schedule - Diesel Locomotives	CNR	GE
	232 (50%)	**233 (50%)**
	CNR 1st 20 from China	GE 1st 6 from USA
by March 2015	0	0
by March 2016	20	34
by March 2017	87	126
by Oct 2017	84	73
by February 2018	42	
Locomotives will be manufactured at a peak tempo of 12 per month.		

Delivery Schedule - Electric locomotives	Bombardier	CSR
	240 (40%)	359 (60%)
	BT produce all loco's locally	CSR 1st 40 from China
by March 2016	6	88
by March 2017	137	142
by December 2017	97	
by January 2018		129
Locomotives will be manufactured at a peak tempo of 12 per month.		

DISCUSSION

21. In order to analyse the increase in ETC two factors need to be considered:

    i. Updated economic data from business case date to current (backward looking);

    ii. Future financial risks emanating from the transaction and costs associated to mitigate these risks (forward looking).

22. This document has been prepared to explain the increase in ETC on this basis, concentrating on why these costs needed to be incurred and were these costs reasonable in the circumstances.

23. The increase in ETC of R 15.9 billion is due to the following reasons (refer Table 2 below):

    a) Escalations from the approved business case to award date (backward looking) (Item A of Table 2)

    b) Forex from the approved business case to award date (backward looking) (Item C of Table 2)

    c) Additional scope of work allocated to Transnet Engineering (TE) for the strategy to enable TE to eventually transform to an Original Equipment Manufacturer (OEM) of locomotives (strategic) (Item B of Table 2).

    d) The cost of reducing the batch size (strategic and risk mitigation) (Item D of Table 2)

    e) The cost of future escalations over the life of the contract (forward looking and risk mitigation) (Item E of Table 2)

    f) The cost of fixing forex exposure over the life of the contract (forward looking and risk mitigation) (Item F of Table 2)

    g) Contingencies related to variation orders, options (such as electronically controlled pneumatic braking and wire distributed power etc.) and capital spares (Item G of Table 2)

Table 2

		Diesel + Electric Grand Total 1 064	%
Best and Final Offer per Board submission excluding Hedging & Escalation		**29 353 532 740**	
Adjusted for changes to:		9 994 929 119	
Escalation up to signature date (from close of tender to Mar 14)	A	2 362 018 104	8.0%
Add back original TE scope removed for BAFO purposes	B	1 706 643 360	5.8%
Forex adjustment to spot rate at 17 March 2014	C	3 030 660 144	10.3%
Batch pricing adjustment for reduction of batch size to 40 % / 60 %	D	2 754 402 335	9.4%
Best and Final Offer updated for economic and other factors		39 209 256 683	
Adjustments for:			
Additional TE Scope	B	883 172 732	3.0%
New Price including TE scope		40 092 429 415	
Cost to fix escalation to end of contract	E	6 725 748 499	16.8%
Cost of Hedging	F	2 729 046 496	6.8%
Estimated Total Cost including Hedging and Escalation		49 547 224 410	
The ETC above excludes the cost of any options, variations capital spares, initial spares, tools and test equipment. Add approximately a further 10 % at least to cover this cost.	G	4 954 775 590	
Proposed Estimated Total Cost including Hedging, Escalation, options, spares, tools and test equipment		54 502 000 000	

Increase in ETC for 1064 GFB Locomotives

BACKWARD LOOKING ECONOMIC AND OTHER FACTORS THAT HAVE IMPACTED THE PRICE:

24. The estimates and assumptions on which the 1064 business case was based have changed substantially since approval was obtained from the Transnet Board in April 2013.

25. In addition a number of parameters have materially changed since issue of the tender, approval of the investment by the Transnet Board and the contract negotiation process. These are summarised in Table 3 below:

Table 3

	Business Case	Tender Stage	Negotiation/ Contracting Stage	% movement
Rand to the US Dollar	9.13	8.98	10.72	19.4%
Rand to the Euro	n/a	11.86	14.87	25.4%
Local CPI	n/a	100%	106.10%	6.1% *
Local Hot rolled Steel plates Index	n/a	100%	112.90%	12.9% *
Local PPI	n/a	100%	107.50%	7.5% *
Chinese Equivalent CPI Index	n/a	100%	102.50%	2.5% **
US Equivalent CPI Index	n/a	100%	101.33%	1.3% **
Euro Equivalent CPI Index	n/a	100%	102.08%	2.1% **

* Index movements calculated from Dec 12 to Jan 14

** Index movements calculated from May 13 to Mar 14

Item C of Table 2

a. Foreign exchange rates. The Rand has depreciated by 19.4 % against the US Dollar since the tender stage. Similarly the Rand has also depreciated by 25.4 % against the Euro over the same period. The spot rate of exchange used in the business case to calculate the base price of the locomotive was 9.13 Rand to the US Dollar, as compared to the spot exchange rate as at contract signature date of 10.72 Rand to the US Dollar, an increase of 17.4 %. This has impacted the expected price of the locomotive as per the business case and ultimately the ETC as approved by the Board.

Consequently the additional 10.3 % per C in Table 2 is reasonable.

Item A of Table 2

b. Labour cost increase. The cost of labour required to build the locomotives has increased locally within South Africa and globally over this period, as indicated within the CPI/PPI indices listed in Table 3 above and as evidenced by the higher than CPI wage settlement that Transnet entered into at 8.5 % for a 2 year period. Due to the tender localisation requirements, Transnet Engineering (TE) will assemble the locomotives and consequently local labour will be utilised for the assembly.

c. Material cost increase. A significant component of the locomotive is steel. The price of steel is impacted by the steel commodity price of which the trading currency is in

US Dollars and secondly thereby foreign exchange deterioration as well. The local index for hot rolled steel plates has deteriorated by approximately 12.9 % since December 2012, which is indicative of the level of increase in the price of steel.

d. Inflation. Local Producer Price Index (PPI) has increased by over 7.5 % since December 2012 thereby affecting the price of locally sourced products required for the build of the locomotives. Foreign equivalent indices also increased over this period. This together with the foreign exchange deterioration indicated above has resulted in the price of imported components for this project increasing.

e. Statistics SA report that the headline CPI annual inflation rate in April 2014 was 6.1 %, further explained in the Business Day article "CPI breaches Reserve Bank target" dated 22 May 2014.

f. Applying the relevant proportion of each of the labour, material and other input costs which make up the basket of items required for the manufacture of the locomotives, would result in the net increase in the locomotive price of 8 %.

g. Consequently the net impact of 8 % on the locomotive price due to the change in economic conditions as per item A of Table 2 is reasonable.

FORWARD LOOKING ECONOMIC FACTORS AND MEASURES TO MITIGATE FINANCIAL RISK THAT HAVE IMPACTED THE PRICE:

Forex (Item F of Table 2)

26. The Financial Risk Management Framework (FRMF) approved by the Board of Directors (BOD) does not permit Transnet accepting forex exposure on committed transactions.

27. The South African Reserve Bank (SARB) also does not permit SOC's to accept open exposure on foreign currency contracts.

28. In addition credit rating agencies and bond holders both prefer conservative risk appetites and consequently would also support fixing our forex exposure.

29. Sensitivities indicate that a 5 % devaluation of the Rand could impact the total ETC by approximately R 3.07 billion if left unhedged.

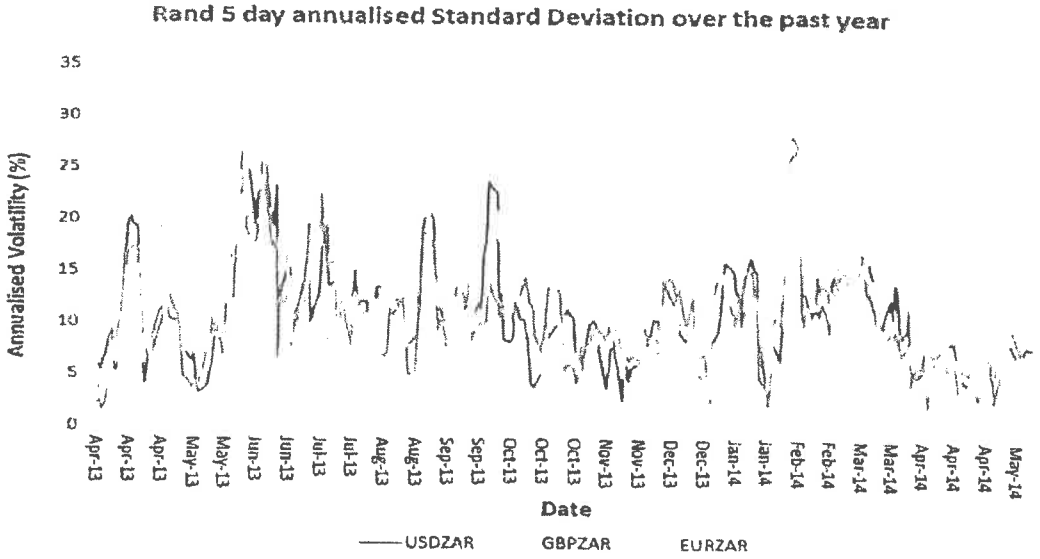
30. Consequently the cost of foreign currency hedging to mitigate and protect the Company against foreign currency devaluation is an inherent cost of the transaction.

31. Costs related to forex are influenced by market forces which are not within managements control and therefore were not included in the ETC for the business case submission. The impact of these forex related costs would only be known once the contract was negotiated and finalised as they are based on market conditions and sentiment at the time.

32. The cost of fixing the forex exposure is impacted by currency volatility and time or duration of the exposure.

33. The recent volatility in the foreign exchange rate of on average up to between 15 & 20 % directly impacts the transaction cost as can be seen in Table 4 below:

Table 4

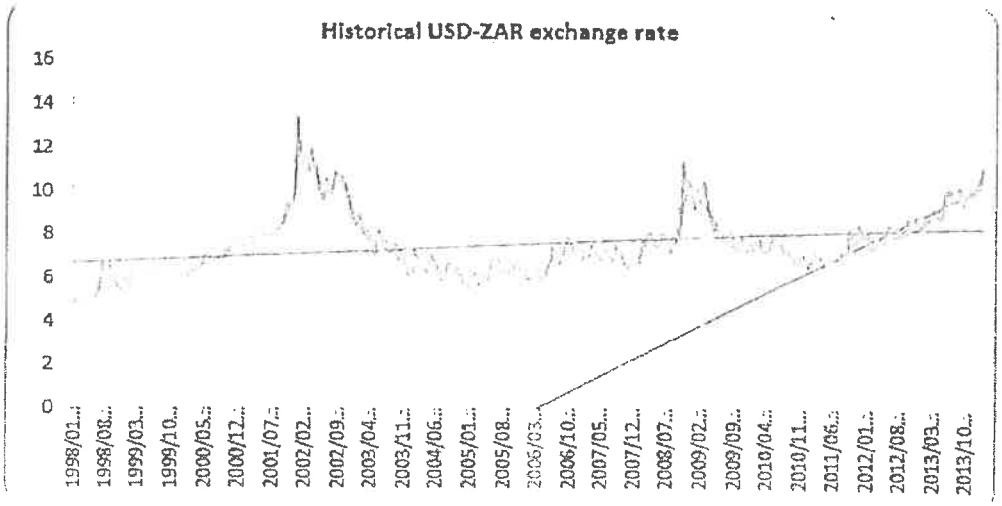


34. In addition the ZAR currency is one of the most volatile and fragile currencies in the world. This view is substantiated by the ZAR currency being termed as one of the "fragile five" by economists and financial markets (refer diagram below).

35. Business Day reported on 18 March 2014 that the Rand is in for a "Rocky ride" for the rest of the year (Refer article "Rocky Ride forecast for 'still to expensive' Rand)

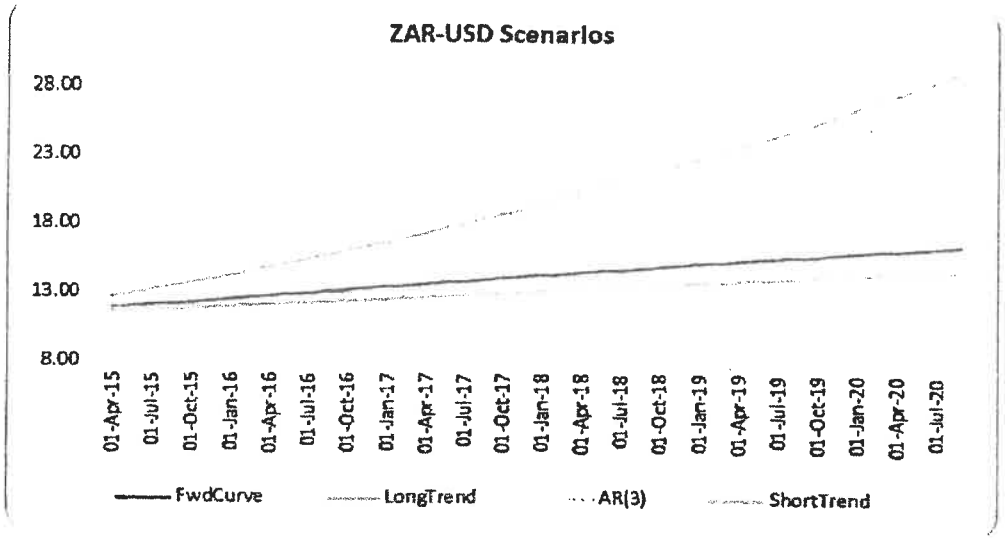
36. The generally held consensus view is that due to the twin deficit of the RSA budget and the current account, and the weak economic outlook supports Rand devaluation in the medium to long term.

Table 5



37. A historical regression analysis conducted by Regiments Capital indicates that the ZAR currency is on a trend of devaluation as indicated in Table 5 above.

Table 6



38. In addition Regiments Capital conducted various currency trend scenarios as indicated in Table 5 above. All scenarios indicate a general devaluation in ZAR over the medium term.

39. The imminent risk of the Ukraine crisis and its impact on emerging markets also had an impact on the decision to fix the exchange rate exposure.

40. In addition the delivery schedule of the locomotives, between 31 and 35 months, also impacts the cost of hedging as the length of the exposure impacts the costs. The longer the period the higher the premium paid due to unknown outcomes in the future.

41. Alternative methods, such as call and put option structures, to reduce cost and mitigate against forex exposure risk were explored in conjunction with Regiments Capital including methods in which Transnet would participate in any possible upside in Rand movements. These methods were evaluated from a cost benefit perspective and consequently the FEC route proved most beneficial and practical to mitigate forex risk.

42. In addition the accounting treatment of options was not optimal as per opinion obtained from KPMG as it would result in the creation of an embedded derivative.

43. The cost to hedge this exposure was obtained from banks by the suppliers. This was then vetted by Transnet Treasury and Regiments Capital for reasonability. They both found the rates and cost to be acceptable.

44. Consequently the net 6.8 % per F in Table 2 above is reasonable.

Escalation of Input Costs (Item E of Table 2)

45. Given the size, magnitude and risk tolerance of the company due to MDS execution, cash flow certainty is of paramount importance when trying to plan over a long term horizon.

46. This ensures that the company is able to manage its key financial metrics such as gearing, cash interest cover and the A/B ratio (required by rating agencies).

47. In addition credit rating agencies and bond holders both prefer conservative risk appetites and consequently would also support fixing our escalation exposure.

48. Careful consideration had to be given to accepting other risks such as labour, steel etc. and being exposed to market conditions.

49. Consequently it was decided to fix escalation for these input costs and gain certainty of cash flows.

50. Costs associated with fixing these input costs are largely driven by market sentiment at the time of contracting such as the items mentioned below.

51. Labour unrest and strikes in the platinum sector has put significant pressure on forward looking labour costs. As indicated earlier Transnet is subject to an 8.5 % wage adjustment for the 2014/15 financial year.

52. The contractor has also built a risk premium into their pricing for forward looking inflation, to cater for the unpredictable nature of the labour environment within South Africa and the risk associated with TE carrying out this additional *new* scope of work.

53. Statistics SA reports that the headline CPI annual inflation rate in April 2014 was 6.1 %, and which is further explained in the Business Day article "CPI Breaches Reserve bank target" dated 22 May 2014.

54. The SARB and National Treasury 2014 Budget Review forecasts CPI at 6.2 %, 5.9 % and 5.5 % for the years 2014, 2015 and 2016 respectively.

55. The MPC also is concerned about upward inflationary pressure on the economy as they have increased the Repo rate by 50 basis points recently in response to managing the upward inflationary pressures. Another imminent increase is highly likely at the next sitting of the MPC on 22 May 2014.

56. The high level of local content (60%) makes local indices more applicable to assess the cost of escalations going forward.

57. Applying the relevant proportion of each of the labour, material and other input costs which make up the basket of items required for the manufacture of the locomotives, would result in the net increase in the locomotive price of 9.2 % for electrics and 6.3 % for diesels increase.

58. Hence a CPI of 6 % escalated for 35 months on a compound basis (excluding a premium for risk) results in a 18.54 % increase, thus the net 16.8 % per E in Table 2 above is reasonable.

59. Escalations of input costs have been verified by Transnet by using publicly available data and by Reglments Capital using their intellectual property methodology and techniques.

TE Scope (Item B of Table 2)

60. A strategic decision was taken at a Transnet level that TE should transform to eventually become an OEM of locomotives. This 1064 tender process, together with the 100 equivalent 19E Dual Voltage Electric locomotive process, was used as a catalyst to facilitate this strategy.

61. As such bidders were advised to provide pricing based on providing TE with additional scope for the manufacture of the locomotives.

62. Strategically it was decided that for specific items within the build process where TE were within 10 % of the market price then it would be acceptable to allow TE to retain this scope.

63. The pricing as reflected above in Table 2 is inclusive of this additional scope for TE based on this principle.

64. Bidders have also built a risk premium into their pricing, to cater for the risk associated with Transnet Engineering carrying out this additional *new* scope of work for the 1st time.

65. Consequently the net additional 3 % per B in Table 2 is justified and is reasonable.

Batch Size (Item D of Table 2)

66. As approved by the Transnet Board the preferred bidders were advised that the batch size has been split on a 50/50 basis for the Diesels and a 60/40 basis for the electrics, amongst them.

67. This was done to mitigate locomotive delivery risk and reduce the MDS risk related to volumes.

68. As a result, the fixed costs related to setting up the production line would have to be recouped over a smaller batch.

69. This resulted in an increase in the cost per locomotive.

70. Although the cost per locomotive has increased, an overall saving is realised due to splitting the batch, because of the saving made on future escalations and hedging costs as a result of a shorter delivery period. This has been quantified to be R 4.08 billion.

71. Consequently the net additional 9.4 % per D in Table 2 is justified and is reasonable.

Contingencies (Item G of Table 2)

72. The contracted price of R 49.5 billion excludes the cost of any requirements for capital spares beyond the warranty period, variation orders and options (such as electronically controlled pneumatic braking and wire distributed power etc.) and as such an additional 10 % (R 4.9 billion) has been added into the request for additional ETC for this (refer item G of Table 2)

73. In order to stimulate development in other parts of South Africa, Transnet have decided that it would be more strategic to have two OEM's manufacture the locomotives in Durban.

74. In addition TE production lines in Koedoespoort cannot accommodate four OEM's as validated by the PWC study.

75. Bidders have based their contracted prices on manufacturing operations being carried out in Gauteng. Bidders have not yet quantified this cost, however this cost is included in the additional 10 % (refer item G of Table 2).

FINANCIAL IMPLICATIONS:

76. The business need and rationale remains as originally indicated in the business case submission.

77. The Business case resulted in a positive NPV (R2.7 billion at the TFR hurdle rate of 18.56 % and R34.1 billion at the TFR WACC of 12.56 %).

78. The Transnet hurdle rate has since been amended to 15.2 % and the NPV at this hurdle rate using the business case assumptions would be R 16.02 billion.

79. The financial models for the Business case have been updated for the following based on the conditions per the signed final contracts:
    a. Final pricing
    b. Revised cash flow profile for the capital investments
    c. Commensurate changes to the volume ramp up and tariff increases on commodities that are priced relative to the investment outlay

80. The updated NPV result is a positive NPV of R 11.68 billion at the new hurdle rate of 15.2 % and R 22.71 billion at the TFR WACC of 12.6 %. The NPV would become a negative R 1.67 billion at the original hurdle rate of 18.56%.

81. The WACC and hurdle rates are updated annually for changes in economic conditions and are approved by Transnet Exco and reviewed by External audit during the year end audit process.

BUDGET IMPLICATIONS:

82. The investment is included in the 2014/15 seven year capital investment plan.

83. The contracted delivery schedule and cash flows have changed as compared to the investment included in the 2014/15 seven year capital investment plan.

84. In order to ensure that Transnet's approved key affordability limits (gearing and cash interest cover) are not breached, a capital prioritisation process will be undertaken, such that other investments which do not impact MDS volume targets would be deferred.

85. The difference between the 2014/15 seven year investment plan and the projected cash flows based on the supplier agreements with contractors with an additional 10 % added for options, variation orders, special tooling, test equipment, initial spares and capital spares, is illustrated in Table 7 below:

Table 7

	Rand million								
	ETC	**13/14**	**14/15**	**15/16**	**16/17**	**17/18**	**18/19**	**19/20**	**20/21**
Budget per Corporate Plan	41 468	-	315	4 188	8 344	9 123	9 420	8 382	1 696
Contracted	49 547								
Add 10 % for options, variations, tools, spares etc.	4 955								
Expected	54 502	4 824	6 308	6 597	18 618	16 970	1 185	-	-
Difference	-13 034	-4 824	-5 993	-2 409	-10 274	-7 847	8 235	8 382	1 696
Corporate Plan alignment to Business Case	-2 868								
Net ETC difference	-15 902								

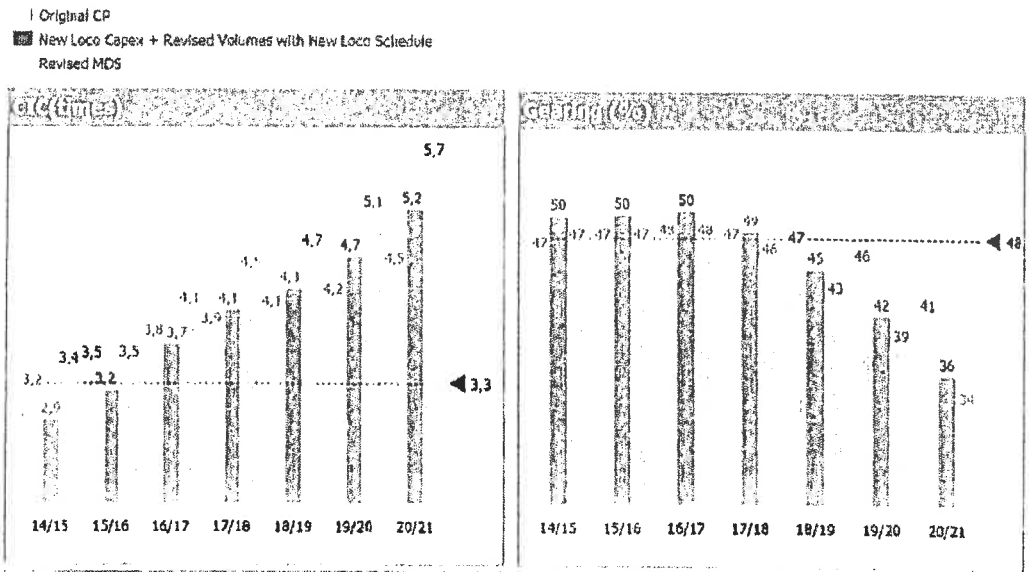
86. In order to secure accelerated delivery of the locomotives to address the MDS volumes at risk, a larger advance payment (R 4844 million) had to be made to the contractors in the 2013/14 financial year.

87. As confirmed by a letter received from the suppliers this was required by the suppliers in order to cover costs to ensure quicker delivery. The rationale as explained by the supplier was confirmed reasonable by Transnet's external auditors and was capitalised accordingly in the Financial Statement at 31 March 2014.

88. Although the accelerated delivery schedule would have resulted in earlier cash outflows for Transnet, an overall saving is realised because of the saving made on future escalations and hedging costs as a result of a shorter delivery period

89. The impact from the locomotive acquisition on the 2014/15 corporate plan as well as the impact of the prioritisation process; updating for the change in volumes, revenue, EBITDA and capital due to the combination of the 100 electric locomotives, 1064 locomotives and 60 Diesel locomotives contracts is reflected in the graph below:

Increase in ETC for 1064 GFB Locomotives



Additional capacity is created from 2020/21 onwards for additional capital investments to meet market demand.

90. As can be seen from the graphs the initial two years of the 2014/15 Corporate Plan has been negatively impacted the by locomotive acquisitions.

91. However after the planned EBITDA and optimisation initiatives that have been factored into the model the ratios are restored.

92. The initiatives identified to meet the Corporate Plan targets are detailed in Annexure A.

RISK MANAGEMENT:

93. In order to manage risks associated with this transaction a risk management framework is in the process of being developed.

94. A Locomotive Steering Committee has been set up to manage the operational issues associated with the locomotive acquisition and will address the following risks:

- Locomotive delivery
- The wagon build program
- Infrastructure requirements
- Operational readiness
- Commercial and Volumes

95. A socio economic monitor will be appointed to ensure socio economic benefits will be realised.

96. In order to mitigate against late delivery risk, a penalty regime capped at 10 % of the contract price has been agreed to with all bidders.

97. Escalation risk has been mitigated by fixing the price of the locomotives.

98. Forex risk has been mitigated by hedging the price of the locomotives by using the suppliers balance sheets.

99. All advance payments are secured by an on demand advance payment guarantee issued by a bank with a minimum long term credit rating of an A- Fitch rating or equivalent.

100. Payment terms have been structured such that the bulk of payments, of between 70 % and 90 %, happens after delivery of the locomotives.

101. In order to manage the total cost of ownership and mitigate against the risk that the locomotives once placed into operation will consume more fuel (diesel locomotives) or energy (electric locomotives) than indicated in bidders responses to the RFP, a penalty clause with a related fuel/energy warranty regime has been included in the supply agreement with bidders.

102. In order to mitigate against default of Supplier Development (SD) commitments, and SD penalty clause has been included in the supply agreements with bidders. An SD bond has also been obtained to cover risk against default.

103. GE have agreed to provide a 30 month warranty on the locomotive as well as a 6 year warranty on the traction motor and a 12 month warranty on spares.

104. CNR, BT and CSR have agreed to provide a 24 month warranty on the locomotive as well as a 6 year warranty on the traction motor and a 12 month warranty on spares.

105. A liability cap of 15 % of the contract price is included in the supply agreement thereby limiting Transnet's exposure in the unlikely event of breach of contract by Transnet.

106. In order to mitigate against the risk of having to accept and pay for locomotives during an economic downturn when volumes from customers may not be forthcoming thereby impacting negatively upon Transnet's loan covenants, bidders agreed to accept a clause in the supply agreement whereby acceptance of locomotives could be deferred for a period of time. Transnet agreed that in return bidders would be reimbursed for reasonable and auditable costs. These costs could include warehousing costs, time value of money costs, costs related to the rolling of hedges etc.

SOURCE OF INFORMATION AND REFERENCES:

107. Data quoted in the memo above has been sourced from:

- Statistics South Africa – release P0141
- Business Day 22 May 2014 – "CPI Breaches Reserve Bank target"
- Business Day 18 March 2014 – "Rocky Ride forecast for still too expensive Rand
- Reserve Bank and National Treasury 2014 Budget Review
- Regiments Capital (transaction advisory services)
- KMPG (accounting opinions)
- PWC (locomotive localisation opportunities for TE and South African industry)

RECOMMENDATION:

108. It is recommended that:

a) the BOD take note that the main reasons for the increase in ETC is due to the exclusion of the following costs from the 24 January 2014 submission:

i. The cost of hedging for foreign exchange movements;
ii. The cost for future inflationary escalations;
iii. The cost of additional scope for Transnet Engineering (TE);
iv. The cost of changes in economic conditions (forex and inflation) between approval of the business case and award of the contract

b) the BOD approves an increase in estimated total cost (ETC) for the acquisition of the 1064 locomotives for Transnet Freight Rail's General Freight Business from R38,6 billion to R54,5 billion.

Recommended by:

Anoj Singh
Group Chief Financial Officer
Date: 22 May 2014

Recommended by:

Siyabonga Gama
TFR Chief Executive
Date: 2014.05.21

Recommended by:

Brian Molefe
Group Chief Executive
Date: 23.5.14

REPORT 2(A) – PART C – EXHIBIT 7

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TRANSNET

28.04.2015

R166m Success Fee

MEMORANDUM

www.transnet.net

TO : The Acquisitions and Disposals Committee

FROM : Siyabonga Gama, Acting Group Chief Executive

SUBJECT : REQUEST TO APPOINT JP MORGAN AND REGIMENTS CAPITAL TO CONCLUDE ON THE CHINA DEVELOPMENT BANK LOAN (CDB)

PURPOSE OF SUBMISSION:

1. The purpose of the submission is to request the Acquisitions and Disposals Committee (ADC) to:
   1.1. Approve the confined appointment of JP MORGAN to hedge the financial risks (interest *rate*; credit and currency risk) emanating from the US$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
   1.2. Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of $1,5 billion;
   1.3. Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and
   1.4. Delegate authority to the Acting GCE to approve all documentation related to this confinement.

EXECUTIVE SUMMARY AND BENEFITS

2. By favourably considering the recommendation above, Transnet will be able to achieve significant benefits.
3. Approximately ~R46 billion (at R11/$) of the required R50 billion (excluding contingencies) to fund the locomotive supplier agreements will be concluded on a committed basis (92% secured funding).
4. This is critical to mitigate liquidity risk due to the high levels of committed capital – which is a major area of focus for rating agencies specifically Standard and Poor's (A/B ratio).
5. The overall cost of debt will be within an acceptable levels with the overall cost of the Chinese portion of the debt at approximately 10.5% compared to the current weight average cost of debt of 9,7% with an average repayment profile of 7 years, subject to market conditions at time of execution.
6. Matching the asset and liability profile with longer dated funding structures (10 - 15 years) for long dated assets such as locomotives that have 30 year useful lives.
7. Enabling Transnet to enter into fixed rate funding (50%) for a portion of the borrowing to better manage interest rate risk and volatility.
8. Transnet and other Chinese financial institutions will be able to give effect to the BRICS commitments of both countries within commercial acceptable terms and conditions.

9. By utilising Chinese funding sources Transnet is able to conserve its use of it domestic credit lines with local financial institutions which can be used in the event of a financial crisis similar to 2008.

DISCUSSION:

10. Transnet has signed a MOU with CDB during 2014 for the provision of funding of up to $5billion, however this was non-binding on either party.
11. This MOU was signed in the presence of the Honourable Presidents of the Republic of South Africa and the Peoples Republic of China as part of the respective countries BRICS commitments.
12. Transnet awarded the locomotive supplier agreements relating to the supply of 1064 locomotives during March 2014 following a rigorous open tender process.
13. The award was made to General Electric; Bombardier Transport; China South Railways and China North Railways with a contract value of R54,5 billion including contingencies.
14. Due to the rating agency requirements of matching commitment capital to committed funding sources to reduce liquidity risk Transnet needed to identify appropriate and cost effective funding sources.
15. To this end Transnet successfully concluded committed funding facilities with USEXIM and EDC to fund the GE and BT portions of the locomotive contracts. These facilities have provided approximately R13 billion of the required funding.
16. Given the above Transnet engaged with CDB during 2014 to conclude a possible loan agreement to fund the Chinese portion of the locomotive supplier agreements.
17. The Board of Directors approved the potential loan from CDB during August 2014 - refer **annexure A**.
18. Consequently Transnet signed a Term sheet (term sheet 1) for the US$2.5 billion 15-year amortizing loan from CDB to finance 232 and 359 locomotives from CNR and CSR, respectively during August 2014.
19. This term sheet was subject to Transnet being satisfied with the cost of hedging as this is significant cost associated with a foreign denominated loan.
20. Transnet`s risk management policies require the currency exposure to be hedged back into Rand
21. The size and tenor of the loan is exceptionally large for the South African market. To quantify this:
    21.1. A 1bps (1/100th of 1%) move higher in the USD:ZAR basis market will cost Transnet R15 million on a loan of $2.5 billion
    21.2. The USD:ZAR basis market which can easily move up or down by 25bps in a single day, equivalent to R370 million on a loan of $2.5 billion.
22. Due to CDBs lack of knowledge of the local financial markets they approached various banks in the local and international market to hedge the possible exposure which resulted in adverse financial consequences for Transnet as the cost of the hedge was unacceptable – see paragraph 30 below.
23. Prudently, Transnet opted not to proceed and communicated to CDB and to the market that it would pursue other funding avenues for the financing.
24. Transnet should choose the route that delivers the lowest Rand funding for Transnet as there is tremendous pressure on its cash interest cover ratio.

JP MORGAN – cross currency swap

25. There are two ways to execute a hedge of this magnitude:
26. Transnet could approach a number of banks and ask for quotes, and then select the bank (or banks) with the lowest quotes – similar to approach used by CDB above which resulted in adverse pricing impacts for Transnet, or
27. Transnet could work in strict confidence with one bank that is of sufficient financial substance (balance sheet) to execute the hedge so that the market is entirely unaware of the hedge until after it is concluded.
28. The first route (approach a number of banks) is optically attractive – banks are put into open competition – but it is certain to lead to materially higher Rand funding for Transnet as the basis swap may increase.
29. We are confident in this assertion because unfortunately, this exact route was tested and proven by CDB with disastrous results in August 2014:
    29.1. In April 2014, CDB evaluated providing the loan in ZAR to Transnet, and approached several banks for an indicative price on a USD:ZAR cross currency swap.
    29.2. This immediately moved the basis swap market on the screen by 25bps against Transnet and resulted in 15bps wider bid-offers.
    29.3. Since each 1bps move costs Transnet R15 million in a higher Rand interest rate, the cumulative cost to Transnet would have been R600 million.
    29.4. This powerfully demonstrated that absolute confidentiality is critical to obtain the best pricing, and a completely different approach to risk management is required to secure this pricing.
30. To secure the lowest Rand funding, Transnet should instead work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence.
31. In this way the market is completely unaware that the currency hedge is being executed; so complete confidentiality is maintained at all times.
32. At the same time, Transnet and the bank agree pricing in advance, so Transnet has complete certainty around the cost of the hedge up front and can deem it to be fair and reasonable.
33. J.P. Morgan, with one of the largest bank balance sheets globally, will provide this confidential solution to Transnet. In so doing, we will assume significant market risk.
34. It is therefore vital that the transaction is executed in strict confidence.
35. There are two types of risk that need to be carefully managed in executing this swap:
36. Market risk: A single basis point (0.01%) move up or down during execution represents a R15 million gain or loss to Transnet
    36.1. J.P. Morgan can do this because of the large appetite they have to warehouse risk, and because we have a superior ability to tap into several liquidity pools to exit the risk quickly but also smoothly
37. Credit risk: The resulting credit and tenor exposure and on the hedge is significant. We will address this as follows:
    37.1. J.P. Morgan has a large appetite and could underwrite the entire transaction whilst holding a significant quantum
    37.2. Distribute the rest of the credit risk.
38. This vanilla cross currency swap will enable Transnet to apply hedge accounting ito IAS 39 to shield the Transnet balance sheet from significant equity volatility that will have severe adverse impacts on the gearing ratio which is also under some strain.
39. Sensitivity analyses indicate that the volatility could be as high as R33 billion under different stress scenarios of exchange rates and interest rates.

40. Vanilla cross currency swaps are approved instruments that Transnet is allowed to use to hedge financial risks in terms of the Board approved Financial Risk Management Framework.
41. Transnet has successfully executed large cross currency swaps with J P Morgan in the past to hedge currency risk exposures.
    41.1. AFLAC loan of JPY 15 billion, hedged in Nov 09 with maturity of 15 Nov 19.
    41.2. USD 750 million GMTN issuance, hedged in Feb 11 with maturity of 10 Feb 16.
    41.3. USD 500 million GMTN issuance, hedged in Jul 12, with maturity of 26 July 22.
42. Apart from the swaps above, forward exchange contracts are done with J P Morgan on a regular basis for operational and capital imports.

JP MORGAN – contingent credit default swap

43. In addition to the above and more importantly JP Morgan as provided a proprietary solution that will enable Transnet to further reduce the cost of funding by approximately 112 basis points by the execution of a contingent credit default swap.
44. This instrument will be a stand-alone instrument that will not impact the hedge accounting of the cross currency swap above and will not be hedge accounted.
45. No other financial institution that has presented to Transnet to date has been able achieve the above.
46. Equity volatility on this instrument is a more manageable and acceptable value of approximately R3 billion under various stress tests.
47. The GCFO and GCE are allowed in terms of the Financial Risk Management Framework to introduce new instruments to manage financial risks and consequently will approve this instrument for use post ADC approval.

JP MORGAN – ZAR syndicated loan of $1,5billion equivalent

48. To further reduce the cost of funding to Transnet it became apparent that Transnet would need to consider a dual tranche denominated loan to fund the Chinese locomotive purchases.
49. Thus it was decided to utilise only $1,5billion of the funding from CDB and use the JP Morgan balance sheet to underwrite a ZAR funding facility of $1,5 billion equivalent.
50. Consequently the GCE signed a revised term sheet (term sheet 2) and mandate letter in April 2015 with CDB for a $1,5billion only.
51. There appears (gauged during our recent visit to China) to be sufficient appetite from other Chinese financial institutions that are willing to provide Transnet with funding in ZAR namely Bank of China; ICBC and China Construction Bank.
52. Thus we are very confident that the ZAR tranche will be successfully executed.
53. This will enable Transnet to still meet the rating agency requirement of demonstrating committed funding facilities for committed capital.

Other Considerations

54. All necessary accounting, taxation and legal opinions have been obtained and no adverse issues have been identified in support of the above execution strategy.
55. An application has been made to National Treasury to increase Transnet's foreign borrowing limit from the current R55 billion to a revised R105 billion.
56. We are currently in discussions with DPE and National Treasury to address their queries regarding the above application.
57. Currently approximately R9,5 billion of the R55 billion approved limit is available to be utilised.

58. Due to the confidentiality reasons and adverse impacts outlined above of an open tender it also made sense that Regiments Capital having supported Transnet in the 1064 locomotive tender as the transaction adviser is the BEE and empowerment partner of JP Morgan to enable Regiments to benefit from a significant transfer of skill from JP Morgan.
59. Participation in this transaction together with JP Morgan will lay the foundation for further future co-operation between the two entities.
60. Transnet will again play its role in creating an enabling environment to enhance its socio economic mandate and this time in the financial services sector.
61. Regiments Capital is a level 1 contributor in terms of the BEE codes. Their BEE credentials including black ownership has been verified by the Transnet Supplier development team.

Regiments Capital – Transaction advisory

62. Transnet appointed Regiments Capital as the Transaction advisors on the 1064 Locomotive Transaction. In terms of the aforementioned mandate, Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet.
63. Regiments was required to evaluate a number of funding sources including:
    63.1. US Exim funding for the GE locomotives
    63.2. EDC funding for the Bombardier locomotives
    63.3. Bond issuance under Transnet's DMTN and GMTN
    63.4. China Development Bank (CDB), Sinosure, China Exim and ICBC funding for the Chinese locomotives
64. Regiments have been working together with the risk management/middle office of Transnet Treasury for over the last 12 months to achieve the outcome below.
65. Assist Transnet with detailed negotiations to achieve the following tangible outcomes:
    65.1. Negotiating a better asset/liability match as opposed to CDB's proposed 10 year amortising profile as well as extending the capital grace period thereby lengthening the duration of the loan profile.
    65.2. Work with management to reduce the overall CDB's initial pricing of 300bp over 6 month Libor.
    65.3. Evaluating all options that would allow for Transnet to complete the CDB transaction at fair pricing.
66. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Regiments recommended that Transnet only utilise $1.5bn of the CDB facility, and blend that with a $1bn ZAR syndicated loan issue. The ZAR syndicated loan issue would allow for a reduction in the blended rate paid by Transnet of approx. 37bp (a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of $2.5bn with the full cost of the cross currency swap).
67. Following the decision to use only USD 1.5 billion out of the total USD 2.5 billion proposed by CDB, an agreement has been reached during the negotiations to have the unutilised USD 1.0 billion available for Transnet with no commitment fee until September 2015. Besides the financial benefit at least in terms of the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet.
68. Regiments have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Management Framework (FRMF).
69. Regiments has assisted Transnet in negotiating with a number of potential Chinese sources of ZAR funding for the ZAR syndicated loan facility, including:
    69.1. ICBC (R2bn funding- term sheet to be provided)
    69.2. Bank Of China (R6bn – term sheet to be provided)

69.3. China Construction Bank (Potential of R2bn- negotiations to be finalised)
69.4. Sinosure- (Pursued the potential for a ZAR guarantee)

70. Regiments' advice and the subsequent conscious decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market.
71. The savings achieved via the CDB margin compression, the blending of the ZAR syndicated loan, and the change in the applicable reference rate (3 month as opposed to the 6 month Jibar) have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Regiments is calculated to be in excess of R 2.7 billion.
72. In this regard, with Regiments assistance the weighted average cost of the blended finance for the Chinese locomotives is around 10.40%, as opposed to the current weighted average cost of funding payable by Transnet on its existing loan portfolio of 9.70%. The current debt portfolio has a significantly shorter duration than the Chinese locomotive funding, and the current funding is predominantly ZAR based as opposed to the predominantly USD based funding of the Chinese locomotives.
73. The financial advice and negotiation support that Regiments provided through this entire process which took in excess of 12 months was done at risk with an expectation of compensation only on successful completion of the transaction.
74. The range of NPV fee outcomes can vary between 15bps and 25bps on a transaction of a similar nature – ie R166 million – R277 million based on yield.
75. Given the invaluable contribution of Regiments to the successful conclusion of this transaction, Regiments success based fee will not exceed 15 bps on the yield as reflected in the NPV calculation below, payable on conclusion of the funding and hedging documents with CDB and JP Morgan.

Success fee in bps	Success fee in Rand (NPV)
15	R166 million

DELEGATIONS OF AUTHORITY

76. The CDB loan was approved by the Board of Directors of Transnet in August 2014.
77. The vanilla cross currency swap and the contingent credit default swap can be approved by the GCFO or GCE based on the Board of Directors approved Financial Risk Management Framework.
78. The appointment of JP Morgan for purposes of the said transaction is silent in the PPM.
79. The GCE has delegations to approve confinements up to R250 million.
80. The ADC's delegations to approve confinements is from R250 million to R1 billion.
81. Due to the silence of the PPM and the confidentiality required to execute this transaction it was decided to approach the ADC for approval.

APPLICABILITY OF THE APPROVED GROUNDS FOR CONFINEMENT:

82. Appended below, for ease of reference, is an extract from the current Procurement Procedure Manual, par 15.1.2, which sets out the grounds for confinement.

a) Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;
b) The goods/services are only obtainable from one supplier/limited number of suppliers. For instance, patented/proprietary goods or OEM spares and components.

Operating Divisions are however required to satisfy themselves that there are no new entrants on the market who could also be tested;

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

d) When 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 organisation to solicit other tender offers as it would result in wasted money and/or time for Transnet. When this particular ground is intended to be used as a ground for confinement, it is important to note that all prerequisites must be satisfied i.e. the goods or services must be highly specialized, almost identical to previous work done and approaching the market again would result in wasted money and time.

83. We are of the view that this matter continues to comply with ground (a) as set out below, and the request for confinement is therefore fully supported.

Ground for confinement per Par 15.1.2	Confinement considerations
a. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;	• Genuine unforeseeable urgency has arisen to close the CDB transaction at current rates in light of the economic circumstances, Eskom credit rating and the impact on the sovereign. • The Transnet`s risk management policies require the currency exposure to be hedged back into Rand • The size and tenor of the loan is exceptionally large for the South African market. • A 1bps (1/100th of 1%) move higher in the USD:ZAR basis market will cost Transnet R15 million on a loan of $2.5 billion. • This could translate into additional costs of R600 million. • Uncertainty of counterparty unwillingness could delay full execution, leaving Transnet exposed to broader FX and rate risks on the USD exposure.

Confidentiality in terms of Delegations of authority

84. In terms of section 15.1.4 of the Delegation of authority "In instances where a confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority".

85. In light of the risks we have highlighted, Transnet's key objective should therefore be to engage with a counterparty on a confidential basis that is:

85.1. Qualified and capable to execute the market risk components efficiently

85.1.1.– Transnet should be offered best advice but also the possibility for full risk transfer on the market risk

85.1.2.– The right trade-off between transparency and confidentiality to ensure a fair and proper outcome

85.2. Prepared to fully underwrite the credit risk arising from the hedge
85.3. Prepared to reduce the credit costs and therefore all-in pricing from the hedge through optimisation of the position

86. There is clearly a trade-off between transparency and confidentiality, in particular, as regards to the market risk components
87. Relying on one price from one bank protects the confidentiality and potential front-running.
88. However, Transnet must avoid a messy execution environment, as seen when CDB asked for indicative pricing from a number of banks for the full transaction earlier this year. We saw the basis swap move 25bps against Transnet within hours, while bid-offers from banks increased dramatically (15bps).
89. If Transnet had been transacting then, this would have crystallised additional transaction costs of ZAR600mm, clearly the opposite effect that Transnet would have been seeking through a competitive bidding/procurement process.
90. Moreover, if Transnet had wanted to wait for the market to become 'unaffected' again, this would have delayed execution for several months, exposing Transnet to broader market volatility.
91. To secure the lowest Rand funding, Transnet must work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence.
92. In this way the market is completely unaware that the currency hedge is being executed; so complete confidentiality is maintained at all times.
93. At the same time, Transnet and the bank agree pricing in advance, so Transnet has complete certainty around the cost of the hedge up front and can deem it to be fair and reasonable.
94. It is not in the public interest as there would be additional cost to Transnet.

ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE

95. Supplier development subject a maximum of 35 % will be applicable to JP Morgan.
96. Supplier development applicable to Regiments Capital will be subject to a maximum of 10%.

FINANCIAL IMPLICATIONS

97. Given the invaluable contribution of Regiments to the successful conclusion of funding transaction, Regiments is due a success or risk based fee of 15 bp on yield payable by Transnet or JP Morgan (or a portion thereof) subject to a maximum of R166 million.
98. The fees for JP Morgan will be part of the market related cost to hedge the exposure to ZAR.

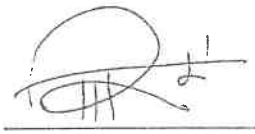
BUDGET IMPLICATIONS

99. The costs have been budgeted as part of the funding plan for 2015/16.

RECOMMENDATION:

- It is recommended that the ADC:
  - Approve the confined appointment of JP MORGAN to hedge the financial risks (interest rate; credit and currency risk) emanating from the US$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
  - Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of $1,5 billion;
  - Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and;
  - Delegate authority to the Acting GCE to approve all documentation related to this confinement.

Compiled by



Phetolo Ramosebudi
Group Treasurer
Date: 28/04/2015

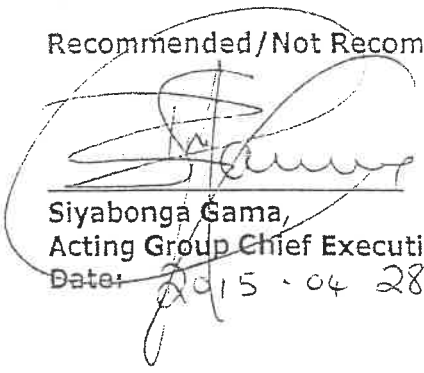
Recommended/~~Not Recommended~~

Garry Pita
Group Chief Supply Chain Officer
Date: 28/4/15

Recommended/~~Not Recommended~~

Anoj Singh
Group Chief Financial Officer
Date: 28/04/15

Recommended/Not Recommended



Siyabonga Gama,
Acting Group Chief Executive
Date: 2015 · 04 28

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TRANSNET

www.transnet.net

TO: Transnet Board of Directors

FROM: **Mr. Brian Molefe**, Group Chief Executive

SUBJECT: LOCOMOTIVE FUNDING INITIATIVES

PURPOSE:

1 The purpose of the this submission is to request the Board to approve the following funding initiatives:

a. ZAR 6 billion funding supported by guarantee from Export-Import Bank of United States;
b. USD600 million loan facility from Export Development Canada and Investec;
c. Up to USD1 billion A/B loan facility from African Development Bank;
d. USD2.5 billion 15 year Facility with China Development Bank, subject to further terms and conditions negotiations as their proposed terms and conditions are currently not in line with similar asset backed and development finance institutions;
e. ZAR 6 billion 15 year funding facility from Industrial and Commercial Bank of China.

BACKGROUND:

2 In light of Transnet's Market Demand Strategy to meet volume growth and customer demand, Transnet wishes to increase the capacity of its General Freight Business from 80mt to 176mt.

3 Transnet will be acquiring rolling stock in order to meet the increased capacity requirements, to facilitate the anticipated growth and to address Transnet and Government's plan to migrate freight from road to rail.

4 In order to facilitate the above objectives, Transnet has entered into Locomotive Supply Contracts to acquire the Locomotives from Bombardier, General Electric, China South Railways (CSR) and China North Railways (CNR).

DISCUSSION:

5 The estimated total cost of the Locomotives, after payment of a deposit of R7.4 billion in March 2014, is approximately R53.7 billion for the financial years 2014/15 - 2018/19.

6 As the Locomotives and their respective components will be procured from Bombardier; CSR; CNR; GE, they will have "foreign content" and as such, Transnet can make use of both tied and untied ECA-backed funding and Development finance.

7 On the 31st July 2014, US Exim Bank approved a USD 563,455,622 Long Term Guarantee for financing of the 293 locomotives manufactured by General Electric Company. As per the new 2014 Sector Understanding on Export Credits for Rail Infrastructure prescribed by the OECD Guidelines, the tenor of the guarantee is up to 14 years, which tenor is favourable for Transnet's asset and liability matching strategy. The premium is 5.97% of the total guaranteed amount and the commitment fee is 0.125% per annum of the non-cancelled and non-disbursed amount. This facility will be structured as an asset backed with locomotives used as security.

8 Export Development Canada ("EDC") and Investec offered a 13 year unsecured credit facility of up to USD600 million towards the funding of the locomotives procured from Bombardier at a rate of 3m Jibar + 200bps.

9 The African Development Bank ("AfDB") has proposed up to USD1000 million A/B loan structure consisting of USD250 million direct lending and USD750 million from a syndicate of banks to Transnet.

10 China Development Bank ("CDB") have indicated their willingness to fund the CSR and CNR locomotives and have proposed a 15 year bullet loan of up to USD2.5 billion at a rate of 3m Libor + 275bps which is equivalent to 3m Jibar + 430 bps . This pricing is above Transnet's weighted cost of debt and Transnet will continue to engage with CDB to further revise their pricing downward. In addition to the proposed uneconomical pricing, CDB is also requesting locomotives to be used as security as well as the inclusion of financial covenants. The current proposal is too expensive and includes covenants that Transnet is not offering to other lenders/investors. Should negotiations fail, Treasury will recommend termination of negotiations and use other cost effective funding sources to finance locomotives procured from China.

11 In addition, Transnet has received a proposal from Industrial and Commercial Bank of China ("ICBC") of R6 billion for up to 15 years at a rate of 6m Jibar + 280bps for the financing of locomotives procured from CSR and CNR. ICBC's pricing is also above Transnet's weighted cost of debt but more attractive than the CDB offer. Group Treasury will request ICBC to consider reducing the price.

12 The above funding initiatives will require certain minimum criteria to be met, before any funding is made available to Transnet, these may include inter alia:

a. Acceptable levels of foreign/local content in the supplier contracts (a key requirement for ECA funders and some DFIs and Multilaterals);
b. Acceptable legal agreements, covenants and rating downgrade triggers to mitigate any risk on Transnet's business;
c. Some funders may require a special notarial bond to be registered in their favour over the Locomotives.

FINANCIAL IMPLICATIONS:

	Security offered	Facility Agent Fee	Arrangement Fee	Rate	Commitment Fee
US-Exim	YES	5.97% (once off premium)	100 points	3m Jibar + 160bps	12.5 points
EDC	NO	0	45 points	3m Jibar+ 200bps	7 points
AfDB	NO	US20 000 pa	80bps	6m Jibar + 200-230bps	60 points
CDB	YES	0.2bps pa of the financed amount	150bps	6m Libor + 275bps (Jibar +430)	100 points
ICBC	YES	0	100bps	6m Jibar + 280bps	60bps

BUDGET IMPLICATIONS:

13 The proposed external funding required to be raised has been budgeted for in the 2014/15 Finance Cost Budget and will be further budgeted for in the 2015/16-2018/19 Finance Cost Budgets respectively.

RECOMMENDATION:

14 It is recommended that the Transnet Board of Directors approve the following funding initiatives:

a. ZAR 6 billion funding supported by guarantee from Export-Import Bank of United States;
b. USD600 million loan facility from Export Development Canada and Investec;
c. Up to USD1 billion A/B loan facility from African Development Bank;
d. USD2.5 billion 15 year Facility with China Development Bank, subject to further terms and conditions negotiations as their proposed terms and conditions are currently not in line with similar asset backed and development finance institutions;
e. ZAR 6 billion 15 year funding facility from Industrial and Commercial Bank of China.

15 It is recommended that the Transnet Board of Directors approve the attached Board resolution.

Compiled by:

_____

Mr. Anoj Singh
Group Chief Financial Officer
Date:

Recommended by:

_____

Mr. Brian Molefe
Group Chief Executive
Date:

ANNEXURE A:

The Transnet Board of Directors **RESOLVED** that it approves the following funding initiatives to finance the 1224 locomotives procured from GE, Bombardier, CNR and CSR subject to terms and conditions including price and loan covenants that are in line with similar funding facilities:

(i) ZAR 6 billion US Exim supported funding;

(ii) USD 600 million facility with Export Development Canada and Investec;

(iii) Up-to USD1 billion A/B facility from African development bank;

(iv) ZAR 6 billion facility with Industrial and Commercial Bank of China and

(v) Up to USD2.5 billion facility with China Development bank.

The Transnet Board of Directors **RESOLVED** that:

1. The Company is hereby authorised to enter into and execute the above facility agreement subject to acceptable terms and conditions that are in line with similar facilities.

2. The Group Chief Executive of the Company be and is hereby authorised to negotiate, settle and agree the terms of the facilities and related documents, execute the facilities and related agreements, each in such form as he deems fit including all documents and security arrangements pertaining to the facilities which may be necessary or incidental to the implementation of such financing on behalf of the Company and to do all such things, take all such actions and sign all such documents necessary to give effect to this resolution and resolution number 1 above.

3. The Group Chief Executive of the Company, the Group Chief Financial Officer and Group Treasurer be and are hereby authorised to sign any and all documents, including but not limited to Drawdown Request Letters related to the Facility.

4. To the extent that a person who is authorised to execute the facility or any related document on behalf of the Company or to take any other action on behalf of the Company contemplated by the resolutions set out in these minutes, as done so before the date of the meeting and the passing of the resolutions recorded in these minutes, his or her actions in this regard be and are hereby ratified to the fullest extent permitted by law.

REPORT 2(A) – PART C – EXHIBIT 8

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TRANSNET

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MEMORANDUM:

To: Mr. Siyabonga Gama, Acting Group Chief Executive (GCE)

From: Mr. Anoj Singh, Group Chief Financial Officer (GCFO); and
Mr. Garry Pita, Group Chief Supply Chain Officer (GCSCO)

Date: 19 May 2015

SUBJECT: CONTRACT ADDENDUM TO REGIMENTS CAPITAL FOR TRANSACTION ADVISORY AND SUPPORT SERVICES ON THE 1064 LOCOMOTIVE TRANSACTION – GSM/12/05/0447

PURPOSE

1. The purpose of this submission is to request the Acting Group Chief Executive (GCE) to approve the contract addendum to Regiments Capital for transactional advisory and support services on the 1064 locomotive transaction.

BACKGROUND

2. Transnet entered into a fourteen (14) month agreement with a consortium of companies led by McKinsey Incorporated for the provision of transactional advisory services related to the acquisition of the 1064 locomotives from January 2013 until March 2014.

3. Upon phase 2 of the engagement being reached it was decided by McKinsey and agreed by Transnet that McKinsey would cede the principal lead role in the contract to Regiments Capital since phase 2 consisted of finance and deal structuring deliverables. As such Regiments Capital assumed the principal lead role in the contract. The letter of intent (LOI) was then amended, by value, to reflect additional scope of work to ensure better implementation and management of risks. (Refer to Annexure A)

4. Subsequent to the cession agreement the contract period was extended by twelve (12) months from January 2014 until January 2015 or until the successful completion of the revised deliverables as mandated by Transnet. (Refer to Annexure B)

5. Regiments then indicated to Transnet that their preferred operating model for such engagements is usually based on a risk sharing model or success fee. A submission was approved by the GCE on 17 April 2014 in support of changing the remuneration model. The agreement was then amended, by value, to reflect a change in the remuneration model as proposed by Regiments. (Refer to Annexure C)

DISCUSSION

6. A submission was made to the Transnet Acquisition and Disposals Committee (ADC) detailing the services rendered by Regiments Capital and the successful of outcome thereof.

7. The submission included the request for approval to extend the contract value for an allowance of a success fee to be remunerated to Regiments Capital subject to the successful outcome of funding and hedging agreements between China Development Bank (CDB) and JP Morgan

8. The submission was approved in its entirety by the ADC including the delegation of authority being granted to the Acting GCE for approving all documentation. (Refer to Annexure D)

SCOPE OF WORK PERFORMED

9. The following scope of work was performed by Regiments in support of payment of a success or risk based fee to them:

   9.1 Technical support including building cost escalation models and total cost of ownership models to inform and guide the negotiation process;

   9.2 Developed a detailed funding plan for the acquisition of the 1064 locomotives Transnet from GE, Bombardier, CNR and CSR considering the following:
   - 9.2.1 Evaluation of all funding sources including US Exim, EDC, Bond Issuance under Transnet's DMTN and GMTN, China Development Bank (CDB), Sinosure and China Exim;
   - 9.2.2 Matching of assets and liabilities;
   - 9.2.3 Evaluation of the useful life of all underlying assets; and
   - 9.2.4 Identification and management of all financial risks (including liquidity, interest rate, credit and currency risks;

   9.3 Assisted Transnet in the negotiations with all of the identified Chinese potential funders and in particular with the detailed and protracted negotiations with CDB;

   9.4 Regiments assistance in these detailed negotiations with CDB resulted in the following tangible outcomes:
   - 9.4.1 A fifteen year amortizing profile was negotiated, as opposed to CDB's proposed 10 year amortizing profile (the longer duration provides a better asset/liability match);
   - 9.4.2 The capital grace period was extended from 36 months to 54 months, thereby lengthening the duration of the loan profile further- in line with the asset/liability matching requirements;
   - 9.4.3 CDB's initial pricing of 300bp over 6 month Libor, was successfully negotiated to the final agreed margin of 257bp over Libor- a saving of 43bp (a net present value benefit of $64.5m- based on the $2.5bn facility);

9.4.4 The reference interest rate for the CDB loan was 6 month Libor. Regiments assisted Transnet in negotiating for a change of the reference interest rate from 6 month Libor to 3 month Libor. This change translates to a significant financial benefit when the liability is converted from a USD loan to a ZAR loan (as required by Transnet FRM framework) and, the interest rate then convert the ZAR loan from floating to fixed. The benefit derived from the change of the 6 month Libor to the 3 month Libor is expected to be in the region of 40 bps at the point that Transnet chooses to fix the resulting 3 month Jibar linked interest rate. (The current market pricing difference between a NACQ and NACS swap of float to fixed for this loan profile amounts to a pricing premium of approx. 40bp on the NACS profile). This NPV difference is approx. R720m- for the $2.5bn loan; and

9.4.5 In the course of the commercial negotiations with CDB, CDB decided (on its own initiative) to test the cross currency swap pricing on this transaction with 8 banks. The effect of this unauthorized action (given the illiquid nature of the ZAR CCS market), was to cause an adverse pricing move for Transnet. Subsequent to this Regiments assisted Transnet in evaluating all options that would allow for Transnet to complete this transaction at fair pricing. Regiments advised Transnet that the transaction should be hedged with a single counterpart of substance, willing to place balance sheet behind the transaction. It is in this light that Regiments assisted Transnet in the selection of JP Morgan as the CCS counterpart;

9.5 In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Regiments recommended that Transnet only utilize $1.5bn of the CDB facility, and blend that with a $1bn (R12bn) ZAR syndicated loan issue. The ZAR syndicated loan issue would allow for a reduction in the blended rate paid by Transnet of approx. 37bp (a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of $2.5bn with the full cost of the CCS;

9.6 Regiments have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Framework (FRM). The savings achieved via the CDB margin compression, the blending of the ZAR syndicated loan, and the 3 month (as opposed to the 6 month Jibar), have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure of the interest cover ratio, or the company cash flows;

9.7 Regiments has assisted Transnet in negotiating with a number of potential Chinese sources of ZAR funding for the ZAR syndicated loan facility, including:

9.7.1 ICBC (R2bn funding);

9.7.2 Bank Of China (R6bn);

9.7.3 China Construction Bank (Potential of R2bn);

9.7.4 Sinosure (Pursued the potential for a ZAR guarantee); and

9.8 The financial advice and negotiation support that Regiments provided through this entire process which took in excess of 12 months was done at risk with an expectation of compensation only on successful completion of the transaction. Given the invaluable contribution of Regiments to the successful conclusion of this transaction, Regiments is due a success based fee of 15bps.

FINANCIAL IMPLICATIONS

10. Regiments Capital is due a success or risk based fee of 15bp on yield payable by Transnet subject to a maximum of R166 million.

11. The overall contract value will be increased to a capped limit of R265.5 million to allow for the remuneration of the success or risk based fee payable upon successful completion of funding and hedging agreements with CDB and JP Morgan.

12. In addition to the 30% supplier development commitment attributable to the R99 million initial contract, an expected ten percent (10%) of the abovementioned success or risk based fee payable to Regiments will be committed towards supplier development initiatives to be identified and agreed to between Regiments and Transnet.

BUDGET IMPLICATIONS

13. The costs have been budgeted as part of the funding plan for 2015/16.

APPROVALS AND DELEGATIONS

14. The authority for approving the contract addendum has been delegated to the Acting GCE by the ADC. (Refer to Annexure D)

RECOMMENDATION

15. It is recommended that the Acting Group Chief Executive (GCE) approves the following:
    15.1 the value of the contract to be increased to a capped amount of R265.5 million; and
    15.2 the allowance for the contract period to accommodate the successful conclusion of the funding and hedging agreements with CDB and JP Morgan in order to effect the remuneration (success or risk based fee) to Regiments Capital.

COMPILED BY:

Kevin Weir
Executive Manager: iSCM
Date: 18/5/15

RECOMMENDED/~~NOT RECOMMENDED~~ BY:

Garry Pita
Group Chief Supply Chain Officer
Date: 18/5/15

RECOMMENDED/~~NOT RECOMMENDED~~ BY:

Anoj Singh
Group Chief Financial Officer
Date: 19/05/15

APPROVED/~~NOT APPROVED~~ BY:

Siyabonga Gama
Acting Group Chief Executive
Date: 2015.07.16

ANNEXURE A

TRAN

THIRD ADDENDUM FOR GSM/12/05/0447 - FOR ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

BETWEEN

McKINSEY INCORPORATED
(1995/002398/10)
("The Service Provider")

AND

TRANSNET SOC LTD
(1990/000900/30)
("Transnet")

1. PREAMBLE AND INTRODUCTION

1.1 McKinsey Incorporated, and Transnet signed a LOI on the 6th December 2012 in terms of which Transnet acquired the services to assist Transnet with advisory services related to the acquisition of 1064 Locomotives tender ("The agreement").

1.2 McKinsey further appointed Regiments Capital (Pty) Ltd as a partner in executing the financing aspect of the above mentioned tender agreement, with McKinsey Incorporated being the principal lead.

1.3 The parties now wish to further vary the LOI and vary the scope of work regarding the financing aspect of the transaction.

1.4 The LOI shall be regarded as amended by the provision of the third addendum.

2. SOLE AGREEMENT

2.1 The LOI and addendum constitutes the sole agreement between the parties relating to the subject matter referred to in paragraph 1 of this third addendum and no variation shall be of any force and effect unless reduced to in writing and signed by or on behalf of both parties.

3. VARIATION OF SCOPE OF WORK

3.1 The deliverables for the revised scope of work will be as per clause 2 derived and agreed upon by Regiments Capital Pty (Ltd) for executing the funding portion of tender agreement GSM/12/05/0447. The objective of this work specific project is to conduct all the necessary studies and preparatory work to enhance Transnet's ability to rise the required funding at a competitive interest rate and to achieve an optimal funding structure with minimal pressure on Transnet's future liquidity. The deliverables include:

1. Determining the development and sustainability impact of the acquisition by,
    a. Conducting socio-economic impact studies.
    b. Determine the acquisition's impact on the environment.
    c. Examining the projects contribution to regional integration.

2. Conducting a collateral assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promoting funds/agencies and in the form of vendor finance.
3. Present a detailed analysis with specific recommendation to be pursued and executed.
4. Investigate how asset/component can be secured in order to optimise balance sheet and cost of financing within the context of Transnet policy with respect to asset ownership and control.
5. Developing and implementing a best practice risk management to the transaction:
    a. A financial risk assessment framework (including risk identification, risk assessment, risk response, risk monitoring, performance measurement, risk control, risk reporting and compliance) will be developed and implemented.
    b. Cost escalation risk management.
    c. Legal and regulatory risks.
    d. Balance sheet impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.
6. Developing an optimal risk management solution by examining solution that is embedded in the acquisition agreemnent, funding agreement and separate risk overlays.
7. Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute. The full spectrum of funding opportunities that will be evaluated include:
    a. Local and International Banks.
    b. Local and international development finance institutions.
    c. Export credit agencies.
    d. Vendor financing.
8. Provide execution support programme management and support in respect to funding:
    a. Assist in the preparation and management of capital raising related tenders/RFPs and RFIs.
    b. Participate in roadshows and assisting with the preparation of information memorandums.
    c. Participate in the fulfilment of conditions precedent required by the funders.
    d. Participate in due diligence exercise and responding to all credit queries raised by the funders.

4. VARIATION OF CONTRACT PRICE

4.1 As a result of the additional scope of work required on the financial phase of this contract, the initial price of R35 200 000.00 (Thirty five million and two hundred thousand rand only) will therefore increase by R6 000 000 (Six Million Rands only). This increase will bring the total Contract value to the fixed amount of R41 200 000.00 (Forty One Million and Two Hundred Thousand Rand only).

4.2 The work performed for this deliverable will be a fixed price of R15 000 000 (fifteen million rand only), utilising the contract value allocated to other deliverables that are no longer required, once R9 000 000 (nine million rand only) has been reached Transnet must approve the continuation of the work past R9 000 000 (nine million rand only) to R15 000 000 (fifteen million rand only).

4.3 Expenses for this piece of work will be capped at 10% of the value, based on actual costs incurred and in terms of Transnet Policies and Procedures

TRANSNET

5. AUTHORITY OF SIGNATURE

5.1 This addendum is effected and confirms the variations herein by acceptance of the signed authority's below:

Signed at _____ this _____ of _____ 2014

Name: ERIC WOOD

Title: EXECUTIVE DIRECTOR

~~McKinsey Incorporated~~

Authorised signatory who warrants that he/she is duly authorised to sign this Third Addendum

AS WITNESSES:

1.Name: _____

Signature: _____

Signed at JHB this 04 of Feb 2014

Name: Anoj Singh

Title : Group Chief Financial Officer

TRANSNET SOC Ltd

Authorised signatory for and on behalf of Transnet who warrants that he is duly authorised to sign this Third Addendum

AS WITNESSES:

1.Name: _____

Signature: _____

TRANSNET
delivering freight reliably

REGIMENTS CAPITAL

Transnet (SOC) Limited
Carlton Centre
150 Commissioner Street
Johannesburg
2001

Date: 20 January 2014
Reference: GSM/12/05/0447

Dear Anoj Singh,

RE: Transaction advisory services related to the acquisition of the 1064 locomotives over a period of 12 (twelve) months

Transnet had expressed its intent to procure transaction advisory services from a consortium of firms (namely, McKinsey Incorporated, Regiments Capital, Advanced Rail Technologies, Nedbank Capital and Utho Capital) pursuant to its letter of intent dated 30 November 2012. The various services that were foreseen at the time are grouped under four categories (contracting strategy, business case validation, technical evaluation and execution, and PMO, integration and stakeholder management). Subsequent to the issuance of the original letter of intent, the realisation for a conflict of interest arising from engaging Nedbank Capital has made the reallocation of the tasks that were originally thought to be handled by Nedbank to other members of the consortium.

This document is therefore intended to clarify the updated scope of transaction advisory work that Regiments Capital will perform in relation to the acquisition of the 1064 locomotives.

The Parties to this agreement are:

(1) Transnet SOC Limited (Transnet), a State Owned Company and the procurer of the transaction advisory services (Registration Number 1990/000900/30); together with
(2) Regiments Capital (Regiments).

Transnet wishes to contract with Regiments for the provision of the following transaction advisory services. The services will be offered over a period of 12 (twelve) months.

NOW THEREFORE IT IS AGREED

1. **Conditions Precedent**

In line with the original LOI dated 30 November 2012 and the subsequent changes in reallocation of tasks, Transnet wishes to finalize the details of the services to be provided by Regiments. The undermentioned conditions precedent will apply:

1.1. The Parties agree to work towards concluding the Agreement for the Provision of Transaction Advisory services for a period of 12 (twelve) months, commencing 22 January 2014, in relation to the structuring and efficiency of the funding required for the acquisition of the 1064 locomotives. The work may extend beyond the 12 (twelve)

month period, at no additional cost to Transnet if the deliverables are not achieved for whatever reason, as this engagement is output-based as opposed to time based.

1.2. Regiments agrees to promptly commence with the provision of the services as detailed in section 2 below.

2. Contract Fees and Deliverables

The proposed fee structure for the services to be rendered is understood by both parties to involve a retainer applicable every month and a performance fee on the funding raised at interest rates below the benchmark.

2.1. **Fees and related** costs are quoted in South African currency and are exclusive of Value Added Tax (VAT). Expenses will be capped at 10% of the value of the total retainer.

2.1.1. Deliverables (except the actual fund raising) must be executed for a fee of R15 million over a period of 12 (twelve) months.

2.1.2. A performance fee equal to 20% of the savings achieved against the benchmark interest rate. The benchmark interest rate is the interest rate at which Transnet was able to raise its most recent funding prior to 1 January 2014.

2.2. **Payment** will be effected at equal monthly instalments by Transnet, against presentation by Regiments of undisputed Tax Invoices.

2.3. **Key deliverables and project timeframe.**

The key project deliverables over the 12 (twelve) month period include the activities and deliverables described below that enhance the cost and structuring of the funding for the acquisition of the 1064 locomotives.

The objective of this specific project is to conduct all the necessary studies and preparatory work to enhance Transnet's ability to raise the required funding at a competitive interest rate and to achieve an optimal funding structure with minimal pressure on Transnet's future liquidity.

The deliverables include:

2.3.1. Determining the development and sustainability impact of the acquisition by:

2.3.1.1. Conducting socio-economic impact studies

2.3.1.2. Determining the acquisition's impact on the environment

2.3.1.3. Examining the project's contribution to regional integration

2.3.2. Conducting a collateral assessment

2.3.2.1. Conduct collateral assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promotion funds/agencies and in the form of vendor finance.

2.3.2.2. Present a detailed analysis with specific recommendations to be pursued and executed.

2.3.2.3. Investigate how asset/component can be secured in order to optimise balance sheet impact and cost of financing within the context of Transnet policy with respect to asset ownership and control.

2.3.3. Developing and implementing a best practice risk management framework to the transaction

2.3.3.1. A financial risk assessment framework (including risk identification, risk assessment, risk response, risk monitoring, performance measurement, risk control, risk reporting and compliance) will be developed and implemented.

2.3.3.2. Cost escalation risk management

2.3.3.3. Legal and regulatory risks

2.3.3.4. Balance sheet impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.

2.3.4. Developing an optimal risk management solution by examining solutions that are embedded in the acquisition agreement, funding agreement and separate risk overlays.

2.3.5. Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute. The full spectrum of funding opportunities that will be evaluated include:

2.3.5.1. Local and international banks

2.3.5.2. Local and international development finance institutions

2.3.5.3. Export credit agencies

2.3.5.4. Vendor financing

2.3.6. Providing execution programme management and support in respect to funding:

2.3.6.1. Assist in the preparation and management of capital raising related tenders/RFPs and RFIs.

2.3.6.2. Participate in road shows and assisting with the preparation of information memorandums.

2.3.6.3. Participate in the negotiation of the commercial terms of funding from the shortlisted funders.

2.3.6.4. Participate in the fulfilment of conditions precedent required by the funders.

2.3.6.5. Participate in the due diligence exercise and responding to all credit queries raised by the funders.

3. Miscellaneous

3.1. Neither Party shall reveal the content of this agreement or anything disclosed to the other Party in pursuance hereof to any third party, except with the prior express

written consent of the other party, and then only to the extent required to facilitate progression of the start-up procedures.

3.2. This agreement may only be amended or modified in writing by the authorised signatories of the Agreement.

Thus duly signed at ....., South Africa on this ..... day of ..... 20..... on behalf of:

TRANSNET SOC LIMITED

NAME: Anoj Singh

DESIGNATION: Group Chief Financial Officer

23/01/14.

WITNESSES

1. .....

2. .....

Subject to items listed below:

Thus duly signed at HOUGHTON, South Africa on this 20th day of JAN 20.14 on behalf of:

REGIMENTS CAPITAL

NAME: Niven Pillay

DESIGNATION: Executive Director

WITNESSES

3. .....

4. .....

- The contract for the supply of these services is with McKinsey and Regiments Capital is contracted to them.
- In terms of section 2 there will not be a performance fee for fundraising thus 2.1.2 will be removed as well.
- Expenses will be capped at 10% and paid on approved actual costs in terms of Transnets policies & procedures
- Payment will be made to McKinsey
- Costs and payment against this scope may not be made above R9 million without specific approval by Transnet

REPORT 2(A) – PART C – EXHIBIT 9

Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

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TRANSNET

MEMORANDUM

www.transnet.net

TO : **The Acquisitions and Disposals Committee**

FROM : **Siyabonga Gama,** Acting: Group Chief Executive

SUBJECT : **REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE US$1 BILLION ZAR EQUIVALENT CLUB LOAN**

PURPOSE:

1. The purpose of the submission is to request the Acquisitions and Disposals Committee (ADC) to:

1.1. Approve the appointment of Trillian in the place of JP Morgan as a Lead Manager of the US$1 billion ZAR equivalent Club loan which was previously confined to JP Morgan.

1.2. Approve the termination of JP Morgan on the ZAR syndication loan.

1.3. Delegate authority to the GCE to approve all documentation related to this confinement.

BACKGROUND:

2. Transnet has signed the mandate letter and Term sheet for the US$2.5 billion 15-year amortizing loan from China Development Bank ("CDB") to finance 232 and 359 locomotives from China North Railways ("CNR") and China South Railways ("CSR"), respectively.

3. The Board approved the transaction during August 2014.

4. Transnet decided to split the transaction into 2 tranches the US$ 1.5 billion tranche and the standby facility of US$1 billion tranche.

5. JP Morgan was appointed through a confinement approved by ADC to lead the ZAR Club as a substitute for the US$1billion standby facility to bring the overall cost of the transaction lower and avoid foreign exchange exposure and the need for cross currency swaps.

DISCUSSION:

6. In order to further reduce the cost of CDB funding, Transnet considered a dual tranche loan to fund the Chinese locomotives acquisition.

7. Therefore it was decided to utilise the US$1.5 billion from CDB and JP Morgan to underwrite a ZAR equivalent funding of US$1 billion.

8. This would enable Transnet to meet the rating agency requirements in demonstrating the committed funding against the committed capital investments.

9. Consequently the GCE signed a revised term sheet and mandate letter with CDB for US$1.5 billion.

10. Regiments Capital was appointed as a 1064 locomotive funding advisor and had SD obligations to Transnet on their contract.

11. One of their SD initiatives is the development of other smaller black owned organisations in the industry and Trillian is one of the beneficiaries of this initiative.

12. When it became apparent that JP Morgan would not be able to deliver the ZAR loan Regiments engaged with its SD beneficiary to see if there were options available to Transnet. It became apparent that Trillian would be able to deliver on Transnet's requirement for a Club loan deal at a price and tenor which was most comparable to both the CDB loan and JP Morgan proposal.

13. The illustration of the benefits is presented below.

TRILLIAN CAPITAL:

14. Post the successful completion of the 1064 locomotive transaction, Transnet developed detailed funding plan to secure the necessary funding for the locomotives together with the general purpose funding requirement.

15. One of the salient transactions was the approval of the US$2.5 billion credit facility to finance the purchase of the Chinese locomotives.

16. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Trillian recommended that Transnet only utilise $1.5bn of the CDB facility, and blend that with a US$1bn ZAR club loan. The ZAR club loan would allow for a reduction in the blended rate paid by Transnet of approximately 37bp (a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of $2.5bn with the full cost of the cross currency swaps).

17. Following the decision to use only US$1.5 billion out of the total USD 2.5 billion proposed by CDB, Trillian recommended that US$ 1 billion be available for Transnet as standby facility with no commitment fee until September 2015 over and above the ZAR club loan. Besides the financial benefit at least in terms of the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet.

18. Trillian have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Framework (FRM).

19. Trillian has assisted Transnet in negotiating with a number of potential funding sources of ZAR funding, including the following firm commitments:

19.1. Nedbank group(R6 billion);

19.2. Bank Of China (R3 billion);

19.3. ABSA Bank (R3 billion); *and*

19.4. Libfin (R1 billion).

20. Trillian' advice and the subsequent conscious decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market.

21. The savings achieved via the blending of the ZAR club loan, and the change in the applicable reference rate (3 month as opposed to the 6 month Jibar) have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Trillian is calculated to be R820 million.

22. In this regard, with Trillian's assistance the average cost of the Club Loan is around is 9.008%(3month Jibar+2.7% (nominal annual compounded semi-annually)) nacs as compared to the cost of the CDB Loan converted to ZAR at 9.533%(3month Jibar+322.5bps) nacs with 3 month Jibar at 6.308%.

23. Transnet was able to achieve the 15 year tenor at 3 month Jibar +270bps tenor as compared to the JP Morgan advice of 15 Year tenor at 370bps over 3 month Jibar.

24. The financial advice and negotiation support that Trillian provided through this entire process which took in excess of 5 months was done at risk with an expectation of compensation only on successful completion of the transaction.

ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE:

25. Trillian will be subject to 10% Supplier development obligations.

DELEGATIONS:

26. The ADC had previously approved the award through confinement, and due to the termination of the JP Morgan mandate and it is required that the ADC approve Trillian to replace JP Morgan.

FINANCIAL IMPLICATIONS:

27. Transnet value add to Transnet in relation to the 1064 locomotive ZAR club loan funding can be summarised in the following table:

INITIATIVE	SAVINGS
Saving achieved by securing club loan at 52.5 bps including cost cheaper than the equivalent dollar funding from CDB.(3m Jibar+322.5bps -3m jibar +270bps)	**R418m**
Saving achieved by securing club loan at 100bps including cost cheaper than the equivalent dollar funding from JP Morgan.(3m Jibar+370bps -3m jibar +270bps)	R796m
Fees	R24m
TOTAL	**R820 million**

28. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Trillian is calculated to be in excess of R 820 billion.

29. The financial advice, negotiation support and execution support that Trillian provided through the raising of the ZAR club loan took in excess of 5 months and is done with an expectation of compensation only on successful completion of the transaction at 20% of savings. However, Transnet negotiated that the fee is calculated as 10% of the total financial benefit related to the CDB loan:

SUCCESS FEE IN PERCENT (ZAR 12 BILLION)	SUCCESS FEE
10%	R82 million

30. Given the invaluable contribution of Trillian to the successful conclusion of funding transaction, Trillian is due a success based fee of 10% of the savings payable by Transnet subject to a maximum of R82 million.

31. The fees for Trillian will be part of the market related cost to the borrowing costs of the loan.

BUDGET IMPLICATIONS:

32. The costs have been budgeted as part of the funding plan for 2015/16.

RECOMMENDATION:

33. That the Acquisitions and Disposals Committee (ADC):

33.1. Approve the appointment of Trillian in the place of JP Morgan as a Lead manager for the US$1.5 billion ZAR equivalent club loan which was previously confined to JP Morgan;

33.2. Approve the termination of JP Morgan ZAR syndication loan;

33.3. Delegate authority to the GCE to approve all documentation related to this confinement.

Compiled by:

Phetolo Ramosebudi
Group Treasurer
Date: 17/09/15

Recommended/Not Recommended:

Edward **Thomas**
Acting: Group Chief Supply Chain Officer
Date: 17/9/15

Recommended/Not Recommended:

Garry Pita
Acting: Group Chief Financial Officer
Date: 18/9/15

Recommended/Not Recommended:

Siyabonga Gama
Acting: Group Chief Executive
Date: 2015.09.22

REPORT 2(A) – PART C – EXHIBIT 10

Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

P.O. Box 72501
Parkview
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TRANSNET

www.transnet.net

TO: **Mr. Siyabonga Gama,** Acting Group Chief Executive

Mr. Garry Pita, Acting Group Chief Financial Officer

Mr. Ndiphiwe Silinga, Group Executive: Legal and Compliance

FROM: **Mr. Phetolo Ramosebudi,** Group Treasurer

SUBJECT: ZAR CLUB MANDATE

PURPOSE:

1. To request that the Acting Group Chief Executive ("GCE") and Acting Group Chief Financial Officer ("GCFO") sign off on Trillion Asset Managements' ("TAM") invoice for services rendered to and on behalf of Transnet in its capacity as Transnet's Originating and Co-ordinating Mandated Lead Arranger for the ZAR12 billion Club Facility (the "Facility").

BACKGROUND:

2. In March 2014, Transnet awarded a contract for the building of 1064 diesel and electric locomotives to four global original equipment manufacturers. The company awarded CSR Zhuzhou Electric Locomotive and Bombardier Transportation contracts to build 599 electric locomotives and; General Electric Technologies and CNR Rolling Stock to build 465 diesel locomotives.

3. Subsequent to the announcement, Transnet engaged with a number of stakeholders to address the funding needs of the locomotive acquisition programme.

4. Regiments Capital was appointed as the 1064 locomotive funding advisor and had supplier development ("SD") obligations to Transnet on their contract. One of the SD requirements was the development of other black owned organisations in the industry. Trillian was the beneficiary of that initiative.

DISCUSSION:

5. TAM engaged Transnet with a financing solution. The solution was to aid Transnet in raising part of the funding requirement for the Chinese locomotives cost effectively.

6. The scope includes the following:

   i. Primary point of contact for the client in respect of the structuring and documentation of the Club Loan

   ii. Book build process

   iii. Leading negotiations on behalf of Transnet

   iv. Liaising with legal counsel

   v. All other ancillary service that will enable Transnet to bring to finality the transaction.

   vi. Acting as Lead Arranger and Co-ordinator

7. Attached herein Annexure A: Approval of Trillian as Mandated Lead Manager for the ZAR Club Facility.

FINANCIAL IMPLICATIONS:

8. Fees payable for services rendered will amount to R82 million.

DELAGATION OF AUTHORITY

9. As per DOA 5.4.1 the appointment of advisory services requires the approval of the Group GCE.

BUDGET IMPLICATIONS:

10. The Loan Facility Fees have been budgeted for in the 2015/16 finance cost budget.

RECOMMENDATION:

11. It is recommended that the Acting GCE and Acting GCFO sign off on Trillion Asset Managements' invoice for services rendered to and on behalf of Transnet in its capacity as Transnet's Originating and Co-ordinating Mandated Lead Arranger for the ZAR12 billion Club Facility (the "Facility").

Compiled by:

Mr. Phetolo Ramosebudi
Group Treasury
Date: 24/11/2015

Recommended/ ~~Not Recommended~~:

Mr. Ndiphiwe Silinga
Group Executive: Legal and Compliance
Date: 26/11/2015

Recommended/ Not Recommended:

Mr. Garry Pita
Acting Group Chief Financial Officer
Date: 2/12/15

Approved/ ~~Not Approved~~

Mr. Siyabonga Gama
Acting Group Chief Executive
Date: 2015 12 03

Trillian Asset Management
2008/023108/07
VAT No. 4860250580

Trillian Asset Management (Pty) Ltd
Postnet Suite 488
Private Bag X1
Melrose Arch
2076

Tax Invoice

Date	18/11/15
Page	1
Document No	IN101237

Transnet SOC Ltd
Carlton Centre
150 Commissioner Street
Johannesburg
2001

Deliver to

Carlton Centre
150 Commissioner Street
Johannesburg
2001

Account	Your Reference	Tax Exempt	Tax Reference	Sales Code
TRANSN		N	4720103177	Exclusive

Code	Description	Quantity	Unit	Unit Price	Disc%	Tax	Nett Price
1400000	Lead Arranger of ZAR12,000,000,000 Club Loan Facility for Transnet SOC Ltd					14.00%	82 000 000.00

TRANSNET

PAID

Trillian Asset Management
Investec CCM Main Account
Acc No 50005027729 Br 580105

Received in good order

Signed _____ Date _____

Sub Total		82 000 000.00
Discount @	0.00%	0.00
Amount Excl Tax		82 000 000.00
Tax		11 480 000.00
Total		93 480 000.00

© Softline (Pty) Ltd

19-151857

TRANSNET

Payee:
Trillian Asset Management (Pty) Ltd
Postnet Suite 488
Private Bag X1

Melrose Arch 2076

PAYMENT ADVICE

Date :19.11.2015

Description	Invoice no.	Date	R	C
Lead Arranger of ZAR 12,000,000,000 Club Loan Facility for Transnet SOC Limited	IN101237	18.11.2015	82,000,000	00
		Sub total	**82,000,000.00**	
		VAT	**11,480,000.00**	
		Total	**93,480,000.00**	

By Hand | **Tel. No (011)308-1217** | Ref.:

Compiled by: F Bangani | Approved by:

COCE	GL	R	C
		93,480,000	**00**

FOR OFFICE USE

Verified | Approved

Vendor No: | Date _____/_____/_____ Document no.

Vendor 2005559
Company Code TR04

Name [redacted]
City [redacted]

	Account	Doc.No	Reference	Allocation	Cur	Pmnt Block	Doc. Date	Pstng Date	Amount in doc. curr.	Curr.	Clearing	Clrng Date	Text	Ass.
	2005559	20151204	IN101237	1900151861	KR		18.12.2015	04.12.2015	93,480,000.00-	ZAR	1500040734	04.12.2015	LEAD ARRANGER ZAR 12 000000000 CLUB	
		20151204							93,480,000.00-	ZAR				
**									93,480,000.00-	ZAR				

TRANSNET-REF-BUNDLE-05618

MNS

PART D: BID DOCUMENT		
EXHIBIT NO.	DATE	DESCRIPTION OF EXHIBIT
1.	30/05/2012	Request for Proposal (GSM/12/05/0447) for the appointment of transaction advisory services to the 1064 Locomotives tender
2.	06/05/2015	Request for Proposal (GSM/15/05/1265) for the provision of hedging financial risks (interest rate, credit and currency risk) and to lead and underwrite the equivalent syndicate ZAR loan for a period of fourteen (14) years
3.	08/05/2015	JP Morgan's proposal in respect of the RFP (GSM/15/05/1265) for the provision of hedging financial risks (interest rate, credit and currency risk) and to lead and underwrite the equivalent syndicate ZAR loan for a period of fourteen (14) years.

REPORT 2(A)

PART D

REPORT 2(A) – PART D – EXHIBIT 1

TRANSNET

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

RFP NUMBER	GSM/12/05/0447
ISSUE DATE:	30 May 2012
CLOSING DATE:	07 June 2012
CLOSING TIME:	12:00
BID VALIDITY PERIOD:	90 days from closing date

TRANSNET-REF-BUNDLE-05623

SCHEDULE OF BID DOCUMENTS

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TRANSNET-REF-BUNDLE-05624

LIST OF ACRONYMS

B-BBEE	Broad-Based Black Economic Empowerment
CD	Compact/computer disc
DPE	Department of Public Enterprises
DTI	Department of Trade and Industry
EME	Exempted Micro Enterprise
FRC	Further Recognition Criteria
GBC	General Bid Conditions
ID	Identity Document
JV	Joint Venture
LOI	Letter of Intent
NDA	Non-Disclosure Agreement
NGP	New Growth Path
OD	Transnet Operating Division
PTN	Post-Tender Negotiations
QSE	Qualifying Small Enterprise
RFP	Request for Proposal
SD	Supplier Development
SME	Small Medium Enterprise
SOC	State Owned Company
TAC	Transnet Acquisition Council
VAT	Value-Added Tax
ZAR	South African Rand

TRANSNET-REF-BUNDLE-05625

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 1 : NOTICE TO BIDDERS

1 PROPOSAL REQUEST

Responses to this RFP [hereinafter referred to as a **Proposal** or **Proposals**] are requested from selected persons, companies [hereinafter referred to as an **Entity** or **Respondent**] to supply the aforementioned requirement(s) to Transnet.

On or after 30 May 2012, the RFP documents may be inspected at, and are obtainable from the office of Luqmaan Noor Moosa, Room 4853, 48th Floor, 150 Commissioner street, Carlton Centre , Johannesburg.

The documents may only be obtained after making a payment of an amount of R5000.00 (inclusive of VAT) per set. Payment is to be made as follows:

Bank Name	:	*Standard Bank*
Account Name	:	*Transnet SOC Ltd*
Account Number	:	*00 237 3963*
Branch Code	:	*004805*
Reference	:	*GSM/12/05/0447 – Please specify your company name*

NOTES –

a) This amount is not refundable.

b) A receipt for payment made must be presented when collecting the RFP documents and submitted with your Proposal.

RFP documents will only be available until 14h00 on 05th June 2012.

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

2 FORMAL BRIEFING

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 6 *[Communication]* below

3 PROPOSAL SUBMISSION

Three (3) proposals **plus a CD copy** must reach the Secretary, Transnet Acquisition Council before the closing hour on the date shown below, and must be enclosed in a sealed envelope which must have inscribed on the outside:

TRANSNET-REF-BUNDLE-05626

RFP No:	GSM/12/05/0447
Description:	FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER
Closing date and time:	07th June 2012 at 12:00
Closing address:	*[Refer options in paragraph 4 below]*

4 DELIVERY INSTRUCTIONS FOR RFP

4.1 Delivery by hand

If delivered by hand, the envelope is to be deposited in the Transnet tender box which is located at the main entrance of the Office Block, Carlton Centre, 150 Commissioner Street, Johannesburg, and should be addressed as follows:

THE SECRETARY
TRANSNET ACQUISITION COUNCIL
CARLTON CENTRE
TENDER BOX
OFFICE BLOCK FOYER
150 COMMISSIONER STREET
JOHANNESBURG 2001

a) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are not larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 0 above.

b) It should also be noted that the above tender box is located at the street level outside the main entrance in Commissioner Street and is accessible to the public 24 hours a day, 7 days a week.

4.2 Dispatch by courier

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

THE SECRETARY
TRANSNET ACQUISITION COUNCIL
48TH FLOOR
CARLTON CENTRE
OFFICE BLOCK
150 COMMISSIONER STREET
JOHANNESBURG

4.3 Please note that this RFP closes punctually at 12:00 on Thursday, 07th June 2012.

4.4 If responses are not delivered as stipulated herein, such responses will not be considered and will be treated as "UNRESPONSIVE."

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

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4.6 The responses to this RFP will be opened as soon as practicable after the expiry of the time advertised for receiving them.

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

4.8 Envelopes must not contain documents relating to any RFP other than that shown on the envelope. All envelopes must reflect the return address of the Respondent on the reverse side.

4.9 No slips are to be attached to the response documents. Any additional conditions must be embodied in an accompanying letter. Subject only to clause 17 *[Alterations made by the Respondent to Tendered Prices]* of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

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

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.

Transnet would therefore prefer to do business with local business enterprises who share these same values and who are prepared to contribute to meaningful B-BBEE initiatives [including, but not limited to subcontracting and Joint Ventures] as part of their tendered responses. Transnet will accordingly allow "preference" points to companies who provide a B-BBEE Accreditation Certificate. All procurement transactions will be evaluated accordingly.

Consequently Transnet urges all Respondents *[Large Enterprises, QSE's and EME's- see below]* to have themselves accredited in compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011. As from 1 October 2011 valid B-BBEE Accreditation Certificates must be issued by:

a) Verification Agencies accredited by the South African National Accreditation System [SANAS]; or

b) Registered Auditors approved by the Independent Regulatory Board of Auditors [IRBA], in accordance with the approval granted by the Department of Trade and Industry.

A Verification Certificate issued must reflect the weighted points attained by the measured entity for each element of the scorecard as well as the overall B-BBEE rating. Respondents are also urged to submit their shareholders certificates

5.1 B-BBEE Rating

Enterprises will be rated by Verification Agencies or Registered Auditors based on the following:

a) **Large Enterprises** [i.e. annual turnover greater than R35 million]:

- Rating level based on all seven elements of the B-BBEE scorecard

b) **Qualifying Small Enterprises – QSE** [i.e. annual turnover between R5 million and R35 million]:

- Rating based on any four of the elements of the B-BBEE scorecard

c) **Exempted Micro Enterprises – EME** [i.e. annual turnover less than R5 million]:

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- In accordance with B-BBEE Codes of Good Practice (Statement 000, Section 4), any enterprise with an annual Total Revenue of R 5million or less qualifies as an Exempted Micro-Enterprise.
- Automatic rating of Level 4 B-BBEE irrespective of race or ownership, i.e. 100% B-BBEE recognition
- Black ownership greater than 50% or Black Women ownership greater than 30% automatically qualify as Level 3 B-BBEE, i.e. 110% B-BBEE recognition
- In light of the revised Preferential Procurement Policy Framework Act Regulations which came into effect on 7 December 2011 and its Implementation Guides; it has become mandatory for the SANAS symbol to appear on the EME certificates as there is a greater need to provide certainty to the implementers of the PPPFA Regulations on the validity of SANAS Accredited Verification Agency.
- In terms of the B-BBEE Codes, Exempted Micro Enterprises ("EMEs") may provide the following in order to qualify as an EME:
  - an auditor's certificate;
  - a certificate issued by an accounting officer; or
  - a certificate issued by a Verification Agency accredited by the South African National Accreditation System ("SANAS").
- To give effect to these new requirements, EME's should provide Exempted Micro Enterprise (EME) B-BBEE status level certificates issued by Verification Agencies accredited by the South African National Accreditation System (SANAS) – The certificate must contain the following:
  - SANAS symbol on the face of the certificate
  - The Auditor's/Accounting Officer's letter head with full contact details;
  - The Auditor's/Accounting Officer's practice numbers;
  - The name and the physical location of the measured entity;
  - The registration number and, where applicable, the VAT number of the measured entity;
  - The date of issue and date of expiry;
  - The B-BBEE Status Level of Contribution obtained by the measured entity; and
  - The total black shareholding and total black female shareholding.

Respondents will be required to furnish proof of the above to Transnet. [i.e. a detailed scorecard as stipulated above in respect of Large Enterprises and QSEs, or proof of turnover in respect of EMEs].

N.B. Failure to do so will result in a score of zero being allocated for B-BBEE.

Turnover: ***Kindly indicate your entity's annual turnover for the past year:***

R_____

All Respondents must complete and return the B-BBEE Preference Points Claim Form attached hereto as Annexure A.

5.2 Joint Ventures and Subcontractors

In addition to the above, Respondents who wish to enter into a Joint Venture with, or subcontract portions of the contract to, B-BBEE entities must state in their RFPs, the percentage of the total

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contract value that will be allocated to such B-BBEE entities, should they be successful in being awarded any business. A rating certificate in respect of such B-BBEE JV-partners and/or subcontractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the RFP response to enable Transnet to evaluate in accordance with the processes outlined in the B-BBEE Preference Points Claim Form appended hereto as Annexure A.

Respondents should also submit a signed JV agreement between the parties clearly stating the percentage (%) split of business and the associated responsibilities of each party.

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

5.3 B-BBEE Registration

In addition to the accreditation certificate, Transnet recommends that Respondents register their B-BBEE compliance and supporting documentation on the Department of Trade and Industry's [**DTI**] National B-BBEE IT Portal and Opportunities Network and provide Transnet with proof of registration in the form of an official B-BBEE Profile issued by the DTI.

Transnet would wish to use the DTI B-BBEE IT Portal as a data source for tracking B-BBEE compliance.

For instructions to register and obtain a DTI B-BBEE Profile go to http://bee.thedti.gov.za

6 COMMUNICATION

Respondents are warned that a Proposal will be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business.

6.1 For specific queries relating to this RFP, a Bid Clarification Request Form should be submitted before 12:00 on 05th June 2012, substantially in the form set out in SECTION 12 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose all Respondents need to indicate by email their intention to respond to this RFP by informing Transnet of their contact details as soon as possible but on or before **05th June 2012** to Luqmaan.NoorMoosa@transnet.net.

6.2 After the closing date of the RFP, a Respondent may communicate with the Secretary of the Transnet Acquisition Council, at telephone number 011 308 3528/3522, email TAC.SECRETARIAT@transnet.net or facsimile number 011 308 3967 on any matter relating to its RFP Proposal.

Respondents found to be in collusion with one another will be automatically disqualified and blacklisted from doing business with Transnet in the future.

7 INSTRUCTIONS FOR COMPLETING THE RFP

7.1 Sign one set of documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. Two duplicate sets of documents are required. The second and third set can be a copy of the original signed Proposal.

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7.2 All sets of documents to be submitted to the address specified in paragraph 4 above.

7.3 A CD copy of the RFP Proposal must be submitted. Please provide in MS Word / Excel format, not PDF versions, noting that the signed original set will be legally binding *[paragraph 7.1 above]*.

7.4 *All returnable documents listed in the Proposal Form [SECTION 4] must be returned with your Proposal.*

8 COMPLIANCE

The successful Respondent [hereinafter referred to as the **Service Provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

9 ADDITIONAL NOTES

9.1 All returnable documents as indicated in the Proposal Form *[SECTION 4]* must be returned with the response.

9.2 Changes by the Respondent to its submission will not be considered after the closing date.

9.3 The person or persons signing the Proposal must be legally authorised by the Respondent to do so *[Refer SECTION 6 – Signing Power, Resolution of the Board of Directors]*. A list of those person(s) authorised to negotiate on your behalf [if not the authorised signatories] must also be submitted along with the Proposal together with their contact details.

9.4 Transnet would prefer not to 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 Service Providers / OEMs [Original Equipment Manufacturers].

9.5 Transnet may wish to visit the Respondent's place of business during this RFP process.

9.6 Transnet reserves the right to undertake post-tender negotiations [**PTN**] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.

9.7 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated. Transnet reserves the right to reject any or all offers.

9.8 **Transnet will reserve the right to split the award to various service providers based on the services and expertise required.**

FAILURE TO OBSERVE ANY OF THE AFOREMENTIONED REQUIREMENTS MAY RESULT IN A PROPOSAL BEING REJECTED

10 DISCLAIMERS

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of a Proposal in response to it. In particular, please note that Transnet reserves the right to:

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10.1 modify the RFP's Services and request Respondents to re-bid on any changes;

10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;

10.3 disqualify Proposals submitted after the stated submission deadline;

10.4 not necessarily accept the lowest priced Proposal;

10.5 reject all Proposals, if it so decides;

10.6 withdraw the RFP on good cause shown;

10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;

10.8 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;

10.9 split the award of the contract between more than one Service Provider; or

10.10 make no award of a contract.

In addition, Transnet reserves the right to exclude any Respondent from the bidding process who has been convicted of a serious breach of law during the preceding 5 [five] years, including but not limited to breaches of the Competition Act 89 of 1998. Respondents are required to indicate in SECTION 11 *[Breach of Law]* whether or not they have been found guilty of a serious breach of law during the past 5 [five] years.

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with this Proposal, whether or not the Respondent is awarded a contract.

11 LEGAL REVIEW

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

Transnet urges its clients, suppliers and the general public

to report any fraud or corruption on the part of Transnet employees to

TIP-OFFS ANONYMOUS : 0800 003 056

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RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER FOR A PERIOD OF 9 MONTHS

SECTION 2 : BACKGROUND AND SCOPE OF REQUIREMENTS

1 BACKGROUND

Transnet SOC Ltd announced that it expects to create up to 588 000 new job opportunities across the economy through its Market Demand Strategy (MDS), which will see Transnet spend R300 billion on capital projects over a seven-year period. The MDS is aimed at expanding South Africa's rail, port and pipelines infrastructure, resulting in a significant increase in freight volumes, especially in commodities such as iron ore, coal and manganese. It will also lead to a significant modal shift from road to rail. The main objective of the strategy is for Transnet to invest in building capacity to meet validated market demand that will enable economic growth. The MDS is Transnet's contribution to Government's growth strategy through investment in infrastructure and a key component of enabling the aspirations of the New Growth Path (NGP).

Highlights of MDS:

- R300 billion capital investment programme;
- R205 billion will be allocated to rail projects, R151 billion of which will be allocated to general freight to support the growth in volumes to 170 million tons per annum (mtpa);
- Expand export coal from 68mtpa to 97,5mtpa ;
- Expand iron ore export from 53mtpa to 82,5mtpa;
- Container volumes handled through the ports to increase from 4,3 million to 7,6 million twenty-foot equivalent unit containers (TEUs);
- Investment in the final phases of the New Multi-Product Pipeline;
- Stronger financial position: Revenue growth of 16% p.a. over the next seven years, driven by volume growth;
- EBITDA - Transnet's key measure of profitability - will more than triple to R68 billion by 2018/19;
- R213,6 billion of the required funding will be generated from operating cashflows;
- R86,5 billion of the required funding will be raised from debt capital markets;
- Gearing and cash interest cover will remain within target levels of 50% and greater than three times respectively;
- Significant productivity and efficiency improvements expected in rail and port operations;
- Growth of the local industry through programmatic procurement;
- Transnet's employee headcount will peak at 74 000 in 2018/19. The total number of jobs expected to be created via MDS will peak at 588 000 – this includes direct, indirect and economy-wide jobs; and

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- Skills development: R7,7 billion spent on training by 2018/19 including R4,7 billion on bursaries and grants.

MDS is not only about Transnet, but key to South Africa's growth objectives. This strategy aims to deliver a lasting economic, social and environmental value to society. A combination of partnerships with its stakeholders and the successful execution of MDS, will enable economic growth for the country. This is a huge challenge for Transnet, but Transnet has developed a comprehensive implementation plan to ensure a successful delivery of the strategy. Transnet would like to place the order of the locomotives by a rigorous process to evaluate and select the preferred supplier(s) is required. Given the tight timelines and technical requirements, Transnet requires advisory services, support and capabilities to develop and augment the business case, identify opportunities and technical optimisation, run the process to select the preferred supplier(s) and setting up of the contracts post award with the preferred supplier(s).

2 SCOPE OF REQUIREMENTS

2.1 Objectives

The objectives of this work is to assist Transnet in successfully awarding contracts for the manufacture and supply of diesel and electric locomotives while maximising value for Transnet and securing localisation benefits for South Africa.

Intermediate objectives include:

- Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;
- End to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
- Identifying value optimisation potential and technical optimisation options;
- Setting up the tender process in line with all requirements applicable to State-owned-companies (SOCs);
- Developing a shortlist of potential suppliers;
- Developing the contracts for the tender; and
- Developing finance and funding options.

2.2 Deliverables

Key deliverables include:

- Updated and improved business case and relevant documentation for submission to the Transnet Board of Directors and Department of Public Enterprises;
- The business case should include the end to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations);
- List of technical value optimisation levers and estimated value;
- Design of an optimisation approach for joint value optimisation between Transnet and the selected supplier(s);
- Overall tendering process design for the locomotives;
- Request for Information / Quotation documentation;

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- Short list of potential suppliers;
- Template contract for awarding of the tender; and
- Documentation for the final selection of preferred supplier(s).

2.3 Other Requirements

Transnet SOC Ltd requires respondents to sub-contract no less than a minimum of **30%** of the award to a BBBEE partner.

Acceptance of Sub-Contract Agreement:

YES		NO	

Failure to comply with the above mentioned agreement will result in a Respondent's disqualification.

3 GENERAL INFORMATION

3.1 The Service Provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.

3.2 The Service Provider(s) must provide the information requested and comply with the requirements stated in this RFP.

4 EXCHANGE AND REMITTANCE

The attention of the Respondents is directed to clause 8 *[Exchange and Remittance]* of the General Bid Conditions appended hereto. The Respondent is also to note that the particulars of the exchange rate on which the Respondent has based its tendered price(s), is/are to be stipulated hereunder, *only if Transnet is requested by the Respondent to effect payment overseas direct to the Respondent's principal or Service Provider, which is not a registered South African Company.*

4.1 ZAR 1.00 [South African currency] being equal to _____ *[foreign currency]*

4.2 _____ % in relation to tendered price(s) to be remitted overseas by Transnet

4.3 _____ *[Name of country to which payment is to be made]*

4.4 Beneficiary details:

Name *[Account holder]* _____

Bank *[Name and branch code]* _____

Swift code _____

Country _____

4.5 _____ *[Applicable base date of Exchange Rate used]*

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EXPORT CREDIT AGENCY SUPPORTED FINANCE (NOT APPLICABLE FOR THIS TENDER)

In order to finance its payment obligations under a future contract where foreign transactors are involved, Transnet would consider raising debt financing (an "ECA Facility") from one or more banks and financial institutions, with the benefit of export credit agency ("ECA") credit support to be provided by an Export Credit Agency.

Under such circumstances the successful Respondent will agree to undertake:

a) to provide (and/or cause the Export to provide, as applicable) to Transnet and the banks and financial institutions that may participate in the ECA Facility all such assistance as an importer of services, which are eligible for ECA credit supported finance by an Export Credit Agency, is generally required to provide for the purposes of obtaining ECA support;

b) not to do or (as Service Provider of the relevant eligible Services) omit to do anything which may adversely affect Transnet's prospects of qualifying for, or, once obtained, maintaining ECA credit support by an Export Credit Agency in respect of an ECA Facility.

All cost, expenses, charges and liabilities incurred by Transnet in establishing an ECA Facility with credit support from an Export Credit Agency, will be for the account of Transnet.

5 SERVICE LEVELS

5.1 An experienced account representative(s) is required to work with Transnet's sourcing/procurement department. [No sales representatives are needed for individual department/locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.

5.2 Transnet will have monthly reviews with the Service Provider's account representative on an on-going basis.

5.3 Transnet reserves the right to request that any member of the Service Provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.

5.4 The Service Provider guarantees that it will achieve a 95% service level on the following measures. If the Service Provider does not achieve this level as an average over each month, Transnet will receive a 1.5% rebate on monthly outputs payable in the next quarter:

a) On-time deliverables (as per agreed contract)

5.5 The Service Provider must provide a telephone number for customer service calls.

5.6 Failure of the Service Provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] days' notice to the Service Provider.

Acceptance of Service Levels:

YES		NO	

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6 RISK

Respondents must elaborate on the control measures put in place by their entity, which would mitigate the risk to Transnet pertaining to potential non-performance by a Service Provider, in relation to:

6.1 Quality of Services provided:

_____

_____

_____

_____

_____

6.1 Continuity of Services:

_____

_____

_____

_____

_____

6.2 Compliance with the Occupational Health and Safety Act, 85 of 1993:

_____

_____

_____

_____

6.3 Compliance with the National Railway Safety Regulator Act, 16 of 2002:

_____

_____

_____

7 REFERENCES

Please indicate below the company names and contact details of existing or past customers whom Transnet may contact to seek third party evaluations of your current service levels:

NAME OF COMPANY	CONTACT PERSON	TELEPHONE

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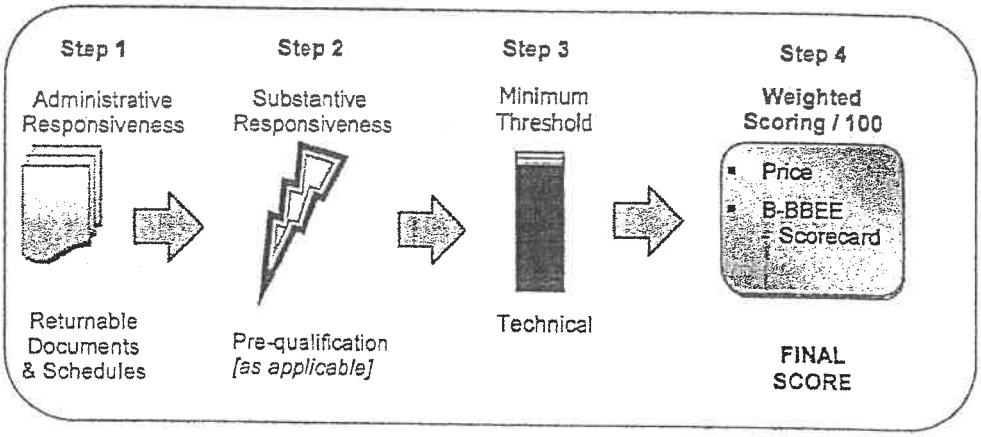
8 EVALUATION METHODOLOGY AND CRITERIA

Transnet will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:



8.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

EVALUATION CRITERIA	RFP REFERENCE
• whether the bid has been lodged on time	*SECTION 1 paragraph 3*
• whether all returnable documents and/or schedules [where applicable] were completed and returned by the closing date and time	*SECTION 4*
• whether the bid documentation has been duly signed by the Respondent.	*SECTION 1 paragraph 7.1*

The test for administrative responsiveness [Step One] must be passed for a Respondent's proposal to progress to Step Two for further evaluation.

8.2 STEP TWO: Test for Substantive Responsiveness to RFP

The test for substantive responsiveness to this RFP will include the following:

EVALUATION CRITERIA	RFP REFERENCE
• whether any pre-qualification criteria set by Transnet, have been met	*SECTION 1 paragraphs 6.1, 10.3* *SECTION 4 – validity period* *SECTION 8, General Bid Conditions clause 19* *SECTION 10*
• whether the bid contains a priced offer	*SECTION 3*
• whether the bid materially complies with the scope and/or specification given	*SECTION 2*

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• whether all material terms and conditions stated in the bid document have been met	*All SECTIONS*
• whether Respondents will sub-contract 30% of the award to a B-BBEE company with black ownership of >50%	*SECTION 2, paragraph 2.3*

The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation.

8.3 **STEP THREE: Test Minimum Threshold for Technical and Experience**

Technical Criteria:

The preferred consultant must demonstrate at least the following technical requirements:

EVALUATION CRITERIA	RFP REFERENCE
• Updated and improved business case and relevant documentation for submission to the Transnet Board of Directors and Departments of Public Enterprises	*SECTION 2, paragraph 2*
• The business case should include the end to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations)	*SECTION 2, paragraph 2*
• List of technical value optimisation levers and estimated value	*SECTION 2, paragraph 2*
• Design of an optimisation approach for joint value optimisation between Transnet and the selected supplier(s)	*SECTION 2, paragraph 2*
• Overall tendering process design for the locomotives in line with all requirements applicable to State-owned-companies (SOC's)	*SECTION 2, paragraph 2*
• Request for Information / Quotation documentation	*SECTION 2, paragraph 2*
• Short listing of potential suppliers	*SECTION 2, paragraph 2*
• Template contract for awarding of the tender	*SECTION 2, paragraph 2*
• Documentation for the final selection of preferred supplier(s)	*SECTION 2, paragraph 2*
• Proven ability in project deal structuring, financing and funding	*SECTION 2, paragraph 2*
• A sound methodology for developing robust business cases, including financial and non-financial elements (e.g. local procurement, job creation, etc.)	*SECTION 2, paragraph 2*
• A proven approach to technical optimisation of capital equipment, prior experience with locomotives will be	*SECTION 2, paragraph 2*

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favoured.	
• A proven approach for developing and providing support to large capital project tender processes including assistance in developing RFIs, RFQs, shortlisting and final selection	*SECTION 2, paragraph 2*
• The approach must demonstrate how the service provider would set up the project and work jointly with Transnet and potential suppliers to meet the required timeline, including key milestones and resources required	*SECTION 2, paragraph 2*
• Proven ability in project deal structuring, financing and funding	*SECTION 2, paragraph 2*
• Experience with development of contracting strategies for large projects (e.g. programmatic procurement) and the ability to extract value and savings. (contracting approach between state owned companies and suppliers would be preferred)	*SECTION 2, paragraph 2*
• A thorough understanding and experience with the socio-economic issues (SD, Broad based Black Economic Empowerment, industrialization and localisation, environmental issues etc.); and	*SECTION 2, paragraph 2*
• Thorough understanding of the PFMA, PPPFA, IPAPII, NGP etc, requirements	*SECTION 2, paragraph 2*
• Capital project optimisation experience (rail and capital equipment preferable). This should include: - Design to Value - Design to Cost - Minimum Technical Solution development	*SECTION 2, paragraph 2*
• Working with other railways – consultant should demonstrate that it understands the rail business model and has worked with other railways	*SECTION 2, paragraph 2*
• Business case development and evaluation for mega projects	*SECTION 2, paragraph 2*
• Contracting strategy development for large projects	*SECTION 2, paragraph 2*
• Contract development for large projects	*SECTION 2, paragraph 2*
• Deal structuring and financing for large capital investment projects	*SECTION 2, paragraph 2*
• Procurement and Supply Chain experience (rail experience preferable)	*SECTION 2, paragraph 2*
• Experience with the socio-economic issues (SD, Broad based Black Economic Empowerment, industrialization and	*SECTION 2, paragraph 2*

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localisation, environmental issues etc.);	
• Extensive experience in South Africa	*SECTION 2, paragraph 2*
• The proposal should include a list of key personnel who will be involved in the project as well as experts who will be called upon to provide support. Short CVs of core team members and experts must be provided.	*SECTION 2, paragraph 2*
• Additionally, working knowledge of Transnet systems and processes would be beneficial, but is not required.	*SECTION 2, paragraph 2*
• Approach - The service provider must demonstrate a clear and practical approach to this project to cover the requirements and deliverables as well as the set up, governance model and resource model clearly indicating the resources required from Transnet	*SECTION 2, paragraph 2*

The minimum threshold of 70% for Technical evaluation criteria must be met or exceeded for a Respondent's proposal to progress to Step Four for final evaluation.

8.4 **STEP FOUR: Final Weighted Scoring**

a) **B-BBEE Rating**

(i) **B-BBEE Scorecard:**

EVALUATION CRITERION	RFP REFERENCE
• Current status evaluated according the B-BBEE Accreditation scorecard	*SECTION 1, paragraph 5 & Preferential Points Claim Form*

b) **Price Criteria:**

EVALUATION CRITERIA	RFP REFERENCE
• Price for services - rate per hour - rate per resource level (**Not team bundles**) - rate for overtime - disbursements	*SECTION 3*
• Entity's financial stability	*Financial Statements – returnable document*

c) **Broad-Based Black Economic Empowerment criteria**

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- **B-BBEE - current scorecard** *[Refer paragraph 8.4(a)(i) above]*

8.5 **SUMMARY: Evaluation Thresholds and Weightings**

EVALUATION CRITERIA	MINIMUM THRESHOLD [%]
Technical / functionality	70

EVALUATION CRITERIA	FINAL WEIGHTED SCORES
Price	60
B-BBEE - Scorecard	40
TOTAL SCORE:	100%

Note: Transnet reserves the right to conduct post-tender negotiations with the preferred Respondent(s)

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RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 3 : PRICING AND DELIVERY SCHEDULE

Notes to Pricing:

a) All Prices must be quoted in South African Rand, exclusive of VAT

b) Prices quoted must be held firm for the duration of the contract

c) Currency rate of exchange utilised: _____

d) Respondents must submit their 3-year audited financial statements with their Proposal

e) CV's must be submitted for each resource tendered

Item No	Name/Title of Resource	Quantity of Resources to be Allocated	Resource Level of Seniority	Resource Years of Experience	Resource Unit Cost per Hour	Overtime Unit Cost per Hour
1					R _____	R _____

Disbursements must be based on actual disbursements but will not exceed _____% of the total cost for services proposed. (Respondents to insert percentage).

Respondents are required to indicate with a [✓] below which of the following key deliverables falls within their area of expertise:

• Updated and improved business case and relevant documentation for submission to the Transnet Board of Directors and Departments of Public Enterprises	
• The business case should include the end to end requirements of the overall General Freight programme (locomotives, wagons, infrastructure etc based on validated volume expectations)	
• List of technical value optimisation levers and estimated value	
• Design of an optimisation approach for joint value optimisation between Transnet and the selected supplier(s)	
• Overall tendering process design for the locomotives in line with all requirements applicable to State-owned-companies (SOC's)	
• Request for Information / Quotation documentation	

TRANSNET-REF-BUNDLE-05643

• Short listing of potential suppliers	
• Template contract for awarding of the tender	
• Documentation for the final selection of preferred supplier(s)	
• Proven ability in project deal structuring, financing and funding	
• A sound methodology for developing robust business cases, including financial and non-financial elements (e.g. local procurement, job creation, etc.)	
• A proven approach to technical optimisation of capital equipment, prior experience with locomotives will be favoured	
• A proven approach for developing and providing support to large capital project tender processes including assistance in developing RFIs, RFQs, short listing and final selection	
• The approach must demonstrate how the service provider would set up the project and work jointly with Transnet and potential suppliers to meet the required timeline, including key milestones and resources required	
• Experience with development of contracting strategies for large projects (e.g. programmatic procurement) and the ability to extract value and savings. (contracting approach between state owned companies and suppliers would be preferred)	
• A thorough understanding and experience with the socio-economic issues (SD, Broad based Black Economic Empowerment, industrialization and localisation, environmental issues etc.)	
• Thorough understanding of the PFMA, PPPFA, IPAPII, NGP etc	
• Capital project optimisation experience (rail and capital equipment preferable). This should include: - Design to Value - Design to Cost - Minimum Technical Solution development	
• Working with other railways – consultant should demonstrate that it understands the rail business model and has worked with other railways	
• Business case development and evaluation for mega projects	
• Contracting strategy development for large projects	
• Contract development for large projects	
• Deal structuring and financing for large capital investment projects	
• Procurement and Supply Chain experience (rail experience preferable)	
• Extensive experience in South Africa	
• The proposal should include a list of key personnel who will be involved in the project as well as experts who will be called upon to provide support. Short CVs of core team members and experts must be provided.	

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• Approach - The service provider must demonstrate a clear and practical approach to this project to cover the requirements and deliverables as well as the set up, governance model and resource model clearly indicating the resources required from Transnet	

Kindly note that each deliverable will be evaluated individually and will have a minimum threshold of 70%

TRANSNET-REF-BUNDLE-05645

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 4 : PROPOSAL FORM

I/We_____

[name of entity, company, close corporation or partnership]

of *[full address]*

_____

_____

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

represented by_____

in my capacity as _____

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as the case may be, dated _____ a certified copy of which is annexed hereto, hereby offer to supply the above-mentioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the accompanying letter(s) reference _____ _____ and dated _____ *[if any]* and the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Transnet's:

(i) Master Agreement Professional Services;

(ii) General Bid Conditions – Services; and

(iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the **Letter of Intent**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Services within 4 [four] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

TRANSNET-REF-BUNDLE-05646

I/We accept that any contract resulting from this offer will be for a period of 9 months only; and agree to a penalty clause to be negotiated with Transnet, which will allow Transnet to invoke a penalty [details to be negotiated] against us should the delivery of the Services be delayed due to non-performance by ourselves.

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity: _____

Facsimile: _____

Address: _____

_____

_____

NOTIFICATION OF AWARD OF RFP

As soon as possible after approval to award the contract(s), the successful Respondent **[the Service Provider]** will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Service Provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

VALIDITY PERIOD

Transnet requires a validity period of 90 [ninety] days [from closing date] against this RFP.

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

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

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

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

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

_____

_____

_____

_____

_____

TRANSNET-REF-BUNDLE-05647

CONFIDENTIALITY

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

DISCLOSURE OF PRICES TENDERED

Respondents must indicate here whether Transnet may disclose their tendered prices and conditions to other Respondents:

YES		NO	

PRICE REVIEW

Transnet may benchmark this price offering(s) against the lowest price received as per a benchmarking exercise. If the Respondent's price(s) is/are found to be higher than the benchmarked price(s), then the Respondent shall match or better such price(s) within 30 [thirty] days, failing which the contract may be terminated at Transnet's discretion or the particular item(s) or service(s) purchased outside the contract.

RETURNABLE DOCUMENTS AND SCHEDULES

Respondents are required to submit the following returnable documents and schedules with their responses [see √]. All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent:

SECTION 1 : Notice to Bidders	√
- ANNEXURE A : B-BBEE Preference Points Claim Form	√
- Signed JV agreement (if applicable)	√
SECTION 2 : Background, Overview and Scope of Requirements	√
SECTION 3 : Pricing & Delivery Schedule	√
SECTION 4 : Proposal Form	√
SECTION 5 : Vendor Application Form	√
- Original cancelled cheque or bank verification of banking details	√
- Certified copies of IDs of shareholder/directors/members [as applicable]	√
- Certified copy of Certificate of Incorporation [CM29/CM9 name change] (i.r.o companies)	√
- Certified copy of share certificates [CK1/CK2 if CC] (i.r.o closed corporations)	√
- Entity's letterhead	√
- Original Valid Tax Clearance Certificate	√
- Certified copy of VAT Registration Certificate	√
- Certified copy of Company Registration Certificate	√
- Valid B-BBEE Accreditation Certificate [Large Enterprises and QSEs]	√
- In terms of the B-BBEE Codes, Exempted Micro Enterprises ("EMEs") may provide the	√

TRANSNET-REF-BUNDLE-05648

following in order to qualify as an EME: - auditor's certificate; or - a certificate issued by an accounting officer; or - a certificate issued by a Verification Agency accredited by the South African National Accreditation System ("SANAS")	
- Audited Financials for previous 3 years	√
SECTION 6 : Signing Power - Resolution of Board of Directors	√
SECTION 7 : Certificate of Acquaintance with RFP Documents	√
SECTION 8 : General Bid Conditions – Services	√
SECTION 9 : Master Agreement Professional Services	√
SECTION 10 : RFP Declaration Form	√
SECTION 11 : Breach of Law	√
SECTION 12 : Bid Clarification Request Form	√
SECTION 13 : Supplier Code of Conduct	√
SECTION 14 : Non-Disclosure Agreement	√

Failure to provide all the above-referenced returnable documents marked with a [√] will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and B-BBEE Accreditation Certificate, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [the **Agreement**] and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

TRANSNET-REF-BUNDLE-05649

By signing the RFP documents, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise.

SIGNED at _____ on this _____ day of _____ 2012

SIGNATURE OF WITNESSES ADDRESS OF WITNESSES

1 _____ _____

Name _____ _____

_____

2 _____ _____

Name _____ _____

_____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

_____

NAME: _____

DESIGNATION: _____

TRANSNET-REF-BUNDLE-05650

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER FOR A PERIOD OF 9 MONTHS

SECTION 5 : VENDOR APPLICATION FORM

Respondents are to furnish the following documentation and complete the Vendor Application Form below:

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details **[with bank stamp]**
2. **Certified** copy of Identity Document(s) of Shareholders/Directors/Members [where applicable]
3. **Certified** copy of Certificate of Incorporation, CM29 / CM9 [name change]
4. **Certified** copy of Share Certificates [CK1/CK2 if CC]
5. A letter on the entity's letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate and **certified copy** of VAT Registration Certificate
7. A signed letter from your auditor or accountant confirming most recent annual turnover figures

Note: **No contract shall be awarded to any Respondent whose tax matters have not been declared by SARS to be in order.**

Vendor Application Form

Entity's trading name						
Entity's registered name						
Entity's Registration Number or ID Number if a Sole Proprietor						
Form of entity [√]	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor
How many years has your entity been in business?						
VAT number [if registered]						
Entity's telephone number						
Entity's fax number						
Entity's email address						
Entity's website address						
Bank name				Branch & Branch code		
Account holder				Bank account number		

Respondent's Signature

Date & Company Stamp

TRANSNET-REF-BUNDLE-05651

Postal address		Code
Physical address		Code
Contact person		
Designation		
Telephone		
Email		

Annual turnover range [last financial year]	< R5 m	R5 - 35 m	> R35 m
Does your entity provide	Products	Services	Both
Area of delivery	National	Provincial	Local
Is your entity a public or private entity		Public	Private
Does your entity have a Tax Directive or IRP30 Certificate		Yes	No
Main product or services [e.g. Stationery/Consulting]			

Complete B-BBEE Ownership Details:

% Black ownership	% Black women ownership	% Disabled Black ownership

Does your entity have a B-BBEE certificate	Yes	No
What is your B-BBEE status [Level 1 to 9 / Unknown]		
How many personnel does the entity employ	Permanent	Part time

If you are an existing Vendor with Transnet please complete the following:

Transnet contact person	
Contact number	
Transnet Operating Division	

Duly authorised to sign for and on behalf of Entity / Organisation:

Name		Designation	
Signature		Date	

TRANSNET-REF-BUNDLE-05652

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 6 : SIGNING POWER – RESOLUTION OF BOARD OF DIRECTORS

NAME OF ENTITY: _____

It was resolved at a meeting of the Board of Directors held on _____ that

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

in his/her capacity as indicated above is/are hereby authorised to enter into, sign, execute and complete any documents relating to Proposals and/or Agreements for the supply of Services.

FULL NAME _____ _____
SIGNATURE CHAIRMAN

FULL NAME _____ _____
SIGNATURE SECRETARY

TRANSNET-REF-BUNDLE-05653

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 7 : CERTIFICATE OF ACQUAINTANCE WITH RFP DOCUMENTS

NAME OF ENTITY:

_____

I/We _____

do hereby certify that I/we acquainted myself/ourselves with all the documentation comprising this RFP and all conditions contained therein, as laid down by Transnet SOC Ltd for the carrying out of the proposed supply/service/works for which I/we submitted my/our response.

I/We furthermore agree that Transnet SOC Ltd shall recognise no claim from me/us for relief based on an allegation that I/we overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating my/our offered prices or otherwise.

SIGNED at _____ on this _____ day of _____ 2012

_____ _____

SIGNATURE OF WITNESS SIGNATURE OF RESPONDENT

TRANSNET-REF-BUNDLE-05654

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 8 : GENERAL BID CONDITIONS - SERVICES

Refer General Bid Conditions attached hereto

TRANSNET-REF-BUNDLE-05655

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER FOR A PERIOD OF 9 MONTHS

SECTION 9 : MASTER AGREEMENT PROFESSIONAL SERVICES

Refer Form Professional Services attached hereto.

Respondents should note the obligations as set out in the Master Agreement Professional Services

TRANSNET-REF-BUNDLE-05656

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 10 : RFP DECLARATION FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for bid clarification purposes;
2. we have received all information we deemed necessary for the completion of this Request for Proposal [RFP];
3. at no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;
4. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from bidders in responding to this RFP have been conducted in a fair and transparent manner; and
5. furthermore, we declare that a family, business and/or social relationship ***exists / does not exist*** *[delete as applicable]* between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group.

If such a relationship exists, Respondent is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/ PARTNER/SHAREHOLDER: ADDRESS:

_____

_____

_____

Indicate nature of relationship with Transnet:

_____

_____

[Failure to furnish complete and accurate information in this regard may lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet]

_____ _____

Respondent's Signature Date & Company Stamp

TRANSNET-REF-BUNDLE-05657

6. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

7. We accept that any dispute pertaining to this bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought. *[Refer "Important Notice to Respondents" overleaf].*

8. We further accept that Transnet reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

SIGNED at _____ on this _____ day of _____ 2012

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	
Place:	

TRANSNET-REF-BUNDLE-05658

IMPORTANT NOTICE TO RESPONDENTS

- **Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5,000,000.00 [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this value threshold, a complaint may be lodged with Transnet's Procurement Ombudsman for further investigation.**
- **It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference for the Transnet Procurement Ombudsman, details of which are available for review at Transnet's website www.transnet.net.**
- **An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to procurement.ombud@transnet.net**
- **For transactions below the R5,000,000.00 [five million S.A. Rand] threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division.**
- **All Respondents should note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a bidder on its List of Excluded Bidders.**

TRANSNET-REF-BUNDLE-05659

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 11 : BREACH OF LAW

NAME OF ENTITY: _____

I/We _____

do hereby certify that *I/we* ***have/have not been*** found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

_____

_____

_____

DATE OF BREACH: _____

Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____ 20__

_____ _____

SIGNATURE OF WITNESS SIGNATURE OF RESPONDENT

TRANSNET-REF-BUNDLE-05660

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 12 : BID CLARIFICATION REQUEST FORM

RFP No: GSM/12/05/0447

RFP deadline for questions / bid clarifications: **Before 12:00 on 05th June 2012**

TO:	Transnet SOC Ltd
ATTENTION:	Transnet Corporate Centre
EMAIL	Luqmaan.NoorMoosa@transnet.net
DATE:	_____
FROM:	_____
	_____

RFP Bid Clarification No *[to be inserted by Transnet]* GSM/12/05/0447

REQUEST FOR BID CLARIFICATION

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

TRANSNET-REF-BUNDLE-05661

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 13 : SUPPLIER CODE OF CONDUCT

Transnet aims to achieve the best value for money when buying or selling goods and/or obtaining services. This however must be done in an open and fair manner that supports and drives a competitive economy. Underpinning our process are several acts and policies that any supplier dealing with Transnet must understand and support. These are:

- The Transnet Procurement Procedures Manual [**PPM**];
- Section 217 of the Constitution - the five pillars of Public PSCM [Procurement and Supply Chain Management]: fair, equitable, transparent, competitive and cost effective;
- The Public Finance Management Act [**PFMA**];
- The Broad Based Black Economic Empowerment Act [**B-BBEE**]; and
- The Prevention and Combating of Corrupt Activities Act.

This Code of Conduct has been included in this RFP to formally apprise prospective Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

Prohibition of Bribes, Kickbacks, Unlawful Payments, and Other Corrupt Practices

Transnet is in the process of transforming itself into a self-sustaining State Owned Company [SOC], actively competing in the logistics industry. Our aim is to become a world class, profitable, logistics organisation. As such, our transformation is focused on adopting a performance culture and to adopt behaviours that will enable this transformation.

1. *Transnet will not participate in corrupt practices and therefore expects its Suppliers to act in a similar manner.*
    - Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with and payments to our Suppliers.
    - Employees must not accept or request money or anything of value, directly or indirectly, to:
        - illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
        - win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
        - gain an improper advantage.
    - There may be times when a Supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our Suppliers to use our "Tip-offs Anonymous" Hot line to report these acts [0800 003 056].

TRANSNET-REF-BUNDLE-05662

2. *Transnet is firmly committed to the ideas of free and competitive enterprise.*
    - Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust.
    - Transnet does not engage with non-value adding agents or representatives solely for the purpose of increasing B-BBEE spend [fronting].

3. *Transnet's relationship with Suppliers requires us to clearly define requirements, exchange information and share mutual benefits.*
    - Generally, Suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our Suppliers, we will not tolerate any illegal activities. These include, but are not limited to:
        - misrepresentation of their product [e.g. origin of manufacture, specifications, intellectual property rights];
        - collusion;
        - failure to disclose accurate information required during the sourcing activity [e.g. ownership, financial situation, B-BBEE status];
        - corrupt activities listed above; and
        - harassment, intimidation or other aggressive actions towards Transnet employees.
    - Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the Supplier is expected to participate in an honest and straight forward manner.
    - Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

Conflicts of Interest

A conflict of interest arises when personal interests or activities influence [or appear to influence] the ability to act in the best interests of Transnet.

- Doing business with family members
- Having a financial interest in another company in our industry

TRANSNET-REF-BUNDLE-05663

RFP FOR THE APPOINTMENT OF ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

FOR A PERIOD OF 9 MONTHS

SECTION 14 : NON-DISCLOSURE AGREEMENT [NDA]

Complete and sign the Non-Disclosure Agreement attached hereto

REPORT 2(A) – PART D – EXHIBIT 2

TRANSNET

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF HEDGING FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

RFP NUMBER	**GSM/15/05/1265**
ISSUE DATE:	**06 May 2015**
CLOSING DATE:	**08 May 2015**
CLOSING TIME:	**12:00**
BID VALIDITY PERIOD:	**120 days Business Days from Closing Date**

SCHEDULE OF BID DOCUMENTS

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RFP ANNEXURES:

ANNEXURE A	TECHNICAL PREQUALIFICATION
ANNEXURE B	SUPPLIER DEVELOPMENT VALUE SUMMARY
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RFP APPENDICES:

APPENDIX (i)	SD GUIDELINES
APPENDIX (ii)	GENERAL BID CONDITIONS
APPENDIX (iii)	SERVICES STANDARD TERMS AND CONDITIONS OF CONTRACT
APPENDIX (iv)	NON DISCLOSURE AGREEMENT SERVICES
APPENDIX (v)	SUPPLIER INTEGRITY PACT

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 1: NOTICE TO BIDDERS

1 INVITATION TO BID

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity**, **Respondent** or **Bidder**].

DESCRIPTION	The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead and Underwrite the Equivalent Syndicate ZAR Loan for a period of fourteen (14) years.
BID FEE AND BANKING DETAILS	This RFP is issued free of charge.
INSPECT / COLLECT DOCUMENTS FROM	This RFP will be emailed to potential bidders.
ISSUE DATE AND COLLECTION DATE DEADLINE	This RFP will be emailed to potential bidders.
COMPULSORY/NON COMPULSORY BRIEFING SESSION	No briefing session will be held.
CLOSING DATE	**12:00 on Friday 08 May2015** Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
VALIDITY PERIOD	**120 Business Days from Closing Date** Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.

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

2 FORMAL BRIEFING

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 6 *[Communication]* below:

3 PROPOSAL SUBMISSION

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

The Secretariat, Transnet Acquisition Council

RFP No:	GSM/15/05/1265
Description	The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead and Underwrite the Equivalent Syndicate ZAR Loan for a period of fourteen (14) years.
Closing date and time:	08 May 2015 at 12:00
Closing address	*[Refer to options in paragraph 4]*

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

4 DELIVERY INSTRUCTIONS FOR RFP

4.1 Delivery by hand

If delivered by hand, the envelope is must be deposited in the Transnet tender box which is located at the main entrance of the Office Block, Carlton Centre, 150 Commissioner Street, Johannesburg, and must be addressed as follows:

THE SECRETARIAT
TRANSNET ACQUISITION COUNCIL
CARLTON CENTRE
TENDER BOX
OFFICE BLOCK FOYER
150 COMMISSIONER STREET
JOHANNESBURG 2001

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

b) It should also be noted that the above tender box is located at the street level outside the main entrance in Commissioner Street and is accessible to the public 24 hours a day, 7 days a week.

4.2 Dispatch by courier

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

THE SECRETARIAT
TRANSNET ACQUISITION COUNCIL
48TH FLOOR
CARLTON CENTRE
OFFICE BLOCK
150 COMMISSIONER STREET
JOHANNESBURG

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

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

4.5 The responses to this RFP will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.

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

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

In terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

5.1 B-BBEE Joint Ventures or Consortiums

Respondents who would wish to respond to this RFP as a Joint Venture [**JV**] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must

also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

5.2 Subcontracting

Transnet fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, EMEs and QSEs including any companies designated as B-BBEE Facilitators[1].

A person awarded a contract may not subcontract more than 25% [twenty-five percent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

5.3 B-BBEE Improvement Plan

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE rating. Respondents are therefore requested to indicate the extent to which they will maintain or improve their B-BBEE status over the contract period.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals by completion of ***Annexure D*** appended hereto. *[Refer to Section* 10 and *Annexure D for further instructions]*

5.4 Supplier Development Initiatives

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

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

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[1] The Minister of the Department of Trade and Industry has the power to designate certain Organs of State or Public Entities as B-BBEE Facilitators. For example, the South African National Military Veterans' Association (SANMVA) has been designated as a B-BBEE Facilitator. As such they will be treated as having rights of ownership held 100% by Black People, 40% by Black Women and 20% by Black designated groups.

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

The tenderer must provide a definition of what the contract value will be and provide a value which will be used for the measurement of the SD delivered against the contract value for the duration of the contract. Transnet will in the negotiation stage finalise the contract value definition and the final value that will be used.

*All Respondents must refer to Section 8 for instructions and complete Section 9 [**Declaration of Supplier Development Commitments**] as this is a mandatory returnable document. In addition, Respondents are required to submit a Supplier Development Plan and SD Value Summary, **Annexure B** and **Annexure C** as these are required as essential returnable documents.*

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

The commitments made by the successful Respondents will be incorporated as a term of the contract and monitored for compliance.

6 COMMUNICATION

6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted to Suellen Du Plessis before **12:00 on 07 May 2015**, substantially in the form set out in Section 6 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the **correct** contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.

6.2 After the closing date of the RFP, a Respondent may only communicate with the Secretariat of the Transnet Acquisition Council, at telephone number 011 308 3528/3522, email TAC.SECRETARIAT@transnet.net or facsimile number 011 308 3967 on any matter relating to its RFP Proposal.

6.3 Respondents are to note that changes to its submission will not be considered after the closing date.

Respondents are warned that a Proposal will be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with Transnet in the future.

7 CONFIDENTIALITY

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

8 INSTRUCTIONS FOR COMPLETING THE RFP

8.1 Proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.

8.2 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Proposal.

8.3 Both sets of documents are to be submitted to the address specified in paragraph 4 above, and Bidders must ensure that the original and copies (where applicable) are identical in all respects as Transnet will not accept any liability for having disqualified a bidder for failing to provide a mandatory returnable document in either the original or the copy of the RFP albeit that it was included in the other.

8.4 A CD copy of the RFP must also be submitted. Please provide files in MS WORD/Excel format, not PDF versions, noting that the signed original set will be legally binding.

8.5 **All returnable documents tabled in the Proposal Form [Section 4] must be returned with your Proposal.**

8.6 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.

8.7 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions (Appendix ii), alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

9 COMPLIANCE

The successful Respondent [hereinafter referred to as the **Service Provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

10 DISCLAIMERS

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Transnet reserves the right to:

10.1 modify the RFP's Services and request Respondents to re-bid on any such changes;

10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;

10.3 disqualify Proposals submitted after the stated submission deadline [Closing Date];

10.4 not necessarily accept the lowest priced Proposal or an alternative bid;

10.5 reject all Proposals, if it so decides;

10.6 withdraw the RFP on good cause shown;

10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;

10.8 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;

10.9 split the award of the contract between more than one Service Provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;

10.10 make no award of a contract;

10.11 should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract.

Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

11 LEGAL REVIEW

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

Transnet urges its clients, suppliers and the general public

to report any fraud or corruption to

TIP-OFFS ANONYMOUS : 0800 003 056

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 2: SCOPE OF REQUIREMENTS

1 SCOPE OF REQUIREMENTS

The following are the scope of requirements:

1.1 Cross Currency Swap and Contingent Credit Default Swap

- The bidder must act as sole hedge counterparty to the Company in connection with the Loan on the terms of the Transaction.
- The bidder must hedge each draw-down of the Loan at or about the time of each draw-down by way of entering into a cross-currency swap.
- The bidder must execute the credit contingent structure (either in a form of a Credit Default Swap Overlay or a Contingent Credit Default Swap), up to an aggregate cross-currency swaps notional amount of US$1.5billion; and
- The bidder must pre-hedge the Transaction with effect from the date hereof, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of the bidder.

1.2 Loan Syndication

- The bidder must lead and manage the raising of $1.5 billion, ZAR equivalent facility for up to 15 year tenor with amortising profile with 54 month grace period.
- The bidder must co-ordinate the production of appropriate information materials by the Company for the prospective lenders, including due diligence requirements and bank presentations, where appropriate;
- The bidder shall (where appropriate) set up and maintain secured data-dissemination websites.
- The bidder must be a liaison between Company, lenders and legal counsel in order to establish optimal and consensus financing terms and an efficient and streamlined documentation negotiation process for the Facilities; and

  The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.
- The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.

2 GREEN ECONOMY / CARBON FOOTPRINT

Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

3 GENERAL SERVICE PROVIDER OBLIGATIONS

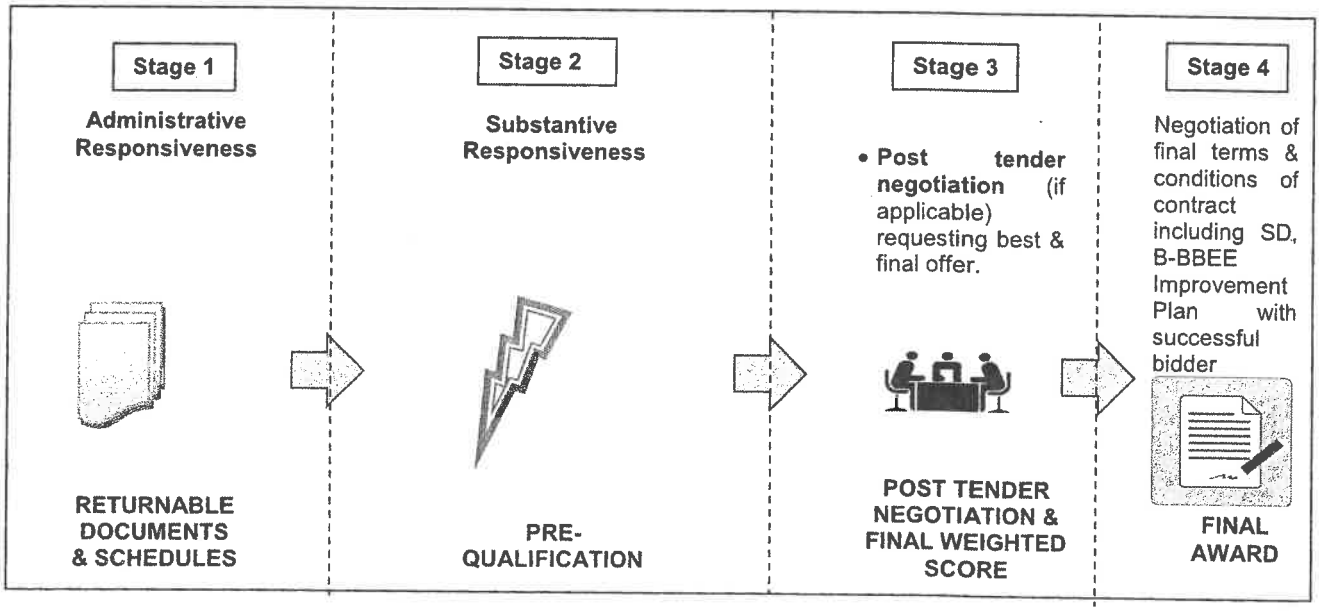
3.1 The Service Provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.

3.2 The Service Provider(s) must comply with the requirements stated in this RFP.

4 EVALUATION METHODOLOGY

Transnet will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:

Please note:
As this is a Treasury transaction for hedging requirements, preference (i.e. 80/20 or 90/10) in accordance with the PPPFA and PPM will not be applicable.



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different stages of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must therefore not be interpreted to mean that bidders have necessarily passed any previous stage(s).

4.1 STAGE ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative Responsiveness Check	RFP Reference
• Whether the Bid has been lodged on time	*Section 1 paragraph 3*
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	*Section 4*
• Verify the validity of all returnable documents	*Section 4, page 19 and 20*

The test for Administrative Responsiveness [Stage One] must be passed for a Respondent's Proposal to progress to Stage Two for Substantive Responsiveness Check

4.2 STAGE TWO: Test for Substantive Responsiveness to RFP

The test for substantive responsiveness to this RFP will include the following:

Substantive Responsiveness Check	RFP Reference
• Whether any general pre-qualification criteria set by Transnet, have been met	*Section 1 paragraphs 2.2, 6, 10.3* *Section 4 – validity period* *General Bid Conditions - clause 19* *Sections 10, 11*
• Whether the Bid contains a priced offer	*Section 3*
• Whether the Bid materially complies with the scope and/or specification given	*All Sections*
• Annexure A: Technical Pre-qualification	*Section 2 – Scope of Work*
• Whether the Bid contains a commitment that the monetary value of all SD initiatives to be undertaken by the Respondent will not be less than 35 % [thirty five percent] of the contract value.	*Section 9*

The test for substantive responsiveness [Stage Two] must be passed for a Respondent's Proposal to progress to Stage Three for final evaluation (Price and B-BBEE)

5 STAGE THREE: Post Tender Negotiations (if applicable)

Transnet reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations.

6 STAGE FOUR: Final Contract Award

Transnet will negotiate the final terms and condition the contract with the successful Respondent(s). This may include aspects such as Supplier Development, the B-BBEE Improvement Plan, price and delivery. Thereafter the final contract will be awarded to the successful Respondent(s).

IMPORTANT NOTICE TO RESPONDENTS

Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5million [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this threshold, a complaint may be lodged with the Ombudsman for further investigation. The Ombudsman reserves the right to refer the complaint to an external service provider for investigation.

It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference OF the Ombudsman which are available for review at Transnet's website www.transnet.net.

An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to procurement.ombud@transnet.net.

For transactions below the abovementioned threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division/Specialist Unit.

Respondents are to note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a Bidder on its List of Excluded Bidders.

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 3: PRICING

Please indicate each part of the Transaction prices based on the table below:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Default Swap Overlay (bps)	Credit Contingent Default Swap (bps)

For the avoidance of doubt:

a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto,

b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded at each Loan drawn-down.

1 SERVICE LEVELS

1.1 An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.

1.2 Transnet will have quarterly reviews with the Service provider's account representative on an on-going basis.

1.3 Transnet reserves the right to request that any member of the Service provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.

1.4 The Service provider must provide a telephone number for customer service calls.

1.5 Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

Acceptance of Service Levels:

YES		NO	

SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

_____

_____

2 _____

Name _____

_____

_____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 4: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

I/We_____

[name of entity, company, close corporation or partnership] of *[full address]*

_____

_____

carrying on business trading/operating as

_____

represented by_____

in my capacity as _____

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated _____to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with shortlisted bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to supply the abovementioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Transnet's:

(i) Terms and Conditions of Contract - Services

(ii) General Bid Conditions – Services ; and

(iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award/intent, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the **Letter of Intent**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Services within 4 [four] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period of 14 [fourteen] years only.

Furthermore, I/we agree to a penalty clause/s to be negotiated with Transnet, which will allow Transnet to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Services due to non-performance by ourselves, failure to meet Supplier Development and/or B-BBEE Improvement Plan commitments. A penalty of up to 100% of the outstanding portion of the Supplier Development commitment will be applied and Transnet reserves the right to set this off against any payment due to the Respondent. In addition, I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Transnet with cause for cancellation.

ADDRESS FOR NOTICES

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

_____

Facsimile:

_____

Address:

_____

_____

_____

NOTIFICATION OF AWARD OF RFP

As soon as possible after approval to award the contract(s), the successful Respondent [**the Service provider**] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

VALIDITY PERIOD

Transnet requires a validity period of 120 [one hundred and twenty] Business Days from closing date against this RFP.

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

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

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

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

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

_____

_____

_____

RETURNABLE DOCUMENTS

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. **Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

a) Mandatory Returnable Documents

Failure to provide all Mandatory Returnable Documents at the closing date and time of this tender <u>will</u> result in a Respondent's disqualification. Bidders are therefore urged to ensure that <u>all</u> these documents are returned with their Proposals.

Please confirm submission of the mandatory Returnable Documents detailed below by so indicating [Yes or No] in the table below:

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 3 : Pricing	
ANNEXURE A : Technical Pre-Qualification	
SECTION 9 : Declaration of Supplier Development Commitments	
ANNEXURE B : Supplier Development Value Summary	

b) **Essential Returnable Documents**

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **Essential Returnable Documents** as detailed below.

Failure to provide all Essential Returnable Documents may result in a Respondent's disqualification at Transnet's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

Please confirm submission of these essential Returnable Documents by so indicating [Yes or No] in the table below:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
SECTION 4 : Proposal Form and List of Returnable documents	
- Valid and original, or a certified copy, of your entity's B-BBEE Accreditation Certification. Note: failure to provide these required documents at the closing date and time of the RFP will result in an automatic score of zero being allocated for preference	
- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Original and valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	
SECTION 5 : RFP Declaration and Breach of Law Form	
SECTION 11 : Vendor Application Form	
Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	
- Certified copies of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)	
- Certified copies of the company's shareholding/director's portfolio	
- Entity's letterhead	
- Certified copy of valid VAT Registration Certificate	
- ANNEXURE B : Supplier Development Plan	
ANNEXURE D : B-BBEE Improvement Plan	

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE Verification Certificate, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [**the Agreement**] and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof, including but not limited to the documents stated below and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise.

Bidders furthermore agree that Transnet SOC Ltd shall recognise no claim from them for relief based on an allegation that they have overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating their offered prices or otherwise.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid which they intend to respond on, before submitting the bid. The Bidder agrees that he/she will have no claim based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

1 General Bid Conditions
2 Terms and Conditions of Contract for the supply of Services to Transnet
3 Supplier Integrity Pact
4 Non-disclosure Agreement
5 Supplier Development initiatives included in this RFP
6 Vendor Application Form* and all supporting documents (first time vendors only)

Alternatively, for all existing vendors, please provide vendor number(s) here:

Transnet Operating Division	Unique Vendor Number	Yes / No
Transnet Group		
TFR, etc.		

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s).

SIGNED at _____ on this _____ day of _____ 20___

SIGNATURE OF WITNESSES

1 _____

Name _____

2 _____

Name _____

ADDRESS OF WITNESSES

_____

_____

_____

_____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 5: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: _____

We _____ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;

2. we have received all information we deemed necessary for the completion of this Request for Proposal [**RFP**];

3. we have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Services as well as Transnet information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.

4. at no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;

5. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner; and

6. furthermore, we declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid.

7. In addition, we declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of the Transnet Group.

8. If such a relationship as indicated in paragraph 6 and/or 7 exists, the Respondent is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/
PARTNER/SHAREHOLDER: ADDRESS:

_____

_____

_____

Indicate nature of relationship with Transnet:

_____

_____

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet]

9. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

10. We accept that any dispute pertaining to this Bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.

11. We further accept that Transnet reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

BREACH OF LAW

12. We further hereby certify that *I/we* (the bidding entity and/or any of its directors, members or partners) ***have/have not been*** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.
    Where found guilty of such a serious breach, please disclose:
    NATURE OF BREACH:
    _____
    _____
    _____
    _____
    DATE OF BREACH:_____
    Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____ 20___

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 6: RFP CLARIFICATION REQUEST FORM

RFP No: GSM/15/05/1265

RFP deadline for questions / RFP Clarifications: Before 12:00 on 07 May 2015.

TO:	Transnet SOC Ltd
ATTENTION:	Suellen Du Plessis
EMAIL	Suellen.DuPLessis@transnet.net
DATE:	_____
FROM:	_____
	_____

RFP Clarification No *[to be inserted by Transnet]* .....

REQUEST FOR RFP CLARIFICATION

_____

_____

_____

_____

_____

_____

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RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 7: B-BBEE STATUS

1. B-BBEE STATUS AND SUBCONTRACTING

1.1 Subcontracting:

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

If YES, indicate:

(i) What percentage of the contract will be subcontracted? .....%

(ii) The name of the subcontractor .....

(iii) The B-BBEE status level of the subcontractor .....

(iv) Is the subcontractor an EME? YES/NO

1.2 Declaration with regard to Company/Firm

(i) Name of Company/Firm.....

(ii) VAT registration number.....

(iii) Company registration number.....

(iv) Type of Company / Firm [TICK APPLICABLE BOX]

☐Partnership/Joint Venture/Consortium

☐One person business/sole propriety

☐Close Corporations

☐Company (Pty) Ltd

(v) Describe Principal Business Activities

.....

.....

(vi) Company Classification [TICK APPLICABLE BOX]

☐Manufacturer

☐Supplier

☐Professional Service Provider

☐Other Service Providers, e.g Transporter, etc

(vii) Total number of years the company/firm has been in business.....

BID DECLARATION

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

(i) The information furnished is true and correct.

(ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.

(iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:

(a) disqualify the person from the bidding process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) restrict the Bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or

(e) forward the matter for criminal prosecution.

WITNESSES:

1. .....

2. .....

SIGNATURE OF BIDDER

DATE:.....

COMPANY NAME: .....

ADDRESS:.....

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 8 : SUPPLIER DEVELOPMENT INITIATIVES

1.1 Aim and Objectives

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

The key focuses of the NGP include:

- increasing employment intensity of the economy
- addressing competitiveness
- balancing spatial development of rural areas and poorer provinces
- reducing the carbon intensity of the economy
- creating opportunities in improving regional and global cooperation
- enabling transformation that benefits a wider range of social actors in society e.g. workers, rural communities, youth and women

Transnet, as a State Owned Company [**SOC**], plays an important role to ensure these objectives are achieved. Therefore, the purchasing of goods and services needs to be aligned to Government's objectives for developing and transforming the local supply base. Transnet's mission is to transform its supplier base by engaging in targeted supplier development initiatives to support localisation and industrialisation whilst providing meaningful opportunities for Black[2] South Africans with a particular emphasis on:

- Youth [16 to 35 year olds]
- Black women
- People with disabilities
- Small businesses
- Rural integration

1.2 Supplier Development [SD]

To facilitate the implementation of Supplier Development initiatives, Transnet has adapted an existing framework from the Department of Public Enterprises [**DPE**]. This framework allows for a basic set of principles to be applied to appropriately targeted SD initiatives. Supplier development initiatives aim to build local suppliers who are competitive through building capability and capacity. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix [**IC³ Matrix**]. Currently there are four quadrants of SD initiatives which Transnet considers according to the IC³ Matrix. This RFP has been identified as strategic, involving high commercial leverage and high value.

---

[2] "**Black**" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

Accordingly, Respondents are required to provide a commitment of the Supplier Development initiative they will undertake during the contract period in the **Supplier Development Value Summary**. In addition, Transnet requires that all Respondents submit a **Supplier Development Plan** demonstrating how they will discharge their commitments made in the Supplier Development Value Summary. The contract which will be concluded with the successful bidder will incorporate the SD undertakings made in the abovementioned documents as a term of the contract.

a) For a detailed understanding of the IC³ Matrix, the respective SD initiatives and their objectives, please refer to the "Supplier Development Guidelines" appended hereto as Appendix i. This document must be used as a guideline to complete the SD Plan.

b) The following Supplier Development [**SD**] focus areas have been identified, namely:

Category	Description
Transfer of Technology and Intellectual Property Rights [**IPR**]	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Preservation	Number of jobs created or preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

Green economy / carbon footprint: The potential reduction of the economy's carbon intensity [i.e. creation of a greener economy] should be regarded as a key priority within all the above SD Categories and for all proposed SD initiatives

c) The **Supplier Development Plan** is to be submitted as a separate document, developed in line with the criteria set out in the **Supplier Development Value Summary**. The Supplier Development Plan is a detailed narrative document explaining the Respondent's Bid value as summarised in the Supplier Development Value Summary. The SD Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This SD Plan should also provide an overview of what you intend to achieve, when, and the mechanisms whereby you will achieve those objectives. The SD Value Summary and SD Plan will represent a binding commitment on the part of the successful Respondent.

Annexure B must be completed, indicating by cross-reference the detailed areas which have been addressed in your SD Plan for each of the evaluation criteria listed in paragraph 1.2 (b) above, together with the Value Indicators therefore.

Notes for completion of the SD Plan:

(i) Respondents are required to address each of the aspects under the detailed SD Description as a minimum for submission. This is not an exhaustive list however, and Respondents must not be limited to these choices when compiling each section.

(ii) Please provide detailed calculations to illustrate how your estimated Rand values have been derived.

(iii) Respondents are required to provide an electronic copy [CD] of the completed Annexure B as part of the SD Plan submission.

1.3 **Additional contractual requirements**

Should a contract be awarded through this RFP process, the successful Respondent(s) [hereinafter referred to as **the Supplier**] will be contractually committed, *inter alia*, to the following conditions:

a) The Supplier will be required to submit a **Supplier Development Implementation Plan** within 45 [forty-five] calendar days from the signature date of a Letter of Intent [**LOI**]. This Implementation Plan represents additional detail in relation to the SD Plan providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to undertake and deliver during the term of the contract. Specific milestones, timelines and targets will be recorded to ensure that the Implementation Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.

b) The Implementation Plan may require certain additions or updates to the initial SD Plan in order to ensure that Transnet is satisfied that development objectives will be met.

c) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Supplier's compliance with its stated SD commitments.

d) The Supplier will be required to provide:

(i) monthly status updates to Transnet for each SD initiative. [Detailed requirements will be provided by Transnet];

(ii) quarterly status reports for Transnet and the DPE. [Detailed reporting requirements will be provided by Transnet]; and

(iii) a final Supplier Development report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all SD components plus auditable confirmation of the Rand value contribution associated with each such SD commitment.

e) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.

f) The Supplier will be required to submit this Implementation Plan to Transnet in writing, within 45 [forty-five] calendar days after signature of a Letter of Intent [**LOI**], where after both parties must reach an agreement [signed by both parties] within 20 [twenty] calendar days. Transnet will reserve the right to reduce or increase the number of days in which the Supplier must submit its Implementation Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.

g) The contract will be conditional on agreement being reached by the parties on the Implementation Plan submitted by the Supplier. Therefore failure to submit or thereafter to agree to the

Implementation Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.

h) Failure to adhere to the milestones and targets defined in an Implementation Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

1.4 Supplier Development Returnable Documents

Attached herewith is the following documentation:

- **Declaration of Supplier Development Commitments – Section 9 [mandatory]**
- **SD Plan – Annexure C [essential]**
- **SD Value Summary – Annexure B [mandatory]**

Respondents are to note whether the abovementioned documents are listed as mandatory or essential returnable documents in Section 4 to this RFP as failure to submit, or to submit an incomplete mandatory returnable document will result in disqualification of your Proposal. Failure to submit an essential returnable document may result in disqualification of your Proposal.

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 9 : DECLARATION OF SUPPLIER DEVELOPMENT COMMITMENTS

I/We _____

hereby **agree/do not agree** to commit that not less than 35% of the contract value will be spent cumulatively on Supplier Development Initiatives. This pre-qualification criterion must be discharged against the following Supplier Development categories as outlined in the Supplier Development Value Summary [Annexure B]:

- Transfer of Technology and Intellectual Property Rights
- Skills Development
- Job Preservation
- Small Business Promotion

I/We do hereby certify that the Supplier Development commitments made in relation to this RFP are solely in relation to this transaction and are not duplicated in relation to any other contracts that I/we have secured with any other organ of state including other State Owned Companies.

Furthermore, I/we do hereby declare that this undertaking also applies to any other contracts that I may have secured with Transnet including other Transnet Operating Divisions/Specialist Units. For the purposes of verification of this undertaking, the following is a list of contracts with Supplier Development commitments that I/we have secured with Transnet:

_____

_____

_____

SIGNED at _____ on this _____ day of _____ 20___

_____ _____

SIGNATURE OF WITNESS SIGNATURE OF RESPONDENT

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 10 : B-BBEE IMPROVEMENT PLAN

Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating and requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate whether they will maintain or improve their BBBEE status over the contract period.

Additional contractual requirements

Should a contract be awarded through this RFP process, the successful Respondent(s) may be contractually committed, *inter alia*, to the following conditions:

a) The original B-BBEE Improvement Plan may require certain additions or updates in order to ensure that Transnet is satisfied that developmental objectives will be met.

b) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow Transnet access to information to measure and verify the Supplier's compliance with its stated B-BBEE Improvement commitments.

c) The Supplier will be required to provide:

   (i) quarterly status reports for Transnet; and

   (ii) a final B-BBEE Improvement Plan report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all B-BBEE Improvement components.

d) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.

Respondents are requested to submit their B-BBEE Improvement Plan as an **additional document** with their Proposals by completion of ***Annexure D*** appended hereto. *[Refer Annexure D for further instructions]*

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

Section 11 : VENDOR APPLICATION FORM

Respondents are to furnish the following documentation and complete the Vendor Application Form below:

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details [**with bank stamp]**
2. **Certified copy** of Identity Document(s) of Shareholders/Directors/Members *[where applicable]*
3. **Certified copies** of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)
4. **Certified copies** of the company's shareholding/director's portfolio
5. **Original** letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate [RSA entities only]
7. **Certified** copy of VAT Registration Certificate [RSA entities only]
8. **A valid and original** B-BBEE Verification Certificate / sworn affidavit **or certified copy** thereof meeting the requirements for B-BBEE compliance as per the B-BBEE Codes of Good Practice;
9. **Certified copy** of valid Company Registration Certificate [if applicable]

Note: ***No contract shall be awarded to any South African Respondent whose tax matters have not been declared by SARS to be in order.***

Vendor Application Form

Entity's trading name	
Entity's registered name	
Entity's Registration Number or ID Number if a Sole Proprietor	
Form of entity [√] CC Trust Pty Ltd Limited Partnership Sole Proprietor	
How many years has your entity been in business?	
VAT number [if registered]	
Entity's telephone number	
Entity's fax number	
Entity's email address	
Entity's website address	

Respondent's Signature

Date & Company Stamp

Bank name		Branch & Branch code	
Account holder		Bank account number	
Postal address			Code
Physical address			Code
Contact person			
Designation			
Telephone			
Email			

Annual turnover range [last financial year]	< R5 m	R5 - 35 m	> R35 m
Does your entity provide	Products	Services	Both
Area of delivery	National	Provincial	Local
Is your entity a public or private entity		Public	Private
Does your entity have a Tax Directive or IRP30 Certificate		Yes	No
Main product or services [e.g. Stationery/Consulting]			

Complete B-BBEE Ownership Details:

% Black ownership	% Black women ownership	% Disabled Black ownership	% Youth ownership

Does your entity have a B-BBEE certificate	Yes	No
What is your B-BBEE status [Level 1 to 9 / Unknown]		
How many personnel does the entity employ	Permanent	Part time

If you are an existing Vendor with Transnet please complete the following:

Transnet contact person	
Contact number	
Transnet Operating Division	

Duly authorised to sign for and on behalf of Entity / Organisation:

Name		Designation	
Signature		Date	

Respondent's Signature

Date & Company Stamp

REPORT 2(A) – PART D – EXHIBIT 3

8 MAY 2015

TRANSNET

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

J.P. Morgan response to Request for Proposals dated 6 May 2015

Kindly send all correspondence in connection with this proposal to:

Marc Hussey – Managing Director, Head Global Corporate Banking Sub-Saharan Africa
J.P. Morgan Johannesburg
Telephone: +27 11 507 0730
Mobile: +27 82 460 1940
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This material was prepared by an Associated Person. All questions related to swaps referenced in these materials must be directed to us.swaps.marketing@jpmorgan.com.

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

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1. Summary of RFP Response

Introduction

JPMorgan Chase Bank, N.A., Johannesburg Branch (**"JPMC** or **JP Morgan"**) is pleased to submit our proposal in response to Transnet SOC Ltd's (**"Transnet"** or **"the Company"**) Request for Proposal (**"RFP"**) dated 6 May 2015 for the provision of hedging of financial risks (interest rate, credit and currency risk) and to act as lead arranger for the syndicated ZAR12 billion loan (the "Loan") for a period of up to fifteen (15) years.

Please note that given the short time frame we have endeavored to respond as completely and fully as possible but kindly note the following:

- The terms of the RFP document do not accurately reflect the potential transactions as envisaged and appear to contemplate a straightforward supplier contractual arrangement. Accordingly, we have made certain amendments to reflect:
  - the correct nature and extent of the transactions being proposed;
  - that final terms are still subject to negotiation and agreement with Transnet; and
  - that all potential transactions are subject to the negotiation and conclusion of applicable documentation (terms sheets etc., confirmations etc.).
- Extensive negotiations between the parties to date have already resulted in substantial agreement on the key terms and principles, including confidentiality. Accordingly we have amended the RFP to align to these agreed terms. We attach the draft from of letter agreement relating to the hedging of financial risk and which we refer to in our mark-up as the "Letter Agreement".
- Certain matters we cannot commit to or represent or warrant due to global policy requirements. In these cases we have provided alternative assurances or representations which we believe should provide sufficient comfort to Transnet.

Further, JPMC's obligations under any transactions are subject to JPMC obtaining all credit, risk, market risk, compliance, legal and reputational approvals.

JPMC shall not be responsible for, and will not be deemed as, advising the Company or any other person or entity on the suitability or corporate implications ofany loan, any hedging or other transaction, performing on the Company's behalf due diligence investigations in connection with any loan or any transaction, nor giving the Company legal, accounting, taxation, regulatory, ratings or investment advice in relation to any loan or any transaction. JPMC and any of its affiliates, subsidiaries or employees shall have no liability to the Company or to any of its subsidiaries or affiliates or its or their respective directors, officers, employees, partners, shareholders or other security holders or creditors for any actions or omissions of such other advisors and including in respect of the advice of such any other advisors in relation to any transaction.

The provisions of the ISDA Master Agreement and confirmations of any transactions entered into thereunder shall prevail over the provisions of the RFP, including but not limited to, the Service Standard Terms and Conditions of Contract or General Bid Conditions ("RFP Documents"). Any breach by the parties of the terms and conditions of the RFP Documents shall not give rise to any rights to terminate any existing transactions under the ISDA Master Agreement between the parties.

Kindly note that our RFP response is valid for a period of 120 business days from 8 May 2015.

There may be occasions where JP Morgan needs to communicate with the working group regarding the proposed hedging and loan transactions in which case we will request permission to do so.

In response to the RFP, we have detailed our responses to the required sections below.

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

Section 1: Notice to Bidders; Sub Section 5.4: Supplier Development Initiatives

Definition of contract value

Transnet has requested we set out the 'contract value' to determine the value of the 35% of contract value to be attributable to supplier development initiatives. Below we set out how we have determined contract value.

Transnet is proposing to enter into a US$2.5billion loan facility with a committed first tranche of US$1.5billion and a further optional tranche of US$1billion at Transnet's option (the "**CBD Loan**") with China Development Bank ("**CDB**") to finance part of the Company's purchase of locomotives from China North Railways and China South Railways. In connection with this Loan, JP Morgan will act as sole hedge counterparty. Transnet will enter into a hedging transaction with JP Morgan in the form of a series of cross currency swaps and credit contingent structures in the form of Contingent Credit Default Swaps (the "**Transaction**").

As described in the attached form of Letter Agreement between JP Morgan and Transnet, Transnet will hedge each draw-down of the CDB Loan with JP Morgan at or about the time of each draw-down by way of entering into a cross-currency swap and a contingent credit default swap, up to an aggregate cross-currency swaps notional amount of US$1.5billion, subject to the market conditions, and the same number of credit contingent structures. Each part of the Transaction, subject to any changes in market conditions, such as liquidity and volatility, and provided there is no *force majeure*, will be priced based on the following charges from an agreed mid price:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Contingent Default Swap charge (bps)
12.9	7	-112.5

The value of the Transaction to JP Morgan is based on the estimated final profitability of the transaction. It is important to note that this will not be known at the outset as it will depend on market conditions and movements, as well as the ability of JP Morgan to risk manage the credit and market risk exposures arising from the cross-currency swap and a contingent credit default swap. The exposure generated is long-term exposure (the underlying CDB Loan has a 15-year final maturity date), although the greatest exposure and risk to JP Morgan arises when the loan is fully drawn and declines gradually over the 15-year tenor.

We also note that the profitability is based on our best assumption of future costs of capital. However the regulatory environment may (and will most likely) change and may impact the actual cost of the transaction, therefore impacting the final profitability.

Assuming correct risk management of these exposures and a stable regulatory environment we estimate the resulting value of the contract to JP Morgan to be in the region of R40 million, though, as noted, it may be higher or lower, and under certain instances may even be negative. Thirty-five percent (35%) of this amount equates to R14 million.

Separately, in respect of our role as lead arranger of the syndicated loan of up to R12 billion, the value to JP Morgan of this role is 0.2% of R12 billion, or R24 million. Thirty-five percent (35%) of this amount equates to R8.4 million.

Therefore we estimate 35% of the total contract value to be R22.4 million.

Section 1: Notice to Bidders; Sub Section 7: Confidentiality, and in Appendix iv – Non Disclosure Agreement

We refer to the terms of the attached Letter Agreement relating to confidentiality as set out in paragraphs 1 to 6 (both inclusive) and note that these are the terms that have been extensively negotiated and agreed with Transnet. For the avoidance of doubt, the terms of the Letter Agreement shall apply to the Transaction described therein.

Section 1: Notice to Bidders; Sub Section 8: Instructions for completing the RFP

In line with previous submissions to Transnet, we will send the hard-copies of the RFP response as requested and send an electronic version via email. For security protocol reasons we may not be able provide a CD.

Section 2: Scope of requirements; Sub Section 1.1 Cross Currency and Contingent Credit Default Swap and 1.2 Loan Syndication

In relation to the scope of work relating to the swaps and in relation to the loan syndication we understand and agree to the requirements in the RFP, but we wish to clarify in sub section 1.2 that we are arranging the loan syndication as lead manager but we are not proposing to underwrite the loan syndication. This change has been marked up in the RFP response. We propose a 0.2% fee on the loan notional to arrange.

Section 2: Scope of Requirements; Sub Section 5: Green economy/carbon footprint

JPMorgan Chase has designed policies that ensure environmental and human rights impacts are identified early, carefully evaluated and managed responsibly. Such policies not only promote positive environmental stewardship, but also highlight business opportunities to support investments in renewable energy, energy efficiency, sustainable water management, sustainable forestry and sustainable supply chains.

As a financial institution, our direct environmental impacts stem primarily from the operation of our corporate real estate, including office buildings, bank branches, data centers and other specialty use buildings. We strive to manage our operations in an efficient and sustainable manner, continually look for opportunities to improve our performance, find innovative solutions to environmental challenges and engage our employees in these efforts.

JPMorgan Chase has made commitments to reduce greenhouse gas emissions and water usage, improve energy efficiency, and manage waste responsibly. These commitments are detailed in the firm's Environmental and Social Policy Framework along with our broader approach to key issues such as climate change, biodiversity and human rights. We report our progress towards these goals in the firm's annual Corporate Responsibility Report.

Please refer to the following links for more information.

- GRI Index (environmental footprint data): www.jpmorganchase.com/corporateresponsibility
- Environmental Sustainability at JPMorgan Chase:

  www.jpmorganchase.com/corporate/Corporate-Responsibility/environment

Section 3: Pricing; Sub Section 1.1: Service Level

The designated JP Morgan account representatives under this RFP for Transnet are:

- Mr Frank Vein

- Executive Director, Global Corporate Banking Sub-Saharan Africa
- Telephone: +27 11 507 0727
- Mobile: +27 82 604 5460
- Email: frank.vein@jpmorgan.com

- The alternate is Mr Marc Hussey
  - Managing Director, Global Corporate Banking Sub-Saharan Africa
  - Telephone: +27 11 507 0730
  - Mobile: +27 82 460 1940
  - Email: marc.j.hussey@jpmorgan.com

Annexure C – Supplier Development Plan

We note that our Supplier Development Plan, sets out current supplier development initiatives related to the transaction, which already meet 35% of contract value. We note also that our future supplier development initiatives and associated budget over the next 5-years are expected to exceed the 35% of contract value to be spent on supplier development. However, we note this is a forecast and is not a contractual commitment at this point and the contractual terms in relation to the Supplier Development Plan are still to be negotiated, as reflected on page 16 of the marked-up RFP.

Appendix ii – General Bid Conditions - Services

Please refer to mark-up of the General Bid Conditions in the attached documents. We note that the conditions are more readily applicable to a straightforward supplier contractual arrangement and a number of the clauses are not applicable in this instance.

Appendix iii – Service Standard Ts and Cs of Contract

Please refer to mark-up of the Ts and Cs of the contract in the attached documents. We note that the terms and conditions are more readily applicable to a straightforward supplier contractual arrangement and a number of the clauses are not applicable in this instance. It is market standard to document terms of cross-border OTC derivative transactions by entering into the ISDA Master Agreement and Confirmations governing individual transactions, incorporating terms of the relevant sets of definitions published by the International Swaps and Derivatives Association, Inc. ("ISDA"). JP Morgan and Transnet have already signed an ISDA Master Agreement in 2009.In addition all terms relating to the ZAR syndicated loan are still to be negotiated and agreed between the parties.

Appendix v – Integrity Pact

We are attaching our Representation Letter relating to JPMorgan Chase's Global Anti-corruption Compliance Program which we believe should provide you with sufficient comfort. Unfortunately due to global policy considerations we are unable to sign up to your from of Integrity Pact.

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

2. RFP Document

Including the following:

- Returnable documents
  - Section 3 – Pricing,
  - Section 5: RFP Declaration and Breach of Law Form,
  - Section 11: Vendor Application Form, and
- Essential returnable documents
  - Section 4 – Proposal Form and List of Returnable Documents
  - Section 9: Declaration of Supplier Development Commitments

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

TRANSNET

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF HEDGING FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ARRANGE (~~AND UNDERWRITE~~) THE ~~EQUIVALENT~~ SYNDICATED ZAR12 BILLION LOAN FOR A PERIOD OF UP TO FIFTEEN (15) ~~FOURTEEN (14)~~ YEARS

RFP NUMBER	**GSM/15/05/1265**
ISSUE DATE:	**06 May 2015**
CLOSING DATE:	**08 May 2015**
CLOSING TIME:	**12:00**
BID VALIDITY PERIOD:	**120 days Business Days from Closing Date**

SCHEDULE OF BID DOCUMENTS

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RFP ANNEXURES:

ANNEXURE A	TECHNICAL PREQUALIFICATION
ANNEXURE B	SUPPLIER DEVELOPMENT VALUE SUMMARY
ANNEXURE C	SUPPLIER DEVELOPMENT PLAN
ANNEXURE D	B-BBEE IMPROVEMENT PLAN

RFP APPENDICES:

APPENDIX (i)	SD GUIDELINES
APPENDIX (ii)	GENERAL BID CONDITIONS
APPENDIX (iii)	SERVICES STANDARD TERMS AND CONDITIONS OF CONTRACT
APPENDIX (iv)	NON DISCLOSURE AGREEMENT SERVICES
APPENDIX (v)	SUPPLIER INTEGRITY PACT

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

Section 1: NOTICE TO BIDDERS

1 INVITATION TO BID

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent** or **Bidder**].

DESCRIPTION	The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead ~~and Underwrite~~ the ~~Equivalent~~ Syndicated ZAR Loan for a period of ~~fourteen (14)~~ years.
BID FEE AND BANKING DETAILS	This RFP is issued free of charge.
INSPECT / COLLECT DOCUMENTS FROM	This RFP will be emailed to potential bidders.
ISSUE DATE AND COLLECTION DATE DEADLINE	This RFP will be emailed to potential bidders.
COMPULSORY/NON COMPULSORY BRIEFING SESSION	No briefing session will be held.
CLOSING DATE	**12:00 on Friday 08 May2015** Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
VALIDITY PERIOD	**120 Business Days from Closing Date** Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.

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

2 FORMAL BRIEFING

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 6 *[Communication]* below:

3 PROPOSAL SUBMISSION

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

The Secretariat, Transnet Acquisition Council

RFP No:	GSM/15/05/1265
Description	The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead ~~and Underwrite~~ the ~~Equivalent~~ Syndicated ZAR Loan for a period of ~~fourteen (14)~~ years.
Closing date and time:	08 May 2015 at 12:00
Closing address	*[Refer to options in paragraph 4]*

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

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

4 DELIVERY INSTRUCTIONS FOR RFP

4.1 Delivery by hand

If delivered by hand, the envelope is must be deposited in the Transnet tender box which is located at the main entrance of the Office Block, Carlton Centre, 150 Commissioner Street, Johannesburg, and must be addressed as follows:

THE SECRETARIAT
TRANSNET ACQUISITION COUNCIL
CARLTON CENTRE
TENDER BOX
OFFICE BLOCK FOYER
150 COMMISSIONER STREET
JOHANNESBURG 2001

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

b) It should also be noted that the above tender box is located at the street level outside the main entrance in Commissioner Street and is accessible to the public 24 hours a day, 7 days a week.

4.2 Dispatch by courier

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

THE SECRETARIAT
TRANSNET ACQUISITION COUNCIL
48TH FLOOR
CARLTON CENTRE
OFFICE BLOCK
150 COMMISSIONER STREET
JOHANNESBURG

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

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

4.5 The responses to this RFP will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.

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

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

In terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

5.1 B-BBEE Joint Ventures or Consortiums

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must

TRANSNET-REF-BUNDLE-05714

also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

5.2 Subcontracting

Transnet fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, EMEs and QSEs including any companies designated as B-BBEE Facilitators[1].

A person awarded a contract may not subcontract more than 25% [twenty-five percent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

5.3 B-BBEE Improvement Plan

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE rating. Respondents are therefore requested to indicate the extent to which they ~~will~~ intend to maintain or improve their B-BBEE status over the contract period.

Respondents are requested to submit their indicative B-BBEE Improvement Plan as an additional document with their Proposals by completion of ***Annexure D*** appended hereto. *[Refer to Section* 10 and *Annexure D for further instructions]*

5.4 Supplier Development Initiatives

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

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

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[1] The Minister of the Department of Trade and Industry has the power to designate certain Organs of State or Public Entities as B-BBEE Facilitators. For example, the South African National Military Veterans' Association (SANMVA) has been designated as a B-BBEE Facilitator. As such they will be treated as having rights of ownership held 100% by Black People, 40% by Black Women and 20% by Black designated groups.

TRANSNET-REF-BUNDLE-05715

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

The tenderer must provide a definition of what the contract value will be and provide a value which will be used for the measurement of the SD delivered against the contract value for the duration of the contract. Transnet will in the negotiation stage finalise the contract value definition and the final value that will be used.

*All Respondents must refer to Section 8 for instructions and complete Section 9 [**Declaration of Supplier Development Commitments**] as this is a mandatory returnable document. In addition, Respondents are required to submit a Supplier Development Plan and SD Value Summary, **Annexure B** and **Annexure C** as these are required as essential returnable documents.*

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

The indicative commitments made by the successful Respondents will be incorporated as a term of the contract and monitored for compliance.

6 COMMUNICATION

6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted to Suellen Du Plessis before **12:00 on 07 May 2015**, substantially in the form set out in Section 6 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the **correct** contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.

6.2 After the closing date of the RFP, a Respondent may only communicate with the Secretariat of the Transnet Acquisition Council, at telephone number 011 308 3528/3522, email TAC.SECRETARIAT@transnet.net or facsimile number 011 308 3967 on any matter relating to its RFP Proposal.

6.3 Respondents are to note that changes to its submission will not be considered after the closing date.

Respondents are warned that a Proposal will be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with Transnet in the future.

7 CONFIDENTIALITY

7.1 All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Non-Disclosure Agreement (Appendix iv). All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence~~, Should the need however arise to divulge any information gleaned from provision of the Services, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet~~, provided that the Respondent may disclose such confidential information, or portions thereof: (a) at the request of any regulatory, supervisory or governmental authority, institution or department; (b) under Court process or pursuant to statutory requirement or regulation; (c) to the Respondents or its representatives auditors, external counsel & accountants, on a confidential basis; or (d) to affiliates or subsidiaries of JP Morgan Chase and Co and their

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

8 INSTRUCTIONS FOR COMPLETING THE RFP

8.1 Proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.

8.2 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Proposal.

8.3 Both sets of documents are to be submitted to the address specified in paragraph 4 above, and Bidders must ensure that the original and copies (where applicable) are identical in all respects as Transnet will not accept any liability for having disqualified a bidder for failing to provide a mandatory returnable document in either the original or the copy of the RFP albeit that it was included in the other.

8.4 A CD copy of the RFP must also be submitted. Please provide files in MS WORD/Excel format, not PDF versions, noting that the signed original set will be legally binding.

8.5 **All returnable documents tabled in the Proposal Form [Section 4] must be returned with your Proposal.**

8.6 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be an indicative offer, subject to negotiation and agreement between the parties. Any exceptions to this statement must be clearly and specifically indicated.

8.7 ~~Any~~ Additional conditions may ~~must~~ be embodied in an accompanying letter. ~~Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions (Appendix II), alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.~~

~~9 COMPLIANCE~~

~~The successful Respondent [hereinafter referred to as the Service Provider] shall be in full and complete compliance with any and all applicable laws and regulations.~~

10 DISCLAIMERS

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Transnet reserves the right to:

10.1 modify the RFP's Services and request Respondents to re-bid on any such changes;

10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;

10.3 disqualify Proposals submitted after the stated submission deadline [Closing Date];

10.4 not necessarily accept the lowest priced Proposal or an alternative bid;

10.5 reject all Proposals, if it so decides;

10.6 withdraw the RFP on good cause shown;

10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;

10.8 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;

10.9 split the award of the contract between more than one Service Provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;

10.10 make no award of a contract;

10.11 should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract.

Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

11 LEGAL REVIEW

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

Transnet urges its clients, suppliers and the general public

to report any fraud or corruption to

TIP-OFFS ANONYMOUS : 0800 003 056

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ ARRANGE THE ~~EQUIVALENT~~ SYNDICATE ZAR 12 Billion LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ UPTO FIFTEEN (15) YEARS

Section 2: SCOPE OF REQUIREMENTS

1 SCOPE OF REQUIREMENTS

The following are the scope of requirements:

1.1 **Cross Currency Swap and Contingent Credit Default Swap**

- The bidder must act as sole hedge counterparty to the Company in connection with the Loan of US$1.5billion China Development Bank on the terms of the Transaction. ("Loan")
- The bidder must hedge each draw-down of the Loan at or about the time of each draw-down by way of entering into a cross-currency swap.
- The bidder must execute the credit contingent structure (either in a form of a Credit Default Swap Overlay or a Contingent Credit Default Swap), up to an aggregate cross-currency swaps notional amount of US$1.5billion; and
- The bidder must pre-hedge the Transaction with effect from the date the contract is awarded ~~hereof~~, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of the bidder.

1.2 **Loan Syndication**

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

- The bidder must lead and manage the raising of $1.5 billion, ZAR equivalent facility for up to 15 year tenor with amortising profile with 54 month grace period.
- The bidder must co-ordinate the production of appropriate information materials by the Company for the prospective lenders, including due diligence requirements and bank presentations, where appropriate;
- The bidder shall (where appropriate) set up and maintain secured data-dissemination websites.
- The bidder must be a liaison between Company, lenders and legal counsel in order to establish optimal and consensus financing terms and an efficient and streamlined documentation negotiation process for the Facilities; and

  The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.
- The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.

2 GREEN ECONOMY / CARBON FOOTPRINT

Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

3 GENERAL SERVICE PROVIDER OBLIGATIONS

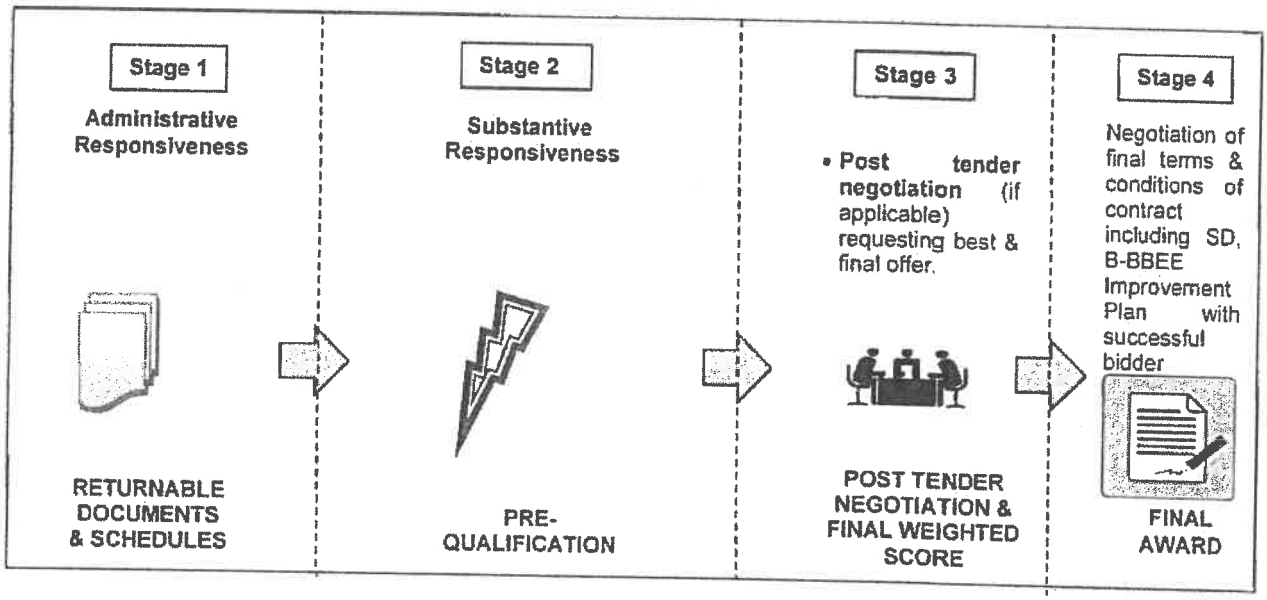
3.1 The Service Provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.

3.2 The Service Provider(s) must comply with the requirements stated in this RFP.

4 EVALUATION METHODOLOGY

Transnet will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:

Please note:
As this is a Treasury transaction for hedging requirements, preference (i.e. 80/20 or 90/10) in accordance with the PPPFA and PPM will not be applicable.



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different stages of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must therefore not be interpreted to mean that bidders have necessarily passed any previous stage(s).

4.1 STAGE ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative Responsiveness Check	RFP Reference
• Whether the Bid has been lodged on time	*Section 1 paragraph 3*
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	*Section 4*
• Verify the validity of all returnable documents	*Section 4, page 19 and 20*

The test for Administrative Responsiveness [Stage One] must be passed for a Respondent's Proposal to progress to Stage Two for Substantive Responsiveness Check

4.2 STAGE TWO: Test for Substantive Responsiveness to RFP

The test for substantive responsiveness to this RFP will include the following:

Substantive Responsiveness Check	RFP Reference
• Whether any general pre-qualification criteria set by Transnet, have been met	*Section 1 paragraphs 2.2, 6, 10.3* *Section 4 – validity period* *General Bid Conditions - clause 19* *Sections 10, 11*
• Whether the Bid contains a priced offer	*Section 3*
• Whether the Bid materially complies with the scope and/or specification given	*All Sections*
• Annexure A: Technical Pre-qualification	*Section 2 – Scope of Work*
• Whether the Bid contains a commitment that the monetary value of all SD initiatives to be undertaken by the Respondent will not be less than 35 % [thirty five percent] of the contract value.	*Section 9*

The test for substantive responsiveness [Stage Two] must be passed for a Respondent's Proposal to progress to Stage Three for final evaluation (Price and B-BBEE)

5 STAGE THREE: Post Tender Negotiations (if applicable)

Transnet reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations.

6 STAGE FOUR: Final Contract Award

Transnet will negotiate the final terms and conditions of the contract with the successful Respondent(s). This may include aspects such as Supplier Development, the B-BBEE Improvement Plan, price and delivery. Thereafter the final contract will be awarded to the successful Respondent(s).

IMPORTANT NOTICE TO RESPONDENTS

Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5million [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this threshold, a complaint may be lodged with the Ombudsman for further investigation. The Ombudsman reserves the right to refer the complaint to an external service provider for investigation.

It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference OF the Ombudsman which are available for review at Transnet's website www.transnet.net.

An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to procurement.ombud@transnet.net.

For transactions below the abovementioned threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division/Specialist Unit.

Respondents are to note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a Bidder on its List of Excluded Bidders.

TRANSNET-REF-BUNDLE-05722

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

Section 3: PRICING

Please indicate each part of the Transaction prices based on the table below:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	~~Credit Default Swap Overlay (bps)~~	Credit Contingent Default Swap (bps)
12.9	7		-112.5

For the avoidance of doubt; all prices set out above are subject to the terms and conditions of the draft Letter Agreement that has been extensively negotiated and is in substantially agreed form which is submitted together with this proposal and the Specific terms and conditions of the underlying ISDA Master Agreement, read with the relevant confirmation for each trade.

~~a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto,~~

~~b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded at each Loan drawn down.~~

1 SERVICE LEVELS All pricing terms for the ZAR Syndicated Loan are still to be negotiated and agreed between the parties

1.1 An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.

1.2 Transnet will have quarterly reviews with the Service provider's account representative on an on-going basis.

1.3 Transnet reserves the right to request that any member of the Service provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.

1.4 The Service provider must provide a telephone number for customer service calls.

1.5 Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

Acceptance of Service Levels:

YES	✓

NO	

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

SIGNED at JOHANNESBURG on this 8TH day of MAY 2015

SIGNATURE OF WITNESSES

1 _____
Name Laura Wojcik

2 _____
Name Yurisha Chetty

ADDRESS OF WITNESSES

1 Fricker Road

1 Fricker Rd

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____
NAME: MARC HUSSEY
DESIGNATION: MANAGING DIRECTOR

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

Date & Company Stamp

TRANSNET-REF-BUNDLE-05724

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ARRANGE ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE D 12 BILLION ZAR LOAN UP TO FIFTEEN (15) FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

Section 4: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

I/We JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH
[name of entity, company, close corporation or partnership] of *[full address]*
1 FRICKER ROAD, ILLOVO, JOHANNESBURG, 2196

carrying on business trading/operating as
N/A

represented by MARC HUSSEY

in my capacity as MANAGING DIRECTOR

being duly authorised thereto by a certificate of incumbency ~~Resolution of the Board of Directors or Members or Certificate of Partners~~, dated as at the date of issue to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with shortlisted bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
MARC HUSSEY	MANAGING DIRECTOR	

I/We hereby offer to supply the abovementioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents, and specifically including the covering letter and the terms of the Letter Agreement.
I/We agree to be bound by those conditions in Transnet's:

(i) Terms and Conditions of Contract - Services

(ii) General Bid Conditions – Services ; and

(iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal,

in each instance as amended in this marked-up Proposal and as amended or substituted by any subsequent agreement, including the Letter Agreement, the relevant ISDA Master Agreement and the relevant confirmation for each trade and in relation to the Syndicated ZAR Loan, as amended or any agreement relating to our appointment as lead arranger, from time to time.

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015
Date & Company Stamp

... terms and conditions relating to the proposed transactions will be negotiated and agreed between Transnet and the proposer in the appropriate form of documentation

~~I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award/intent, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.~~

~~Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the Letter of Intent], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.~~

~~I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Services within 4 [four] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.~~

~~I/We accept that any contract resulting from this offer will be for a period of 14 [fourteen] years only.~~

Furthermore, I/we agree to a penalty clause/s to be negotiated with Transnet, which will allow Transnet to invoke a penalty against us for ~~non-compliance with material terms of this RFP including the delayed delivery of the Services due to non performance by ourselves~~, failure to meet the indicative proposed or any amendment thereof Supplier Development and/or B-BBEE Improvement Plan, ~~commitments~~. A penalty of up to 100% of the outstanding portion of the Supplier Development commitment will be applied and Transnet reserves the right to set this off against any payment due to the Respondent. ~~In addition, I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Transnet with cause for cancellation.~~

ADDRESS FOR NOTICES

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:
JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH

Facsimile:
—

Address:
1 FRICKER ROAD, CNR. HURLINGHAM ROAD, ILLOVO,
JOHANNESBURG, 2196

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Respondent's Signature

Date: 8/5/2015

Date & Company Stamp

TRANSNET-REF-BUNDLE-05726

NOTIFICATION OF AWARD OF RFP

As soon as possible after approval to award the contract(s), the successful Respondent **[the Service provider]** will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

VALIDITY PERIOD

Transnet requires a validity period of 120 [one hundred and twenty] Business Days from closing date against this RFP.

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

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

(i) Registration number of company / C.C. **2001/016069/10**

(ii) Registered name of company / C.C **JPMorgan Chase Bank N.A (Johannesburg Branch)**

(iii)

Full name(s) of director/member(s)	Address/Addresses	Passport Number(s)
James S Crown	270 Park Avenue, New York	208810080
Laban P Jackson Jr	270 Park Avenue, New York	457060759
Marianne Lake	270 Park Avenue, New York	472983892
Matthew E Zames	270 Park Avenue, New York	488314625
William C Weldon	270 Park Avenue, New York	039660004

RETURNABLE DOCUMENTS

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. **Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

a) **Mandatory Returnable Documents**

Failure to provide all Mandatory Returnable Documents at the closing date and time of this tender will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

Please confirm submission of the mandatory Returnable Documents detailed below by so indicating [Yes or No] in the table below:

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 3 : Pricing	✓
ANNEXURE A : Technical Pre-Qualification	✓
SECTION 9 : Declaration of Supplier Development Commitments	✓
ANNEXURE B : Supplier Development Value Summary	✓

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

Date & Company Stamp

b) **Essential Returnable Documents**

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **Essential Returnable Documents** as detailed below.

Failure to provide all Essential Returnable Documents may result in a Respondent's disqualification at Transnet's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.

Please confirm submission of these essential Returnable Documents by so indicating [Yes or No] in the table below:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	SUBMITTED [Yes or No]
SECTION 4 : Proposal Form and List of Returnable documents	
- Valid and original, or a certified copy, of your entity's B-BBEE Accreditation Certification. Note: failure to provide these required documents at the closing date and time of the RFP will result in an automatic score of zero being allocated for preference	X
- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	-
Original and valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	X
SECTION 5 : RFP Declaration and Breach of Law Form	
SECTION 11 : Vendor Application Form	X
Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	X
- Certified copies of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)	X
- Certified copies of the company's shareholding/director's portfolio	
- Entity's letterhead	X
- Certified copy of valid VAT Registration Certificate	X
- ANNEXURE B : Supplier Development Plan	X
ANNEXURE D : B-BBEE Improvement Plan	X

CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE Verification Certificate, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract **[the Agreement]** and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Respondent's Signature

Date & Company Stamp

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP as amended in this marked-up version and as set out in the covering letter submitted with this proposal. including those contained in any printed form stated to form part hereof, including but not limited to the documents stated below and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise.

Bidders furthermore agree that Transnet SOC Ltd shall recognise no claim from them for relief based on an allegation that they have overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating their offered prices or otherwise.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid which they intend to respond on, before submitting the bid. The Bidder agrees that he/she will have no claim based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

1 General Bid Conditions
2 Terms and Conditions of Contract for the supply of Services to Transnet
3 Supplier Integrity Pact
4 Non-disclosure Agreement
5 Supplier Development initiatives included in this RFP
6 Vendor Application Form* and all supporting documents (first time vendors only)

Alternatively, for all existing vendors, please provide vendor number(s) here:

Transnet Operating Division	Unique Vendor Number	Yes / No
Transnet Group		
TFR, etc.		

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s).

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Respondent's Signature

Date: 8/6/2015

Date & Company Stamp

SIGNED at JOHANNESBURG on this 8TH day of MAY 2015

SIGNATURE OF WITNESSES

1 _____
Name Zdunka Wojcik

2 _____
Name Yurisha Aetty

ADDRESS OF WITNESSES

1 Fricker Road

1 Fricker Rd

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____
NAME: MARC HUSSEY
DESIGNATION: MANAGING DIRECTOR

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

Date & Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ARRANGE ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE D 12 BILLION ZAR LOAN FOR A PERIOD OF UP TO FIFTEEN (15) ~~FOURTEEN (14)~~ YEARS

Section 5: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH

We JPMORGAN CHASE BANK, N.A. JOHANNESBURG BRANCH do hereby certify that; to the best of our knowledge and belief:

1. Transnet has supplied and we have received appropriate responses to any ~~all~~ relevant questions [as applicable] which were submitted by ourselves ~~for RFP Clarification purposes;~~ the purposes of the indicative proposals set out herein.
2. we have received all information we deemed necessary for the completion of this Request for Proposal [**RFP**];

3. ~~we have been provided with sufficient access to the existing Transnet facilities/sites and any and all relevant information relevant to the Services as well as Transnet information and Employees, and has had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.~~

4. ~~at no stage have we received additional information relating to the subject matter of this RFP from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFP documents;~~

3 we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFP and the requirements requested from us ~~Bidders~~ in responding to this RFP have been conducted in a fair and transparent manner; and

6. ~~furthermore, we declare that a family, business and/or social relationship exists / does not exist [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Transnet Group including any person who may be involved in the evaluation and/or adjudication of this Bid.~~

4 5 In addition, we declare that ~~an owner / member / director / partner /~~ a direct shareholder of our entity ~~is /~~ **is not** [delete as applicable] an employee or board member of the Transnet Group.

5 6 If such a relationship as indicated in paragraph 6 and/or 7 exists, the Respondent is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/ PARTNER/SHAREHOLDER: N/A ADDRESS:

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Respondent's Signature

Date & Company Stamp

Indicate nature of relationship with Transnet:

N/A

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet]

6~~9~~. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

7~~10~~. We accept that any dispute pertaining to this Bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.

8~~11~~. We further accept that Transnet reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

BREACH OF LAW

12. We further hereby certify that *I/we* (the bidding entity ~~and/or any of its directors, members or partners~~) ~~*have*~~/***have not been*** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.
Where found guilty of such a serious breach, please disclose:
NATURE OF BREACH:

N/A

DATE OF BREACH: N/A

Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at JOHANNESBURG on this 8th day of MAY 2015

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

Date & Company Stamp

For and on behalf of JP Morgan duly authorised hereto	AS WITNESS:
Name:	Name: MARC NIELSEN
Position:	Position: MANAGING DIRECTOR
Signature:	Signature:
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

Respondent's Signature

Date & Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ ARRANGE THE ~~EQUIVALENT~~ UP TO FIFTEEN (15) SYNDICATE ZAR 12 BILLION LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

Section 6: RFP CLARIFICATION REQUEST FORM

RFP No: GSM/15/05/1265

RFP deadline for questions / RFP Clarifications: Before 12:00 on 07 May 2015.

TO:	Transnet SOC Ltd
ATTENTION:	Suellen Du Plessis
EMAIL	Suellen.DuPLessis@transnet.net
DATE:	_____
FROM:	_____
	_____

RFP Clarification No *[to be inserted by Transnet]* .....

REQUEST FOR RFP CLARIFICATION

AS PER EMAIL SENT ON 7 MAY 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Respondent's Signature

Date & Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

ARRANGE
D 12 BILLION
UP TO FIFTEEN (15)

Section 7: B-BBEE STATUS

1. B-BBEE STATUS AND SUBCONTRACTING

1.1 **Subcontracting:**

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

IF YES, indicate:

(i) What percentage of the contract will be subcontracted? .....%

(ii) The name of the subcontractor .....

(iii) The B-BBEE status level of the subcontractor .....

(iv) Is the subcontractor an EME? YES/NO

1.2 Declaration with regard to Company/Firm

(i) Name of Company/Firm.....

(ii) VAT registration number.....

(iii) Company registration number.....

(iv) Type of Company / Firm [TICK APPLICABLE BOX]

☐Partnership/Joint Venture/Consortium

☐One person business/sole propriety

☐Close Corporations

☐Company (Pty) Ltd

(v) Describe Principal Business Activities

.....

.....

.....

(vi) Company Classification [TICK APPLICABLE BOX]

☐Manufacturer

☐Supplier

☐Professional Service Provider

☐Other Service Providers, e.g Transporter, etc

(vii) Total number of years the company/firm has been in business.....

BID DECLARATION

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

(i) The information furnished is true and correct, based on our most recent Empowerdex certificate.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Respondent's Signature

Date & Company Stamp

(ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.

(iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:

(a) disqualify the person from the bidding process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) restrict the Bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or

(e) forward the matter for criminal prosecution.

WITNESSES:

1. .....

2. .....

SIGNATURE OF BIDDER

DATE: 8 MAY 2015

COMPANY NAME: JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH

ADDRESS: 1 FRICKER ROAD, ILLOVO, JOHANNESBURG, 2196

TRANSNET-REF-BUNDLE-05736

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

Section 8 : SUPPLIER DEVELOPMENT INITIATIVES

1.1 Aim and Objectives

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

The key focuses of the NGP include:

- Increasing employment intensity of the economy
- addressing competitiveness
- balancing spatial development of rural areas and poorer provinces
- reducing the carbon intensity of the economy
- creating opportunities in improving regional and global cooperation
- enabling transformation that benefits a wider range of social actors in society e.g. workers, rural communities, youth and women

Transnet, as a State Owned Company **[SOC]**, plays an important role to ensure these objectives are achieved. Therefore, the purchasing of goods and services needs to be aligned to Government's objectives for developing and transforming the local supply base. Transnet's mission is to transform its supplier base by engaging in targeted supplier development initiatives to support localisation and industrialisation whilst providing meaningful opportunities for Black[2] South Africans with a particular emphasis on:

- Youth [16 to 35 year olds]
- Black women
- People with disabilities
- Small businesses
- Rural integration

1.2 Supplier Development [SD]

To facilitate the implementation of Supplier Development initiatives, Transnet has adapted an existing framework from the Department of Public Enterprises **[DPE]**. This framework allows for a basic set of principles to be applied to appropriately targeted SD initiatives. Supplier development initiatives aim to build local suppliers who are competitive through building capability and capacity. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix **[IC³ Matrix]**. Currently there are four quadrants of SD initiatives which Transnet considers according to the IC³ Matrix. This RFP has been identified as strategic, involving high commercial leverage and high value.

[2] "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

Accordingly, Respondents are required to provide an indicative commitment of the Supplier Development initiative they will undertake during the contract period in the **Supplier Development Value Summary**. In addition, Transnet requires that all Respondents submit an indicative **Supplier Development Plan** demonstrating how they intend to discharge their commitments made in the Supplier Development Value Summary. ~~The contract which will be concluded with the successful bidder will incorporate the SD undertakings made in the abovementioned documents as a term of the contract~~.

a) For a detailed understanding of the IC³ Matrix, the respective SD initiatives and their objectives, please refer to the "Supplier Development Guidelines" appended hereto as Appendix I. This document must be used as a guideline to complete the SD Plan.

b) The following Supplier Development [**SD**] focus areas have been identified, namely:

Category	Description
Transfer of Technology and Intellectual Property Rights [**IPR**]	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Preservation	Number of jobs created or preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

Green economy / carbon footprint: The potential reduction of the economy's carbon intensity [i.e. creation of a greener economy] should be regarded as a key priority within all the above SD Categories and for all proposed SD initiatives

c) The **Supplier Development Plan** is to be submitted as a separate document, developed in line with the criteria set out in the **Supplier Development Value Summary**. The Supplier Development Plan is an indicative ~~a detailed narrative~~ document explaining the Respondent's Bid value as summarised in the Supplier Development Value Summary. The SD Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This SD Plan should also provide an overview of what you intend to achieve, when, and the mechanisms you will employ to ~~whereby you will~~ achieve those objectives. ~~The SD Value Summary and SD Plan will represent a binding commitment on the part of the successful Respondent~~.

Annexure B must be completed, indicating by cross-reference the detailed areas which have been addressed in your SD Plan for each of the evaluation criteria listed in paragraph 1.2 (b) above, together with the Value Indicators therefore.

Notes for completion of the SD Plan:

(i) Respondents are required to address each of the aspects under the detailed SD Description as a minimum for submission. This is not an exhaustive list however, and Respondents must not be limited to these choices when compiling each section.

(ii) Please provide detailed calculations to illustrate how your estimated Rand values have been derived.

(iii) Respondents are required to provide an electronic copy [CD] of the completed Annexure B as part of the SD Plan submission.

1.3 **Additional contractual requirements**

Should a contract be awarded through this RFP process, the successful Respondent(s) [hereinafter referred to as **the Supplier**] will be contractually committed, *inter alia*, to the following conditions:

a) The Supplier will be required to submit a **Supplier Development Implementation Plan** within 45 [forty-five] calendar days from the signature date of a Letter of Intent [**LOI**]. This Implementation Plan represents additional detail in relation to the SD Plan providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to undertake and deliver during the term of the contract. Specific milestones, timelines and targets will be recorded to ensure that the Implementation Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.

b) The ~~Implementation~~ SD Plan may require certain additions or updates to the initial SD Plan in order to ensure that Transnet is satisfied that development objectives will be met.

c) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Supplier's compliance with its stated SD commitments.

d) The Supplier will be required to provide Transnet with regular annual updates regarding its indicative SD Plan and the achievements in terms of such plan, including any updates or amendments thereto.

(i) monthly status updates to Transnet for each SD Initiative [Detailed requirements will be provided by Transnet];

(ii) quarterly status reports for Transnet and the DPE. [Detailed reporting requirements will be provided by Transnet]; and

(iii) a final Supplier Development report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all SD components plus auditable confirmation of the Rand value contribution associated with each such SD commitment.

e) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.

f) The Supplier will be required to submit this Implementation Plan to Transnet in writing, within 45 [forty-five] calendar days after signature of a Letter of Intent [**LOI**], where after both parties must reach an agreement [signed by both parties] within 20 [twenty] calendar days. Transnet will reserve the right to reduce or increase the number of days in which the Supplier must submit its Implementation Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.

g) The contract will be conditional on agreement being reached by the parties on the Implementation Plan submitted by the Supplier. Therefore failure to submit or thereafter to agree to the

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~~Implementation Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.~~

~~h) Failure to adhere to the milestones and targets defined in an Implementation Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.~~

1.4 **Supplier Development Returnable Documents**

Attached herewith is the following documentation:

- **Declaration of Supplier Development Commitments – Section 9 [mandatory]**
- indicative **SD Plan – Annexure C [essential]**
- indicative **SD Value Summary – Annexure B [mandatory]**

Respondents are to note whether the abovementioned documents are listed as mandatory or essential returnable documents in Section 4 to this RFP as failure to submit, or to submit an incomplete mandatory returnable document will result in disqualification of your Proposal. Failure to submit an essential returnable document may result in disqualification of your Proposal.

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RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS

ARRANGE

D 12 Billion

Section 9 : DECLARATION OF SUPPLIER DEVELOPMENT COMMITMENTS

I/We JPMORGANCHASE BANK, N.A., JOHANNESBURG BRANCH

hereby **agree/~~do not agree~~** to commit that not less than 35% of the contract value will be spent cumulatively on Supplier Development Initiatives over the duration of the contract. This pre-qualification criterion must be discharged against the following Supplier Development categories as outlined in the indicative Supplier Development Value Summary [Annexure B]:

- Transfer of Technology and Intellectual Property Rights
- Skills Development
- Job Preservation
- Small Business Promotion

I/We do hereby certify that the Supplier Development commitments made in relation to this RFP are solely in relation to this transaction and are not duplicated in relation to any other contracts that I/we have secured with any other organ of state including other State Owned Companies.

Furthermore, I/we do hereby declare that this undertaking also applies to any other contracts that I may have secured with Transnet including other Transnet Operating Divisions/Specialist Units. For the purposes of verification of this undertaking, the following is a list of contracts with Supplier Development commitments that I/we have secured with Transnet:

SIGNED at JOHANNESBURG on this 8th day of MAY 2015

SIGNATURE OF WITNESS

SIGNATURE OF RESPONDENT

Respondent's Signature

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Date: 8/5/2015

Date & Company Stamp

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RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

Section 10 : B-BBEE IMPROVEMENT PLAN

Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating and requests that Respondents submit ~~a~~ B-BBEE improvement plan. Respondents are therefore requested to indicate whether they ~~will~~ maintain or improve their BBBEE status over the contract period.

~~**Additional contractual requirements**~~

Should a contract be awarded through this RFP process, the successful Respondent(s) ~~may be contractually committed, *inter alia*, to the following conditions:~~

~~a) The original B-BBEE Improvement Plan may require certain additions or updates in order to ensure that Transnet is satisfied that developmental objectives will be met.~~

~~b) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow Transnet access to information to measure and verify the Supplier's compliance with its stated B-BBEE Improvement commitments.~~

~~c) The Supplier will be required to provide:~~

~~(i) quarterly status reports for Transnet; and~~

~~(ii) a final B-BBEE Improvement Plan report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all B-BBEE Improvement components.~~

~~d) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.~~

Respondents are requested to submit their ~~B~~ B-BBEE Improvement Plan as an **additional document** with their Proposals by completion of ***Annexure D*** appended hereto. *[Refer Annexure D for further instructions]*

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Date: 8/5/2015

Respondent's Signature

Date & Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ THE ~~EQUIVALENT~~ SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

Section 11 : VENDOR APPLICATION FORM

Respondents are to furnish the following documentation and complete the Vendor Application Form below:

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details **[with bank stamp]**
2. **Certified copy** of Identity Document(s) of Shareholders/Directors/Members *[where applicable]*
3. **Certified copies** of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)
4. **Certified copies** of the company's shareholding/director's portfolio
5. **Original** letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate [RSA entities only]
7. **Certified** copy of VAT Registration Certificate [RSA entities only]
8. **A valid and original** B-BBEE Verification Certificate / sworn affidavit **or certified copy** thereof meeting the requirements for B-BBEE compliance as per the B-BBEE Codes of Good Practice;
9. **Certified copy** of valid Company Registration Certificate [if applicable]

Note: ***No contract shall be awarded to any South African Respondent whose tax matters have not been declared by SARS to be in order.***

Vendor Application Form

Entity's trading name	JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH
Entity's registered name	JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH
Entity's Registration Number or ID Number if a Sole Proprietor	2001/016069/10
Form of entity [√]	EXTERNAL COMPANY / Trust / Pty Ltd / Limited / Partnership / Sole Proprietor
How many years has your entity been in business?	14 YEARS
VAT number [if registered]	4290195686
Entity's telephone number	+27 11 507 3000
Entity's fax number	—
Entity's email address	FRANK.L.VEIN@JPMORGAN.COM
Entity's website address	WWW.JPMORGAN.COM

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Respondent's Signature

Date & Company Stamp

USD BANK ACCOUNT

Bank name	JP MORGAN CHASE BANK	Branch & Branch code	SWIFT: CHASUS33
Account holder	JPMORGAN CHASE BANK	Bank account number	066020712
Postal address	PRIVATE BAG X9936		
	SANDTON, SOUTH AFRICA	Code	2146
Physical address	1 FRICKER ROAD		
	ILLOVO, JOHANNESBURG, SOUTH AFRICA	Code	2196
Contact person	FRANK VEIN		
Designation	EXECUTIVE DIRECTOR		
Telephone	+27 11 507 0727		
Email	FRANK.L.VEIN@JPMORGAN.COM		

Annual turnover range [last financial year]	< R5 m	R5 - 35 m	> R35 m X
Does your entity provide	Products	Services	Both X
Area of delivery	National X	Provincial	Local
Is your entity a public or private entity		Public	Private X
Does your entity have a Tax Directive or IRP30 Certificate		Yes	No X

Main product or services [e.g. Stationery/Consulting] FINANCIAL SERVICES

Complete B-BBEE Ownership Details:

% Black ownership	—	% Black women ownership	—	% Disabled Black ownership	—	% Youth ownership	—

Does your entity have a B-BBEE certificate Yes No

What is your B-BBEE status [Level 1 to 9 / Unknown] LEVEL 2

How many personnel does the entity employ Permanent 148 Part time —

If you are an existing Vendor with Transnet please complete the following:

Transnet contact person N/A

Contact number N/A

Transnet Operating Division N/A

Duly authorised to sign for and on behalf of Entity / Organisation:

Name	MARC HUSSEY	Designation	MANAGING DIRECTOR
Signature		Date	8 MAY 2015

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Date: 8/5/2015

Respondent's Signature

Date & Company Stamp

3. Annexures

Annexure A: Technical Pre-Qualification

Annexure B: Supplier Development Plan, and

Annexure C: Supplier Development Value Summary

Annexure D: B-BBEE Improvement Plan

ANNEXURE A: TECHNICAL PRE-QUALIFICATION

GSM/15/05/1265 - FOR THE PROVISION OF HEDGING FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ~~AND UNDERWRITE~~ ARRANGE THE ~~EQUIVALENT~~ SYNDICATED ZAR 12 BILLION LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ UP TO FIFTEEN (15) YEARS

Respondents are required to indicate whether they are able to provide the services/deliverables as specified in the scope of work.

I/We ...JP Morgan Chase Bank..... hereby agree to 100% compliance to the scope of work as set out in this marked-up response and subject to the conclusion of satisfactory documentation in relation to each aspect of the transaction between the Parties.

ACCEPT	✓	DECLINE	

Note that this technical pre-qualification (Annexure A) is a mandatory returnable document.

Respondent's Signature

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Date & Company Stamp

Instructions and Notes for completion of the SD Value Summary Template:

1	Respondents must complete this Annexure which summarises your Supplier Development [SD] Plan and related value commitments over the contract period.
2	Do not populate greyed out areas.
3	Populate the following columns as requested in SD MEASURMENT column: NUMBER, PERCENTAGE, RAND VALUE excluding VAT, YES/NO and SD PLAN CROSS REFERENCE.
4	Cross-reference the Value Indicators quoted under the column heading "SD PLAN CROSS-REFERENCE" with the corresponding section in your SD Plan.

SD CATEGORY		SD MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE excluding VAT	YES/NO	SD PLAN CROSS-REFERENCE
	Transfer of Technology & Intellectual Property Rights	**Technology and Intellectual Property Rights [IPR] transfers are intangible and/or tangible assets with significant economic value. Respondents will be measured on their plans to transfer knowledge, and/or capital assets, and/or IPR to contribute to capability building of a regional supply base which would ultimately lead to improved capability, efficiency and regional capacity.**					
1	1	*Number* and *Rand value* of new Technology Transfer on hedging of financial risks, or other similar or related type of transaction to be exposed to the Black Graduates In Training at Transnet Group Treasury.	3 day derivative valuation seminar		R1 million		2.1
	1.1	*Number* and *Rand value* of new Technology Transfer on hedging of financial risks, or other similar or related type of transaction to be to be exposed to Transnet employees at our Group Treasury Department.					
	1.2	*Number* and *Rand value* of new Technology Transfer on hedging of financial risks, or other similar or related type of transaction to be to be exposed to BBBEE partners or other preferably black owned, black women owned or black youth owned organisation withing the industry sector	6 month engagement with Regiments Capital		R25 million		2.1
2	**Skills Development**	**New skills development initiatives indicate your company's commitment to skills education, and how this would match with targeted groups. Consideration needs to be directed towards the adequate quality and value of proposed skills development to allow for better evaluation in line with Government objectives.**					
	2	*Number* and *Rand value* of Black Owned Institution Skills Transfer on Hedging of Financial Risks and Underwriting thereof.	Undetermined at this point		R6 million R24 million		2.2.2 2.4
	2.1	*Number* and *Rand value* of Black Women Owned Institutoons Skills Transfer on Hedging of Financial Risks and Underwriting thereof.			R36 million R2.4 million		2.2.2
	2.2	*Number* and *Rand value* of Black Youth Graduates Skills Tranfer on Hedging of Financial Risks and Underwriting thereof at our Group Treasury.					2.2.2

Where "Black" means South African Blacks, Coloureds and Indians, as defined in the B BBEE Act, 53 of 2003

3	**Job Preservation**	**The potential for job preservation directly due to the award of this business.**					
	3	Number of jobs which would be preserved through award of contract	Undetermined at this point				

Respondent's Signature

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ANNEXURE B
SUPPLIER DEVELOPMENT VALUE SUMMARY

Small Business Promotion	These SD value measurements give an indication of your commitment to developing small businesses in line with the Government's New Growth Path (NGP) and B-BBEE requirements					
4	*Percentage of* your projected annual procurement spend from businesses with an annual turnover of less than R35 million (Black QSEs)		5.6%			
4.1	*Percentage of* your projected annual procurement spend from businesses with an annual turnover of less than R5 million (Black EMEs)		3.2%			
4.2	*Percentage of* your projected annual procurement spend from Black start-up enterprises		-			
	ESTIMATED RAND VALUE TOTAL OF SUPPLIER DEVELOPMENT COMMITMENT, EXCLUDING VAT :			**R94 400 000**		
	SUPPLIER DEVELOPMENT COMMITMENT EXPRESSED AS A PERCENTAGE OF ESTIMATED CONTRACT VALUE :			**>100%**		

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date Company Stamp

TRANSNET-REF-BUNDLE-05748

TRANSNET

ANNEXURE C: SUPPLIER DEVELOPMENT PLAN

Transnet requires that all Respondents submit an indicative **Supplier Development Plan** demonstrating how they intend to discharge their commitments made in the indicative Supplier Development Value Summary.

The indicative Supplier Development Plan is a detailed narrative document explaining the Respondent's SD proposal as summarised in the Supplier Development Value Summary.

Respondents must compile the SD plan, with an understanding of Supplier Development as detailed and described in the SD Guideline Document and further guided by the specific requirements mentioned below.

Important Notes for completion of SD Plan:

(i) Respondents are urged to pay careful attention to the compilation of the SD Plan ~~since it, together with the SD Value Summary, represents a binding commitment on the part of the successful Respondent~~.

(ii) Respondents are required to address each of the categories under the detailed SD Description as a minimum for submission. This is however not an exhaustive list and Respondents are not limited to these choices when compiling each section.

(iii) Respondents must ensure that the SD Value Summary submission and the SD Plan submission are accurately cross-referenced with each other.

(iv) Respondents are requested to address each of the SD aspects in no more than two (2) pages per category, to avoid lengthy submissions.

(v) Respondents are required to provide an electronic copy [CD] of the completed SD Value Summary and SD Plan as part of their submissions.

Minimum SD plan requirements

The SD Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This SD Plan should also provide an overview of what you intend to achieve, by when, and the mechanisms to be used to achieve those objectives.

Category	Description
Technology Transfer and Intellectual Property Rights	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Preservation	Number of jobs preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

SUPPLIER DEVELOPMENT PLAN

1. Supplier Development Executive Summary

2. Supplier Development plan per category:

    2.1. Technology Transfer and Intellectual Property Rights
    2.2. New Skills Development
    2.3. Job Preservation
    2.4. Small Business Promotion

Conclusion

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

Date & Company Stamp

MAY 2015

SUPPLIER DEVELOPMENT PLAN

STRICTLY PRIVATE AND CONFIDENTIAL

J.P.Morgan

1. Supplier Development Plan Executive Summary

J.P. Morgan has a strong, long-standing commitment to the South African market and to Broad-Based Black Economic Empowerment (B-BBEE). We currently have a Level 2 rating under the Financial Sector Code as Gazetted on 26 November 2012.

J.P. Morgan has a history in South Africa dating back over 110 years and has been a trusted advisor to South African clients and the Republic of South Africa in many landmark transactions.

As a result, J.P. Morgan is a significant banking group in South Africa and one of the largest foreign banking operations in the country. The firm's commitment to South Africa is further demonstrated by the relative size of the Johannesburg office which has a full banking license, and currently employs 142 people.

J.P. Morgan South Africa has proactively embraced the Government's BBBEE agenda through numerous initiatives. This is based on our primary belief that the foundations of true transformation lie in a strategy that recognizes the inter-related nature of the Department of Trade and Industry ("**DTI**") and the Financial Sector Charter ("**FSC**") scorecard pillars and accords equal importance to each.

J.P. Morgan is highly committed to education, skills transfer and related initiatives. As detailed below we have six programs in South Africa which focus on enterprise development including grants to USAID, the GOLD Peer Education Development Agency, Canon Collins Trust, Dalberg Global Development, Thembani, Operation Hope and Harambee Youth Employment Accelerator.

In the context of this Request for Proposal, we believe we have already created value of ZAR26 million attributable to the initiatives directly related to this transaction and we detail this in Section 2.1 below. Thus we have already exceeded the 35% contract value target (a target of R22.4 million).

In addition, we have set out additional Supplier Development projects under Sections 2.2 and 2.4 below that are expected to total around ZAR80 million ($6.5m) over the next five years. We have detailed these together with out historic projects to show that we are confident we have a robust long-term Supplier Development engagement planned over the next 5-years even though not all the specific projects in these areas are contracted at this stage.

The allocation of the spend above is directly linked to J.P. Morgan doing business in South Africa. So the transaction with Transnet will assist J.P. Morgan to maintain its local presence and generate the revenue to part fund this target allocation.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 6/5/15

2. Supplier Development per Category

2.1 Technology Transfer and Intellectual Property Rights

There are two specific supplier development initiatives already underway that are directly relevant to this transaction with a combined Rand value which we estimate at R26 million. Therefore we believe we have already exceeded the 35% contract value target of R22.4 million.

Transnet derivative valuation seminar

J.P. Morgan conducted a detailed 3-day derivatives valuation seminar for the exclusive benefit of Transnet's Treasury team on the 4th through 6th February 2015. The course was open to the entire Treasury team, and 5 members attended for the duration: Danie Smit, Tshepo Matlamela, Reon Louw, Deva Sathee, and Zander Grobler.

The training was delivered by 4 senior J.P. Morgan professionals (Tom Briggs, Sam Pannetier, Ed Fanklin and Laurent Lalou), 3 of whom flew down from our London office specifically to provide this training. This ensured that the training was delivered by seasoned market practitioners, focusing on derivatives execution and advanced risk management topics. This we believe resulted in a significant transfer of technology in the area of derivatives and specifically in the area of credit default swaps.

We estimate the value of this course, including travel, to be approximately ZAR1 million.

We believe this initiative will meet the "Technology Transfer/sustainability" category definitions set out in Sections 5.3 of Transnet's Supplier Development Guideline Document (March 2015).

Regiments Capital technology transfer

For the past 6 months, senior-level professionals at J.P. Morgan have worked closely with Regiments Capital, a specialized black owned and empowerment financial advisory firm, and an advisor to Transnet in relation to the China Development Bank loan and related locomotive acquisition. Regiments' role was expanded to advise Transnet on the associated proposed risk management transaction. We have worked and continue to work with the advisory, quantitative and legal professionals at Regiments and have shared in detail a confidential and proprietary J.P. Morgan risk management structure for the South African environment. This interaction has included extensive understanding and knowledge transfer around credit default swaps and credit contingent default swaps.

Because of the very specialized nature of these instruments we believe Regiments Capital have received highly valuable intellectual capital transfer, which has enabled Regiments to advise Transnet effectively on this transaction and in the future will allow Regiments and its professionals to market their skills in this area profitably. The involvement of Regiments in a large scale risk management transaction with J.P. Morgan and Transnet will provide Regiments with key credentials and a track record to allow them to offer services independently across South Africa and internationally.

We estimate the total value of this skills transfer both from the value derived (as defined in the RFP) from Transnet and in the future to be in excess of ZAR25 million.

Together, we believe these two initiatives meet the 'Technology Transfer/sustainability' category definition set out in Sections 5.3 of Transnet's Supplier Development Guideline Document (March 2015). We estimate the total value of this skills transfer both from the value derived from Transnet and in the future to be in excess of ZAR26 million.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 9/5/15

2.2 New Skills Development

2.2.1 Skills and education development directly related to J.P. Morgan's business

From January 2012 to 31 December 2014 J.P. Morgan invested R13.5 million in the training and development of the South African office staff. J.P. Morgan's plan for the next 5 years is to spend a further R20 million for internal and external training which includes our graduate training program and learnerships.

Given South Africa's history and the need to develop a broader and deeper base of skilled professionals has never been a more pressing business imperative for all companies operating in the country. Led by J.P. Morgan's global commitment to diversity as a core value of the firm, as well as J.P. Morgan's commitment to doing business in South Africa, we developed a series of education and development initiatives described below.

The Analyst Program

- Graduates in investment banking, trading and sales, are sent to New York in the first year of joining the company to attend a 6 to 8 week Analyst Training program. The programs provide exposure to both financial theory and practice for entry level professionals into banking and financial services.
- These individuals may go on to work further in our overseas offices in London and New York on secondments.

The Winter Training program (University students)

- This targets students currently in university and who are completing their final year of studies.
- This is a 3 week program exposing students to investment banking.
- This program offers soft skills training, business presentations, job shadowing, working on a research project and a corporate social investment project as part of the 3 week initiative.

The Graduate Program

- The graduate program is designed to attract and retain a pipeline of strong young talent. Our aim with this program is to employ black graduates who can make a meaningful contribution to our South African business.
- Students are hired directly from the universities for different lines of business.

Learnership Program for Graduates and Junior Management Staff

- 6 graduates and 5 junior management staff members were enrolled with Da Vinci Institute for 2014 / 2015. This program has been customized to banking and the students will graduate with a Banking Certificate, NQF level 5, at the end of June 2015. 10 out of the 11 students attending this program are Black candidates.
- 4 graduates and 3 junior management staff members are enrolled with Da Vinci Institute for 2015/2016. This program has been customized to banking and the students will graduate with a Banking Certificate, NQF level 5, at the end of Jan 2016. 7 out of the 7 students attending this program are Black candidates

International secondments (since January 2012)

- In addition to the graduate training program, we offer international secondments to our London and New York offices to accommodate candidates from designated groups.

Central Bank conference

- We run an annual central bank conference in Johannesburg – in 2014 this event attracted central banks from across the continent with the largest attendance (15+ persons) from the

South African Reserve Bank, National Treasury and the Public Investment Corporation. One of the objectives of the conference is to hear from J.P. Morgan, external speakers, network and share ideas.

- We estimate the value of our spend on these initiatives over the next 5 years to be R20 million. We believe these initiatives meet the 'Skills Development' category definition set out in Section 5.4 of Transnet's Supplier Development Guideline Document (March 2015).

2.2.2 Skills and education development related to the South African economy

In addition to the above initiatives, J.P. Morgan has extensive supplier development initiatives focused on addressing the skills and education deficits which underpin the high levels of unemployment, especially youth unemployment in South Africa. We estimate there are seven million 16-to-34-year-old South Africans out of work, 70% of the country's unemployed population.

J.P. Morgan is currently supporting six skills development projects in South Africa. These are summarized below:

Organisation	Programme Description	Projected Impact	Impact to Date
Harambee	Activating latent demand in SMEs for entry level staff and efficiently filling these positions with work-ready qualified youth job-seekers.	800 youth placed into jobs with SMEs	SME sourcing on track
Maharishi Institute	Training and placement of youth into jobs in the business process outsourcing (BPO) and information technology (IT) sectors	475 youth placed into BPO&IT jobs	Grant commenced Dec 2014
GOLD	Leadership, vocational skills and entrepreneurship training for young people, with work placements to support them into employment.	133 youth placed high growth industries	Employers signed onto job commitments
Operation Hope	Pilot initiative to give students an understanding of skills necessary to implement a business and be employable.	350 youth trained in finance and business	Curriculum and school partners established
Thembani	Enterprise development programme to support job creation and access to new markets and clients to enhance revenue of select businesses.	Growth of 160 agri-businesses	Training is 100% on track.
School Capacity & Innovation Program	Investing in innovative approaches that enhance education standards and provision across South Africa	Reach 2 million students and 70,000 teachers	Just under 10,000 teachers trained to date

Over the next 5 years J.P. Morgan expects to allocate around $3 million (ZAR36 million) on these and similar programs. Allocation of this spend is directly linked to successfully doing business in South Africa, so the transaction with Transnet will assist us to maintain our local presence and generate the revenue to part fund this target allocation.

These programs will primarily focus on workforce readiness. We expect to support demand-driven training models that connect youth who have some level of secondary education with entry-level jobs in high-growth industries. We have not identified all of the projects that will benefit from this spend, but some will involve a continuation of the above projects, other will be new. We are evaluating the following projects:

- Rural Education Access Program (REAP) – potential alumni progression and placement project.
- The Tertiary School in Business Administration (TSiBA) – potential program to take youth from disadvantaged backgrounds who have received business/finance education and place them into the financial services industry.
- Ikamva Youth – potential program to further connect youth who have received tertiary education support to employment opportunities upon matriculation.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15

Below are two specific examples of the type of projects we do expect to finance:

South African National Youth Development Agency (NYDA) and Youth Build International

- In April 2015 we approved a $200,000 (ZAR 2.4 million) grant to Youth Build International which will partner with the South African National Youth Development Agency. The funding will be spent over the next 18-months in a project to support 150 South African marginalized youth into sustained employment and livelihood and to strengthen South Africa's employment training sector by building the capacities of NYDA and its implementing partner.

J.P. Morgan School of Finance

- We plan to establish the J.P. Morgan School of Finance (with an expected spend of up to R6 million over the next 5 years) to increase our ability to contribute international skills and knowledge to our clients and empowerment partners. This is expected to be launched in 2016 and will include modules in finance, management, technology and leadership.

We estimate the value of our spend over the next 5 years to be R36 million. We believe these initiatives will meet the 'Skills Development' category definition set out in Section 5.4 of Transnet's Supplier Development Guideline Document (March 2015).

2.3 Job Preservation

Not applicable.

2.4 Small Business Promotion

Over the next five years, J.P. Morgan will continue its focus on small business promotion and we expect to spend around R24 million ($2.1 million) on initiatives in this space:

- Our focus will be on small and medium enterprise (SME) training and holistic business development support (BDS) provision to enhance the growth of quality SMEs. It will also include technical assistance and access to finance for high potential SMEs.
- We also expect to focus on creating small business system tools to create a metric for quality BDS across markets.

As a recent example, in 2014, J.P. Morgan's predominant focus in South Africa in this space was around the Catalyst for Growth (C4G) initiative which we funded. C4G attempts to build an analytics platform upon which business development support (BDS) providers can be rated and assessed in order to ensure greatest potential Small and Medium Enterprise (SME) growth.

After a 2 year pilot program, all companies in the C4G program are still successfully operating, with an overall median annual revenue increase of 27%, growth in employment and an increase in successful applications for finance by 14%. The program has received very positive feedback, as shown below:

BUSINESSREPORT

JPMorgan applauds success of SME pilot programme in SA

June 13 2014 at 08:00am

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 6/6/15

Fitzweek

ENTREPRENEURSHIP: JP Morgan's two year SME boost success

June 11 2014 by Emmanuel Obeli Leave a Comment

BusinessDay TV

Rutika Quraishi, Vice President Philanthropy for Europe, Middle East and Africa, JP Morgan reports back on the bank's two-year pilot SME programme

Financial Mail

FEATURES

Small and medium enterprise sector

SMEs: Pressure to get going

[illegible]

But he says it takes time to properly develop and evolve SMEs

This is where an initiative by the JPMorgan Chase Foundation might play a role

Conclusion

We estimate the total value of our spend over the next 5 years to be R94.4 million. We believe these programs will meet the 'Enterprise and Supplier Development' category definition set out in Section 5 of Transnet's Supplier Development Guideline Document (March 2015).

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15

SUPPLIER DEVELOPMENT PLAN

TRANSNET

ANNEXURE D : B-BBEE IMPROVEMENT PLAN

Transnet encourages its Suppliers/Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard, in addition to such scoring, Transnet also requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which their ownership, management control, employment equity, preferential procurement and enterprise development will be maintained or improved over the contract period.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals.

Respondents are to insert their current status (%) and future targets (%) for the B-BBEE Improvement Plan [i.e. not the % change but the end-state quantum expressed as a percentage] in the table below. This will indicate how you intend to sustain or improve your B-BBEE rating over the contract period, which will represent a binding commitment to the successful Respondent.

Ownership Indicator	Required Responses	Current Status (%)	Future Target (%)
1. The percentage of the business owned by Black[1] 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 would be sustained or increased over the contract period.*	JPMorgan applies the FSC carve out as it is a branch of an international bank	JPMorgan will continue to apply carve out when the new FSC codes are gazetted
2. The percentage of your 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 would be sustained or increased over the contract period.*		
3. The percentage of the business owned by Black youth[2]	*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 would be sustained or increased over the contract period.*		
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 Black disabled persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.*		
5. The percentage of the business owned by Employment Schemes or Co-Operatives	*Provide a commitment based on the extent to which ownership in the hands of Employment Schemes or Co-Operatives as a percentage of total ownership of the organisation would be sustained or increased over the contract period.*		

[1] ***"Black"*** *means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003*

[2] ***"Black youth"*** *means Black persons from the age of 16 to 35*

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15

Date & Company Stamp

Management Control Indicator	Required Responses	Current Status (%)	Future Targets (%)
6. 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, would be sustained or increased over the contract period.*	JPMorgan applies the FSC carve out as it is a branch of an international bank	JPMorgan will continue to apply carve out when the new FSC codes are gazetted
7. 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, would be sustained or increased over the contract period.*		
8. The percentage of Black senior managers involved in day to day management of the organisation, in relation to the total senior management cadre	*Provide the percentage of Blacks that would be appointed or retained by the Board and would be operationally involved in the day to day **senior 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,** over the contract period.*	25.45%	33%
9. The percentage of Black middle managers involved in day to day management of the organisation, in relation to the total middle management cadre.	*Provide the percentage of Blacks that would be retained or appointed by the organisation in the **middle management** cadre and would be 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, over the contract period.*	61.76%	75%
10. The percentage of Black junior managers involved in day to day management of the organisation, in relation to the total junior management cadre.	*Provide the percentage of Blacks that would be retained or appointed by the organisation in the **junior management** cadre and would be 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 regards to the day to day management of the organisation, over the contract period.*	69.77%	75%
Employment Equity Indicator	**Required Responses**	**Current Status (%)**	**Future Targets (%)**
11. The percentage of Black employees as a percentage of the total number of employees in the organisation.	*Provide a commitment based on the extent to which the number of Black employees would be sustained or increased as a percentage of the organisation's total workforce, over the contract period.*	49%	53%
12. The percentage of Black women employees as a percentage of the total workforce.	*Provide a commitment based on the increase in the number of Black women employees as a percentage of the organisation's total workforce, or sustained over the contract period.*	24%	28%
13. The percentage of Black youth employed in relation to	*Provide a commitment based on the extent to which the percentage of Black youth*	27%	35%

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 31/5/15

Date & Company Stamp

the total number of employees in the organisation.	*employed, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.*		
14. The percentage of 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, would be sustained or increased over the contract period.*	1%	2%
Preferential Procurement Indicator	**Required Responses**	**Current Status (%)**	**Future Targets (%)**
15. 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 would be sustained or increased over the contract period.*	117%	75%
16. 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 would be sustained or increased over the contract period*	6.54%	5.60%
17. 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 would be sustained or increased over the contract period*	4.35%	3.2%
Preferential Procurement Indicator [continued]	**Required Response**	**Current Status (%)**	**Future Targets (%)**
18. 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 would be maintained or increased over the contract period.*	14.01% 1.63%	20% 9%
Enterprise Development Indicator	**Required Response**	**Current Status (%)**	**Future Target (%)**
19. The organisation's annual spend on Enterprise Development as a percentage of Net Profit after Tax [NPAT]	*Provide a commitment based on the retention or increase in your organisation's annual spend on Enterprise Development initiatives, as a percentage of its Net Profit after Tax, over the contract period.*	1.76%	2%

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/16

Respondent's Signature

Date & Company Stamp

A. Appendix – Supporting Documentation

Copy of B-BBEE Accreditation Certification

Copy of Tax Clearance Certificate

Copy of ID's of directors

Copy of company registration documents

Company letterhead

J.P.Morgan

07 May 2015

Transnet

To whom it may concern

Please find attached the following certified documents / information of JPMorgan Chase bank N.A. (Johannesburg Branch) :

1. B-BBEE accreditation certificate
2. Tax clearance certificate
3. Certified copies of ID's of directors
4. Company registration documents
5. Entity letterhead

Kind regards

Ronelle Reddy
Company Secretary / LEC
Vice President

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. Zames
Organised under the Federal Law of the United States
A subsidiary of JP Morgan Chase & Co.
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider

CM39

Certificate issued by the Registrar of Companies & Close Corporations on Friday, June 18, 2010 11:32
Certificate of Confirmation

COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE
a member of the dti group

Registration number	2001 / 016069 / 10
Enterprise Name	JPMORGAN CHASE BANK NATIONAL ASSOCIATION JOHANNESBURG BRANCH
Enterprise Shortened Name	None provided.
Enterprise Translated Name	None provided.
Registration Date	24/07/2001
Business Start Date	24/07/2001
Enterprise Type	External Company
Enterprise Status	In Business
Financial year end	December
Main Business/Main Object	
Postal address	PRIVATE BAG X 60500 HOUGHTON 2041
Address of registered office	13 WELLINGTON ROAD PARKTOWN 2193

COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE
Registrar of Companies & Close Corporations

South African Revenue Service

Tax Clearance Certificate Number
0071/2/2015/0006809161

Tax Clearance Certificate - Good Standing

Enquiries
0800 00 7277
Approved Date
2015-02-12
Expiry Date
2016-02-12

Company Registration Number	200101606910
Income Tax	9337186143 - JP MORGAN CHASE BANK N.A. (JOHANNESBURG BRANCH)
VAT/Diesel Registration	4290195686 - JP MORGAN CHASE BANK-JOHANNESBURGBRANCH
PAYE Registration	7890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
UIF Registration	U890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
SDL Registration	L890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
Trading Name	JPMorgan Chase Bank N.A. Johannesburg Branch
Tender Number	GoodStanding

It is hereby confirmed that, on the basis of the information at my disposal, the above-mentioned taxpayer has complied with the requirements as set out in section 256(3) of the Tax Administration Act.

This certificate is valid for a period of 12 months unless otherwise communicated by SARS.

Verification of this certificate can be done at any SARS Revenue office nationwide.

Photo copies of this certificate are not valid.

SARS reserves the right to withdraw this certificate at any time should any taxes, levies or duties become due and outstanding by the above taxpayer during the one year period for which the certificate is valid.

This certificate is issued free of charge by SARS.

RONELLE CHARLENE REDDY (CA)
Ex Officio Commissioner of Oaths: Republic of South Africa
Member: The South African Institute of Chartered Accountants
Member Number: 07997093

07 May 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
1 Fricker Road, Illovo, 2196
Reg No.: 2001/016069/10

CERTIFIED A TRUE COPY
OF THE ORIGINAL

EMPOWERDEX
Economic Empowerment Rating Agency

Generic Financial Sector Code B-BBEE Verification Certificate – Local Branch of Foreign Bank Not Exempt from Empowerment Financing but Exempt from Access to Financial Services

JP Morgan South Africa

Incorporating
JP Morgan Chase Bank (Reg No: 2001/016069/10), JP Morgan Equities Ltd (Reg No: 1995/011815/06), JP Morgan Securities South Africa (Reg No: 1996/015112/07)

Address: 1 Fricker Road, Illovo, Johannesburg, 2196

Level Two Contributor

Scorecard Information	Actual Score	Target Score	Analysis	Results
Ownership	17.00	14.00	Procurement Recognition Level	125.00%
Management	4.58	5.00	Empowerment Financing Category	Applicable
Employment Equity	9.54	15.00	Access to Financial Services Category	Exempt
Skills Development	6.07	10.00	Black Ownership	N/A
Preferential Procurement	13.20	18.00	Black Women Ownership	N/A
Empowerment Financing	15.00	15.00	VAT Number	4290195686,4550153425, 4260184480
Enterprise Development	5.00	5.00	Value Adding Enterprise	Yes
Socio-Economic Development	3.00	3.00	Issue Date	28 April 2015
Access to Financial Services	N/A	N/A	Expiry Date	27 April 2016
Total Score	73.39	83.00	Re-Issue Date	N/A
Total Score Equivalent	88.42	100.00		

For EMPOWERDEX (Pty) Ltd

28 April 2015
Date

This verification certificate and the verification report are based on information provided to Empowerdex and represent an independent opinion based on the verification and analysis completed by Empowerdex. The calculation of the scores has been determined in accordance with the Financial Sector Code as Gazetted on 26 November 2012.

Empowerdex (Pty) Ltd, 2001/027963/07
Directors: C W[illiams], [illegible]ock, [illegible]ma, J Brebnor

sanas
BBBEE Verification Agency
BVA 030
A01262

FS15J30019

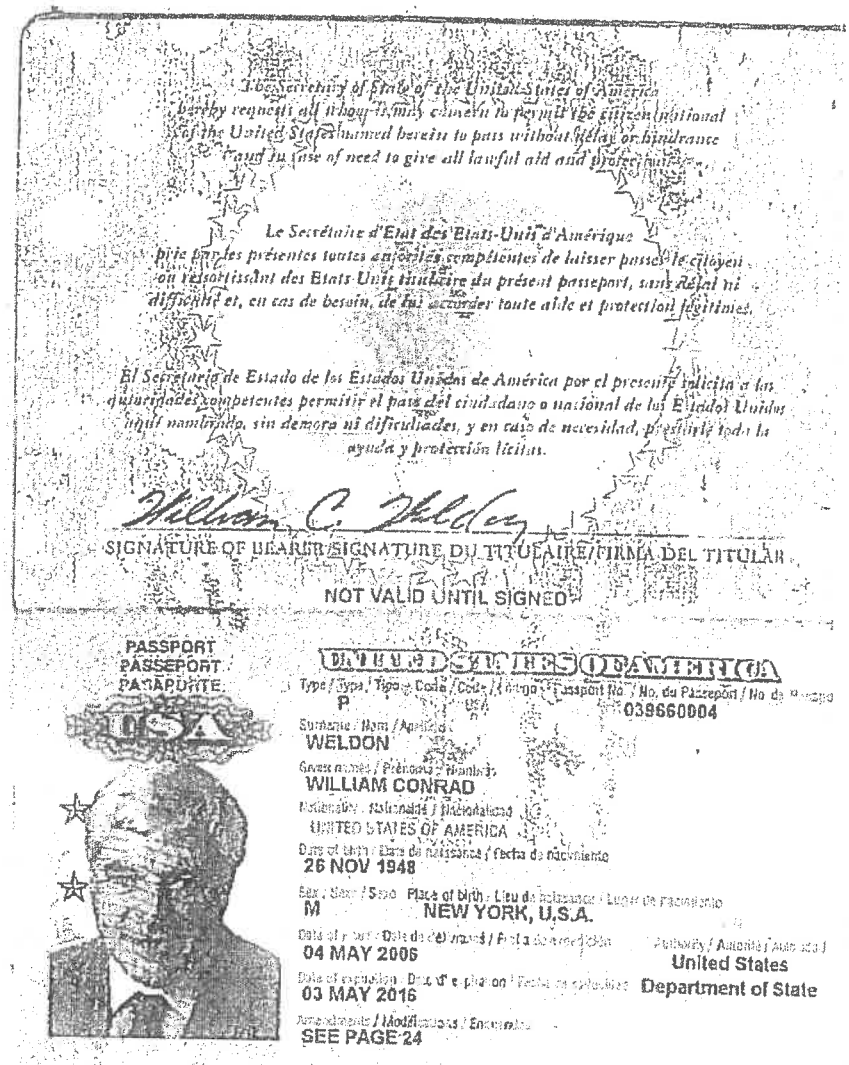
Certificate

CERTIFIED A TRUE COPY
OF THE ORIGINAL

RONELLE CHARLENE REDDY (CA)
Ex Officio Commissioner of Oaths: Republic of South Africa
Member: The South African Institute of Chartered Accountants
Member Number: 07997093

7 May 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
1 Fricker Road, Ilovo, 2196
Reg No.: 2001/016069/10



The Secretary of State of the United States of America
hereby requests all whom it may concern to permit the citizen/national
of the United States named herein to pass without delay or hindrance
and in case of need to give all lawful aid and protection.

Le Secrétaire d'Etat des Etats-Unis d'Amérique
prie par les présentes toutes autorités compétentes de laisser passer le citoyen
ou ressortissant des Etats-Unis titulaire du présent passeport, sans délai ni
difficulté et, en cas de besoin, de lui accorder toute aide et protection légitimes.

El Secretario de Estado de los Estados Unidos de América por el presente solicita a las
autoridades competentes permitir el paso del ciudadano o nacional de los Estados Unidos
aquí nombrado, sin demora ni dificultades, y en caso de necesidad, prestarle toda la
ayuda y protección lícitas.

William C. Weldon

SIGNATURE OF BEARER/SIGNATURE DU TITULAIRE/FIRMA DEL TITULAR

NOT VALID UNTIL SIGNED

PASSPORT
PASSEPORT
PASAPORTE

USA

UNITED STATES OF AMERICA

Type / Type / Tipo: P
Code / Code / Código: USA
Passport No. / No. du Passeport / No de Pasaporte: 039660004

Surname / Nom / Apellido: WELDON

Given names / Prénoms / Nombres: WILLIAM CONRAD

Nationality / Nationalité / Nacionalidad: UNITED STATES OF AMERICA

Date of birth / Date de naissance / Fecha de nacimiento: 26 NOV 1948

Sex / Sexe / Sexo: M

Place of birth / Lieu de naissance / Lugar de nacimiento: NEW YORK, U.S.A.

Date of issue / Date de délivrance / Fecha de expedición: 04 MAY 2006

Authority / Autorité / Autoridad: United States Department of State

Date of expiration / Date d'expiration / Fecha de caducidad: 03 MAY 2016

Amendments / Modifications / Enmiendas: SEE PAGE 24

P<USAWELDON<<WILLIAM<CONRAD<<<<<<<<<<<<<<<<
0396600042USA4811262M1605033<<<<<<<<<<<<<<06

CERTIFIED A TRUE COPY
OF THE ORIGINAL

RONELLE CHARLENE REDDY (CA)
Ex Officio Commissioner of Oaths: Republic of South Africa
Member: The South African Institute of Chartered Accountants
Member Number: 07997093

07 May 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
1 Fricker Road, Ilovo, 2196
Reg No.: 2001/016069/10

REPUBLIC OF SOUTH AFRICA
COMPANIES ACT, 1973

FORM CM 49

1165044 3

Application for the Registration of Memorandum of External Company

SA Companies Registration Office
CHASE MANHATTAN BANK INCORPORATED I..

2001/016069/10

REGISTRATEUR VAN MAATSKAPPYE
EN SLOTE KORPORASIES
2001 -07- 23
REGISTRAR OF COMPANIES
AND OF CLOSE CORPORATIONS

Paste revenue receipt here
or
Affix revenue stamps here
or
Impress revenue franking machine impression here

REVENUE
-4.6.01
INKOMSTE

REPUBLIEK VAN SUID-AFRIKA
REVENUE R 035000 STAMPS
R350 in terms of Section 322 (2)
FTR 036
REPUBLIC OF SOUTH AFRICA

REGISTRATEUR VAN MAATSKAPPYE
EN SLOTE KORPORASIES
2001 -06- 06
REGISTRAR OF COMPANIES
AND OF CLOSE CORPORATIONS

Name of company CHASE MANHATTAN BANK (~~JOHANNESBURG BRANCH~~)

which has been incorporated in NEW YORK

according to the laws of the NEW YORK

requires registration as an external company in the Republic.

The issued capital of the company is $ 1,335,000,000

which is equivalent, at current rates of exchange, of R10,613,250,000

The financial year of the company ends on 31 December..... of each year.

~~*The sole purpose for which the company is establishing a place of business in the Republic is to establish a share transfer office and/or a share registration office.~~

*Delete if not applicable

Dated this 30th day of MAY 2001

RONELLE CHARLENE REDDY (CA)
Ex Officio Commissioner of Oaths: Republic of South Africa
Member: The South African Institute of Chartered Accountants
Member Number: 07997093

07 May 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
1 Fricker Road, Ilovo, 2196
Reg No.: 2001/016069/10

Signature of person acting on behalf of external company

CERTIFIED A TRUE COPY
OF THE ORIGINAL

J P MORGAN CHASE BANK NATIONAL ASSOCIATION
INCORPORATION IN THE STATE OF NEW YORK USA
(Registration No. 2001/016069/10)

RESOLUTIONS OF THE BOARD OF DIRECTORS DATED 1 MARCH 2012

ORDINARY RESOLUTION NUMBER 1

APPOINTMENT OF COMPANY SECRETARIES

It was **RESOLVED THAT** Statucor Pty Ltd hereby resign as company secretary and that Ronelle Charlene Reddy be appointed as company secretary in their stead.

ORDINARY RESOLUTION NUMBER 2

NOTICE OF REGISTERED OFFICE AND POSTAL ADDRESS

It was **RESOLVED THAT** the registered office and postal address of the company be and is hereby changed to the following addresses with immediate effect:

Registered Office:	Postal Address:
1 Fricker Road Illovo Johannesburg 2196	Private Bag X 9936 Sandton 2146

KATHRYN ANNE SPENCER

RONELLE CHARLENE REDDY (CA)
Ex Officio Commissioner of Oaths: Republic of South Africa
Member: The South African Institute of Chartered Accountants
Member Number: 07997093

07 May 2012

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
1 Fricker Road, Illovo, 2196
Reg No.: 2001/016069/10

J.P.Morgan

SAMPLE

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non Executive Chairman), Matthew E. Zames
Organised under the Federal Law of the United States
A subsidiary of JP Morgan Chase & Co.
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider

B. Appendix - General Bid Conditions

TRANSNET

GENERAL BID CONDITIONS - SERVICES

[March 2015]

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

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JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

1 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;

1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;

1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;

1.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;

1.5 **RFP** shall mean Request for Proposal;

1.6 **RFQ** shall mean Request for Quotation;

1.7 **RFX** shall mean RFP or RFQ, as the case may be;

1.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;

1.9 **Service Provider** shall mean the successful Respondent;

1.10 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

1.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and

1.12 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

3 SUBMISSION OF BID DOCUMENTS

3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.

3.2 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.

3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

4 USE OF BID FORMS

4.1 Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.

4.2 Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.

4.3 Only if insufficient space has been allocated for a particular response may a Respondent submit additional information under separate cover using its company's letterhead. This must be duly cross-referenced in the RFX.

~~5 BID FEES~~ N/A

~~5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.~~

~~5.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.~~

6 VALIDITY PERIOD

6.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period of 120 business days after the closing date of the bid.

6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents 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 Transnet's extension of the validity period.

7 SITE VISIT / BRIEFING SESSION

Respondents may be requested to attend a site visit where it is considered necessary to view the site prior to the preparation of Bids, or where Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

8 CLARIFICATION BEFORE THE CLOSING DATE

Should clarification be required on any aspect of the RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

9 COMMUNICATION AFTER THE CLOSING DATE

After the closing date of a Bid [i.e. during the evaluation period] the Respondent may only communicate with the Chairperson or Secretary of the relevant Acquisition Council.

10 UNAUTHORISED COMMUNICATION ABOUT BIDS

Where Bids are submitted to the Secretary of an Acquisition Council, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Acquisition Council or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

11 POST TENDER NEGOTIATIONS

Transnet and the Bidder will enter into post tender negotiations and will document all terms and conditions applicable in agreed written contracts.

~~Transnet reserves the right to conduct post tender negotiations with the preferred bidder or a shortlist of preferred bidders. Should Transnet~~ decide to ~~conduct post tender negotiations, bidders will be requested to provide their best and final offers to Transnet based on such negotiations. A final evaluation will be conducted in terms of 80/20 or 90/10 (whichever is applicable) and the contract will be negotiated and awarded to the successful bidder(s)~~.

12 RETURNABLE DOCUMENTS

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

13 DEFAULTS BY RESPONDENTS

If the Respondent, after it has been notified of the acceptance of its Bid fails to: agree the terms and conditions for the particular transaction in writing with Transnet, within a time period to be agreed between the parties

~~13.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or~~

~~13.2 accept an order in terms of the Bid;~~

~~13.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or~~

~~13.4 comply with any condition imposed by Transnet~~,

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, ~~and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer~~.

14 CURRENCY

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [ZAR], save to the extent specifically permitted in the RFX. or as set out in agreed documentation between Transnet and the Bidder for the specific transaction.

~~15 PRICES SUBJECT TO CONFIRMATION~~

~~15.1 Prices which are quoted subject to confirmation will not be considered.~~

~~15.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests~~.

16 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

~~17 EXCHANGE AND REMITTANCE~~

~~17.1 The Respondent should~~ note ~~that where the whole or a portion~~ of the contract or order value ~~is to be remitted overseas, Transnet~~ shall, if requested to do so ~~by the Service Provider, effect~~ payment

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overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.

17.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.

17.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the *Exchange and Remittance* section of the Bid Documents and also furnish full details of the principals to whom payment is to be made.

17.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.

17.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.

17.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [**VAT Act**].

18 ACCEPTANCE OF BID

18.1 Transnet does not bind itself to accept the lowest priced or any Bid.

18.2 Transnet reserves the right to accept any Bid in whole or in part.

18.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

18.4 Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.

19 NOTICE TO UNSUCCESSFUL RESPONDENTS

Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents shall be informed of the name of the successful Respondent and of the reason as to why their Bids have not been successful.

20 TERMS AND CONDITIONS OF CONTRACT

20.1 The Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

20.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on its company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments/ alternative(s) are acceptable or otherwise, as the case may be.

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21 CONTRACT DOCUMENTS

be negotiated and agreed between the parties.

21.1 The contract documents will ~~comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.~~

21.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

21.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance/Intent, shall ~~constitute a binding contract until the~~ final ~~contract is signed~~.

~~22 LAW GOVERNING CONTRACT~~

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. ~~The~~ *domicilium citandi et executandi* ~~shall~~ be a place in the Republic of South Africa ~~to be~~ specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

23 IDENTIFICATION

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

~~24 CONTRACTUAL SECURITIES~~ N/A

24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of an advanced payment guarantee [**APG**] and/or a performance bond [**Performance Bond**], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.

24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.

24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.

24.4 The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] calendar days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.

24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Service ~~Provider in relation to the conditions of this clause 24 will be for the account of the Service Provider.~~

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25 DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

26 VALUE-ADDED TAX

26.1 In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

26.2 In respect of foreign Services rendered:

a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and

b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

~~27 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT~~

~~27.1~~ **Method of Payment** N/A

a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.

b) However, in addition to the aforegoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.

d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 27.1a) above. Failure to comply with clause 27.1a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 24 above *[Contractual Securities]*.

~~27.2 Conditional Discount~~ N/A

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated from the date of receipt by Transnet of the Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects in terms of the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional discount period will be recalculated from the date of receipt of the correct documentation.

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~~28 DELIVERY REQUIREMENTS~~

N/A

28.1 Period Contracts

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

28.2 Progress Reports

The Service Provider may be required to submit periodical progress reports with regard to the delivery of the Services.

28.3 Emergency Demands as and when required

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The "*Total or Partial Failure to Perform the Scope of Services*" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

~~29 SPECIFICATIONS AND COPYRIGHT~~

N/A

29.1 Specifications

The Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for the Services strictly in accordance with the specifications supplied by Transnet.

29.2 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Service Provider for the purpose of contract work shall be governed by the *Intellectual Property Rights* section in the Terms and Conditions of Contract.

~~30 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS~~

N/A

30.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents.

30.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

30.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

30.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

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a) Such Power of Attorney must comply with Rule 63 [Authentication of documents executed outside the Republic for use within the Republic] of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.

c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.

d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.

30.5 If payment is to be made in South Africa, the foreign Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [**EFT**]:

a) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or

b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

31 CONFLICT WITH BID DOCUMENT

Should a conflict arise between these General Bid Conditions and the Bid Document issued, the conditions stated in the Bid Document shall prevail.

32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by reference. Below follows a condensed summary of this blacklisting procedure.

32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is 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.

32.3 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.

32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

32.5 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, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

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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 Service 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.

32.6 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:

a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;

b) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;

c) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.

d) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.

32.7 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.

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32.8 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.

32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

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5

C. Appendix - Standard Ts and Cs of Contract

TRANSNET

STANDARD TERMS AND CONDITIONS OF CONTRACT
FOR THE PROVISION OF SERVICES TO TRANSNET
[March 2015]

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

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1 INTRODUCTION

When an Agreement is entered into between Transnet SOC Ltd **[Transnet]** and the appointed supplier of Services to Transnet **[the Service Provider]**, these Standard Terms and Conditions of Contract, ~~the technical specifications for the Services, a Work Order including such special conditions as may be applicable, and~~ any terms in the associated Bid Documents, ~~exclusively govern the provision of Services by the Service Provider to Transnet~~, as amended in this marked-up proposal and as further amended or substituted by the negotiated agreements detailing such appointment and/or the terms of the specific transaction shall apply

2 DEFINITIONS

Where the following words or phrases are used in the Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

2.1 **AFSA** means the Arbitration Foundation of South Africa;

2.2 **Agreement** means the Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means [●], notwithstanding the signature date of the Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) the contents of the Agreement;

c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

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f) information relating to the past, present and future research and development of the disclosing Party;

g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) information contained in the software and associated material and documentation belonging to the disclosing Party;

i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) commercial, financial and marketing information;

l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

2.8 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;

2.9 **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;

2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;

2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;

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2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;

2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;

2.15 **Materials** means the Deliverables, the Service Provider Materials and the Third Party Materials;

2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;

2.17 **Party** means either one of these Parties;

2.18 Patents mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of the Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

2.22 **Service(s)** means [●], the Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;

2.23 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;

2.24 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

2.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;

2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;

2.27 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

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2.28 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

2.29 **Trade Marks** mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;

2.30 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and

2.31 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

3 INTERPRETATION

3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in the Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in the Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

~~4 NATURE AND SCOPE~~ N/A

~~4.1~~ The Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider, in accordance with the Agreement.

~~4.2~~ Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

~~4.3~~ Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.

~~4.4~~ During the period of the Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 29 *[Amendment and Change Control]* below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

~~4.5~~ Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or ~~amended by mutual written agreement between the Parties.~~

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4.6 Time will be of the essence and the Service Provider will perform its obligations under the Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in the Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) it has full capacity and authority to enter into and to perform the Agreement and that the Agreement is executed by a duly authorised representatives of the Service Provider;

b) it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence; and

c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations/.

d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and

e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification

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by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.

6.4 The Service Provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.

6.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 29 *[Amendment and Change Control]*.

6.7 The Service Provider warrants that:

a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and

b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with the Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

6.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.

6.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of the Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

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7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under the Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 14 *[Service Provider's Personnel]*, Transnet agrees to provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under the Agreement.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) respond promptly to all complaints and enquiries from Transnet;

b) inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;

d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

~~f) observe and ensure compliance with all requirements and obligations as set out in the~~ labour and related legislation of South Africa, ~~including~~ the Occupational Health and Safety ~~Act, 85 of 1993~~;

~~g) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance; and~~

~~h) ensure the validity of all renewable certifications, including but not limited to its Tax~~ Clearance Certificate and B-BBEE Verification Certificate, for the duration of the Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the ~~Service Provider~~.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) render the Services and perform all its duties with honesty and integrity;

b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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c) endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;

d) use its best endeavours and make every diligent effort to meet agreed deadlines;

e) treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 23 – *Equality and Diversity*];

g) treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;

h) when requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential Information, except where a non-disclosure undertaking has been entered into between the Parties;

~~i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;~~

j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;

l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and

~~m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.~~

9 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

9.1 B-BBEE Scorecard

a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service Provider also contributes to the Supplier Development Programme, as applied by Transnet.

b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of the Agreement.

c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

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(i) a change in the Service Provider's B-BBEE status which is materially less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 19**Error! Reference source not found.**.

e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 19**Error! Reference source not found.** shall apply.

9.2 B-BBEE Improvement Plan

a) Transnet encourages its Service Providers to constantly strive to improve their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period, as per Annexure E of the RFP.

b) The Service Provider shall, for the duration of the Agreement, comply with the B-BBEE Improvement Plan.

c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

9.3 Supplier Development Implementation Plan

a) In addition to the Supplier Development Plan which the Service Provider provided as part of its bid, the Service Provider undertakes, as stipulated in the RFP, to provide Transnet with a Supplier Development Implementation Plan [**the Implementation Plan**] setting out the nature, extent and monetary value of the Service Provider's commitments which the Service Provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service Provider's compliance with the Implementation Plan, as shall be agreed with Transnet but in any event no later than 45 (forty five) calendar days from the signature date of the LOI/LOA.

b) The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 45 (forty five) calendar days as aforesaid (or such later date as Transnet may consent to in writing).

c) If the Parties (acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service Provider in response to the RFP) fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in the clause above, it shall constitute a Service Provider Default and Clause 19**Error! Reference source not found.** shall apply.

d) The Supplier's Implementation Plan shall include, but not be limited to Technology transfer, New skills development, Job creation, Job preservation, Training, Small business promotion and Rural Integration and regional development.

e) ~~The terms of the Implementation Plan's and the monetary value of the commitments~~ thereunder shall not (unless otherwise agreed in writing) ~~be less~~ or less favourable than the commitments made ~~by the~~ Service Provider in the Supplier Development ~~Implementation Plan.~~

9.4 **Green Economy/Carbon Footprint**

a) ~~In addition to the Supplier Development and B-BBEE commitments that the Service Provider makes,~~ The Service Provider has in its bid provided Transnet with an understanding of the Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

9.5 **Reporting**

a) The Service Provider shall monitor, audit, and record ~~in an auditable manner~~, its own implementation and compliance with the indicative B-BBEE Improvement Plan and the indicative Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the indicative B-BBEE Improvement Plan and the indicative Supplier Development Implementation Plan.

b) ~~The Service Provider shall, on a monthly basis from the Commencement Date and within 7~~ (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in ~~this clause 9.5.~~

c) ~~Transnet, through its Supplier Development division, shall, every 6 (six) months from the~~ Commencement Date, review and verify the Service Provider's undertakings stipulated in this clause with respect to B-BBEE and Supplier Development commitments, based on the ~~Service Provider's report.~~

d) ~~The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Supplier Development Implementation Plan.~~

e) ~~Post verification of the submitted report to Transnet, Transnet shall engage with the~~ Service Provider on the findings. The Contract Manager, assisted by the relevant specialist from Transnet's Supplier Development division, must report to the Service Provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to it, that the Service Provider has during such time complied with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and the extent, if any, to which the ~~Service Provider has not so complied~~.

f) ~~Without prejudice to the Transnet's rights under the Agreement~~:

(i) If the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service Provider as to the steps he reasonably considers should be taken by the Service Provider in order for the Service Provider to remedy such non-compliance and the time period within which such steps must be taken;

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(ii) If such recommendations are not implemented by the Service Provider in accordance with such recommendations, then the provisions of clause 9.6 shall apply; and

(iii) Transnet may at any time request a meeting with the Service Provider to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service Provider must undertake in order to remedy that non-compliance.

g) In the event the Service Provider is found not to have met the B-BBEE and Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause 9.6 below or shall be entitled to terminate in terms of clauses 18 and 19.

h) For the sake of completion of its contractual obligations, the Service Provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

9.6 **Penalties**

Non-Compliance Penalties:

a) If the Service Provider fails, at any time, to achieve its commitments under and in accordance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan ("a **Non Compliance**"), the Service Provider shall, subject to the applicable Non Compliance Penalty Cap, pay a Non Compliance penalty ("Non Compliance Penalty") to Transnet in respect of such Non Compliance at the applicable rate ("Applicable Rate"), as prescribed in clause 9.6 b) to m) below.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

(ii) the date on which the Service Provider has remedied such Non Compliance by complying with the Supplier Development Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or

(iii) the Agreement being terminated.

Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):

b) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 10% (ten percent) of such difference.

c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates based on a percentage of the Contract Value:

(i) for the first month (or part thereof), a rate of 1.0% (one percent);

(ii) for the second month (or part thereof), a rate of 1.5% (one and a half percent);

(iii) for the third month (or part thereof), a rate of 2.0% (two percent);

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(iv) for the fourth month (or part thereof), a rate of 2.5% (two and a half percent); and

(v) for any period of Non Compliance after the fourth month, a rate of 3% (three percent).

Non Compliance Penalty Cap for Large Enterprises:

d) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 10% (ten percent) of such difference.

e) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 5% (five percent) of the Contract Value.

Applicable Rates of Non Compliance Penalties for Qualifying Small Enterprises (QSEs):

f) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 5% (five percent) of such difference;

g) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

Non Compliance Penalty Cap for QSEs:

h) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 5% (five percent) of such difference.

i) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

Applicable Rates of Non Compliance Penalties for Exempted Micro Enterprises (EMEs):

j) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 3% (three percent) of such difference;

k) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

Non Compliance Penalty Cap for EMEs:

l) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 3% (three percent) of such difference.

m) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

Non Compliance Penalty Certificate:

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n) ~~If any Non Compliance Penalty arises, the Contract Manager shall issue a Non Compliance~~ Penalty Certificate on the last day of each month during such Non Compliance indicating the Non Compliance Penalties which have accrued during that period.

o) A Non Compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non Compliance Penalty Certificate:

(i) the dispute shall be resolved in accordance with the provisions of the Agreement; and

(ii) if pursuant to that referral, it is determined that the Service Provider owes any amount to Transnet pursuant to the Non Compliance Penalty Certificate, then the Supplier shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

p) Subject to Clause o), the Service Provider shall pay the Non Compliance Penalty indicated in the Non Compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non Compliance Penalties accrued during any relevant period, those Non Compliance Penalties shall be carried forward to the next period.

q) The Service Provider shall pay the amount due within 10 (ten) Business Days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under the Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

r) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated in above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

s) The Non Compliance Penalties set forth in this Clause 9.6 are stated exclusive of VAT. Any ~~VAT payable on Non Compliance Penalties will be for the account of the Supplier~~

10 FEES AND EXPENSES

The parties will negotiate and agree the relevant fees payable in the documentation relating to each aspect of the various transactions

10.1 ~~In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.~~

~~10.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials [if any] set out in the Work Order and accepted by Transnet or in any relevant Work Order [which will be invoiced to Transnet at cost].~~

10.3 Unless otherwise agreed ~~in a schedule or Work Order~~, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:

a) are agreed by Transnet in advance;

b) are incurred in accordance with Transnet's standard travel and expenses policies;

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c) are passed on to Transnet at cost with no administration fee; and

d) will only be reimbursed if supported by relevant receipts.

10.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

11 INVOICING AND PAYMENT

~~11.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of the Agreement.~~

~~11.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed~~ Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed ~~become~~ due and payable to the Service Provider for the provision of the ~~Services, in terms of clause 11.4 below~~.

11.3 All Fees and other sums payable under the Agreement are exclusive of VAT, which will be payable at the applicable rate.

~~11.4 Unless otherwise provided for in the Work Order(s) appended to the Agreement, Tax Invoices~~ shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting ~~documentation~~.

11.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 11, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

~~12 FEE ADJUSTMENTS~~

12.1 Fees for Services rendered in terms of the Agreement shall be subject to review as indicated in the Work Order(s) annexed hereto from time to time.

12.2 No less than 2 [two] months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.

12.3 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with ~~clause 26~~ of this ~~Master~~ Agreement *[Dispute Resolution]*.

13 INTELLECTUAL PROPERTY RIGHTS

13.1 Title to Confidential Information

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider's Background Intellectual Property shall remain vested in the Service Provider.

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b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Service Provider to sub-license to other parties.

c) ~~The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.~~

d) ~~The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.~~

13.2 ~~Title to~~ Intellectual ~~Property~~

a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Service Provider, its researchers, agents and employees shall vest in ~~Transnet and~~ the Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. ~~The Service Provider~~ shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.

b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.

c) Where the Foreground Intellectual Property was created by the Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.

d) No consideration shall be paid by Transnet to the Service Provider for the assignment of any Foreground Intellectual Property from the Service Provider to Transnet, over and above the sums payable in terms of the Agreement. The Service Provider undertakes to ~~sign all documents and do all things as may be necessary to effect, record and perfect the assignment of~~ the Foreground Intellectual Property to ~~Transnet.~~

e) Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably be withheld or delayed], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

~~13.3 Title to Improvements~~

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Service Provider shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Service Provider shall ~~reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground~~ Intellectual Property.

13.4 **Unauthorised Use of Confidential Information**

The Service Provider shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of any party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting.

~~13.5 Unauthorised Use of Intellectual Property~~

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.

c) The Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.

d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards ~~arising out of~~ proceedings.

14 SERVICE PROVIDER'S PERSONNEL

14.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.

14.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.

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14.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.

14.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under the Agreement.

14.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

15 LIMITATION OF LIABILITY

15.1 Neither Party excludes or limits liability to the other Party for:

a) death or personal injury due to negligence; or

b) fraud.

~~15.2 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for~~ damage to any Transnet property [whether tangible or intangible] or ~~any other~~ loss, costs or damage suffered by Transnet to the extent that it ~~results~~ from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider's liability arising out of this clause 15.2 shall be limited to a maximum amount payable in respect of any ~~one~~ occurrence or a series of related occurrences in a single calendar year, such amount to be agreed ~~in writing by the Parties~~.

~~15.3 Subject always to clause 15.1 and 15.2 above, the liability of either the Service Provider or~~ Transnet under or in connection with the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of ~~each~~ Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

15.4 Subject to clause 15.1 above, and ~~except~~ as provided in clauses 15.2 and 15.3 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an ~~indirect nature or loss~~ or damage incurred by the other Party as ~~a result of third party claims~~.

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~~15.5 If for any reason the exclusion of liability in clause 15.4 above is void or unenforceable, either~~ Party's total liability for all loss or damage ~~under the Agreement~~ shall be as provided in clause ~~15.3 above.~~

15.6 Nothing in this clause 15 shall be taken as limiting the liability of the Service Provider in respect of clause 13 *[Intellectual Property Rights]* ~~or clause 17 [Confidentiality]~~.

~~16 INSURANCES~~

16.1 Without limiting the liability of the Service Provider under the Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.

16.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.

16.3 Subject to clause 16.4 below, if the Service Provider fails to effect adequate insurance under this clause 16, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.

16.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 16.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 ~~[thirty] calendar days~~ prior written notice to that effect.

~~17 CONFIDENTIALITY~~ replace with terms eg confidentiality in paragraphs 1 to 6 (both inclusive) of the Letter Agreement

17.1 The Parties hereby undertake the following, with regard to Confidential Information:

a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed ~~or otherwise than in strict compliance with the provisions in the Agreement~~;

c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of the Agreement, in which case such copies shall be regarded as Confidential Information;

d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to the Agreement;

e) not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of the Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

17.2 The duties and obligations with regard to Confidential Information in this clause 17 shall not apply where:

a) a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of the Agreement by that Party, or its Personnel; or

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b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) is independently developed by a Party as proven by its written records.

17.3 This clause 17 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Service Provider by Transnet pursuant to the Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

18 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

Should the Service Provider fail or neglect to execute the work or to deliver any portion of the Service, as required by the terms of the Agreement or Work Order, Transnet may cancel the Agreement or Work Order in so far as it relates to the unexecuted work or rejected portion of the Service, and, in such event, the provision of any remaining commitment shall remain subject in all respects to these conditions.

19 TERM AND TERMINATION

19.1 Notwithstanding the date of signature hereof, the Commencement Date of the Agreement is [•] and the duration shall be for a [•] [[•]] year period, expiring on [•], unless:

a) the Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) the Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

19.2 Either Party may terminate the Agreement forthwith by notice in writing to the other Party where the other Party has committed a material Default and, where such Default is capable of remedy, has failed to remedy such Default within 30 [thirty] calendar days of receiving notice specifying the Default and requiring its remedy.

19.3 Either Party may terminate the Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time], or if any action, application or proceeding is made with regard to it for:

a) a voluntary arrangement or composition or reconstruction of its debts;

b) its winding-up or dissolution;

c) the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or

d) any similar action, application or proceeding in any jurisdiction to which it is subject.

19.4 Transnet may terminate the Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider. For the

Signature of the Letter Agreement and shall be for a duration in accordance with its terms and those of its Annexures. All other agreements relating to the transactions in the LOI will be negotiated and agreed between the Parties

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purposes of this clause, "**control**" means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

19.5 Transnet may cancel any schedule or Work Order hereto at any time on giving the Service Provider 30 [thirty] calendar days' written notice.

19.6 Notwithstanding this clause 19, either Party may cancel the Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party.

20 CONSEQUENCE OF TERMINATION

20.1 Termination in accordance with clause 19 *[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive the Agreement or impliedly do so shall remain in force and in effect.

20.2 On termination of the Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.

20.3 To the extent that any of the Deliverables and property referred to in clause 20.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.

20.4 In the event that the Agreement is terminated by the Service Provider under clause 19.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 19.5 *[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

20.5 The provisions of clauses 1 *[Definitions]*, 6 *[Warranties]*, 13 *[Intellectual Property Rights]*, 15 *[Limitation of Liability]*, ~~17 *[Confidentiality]*~~, 20 *[Consequence of Termination]*, 26 *[Dispute Resolution]* and 30 *[Governing Law]* shall survive termination or expiry of the Agreement.

20.6 If either Party [**the Defaulting Party**] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

20.7 Should:

a) the Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) either Party be provisionally or finally liquidated or placed under ~~judicial management~~ business rescue, whether provisionally or finally; or

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c) either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

then the other Party shall be entitled, but not obliged, to terminate the Agreement on written notice, in which event such termination shall be without any liability and without prejudice to any claims which either Party may have for damages against the other.

21 ASSIGNMENT

Neither Party may assign the benefit of the Agreement or any interest hereunder except with the prior written consent of the other. Further, in the event that Transnet wishes to assign or novate the Agreement to any third party, the Service Provider agrees that it shall not unreasonably withhold or delay its consent to such assignment or novation and that it shall only be entitled to recover from Transnet any reasonable legal costs incurred by it as a direct result of such assignment or novation.

22 FORCE MAJEURE

22.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under the Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the aforegoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of *force majeure*.

22.2 Each Party will take all reasonable steps by whatever lawful means that are available, to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of the Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree to such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.

23 EQUALITY AND DIVERSITY

23.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to the Agreement or any applicant for employment with either Party to the Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

23.2 Both Parties to the Agreement undertake that they will not, and shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

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24 NON-WAIVER

24.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of the Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of the Agreement.

24.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of the Agreement, or prejudice the right of that Party to institute subsequent action.

25 PARTIAL INVALIDITY

If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

26 DISPUTE RESOLUTION

26.1 Should any dispute of whatsoever nature arise between the Parties concerning the Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

26.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.

26.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

26.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 26.

26.5 This clause 26 is severable from the rest of the Agreement and shall remain in effect even if the Agreement is terminated for any reason.

26.6 This clause 26 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

27 ADDRESSES FOR NOTICES

27.1 The Parties to the Agreement select the physical addresses and facsimile numbers, as detailed hereafter, as their respective addresses for giving or sending any notice provided for or required in terms of the Agreement, provided that either Party shall be entitled to substitute such other address or facsimile number, as may be, by written notice to the other:

a) **Transnet**

(i) For legal notices: [•]
Fax No. [•]
Attention: Legal Counsel

(ii) For commercial matters: [•]
Fax No. [•]
Attention: [•]

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b) **The Service Provider**

(i) For legal notices: [•]

Fax No. [•]

Attention: [•]

(ii) For commercial matters: [•]

Fax No. [•]

Attention: [•]

27.2 Any notice shall be addressed to a Party at its physical address or delivered by hand, or sent by facsimile.

27.3 Any notice shall be deemed to have been given:

a) if hand delivered, on the day of delivery; or

b) if posted by prepaid registered post, 10 [ten] calendar days after the date of posting thereof; or

c) if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day.

~~28 WHOLE AND ONLY AGREEMENT~~

28.1 The Parties hereby confirm that the Agreement constitutes the whole and only agreement between them with regard to the subject matter of the Agreement.

28.2 The Parties hereby confirm that the Agreement replaces all other agreements which exist or may have existed in any form whatever between them, with regard to the subject matter dealt with in the Agreement, including any annexures, appendices, schedules or Work Order(s) appended hereto.

29 AMENDMENT AND CHANGE CONTROL

29.1 Any amendment or change of any nature made to this Agreement ~~and the Schedule of Requirements thereof~~ shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto.

~~29.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 26 *[Dispute Resolution]*.~~

~~30 GOVERNING LAW~~ This proposal is exclusively governed by and shall be construed in accordance with South African law and shall be subject to the jurisdiction of the South African courts. All agreements relating to the specific transactions will be as negotiated and agreed between the parties

~~The Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.~~

30.1 **Change of Law**

In the Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, ~~extension or re-enactment of any statutory provision or introduction of any new statutory~~

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~~provision has a material impact on the obligations of either Party, the Parties will negotiate in~~ good faith to agree such amendments to the Agreement as may ~~be appropriate~~ in the circumstances. If, within a reasonable period of time, ~~the~~ Service Provider and Transnet cannot reach agreement on the nature of ~~the~~ changes required or on modification of Fees, Deliverables, warranties, or ~~other~~ terms and conditions, either Party may seek to have the matter determined in ~~accordance with clause 26 *(Dispute Resolution)* above~~.

31 COUNTERPARTS

The Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into the Agreement by signing any such counterpart.

32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.

32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is 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.

32.3 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.

32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

32.5 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, in bad faith, 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;

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f) has made any incorrect statement in a certificate or other communication with regard to the Services 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.

32.6 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:

a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;

b) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;

c) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.

d) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.

32.7 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.

32.8 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.

32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

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Date: 8/5/2015

32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

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JPMorgan Chase Bank N.A. (Johannesburg Branch)
8/5/2015

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D. Appendix – Non Disclosure Agreement

TRANSNET

This indicative proposal is subject to the terms and conditions relating to confidentiality as set out in the Letter Agreement (paragraphs 1 to 6 inclusive) which has been extensively negotiated with Transnet, is in substantially agreed form and is submitted as an attachment to the covering letter.

NON DISCLOSURE AGREEMENT - SERVICES

[March 2015]

N/A

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

THIS AGREEMENT is made between

Transnet SOC Ltd [Transnet] [Registration No. 1990/000900/30]
whose registered office is at 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

and

the Company as indicated in the RFP bid response hereto

WHEREAS

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

N/A

IT IS HEREBY AGREED

1. **INTERPRETATION**

In this Agreement:

1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;

1.2 **Bid or Bid Document** means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;

1.3 **Confidential Information** means any information or other data relating to one party [the Disclosing Party] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the Receiving Party] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:

a) is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or

b) was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or

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Date: 8/5/2015

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

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

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

2. CONFIDENTIAL INFORMATION

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

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

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

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

b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

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

2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.

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

3. RECORDS AND RETURN OF INFORMATION

3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.

3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.

3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:

a) return all written Confidential Information [including all copies]; and

b) expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.

3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3 b) above.

4. ANNOUNCEMENTS

4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.

4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

N/A

5. DURATION

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

6. PRINCIPAL

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

7. ADEQUACY OF DAMAGES

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

8. PRIVACY AND DATA PROTECTION

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

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

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Date: 8/5/2015

9. GENERAL

9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.

9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.

9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.

9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.

9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

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N/A

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

E. Appendix – Integrity Pact

Please see J.P. Morgans form of representation letter relating to their global anti-corruption compliance program.

TRANSNET

Important Note: All potential bidders must read this document and certify in the RFP Declaration Form that they have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.

INTEGRITY PACT

Between

TRANSNET SOC LTD

Registration Number: 1990/000900/30

("Transnet")

and

The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

PREAMBLE

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

1 OBJECTIVES

1.1 Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:

a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and

b) Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

2 COMMITMENTS OF TRANSNET

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.

2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.

2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process.

2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

3 OBLIGATIONS OF THE BIDDER / SUPPLIER

3.1 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:

a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and

b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

3.2 The acceptance and giving of gifts may be permitted provided that:

a) the gift does not exceed R1 000 (one thousand Rand) in retail value;

b) many low retail value gifts do not exceed R 1 000 within a 12 month period;

c) hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;

d) a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;

e) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;

f) a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and

g) a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.

3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.

3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.

3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

3.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.

3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.

3.8 The Bidder / Supplier shall furnish Transnet with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of conduct.

3.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

4 INDEPENDENT BIDDING

4.1 For the purposes of that Certificate in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:

a) has been requested to submit a Bid in response to this Bid invitation;
b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.

4.2 The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.

4.3 In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

a) prices;
b) geographical area where Goods or Services will be rendered [market allocation];
c) methods, factors or formulas used to calculate prices;
d) the intention or decision to submit or not to submit, a Bid;
e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or
f) bidding with the intention of not winning the Bid.

4.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her Bid relates.

4.5 The terms of the Bid as submitted have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.

4.6 Bidders are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in

terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority **[NPA]** for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

4.7 Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be.

5 DISQUALIFICATION FROM BIDDING PROCESS

5.1 If the Bidder / Supplier has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.

5.2 If the Bidder / Supplier has committed a transgression through a violation of section 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.

5.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

6 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

6.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.

6.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is 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.

6.3 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.

6.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

6.5 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, in bad faith, 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.

6.6 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.

6.7 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

7 PREVIOUS TRANSGRESSIONS

7.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.

7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

8 SANCTIONS FOR VIOLATIONS

8.1 Transnet shall also take all or any one of the following actions, wherever required to:

a) Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
c) Recover all sums already paid by Transnet;
d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
e) Cancel all or any other contracts with the Bidder / Supplier; and
f) Exclude the Bidder / Supplier from entering into any bid with Transnet in future.

9 CONFLICTS OF INTEREST

9.1 A conflict of interest includes, inter alia, a situation in which:
a) A Transnet employee has a personal financial interest in a bidding / supplying entity; and
b) A Transnet 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 action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.

9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:
a) Private gain or advancement; or
b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.

Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.

9.3 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:
a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
b) must notify Transnet immediately in writing once the circumstances has arisen.

9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

10 MONITORING

10.1 Transnet will be responsible for appointing an independent Monitor to:
a) Conduct random monitoring of compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for less than R100,000,000 (one hundred million Rand) in value;
b) Monitor compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for greater than R100,000,000 (one hundred million Rand) in value; and
c) Investigate any allegation of violation of any provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier, irrespective of value.

10.2 The Monitor will be subjected to Transnet's Terms of Conditions of Contract for the Provision of Services to Transnet, as well as to Transnet's Supplier Code of Conduct.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)
Date: 8/5/2015

11 EXAMINATION OF FINANCIAL RECORDS, DOCUMENTATION AND/OR ELECTRONIC DATA

For the purpose of Monitoring, as stipulated above, the Monitor shall be entitled to:

a) Examine the financial records, documentation and or electronic date of the Bidder / Supplier / Transnet. The Bidder / Supplier / Transnet shall provide all requested information / documentation / data to the Monitor and shall extend all help possible for the purpose of such examination.

12 DISPUTE RESOLUTION

12.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / 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, following a blacklisting process as mentioned in paragraph 6 above, 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:

a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
b) **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;
c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

13 GENERAL

13.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.

13.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.

13.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.

13.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.

13.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

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JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

F. Appendix - Letter Agreement

DRAFT – NOT FOR SIGNATURE
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

STRICTLY CONFIDENTIAL

Attention:

Date:

Dear Sirs

Transnet SOC Ltd (the "**Company**") is proposing to enter into a US$2.5billion loan facility with a committed first tranche of US$1.5billion and a further optional tranche of US$1billion at the Company's option (the "**Loan**") with China Development Bank ("**CDB**") to finance part of the Company's purchase of locomotives from China North Railways and China South Railways. In connection with this Loan, the Company and JPMorgan Chase Bank N.A., Johannesburg Branch ("**JPMC**") and/or its affiliates ("**JPMC Representatives**") are considering entering into a hedging transaction in the form of a series of cross currency swaps and credit contingent structures in the form of Contingent Credit Default Swaps (the "**Transaction**"). JPMC and the Company (collectively the "**Parties**" and each a "**Party**") hereby agree as follows.

1. Each Party agrees and undertakes that all Confidential Information (as defined below) received by it (the "**Receiving Party**") from the other Party (the "**Disclosing Party**"), as well as the nature, form and content of the Transaction, the identity and role of JPMC and JPMC's Representatives and any subsequent execution of the Transaction shall be kept confidential and shall not, without the prior written consent of the Disclosing Party, be disclosed by the Receiving Party. The Company further agrees to disclose the Confidential Information only to such of its employees and professional advisers (collectively "**Company's Representatives**") who need to know the Confidential Information for the purpose of the Transaction. Prior to receipt of any Confidential Information, each Party shall ensure that its Representatives are aware of and adhere to the obligations of confidentiality set out in this Agreement. Each Party hereby agrees to be responsible for any breach of this Agreement by its Representatives. Each Party agrees that the Confidential Information shall not be used by it or its Representatives other than in connection with an evaluation of the Transaction and any decision to proceed with and/or execute the Transaction or any part thereof.

2. The Confidential Information shall be returned to the Disclosing Party or destroyed (to the extent reasonably practicable) following the Disclosing Party's written request, save for that Confidential

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Information which the Receiving Party or its Representatives are requested or required to retain by any regulatory, supervisory or governmental authority, institution or department; under court process or pursuant to statutory requirement or regulation; pursuant to such Party's or its Representative's internal audit, legal or compliance policies or procedures; or which has been created pursuant to electronic archiving procedures. The Receiving Party shall supply a written confirmation of such destruction to the Disclosing Party upon request.

3. Notwithstanding anything to the contrary contained herein, it is understood that:

(i) each Party and its Representatives may disclose the Confidential Information or portions thereof: (a) at the request of any regulatory, supervisory or governmental authority, institution or department; or (b) under court process or pursuant to statutory requirement or regulation; or (c) to its or its Representative's auditors, external counsel or accountants; and

(ii) JPMC and its Representatives may disclose the Confidential Information or portions thereof: (a) to the institutions referred to in clause 9(b), on a confidential basis; or (b) to affiliates or subsidiaries of JPMorgan Chase & Co; and

(iii) the Company and its Representatives may disclose each cross-currency swap confirmation, in the form of Annex 1 hereto, to CDB upon execution of the cross-currency swap concerned; provided that CDB will be under an obligation of confidentiality in this regard to the Company; and

(iv) the Company will report the Transaction in their annual report in accordance with applicable reporting standards.

4. In this Agreement, "**Confidential Information**" shall mean all information, analyses, compilations, studies, documents or other material (whether communicated orally, in written form or other media) obtained by one Party or its Representatives from the other Party or any of such Disclosing Party's Representatives in connection with the Transaction, the Loan and/or relating to the Disclosing Party, including any execution of any part of the Transaction, together with any analyses, compilations, studies, documents or other material written or otherwise prepared by the Disclosing Party or its Representatives, which reflects or incorporates such information, as well as the nature, form and content of the Transaction, the identity and role of JPMC and JPMC's Representatives; provided that

"Confidential Information" shall not include:

a) information or material which at the time of its disclosure is, or which thereafter becomes part of the public domain other than as a result of a disclosure by the Receiving Party or its Representatives in violation of this Agreement; and

b) information or material which the Receiving Party can show was in its possession, or the possession of one or more of its Representatives, at the time of disclosure and was not acquired directly or indirectly, under a confidentiality obligation.

5. It is further understood and agreed that any breach of the obligations of confidentiality in this Agreement could cause the other Party irreparable injury and that monetary damages may not be adequate remedy for any such breach. In the event of a breach or threatened breach by a Party or its Representatives of any of the confidentiality provisions of this Agreement, the other Party shall be entitled to seek injunctive relief in any court of competent jurisdiction restraining the Party in breach from breaching the terms hereof or from disclosing any Confidential Information to any person.

6. The obligations of confidentiality owed hereunder by the Parties shall expire after a period of 3 years from the date hereof.

7. Subject always to clause 10 hereof JPMC will act as sole hedge counterparty to the Company in connection with the Loan on the terms of the Transaction. The Company will hedge each draw-down of the Loan with JPMC at or about the time of each draw-down by way of entering into a cross-currency swap and a Contingent Credit Default Swap, up to an aggregate cross-currency swaps notional amount of US$1.5billion, subject to the market conditions, and the same number of credit contingent structures. Each part of the Transaction, subject to any changes in market conditions, such as liquidity and volatility, and provided there is no *force majeure* (as defined below), will be priced based on the following charges from an agreed mid price:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Contingent Default Swap charge (bps)
12.9	7	-112.5

For the avoidance of doubt:

a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto,

b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded at each Loan drawn-down substantially on the terms of Annex 2 hereto.

c) *Force majeure* means any of the following extraordinary and unavoidable circumstances in given conditions if as a result of its occurrence, subject to the ability to perform an alternative obligation or other measures agreed between the Parties, either the Company or JPMC as the case may be become unable to perform any or all of its payment or delivery obligations, as well as other material obligations under either a cross-currency swap or the Contingent Credit Default Swap:

i) riot, insurrection, revolution, invasion or blockade;

ii) fire, flood or other acts of God;

iii) war, civil war, military actions, state of emergency or martial law; or

iv) other extraordinary and unavoidable circumstances, the consequences of which render either Party unable to perform.

The provisions of this clause 7 shall remain in effect for a period of 3 years from the date hereof, or as may otherwise be agreed by written agreement between the Parties.

8. The Company hereby authorises JPMC to commence pre-hedging for the Transaction with effect from the date hereof, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of JPMC and JPMC's Representatives only, in the event that the Transaction does not proceed and provided further that the JPMC and its Representatives warrants that it shall not engage in any front-running or other practice akin thereto.

9. The Parties hereby further acknowledge and agree that:

a) the Transaction may subsequently be partially novated by JPMC and/or JPMC's Representatives, as applicable, to the Company's relationship banks approved by JPMC. In order to facilitate this process and prior to any part of the Transaction being executed, the Company undertakes and agrees to provide JPMC's authorised employee representatives, as notified to the Company in writing, on a confidential basis, with the non-binding estimates of the credit and market risk appetite of its relationship banks;

b) in order to reduce JPMC's and/or JPMC's Representatives' market and credit risk exposure under any Transaction that is executed, the Company undertakes and agrees, and will procure that the Company's Representatives undertake and agree, to provide all assistance as may be reasonably

requested by JPMC and/or JPMC's Representatives to effect any subsequent novation or transfer, including: (i) authorising JPMC and/or JPMC's Representatives to approach the potential transferees identified by the Company pursuant to sub-clause 9 (a) and/or potential protection sellers, including, but not limited to, CDB, the African Development Bank ("**ADB**") and the Multilateral Investment Guarantee Agency ("**MIGA**"); (ii) providing any information reasonably requested by JPMC or JPMC's Representatives; and/or (iii) making the Company's senior management and representatives available to participate in meetings with potential transferees, at such times and places as JPMC may reasonably request;

c) in order to effect any of the potential novations referred to in sub-clause 9 (a) above, the Company may run a credit auction among the Company's and JPMC's relationship banks, on a confidential basis;

d) the Company has separately engaged Regiments Capital Proprietary Limited ("**RC**") to act as its financial adviser in relation to the Loan and for the Transaction and the Company understands and agrees that JPMC will not rely upon any services or work performed by any advisors of the Company, including RC. Accordingly, the Company agrees that JPMC and JPMC's Representatives shall have no liability to the Company or to any of its subsidiaries or affiliates or its or their respective directors, officers, employees, partners, shareholders or other security holders or creditors for any actions or omissions of such other advisors (including specifically RC) and including in respect of the advice of such other advisors in relation to the Transaction;

10. The Parties hereby agree that:

a) the Transaction is subject to:

   a. JPMC obtaining all credit, risk, market risk, compliance, legal and reputational approvals; and

   b. the Company providing to JPMC a legal opinion from the Company's external legal advisers in the form which is satisfactory to JPMC prior to entering into the first cross-currency swap hereunder;

b) nothing in this Agreement constitutes an agreement or commitment of JPMC or JPMC's Representatives to act as arranger, underwriter, lead manager, bookrunner or mandated lead arranger or to provide all or any part of the Loan or any other financing or to enter into the Transaction. Any

agreement to act in any such capacity or to provide any additional services would, amongst other things, be subject to the negotiation and execution of separate engagement letter(s) and/or underwriting agreement(s) on terms acceptable to JPMC or, as the case may be, such JPMC Representatives as customarily act in the relevant capacity and/or provide the relevant services. Any such engagement letter(s) or underwriting agreement(s) would be on terms (including as to remuneration, indemnification, costs and expenses) acceptable to JPMC or JPMC's Representatives and would be entered into with the Company and/or its affiliate(s) or special purpose vehicle(s) acceptable to JPMC or JPMC's Representatives; and

c) JPMC shall not be responsible for, and will not be deemed as, advising the Company or any other person or entity on the suitability or corporate implications of the Loan, the Transaction or any other transaction specified herein, performing on the Company's behalf due diligence investigations in connection with the Loan or the Transaction, nor giving the Company legal, accounting, taxation, regulatory, ratings or investment advice in relation to the Loan, the Transaction or any other transaction. Accordingly, the Company specifically confirms that it has obtained its own legal, accounting, taxation, regulatory, rating, financial and/or investment advice as to the effects of entering into a cross-currency swap and a corresponding Contingent Credit Default Swap on the same day as opposed to their execution on two different days. The Company agrees that any decision of the Company to proceed with the execution of a cross-currency swap and a corresponding Contingent Credit Default Swap on the same day or on two different days will be made on the basis of such independent accounting advice.

11. Where this Agreement imposes any obligations on a Party's Representatives, such obligation shall be deemed to include an obligation on the Party concerned to procure that such persons comply with such obligations.

12. This Agreement shall be governed by, and construed in accordance with the laws of the Republic of South Africa, and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Johannesburg in connection with any dispute related to or brought under this Agreement.

13. This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof, no representations having been made by either Party except as are herein specifically set forth. No rights or obligations other than those expressly recited herein are to be implied from this Agreement.

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TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

Please acknowledge your agreement to the foregoing by countersigning this letter, and returning an original copy to us.

Yours faithfully,

DRAFT – NOT FOR SIGNATURE

_____

For and on behalf of
JPMorgan Chase Bank N.A.,
Johannesburg Branch

Accepted and agreed:
for and on behalf of
Transnet SOC Ltd:

DRAFT – NOT FOR SIGNATURE

By: _____
Name: _____
Title: _____
Date: _____

G. Appendix - Representation Letter (relating to JPMorgan Chase's Global Anti-corruption Compliance Program)

J.P.Morgan

8 May 2015

Transnet Soc Limited
The Secretariat
Transnet Acquisition Counsel
Carlton Centre
Tender Box
Office Block Foyer
150 Commissioner Street
Johannesburg 2001

RE: JPMorgan Chase & Co. Global Anti-Corruption Compliance Program

Dear Sir or Madam:

This letter is to inform you that JPMorgan Chase & Co., including each of its subsidiaries, ("JPMC") is firmly committed to participating in international efforts to combat corruption.

JPMC has established an Anti-Corruption Policy that requires compliance with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other applicable anti-corruption laws. The Anti-Corruption Policy is referenced in the publicly available JPMC Code of Conduct.

The JPMC Anti-Corruption Policy:

- Affirms that JPMC has zero tolerance for bribery – whether direct or indirect or in the public or private sector;
- Requires that relevant employees and third parties receive anti-corruption training;
- Explains how JPMC employees may report and escalate corruption-related issues;
- Requires employees to accurately maintain books and records related to the firm's business;
- Prohibits cash gifts and equivalents (e.g., gift cards);
- Establishes a system of internal controls requiring adherence to special procedures when anything of value is provided to a government official to ensure that the benefit is reasonable and customary, proportionate to the underlying business purpose related to it, compliant with local law, and transparently documented;
- Establishes a system of internal controls requiring preclearance of the following items when provided directly or indirectly to a non-U.S. government official:
  - Gifts and Business Hospitality
  - Honoraria and Speaker Fees
  - Visa Letters
  - Political Contributions

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. Zames
Organised under the Federal Law of the United States
A subsidiary of JP Morgan Chase & Co.
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider

J.P.Morgan

- Establishes a system of internal controls requiring preclearance of contributions to a charity or other philanthropic organization recommended by, or that would benefit, a non-U.S. government official;
- Prohibits facilitation payments;
- Establishes a system of controls requiring pre-clearance of any offer of JPMC employment (whether paid or unpaid) to a candidate who is referred by a government official, or an existing or potential client/business partner;
- Establishes a system of controls involving the engagement of entities that act as agents on behalf of JPMC in order to (1) obtain or retain business from any third party, or (2) interact with government officials; and
- Requires employees to assess the corruption risk associated with their transaction types.

JPMC is a publicly traded company that is regulated by various U.S. federal and state banking and securities regulators as well as other regulatory organizations, including self regulatory organizations and other U.S. and non-U.S. governmental agencies that have supervisory authority over certain legal entities. For more information concerning JPMC's businesses and the products and services offered, please feel free to visit our website at www.jpmorgan.com.

Compliance with the legal and regulatory requirements that govern the interactions with government officials, clients, potential clients, and other third parties is critical for JPMC to protect itself, its shareholders and the international financial system from the abuses of corruption and illicit finance. Moreover, compliance with the Anti-Corruption Policy and internal procedures allows JPMC to maintain good standing in the jurisdictions where it transacts business.

If you have any questions or require further information regarding JPMC's anti-corruption efforts, please call me at +27 11 507 0730.

Sincerely,

_____
Signature

_____
Print Name

JPMorgan Chase Bank, N.A., Johannesburg Branch

REPORT 2(A)

PART E

PART E

MNS

PART E: TRANSNET GOVERNANCE DOCUMENTS		
EXHIBIT NO.	DATE	DESCRIPTION OF EXHIBIT
1.	23/11/2007	Standard Operating Procedures: Credit Application, Extension and Review dated 23 November 2007
2.	01/08/2012	Procurement Procedure Manual (Version 1 - effective 1 October 2012)
3.	29/05/2013	Financial Risk Management Framework dated February 2013 (approved by the Board on 29 May 2013)
4.	01/06/2013	Delegation of Authority Framework (effective 1 June 2013)
	25/06/2013	Shareholder's Compact (2013/2014)
6.	25/06/2013	Memorandum of Incorporation
7.	15/09/2013	Declaration of Interest and Related Party Disclosure Policy (Version 2 - effective on 1 July 2012)
8.	10/2013	Procurement Procedure Manual (Version 2-October 2013)
9.	01/09/2014	Delegation of Authority Framework (effective 1 September 2014)

REPORT 2(A) – PART E – EXHIBIT 1

TRANSNET

Standard Operating Procedures
Credit Application, Extension and Review

Transnet Internal Audit	*July 2007*
COMPILED BY	**DATE**
Group Internal Control	*3 September 2007*
RECOMMENDED BY	**DATE**
Group Finance	*23 November 2007*
AUTHORISED BY	**DATE**

AMENDMENT RECORD

REV.	SECTION AFFECTED/REFERENCE	DATE

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1. Scope

1.1. This document outlines the Standard Operating Procedures ("SOP") in respect of the Transnet Group Credit Policy for all Transnet Operating Divisions.

1.2. This standard operating procedures document applies to all employees, permanent, contract and temporary employees at Transnet.

1.3. This standard operating procedures document supersedes any prior procedures in relation to the application for credit, extension of credit facilities and the review of credit facilities for external trade debtors only.

1.4. Standard procedures relating to Lease debtors, internal loans to employees and other Credit Management procedures (for example collections) are not in the scope of this document and in such instances, the presiding Operating Division procedure must prevail.

2. Definitions

Term	Description
"Archive"	An archive refers to a collection of records and the location in which these records are kept and consists of records which have been selected for permanent or long-term preservation.
"Authority Levels"	The authority of a certain designation/ position who is eligible/ qualified/ entitled to make specific decisions or take action.
"BOARD"	The Transnet Limited Board of Directors.
"CEO"	Chief Executive Officer of the Operating Division the company.
"CFO"	Chief Financial Officer of the Operating Division.
"Credit Bureau/ Independent Business Intelligence Partner"	A company that provides credit information on individual borrowers. Credit bureaus collect and collate personal financial data on entities from financial institutions with which they have a relationship. The data is aggregated and the resulting information is made available on request for the purposes of credit assessment and credit scoring.
"Credit check report"	A credit assessment from a credit bureau to verify the creditworthiness of the potential consumer/ customer to verify the creditworthiness of that party.
"Credit Limit"	The maximum and reasonable amount of credit that the lender will extend to the consumer / customer / debtor.
"Credit risk"	The risk that a counter party to a transaction will fail to perform according to the terms and conditions of the contract, thus causing the holder of the claim to suffer a loss.
"Customer"	A customer is an entity who makes use of or receives the products or services of the organization.
"Delegation of Authority Framework"	The Transnet Delegation of Authority Framework records 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.
"EXCO"	The executive committee established to take responsibility for the day to day execution of strategy and running the company.
"Financial Application System"	Financial Application/ Enterprise Resource Planning (ERP) systems are software systems that are used for operational planning and administration for optimizing internal financial and business processes.

"Financial Ratio"	Financial ratios are formed from two or more numbers taken from the financial statements of businesses and used for analysing the credit risk. They allow for comparisons: • between companies; • between industries; • between different time periods of one company; and • between a company and the industry average.
"GCE"	Group Chief Executive Officer or Transnet Limited.
"GCFO"	Group Chief Financial Officer of Transnet Limited.
"Illicit Business"	A business that is perceived or known to be illegal, unlawful, illegitimate, criminal or prohibited/ banned from trading for whatever reasons.
Legal Department (Transnet Group)	Transnet Group's centralised Legal Department
Legal Department (Operating Division)	Operating Division's Legal Department or Legal Representative. Should no Legal Representative be available at the business centre, refer queries to Operating Division's Head Office Legal Department/ Representative or Transnet Group's Legal Department.
"NCA"	National Credit Act No.34 of 2005.
"Operating Divisions" and "OD"	Operating Division's of Transnet Group Limited.
"PFMA"	Public Finance Management Act No.1 of 1999.
"Policy"	The Transnet Group credit policy commencing with immediate effect from October 2007.
"Security Guidelines"	An internal Transnet Limited document prepared by the Transnet Group Legal Department stipulating what security/ guarantees may be accepted and how to assess if a security/ guarantee is legally enforceable.
"Security"	Something given, offered or pledged to a person who is lending money in order to secure or guarantee payment of that debt.
"Standard Operating Procedures"	A set of instructions to perform a function/ operation in reaction to a given event i.e. the customer's requirement for a credit facility with Transnet.
"Subjective Factors"	Factors that influence the entity's ability to financially perform that are linked to direct or indirect market, industry and other risks.
"Terms and Conditions of Credit"	Specify the nature of the business relationship and the expected behaviour of each party to the credit agreement.
"Version Control"	The management of multiple revisions of the same unit of information.

Figure 1: Table of definitions

3. Procedures

3.1 Granting of credit

3.1.1. Transnet Group encourages credit granting on a centralised basis. Granting of credit to Corporate/ Multi-centre Terminals/ Ports is to be on a centralised basis, while the granting of credit to Single Terminals/ Ports may be on a decentralised basis.

3.1.2. The processing of applications is as per the basis defined by the Operating Division's preferred structure.

3.1.3. Granting of credit stakeholders:

- **3.1.3.1.** Credit risk analyst or evaluator;
- **3.1.3.2.** Customer/ consumer (trade debtor);
- **3.1.3.3.** Finance Credit Management;
- **3.1.3.4.** Finance Management;
- **3.1.3.5.** Authorities as per the Operating Division's and Transnet Delegation of Authority Framework;
- **3.1.3.6.** Operating Division or Transnet Group Legal Department;
- **3.1.3.7.** National Credit Regulator; and
- **3.1.3.8.** Transnet Group Compliance.

3.1.4. No credit may be granted to an Illicit Business or unregistered company.

3.1.5. No credit facilities or cash transactions shall be allowed to "blacklisted" customers.

3.1.6. Decisions made in respect of credit applications must be recorded with all relevant details documented.

3.1.7. Applicants whose purchasing requirement is not expected to exceed R10, 000 per month should be encouraged to operate through the Operating Division's cash sale policy.

3.1.8. Subsequent to satisfactory credit application review, credit applications are approved/ declined.

3.1.9. At the time of making credit decisions, the relevant debtor must be rated in terms of Transnet's risk-rating criteria (refer to *Credit Risk Assessment*) in order to ensure acceptable risk levels.

3.1.10. No utilisation of a credit facility must be allowed until it is properly sanctioned in writing by the appropriate authority and all conditions have been complied with or suitably vetted by a Legal representative of Transnet.

3.1.11. All decisions must be clearly conveyed to the relevant customer in writing i.e. the form of a letter outlining the credit conditions and facilities that have been granted.

3.1.12. Operating Divisions are encouraged to use standard templates for communication with customers.

3.2. Authority levels

3.2.1. Authority levels, as defined by the Transnet Limited Delegation of Authority Framework and/ or Operating Division's delegation, are taken into cognisance for all credit applications for both new and existing customers.

3.2.2. Delegated signing authority levels for credit authorisation is as stipulated in paragraph 5.3.2 of Transnet Limited Delegation of Authority Framework and states the following:

Approval Authority	Financial Manager	Divisional CFO	GCFO
Core Operating Units	Up to but not exceeding R10m	Up to but not exceeding R20m	Exceeding R20m
Supporting Divisions	Up to but not exceeding R5m	Up to but not exceeding R10m	Exceeding R10m
Non-core Operating Divisions	Up to but not exceeding R5m	Up to but not exceeding R10m	Exceeding R10m

Figure 2: Authority levels for credit authorisation

3.2.3. Delegated signing authority levels for trade debtor bad debt write-offs is as stipulated in paragraph 5.3.1 of the Transnet Limited Delegation of Authority Framework and states the following:

	Operating Unit EXCO/CEO	GCFO	GCE/ EXCO	BOARD
Core Operating Units	Up to but not exceeding R10m	Up to but not exceeding R50m	Up to but not exceeding R200m	Exceeding R200m
Supporting Businesses	Up to but not exceeding R500 000	Up to but not exceeding R50m	Up to but not exceeding R200m	Exceeding R200m
Non-core Divisions	Nil	Up to but not exceeding R50m	Up to but not exceeding R200m	Exceeding R200m

Figure 3: Trade debtors' bad debt write-off

3.2.4. In respect of all transactions set out in paragraph 5.3.1and 5.3.2, of the Transnet Limited Delegation of Authority Framework, the necessary legal advice must be obtained from the Transnet Group Legal Department 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 or the Transnet Group Legal Department.

3.2.5. Approval limits are cumulative per annum i.e. the Operating Division CEO of Transnet Freight Rail can approve a maximum of R10m bad debt write-off per annum.

(Please note that the above information can be found in the Transnet Limited Delegation of Authority Framework, approved on 30 October 2007)

3.3. Related parties/ interests

3.3.1. The credit personnel as per the basis defined by the Operating Division's preferred structure informs the Operating Division's Financial/ other relevant department in writing of involvement/ outside interest with regards to the Operating Division's customers/ applicants for credit facilities.

Definitions of Related Parties	
A party is a related party to an entity if:	• directly, or indirectly through one or more intermediaries, the party: a) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries); b) has an interest in the entity that gives it significant influence over the entity; c) has joint control over the entity; or • the party is a member of the key management personnel of the entity or its parent.
A party is also a related party to an entity if the party is a close member of the family, or	• the party is an entity that is controlled, jointly controlled or significantly influenced by, or for which significant voting power in such entity resides with, directly or indirectly, any individual in above mentioned two cases.
Close members of the family of an individual are those family members who	• the individual's domestic partner and children;

may be expected to influence, or be influenced by, that individual in their dealings with the entity. They may include:	• children of the individual's domestic partner; and • dependants of the individual or the individual's domestic partner.
In terms of IAS 24 (AC 126) a party is specifically regarded as a related party to an entity if: [IAS 24 (AC 126) - .09]	• the party is an associate (as defined in IAS 28 Investments in associates) of the entity; • the party is a joint venture in which the entity is a venturer (see IAS 31 Interests in joint ventures); • the party is a post-employment benefit plan for the benefit of employees of the entity, or of any entity that is a related party of the entity.

Figure 4: Related parties

3.4. Processing of credit applications received

3.4.1. All customers or potential customers have the right to apply for credit but no customer or potential customer has the right to be automatically granted credit. Credit may be refused on any reasonable commercial grounds; however no customer may be unfairly discriminated against.

3.4.2. The processing of applications is done by the Finance/ Credit personnel as per the Operating Division's delegation of Financial/ Credit personnel.

3.4.3. Credit applications and valid supporting documents may be received from customers either by hand, fax, email or courier.

3.4.4. Only duly completed and signed standard Transnet credit application (extension) forms may be processed.

3.4.5. Register valid, accurate and complete applications alphabetically in a credit application's register for new applications and open a paper based customer file.

3.5. Credit application (extension) evaluation

3.5.1. Ensure that the customer completes the application form in full (refer to *Appendix A* for checklist of required supporting documentation)

3.5.2. Scrutinize application form for significant information, i.e.:

3.5.2.1. Holding company;

3.5.2.2. Period Company has been in operation;

3.5.2.3. Completeness of information and documentation; and

3.5.2.4. Validity of the application i.e. proof of registration, client not blacklisted etc.

3.5.3. Return any incomplete application forms to the customer with a request for missing information/ supporting documentation.

3.5.4. Inform the Operating Division's Legal Department should a dispute arise regarding the conditions of credit, required securities etc. and forward the application form and customer details to them to facilitate.

3.6. Credit risk assessment

3.6.1. The under-mentioned criterion is used to decide the evaluation method of an account.

3.6.1.1. Total credit limit equal or less than R50 000, is evaluated using a credit check report.

3.6.1.2. Total credit limit of R50 000 and more is evaluated as follows:

- New Account – Risk evaluation and assessment template (refer to *Appendix C* for standard credit risk assessment template) and credit check report;
- Existing Account – Risk evaluation and assessment template and historic credit behaviour information. (This is to be performed annually or when adverse information is supplied on the customer).

3.6.2. Scrutinise cash flow and notes to the financial statements for adverse information.

3.6.3. Audited financial statements used in the credit risk assessment should not be older than 12 months.

3.6.4. Draw a credit check report on the customer applying for a credit facility from the chosen independent business intelligence partner (credit bureau).

3.6.5. The independent business intelligence partner (credit bureau) used, and the length of contract entered into with the independent business intelligence partner is at the discretion of the Operating Division.

3.6.6. Apply expert judgement in respect of credit reports e.g. should applicant be a Blue Chip Company (a company recognized as being the top 40 corporate companies listed on the JSE Securities Exchange), then a credit check report may not be required.

3.6.7. Scrutinize credit check report for adverse information.

3.6.8. Inform the customer verbally and in writing, if the opinion is highly unfavourable, that the credit application was unsuccessful.

3.6.9. Items which may deem a credit application unsuccessful:

3.6.9.1. Previous judgement or default (either internal to/ external to Transnet);

3.6.9.2. Unfavourable rating on credit check report obtained from independent business intelligence partner;

3.6.9.3. Bank code lower than "C";

3.6.9.4. Trade reference information not favourable; and

3.6.9.5. Illicit business or unregistered company.

3.6.10. Perform a credit risk assessment using the standard credit risk assessment template (refer t *Appendix C* for standard credit risk assessment template), if the credit check report proved favourable.

3.6.11. Assess the customer across the four categories of the credit risk assessment template:

3.6.11.1 Financial statements;

3.6.11.2 Total Credit with Transnet Operating Divisions;

3.6.11.3 Financial Ratio Analysis; and

3.6.11.4 Subjective factors.

3.6.11.1. Financial Statements

3.6.11.1.1. Capture the relevant information pertaining to the following:

- Name of evaluator;
- Evaluator's designation;
- Name of company applying;
- Date on which risk assessment performed.

3.6.11.1.2. This information will then be automatically generated on the other pages of the risk assessment template.

3.6.11.1.3. Capture the relevant and pertinent company information i.e. account number, VAT registration number, previous credit limit, credit limit being applied for, and current credit limits with other Transnet Operating Divisions, as well as information pertaining to the company, audit and credit bureau reports.

3.6.11.1.4. Select relevant option from scroll-down menu where "(Select Applicable)" is illustrated next to the information box (see below).

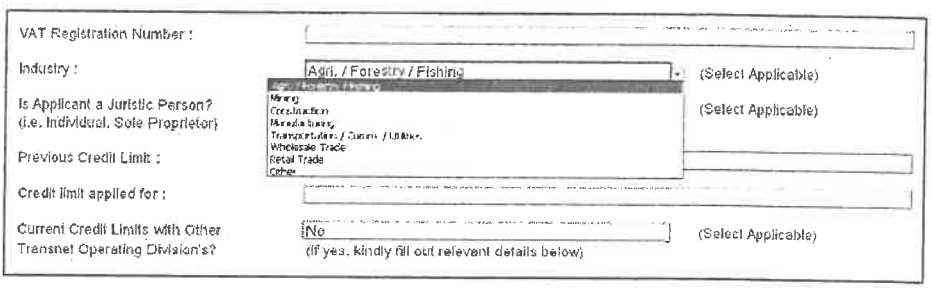


Figure 5: Illustration of scroll-down menu

3.6.11.1.5. Complete required balance sheet, income statement and cash flow statement items for the present and previous year (see below).

Balance Sheet Items	(Please insert full value) Current 2006	Previous 2005
Financial Year End (please insert current year date)		
Total Equity *(Ordinary Share Capital, Share Premium, Distributable & Non-Distributable Reserves)*		
Total Assets *(Cash Reserves, Debtors, Stock and Tangible Assets i.e. Buildings, Machinery, Equipment, Furniture & Land)*		
Non-current Assets		
Investments		
Intangible Assets *(i.e. Patent Rights or Goodwill)*		
Current Assets *(i.e. Prepaid Expenses & Marketable Securities)*		
Debtors/ Accounts Receivable		
Stock		
Total Liabilities *(Long Term Liabilities, Current Liabilities, Deferred Tax, Non-Redeemable Preference Shares, Shareholder Loans and Environmental Provisions)*		
Interest Bearing Debt		
Redeemable Preference Shares		
Current Liabilities		
Creditors/ Accounts Payable		
Bank Overdraft		
Income Statement Items		
Revenue		
Cost of Sales		
Investment Income *(Dividends Received and all Interest Earned)*		
Profit (Loss) Before Interest and Tax		
Interest Paid		
Cash Flow Statement Items		
Cash Generated by Operations		

Figure 6: Illustration of financial statement sheet

3.6.11.1.6. National Credit Act applicability will be automatically generated as a result of information supplied above. This is determined on the basis of judicial person and asset or turnover thresholds.

3.6.11.2. Total Credit with Transnet Operating Divisions

3.6.11.2.1. Determine and capture existing credit limits with other Operating Divisions and the terminals/ centres where this credit is applicable.

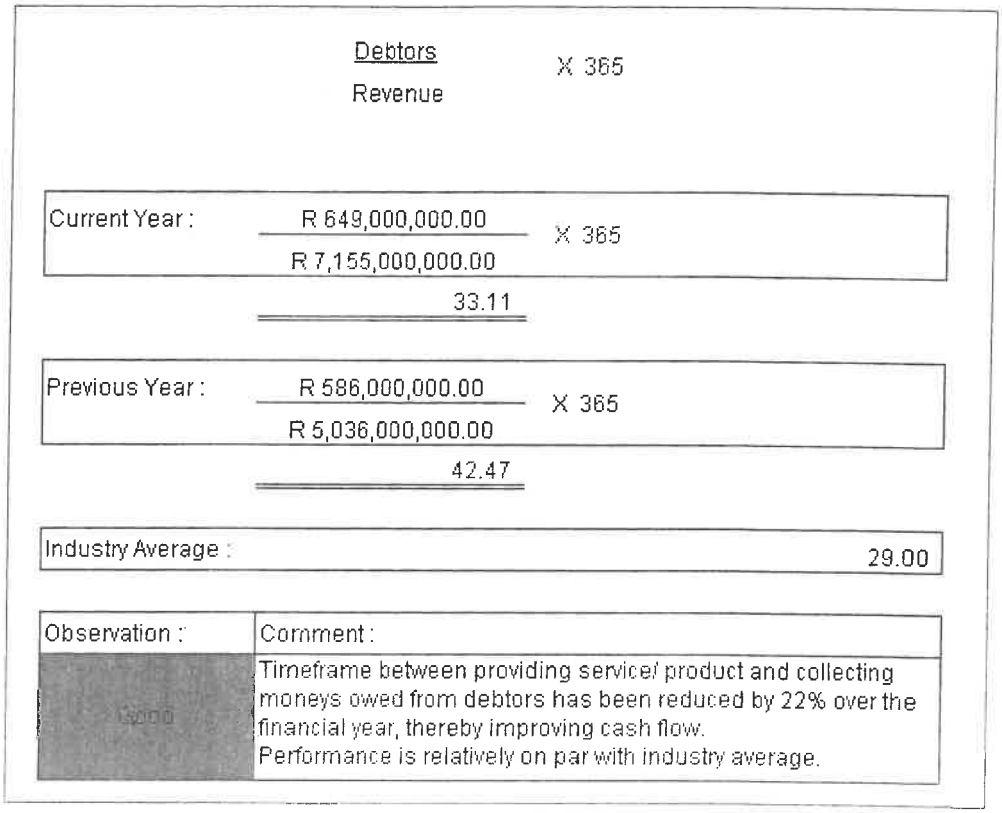
3.6.11.2.2. Total credit within the specified Operating Divisions as well as a total combined credit across the Transnet Operating Divisions is automatically generated and summarised in a table.

3.6.11.3. Financial ratio analysis

3.6.11.3.1. Ratios for current and previous year automatically generated as a result of information obtained from Financial Statements workbook.

3.6.11.3.2. Capture industry average for every individual ratio.

3.6.11.3.3. Select the appropriate option from the "Observation" scroll-down menu and comment in the comment box provided (see below).



Debtors / Revenue X 365

Current Year :	R 649,000,000.00 / R 7,155,000,000.00 X 365	33.11
Previous Year :	R 586,000,000.00 / R 5,036,000,000.00 X 365	42.47
Industry Average :		29.00

Observation :	Comment :
[redacted]	Timeframe between providing service/ product and collecting moneys owed from debtors has been reduced by 22% over the financial year, thereby improving cash flow. Performance is relatively on par with industry average.

Figure 7: Example of completed financial ratio analysis observation and comment

(Please note that the norms illustrated below are to be used as a guideline and may vary from industry to industry)

Section	Content Field	Guideline
Liquidity Ratios	Current Ratio	Norm 2:1 Current assets divided by current liabilities. This ratio indicates the extent to which the claims of short-term creditors are covered by assets expected to be converted to cash in the near future.
Liquidity Ratios	Acid Test Ratio	Norm 1:1 A ratio that tests a corporation's liquidity. It is a stricter test than if the current ratio is used and is used to measure the short-term ability of a business to meet its obligations.
Liquidity Ratios	Solvency Ratio	Norm 1:1 Total assets divided by total liabilities.
Liquidity Ratios	Interest Cover	Norm 3:1 Profit before interest and tax and interest paid, divided by interest paid.
Activity Ratios	Stock Turnover	This measures sales turnover as a ratio of stocks, and is intended to show how fast stock is moved. The higher the score, the more liquid the position
Activity Ratios	Stock Days	This ratio measures on average how many days stock is kept before being sold.
Activity Ratios	Debtors Days	This ratio measures how many days it takes to collect the money from debtors after selling the goods and/ or rendering a service.
Activity Ratios	Creditors Days	This ratio measures how long the company takes to pay creditors (suppliers) after purchasing

Section	Content Field	Guideline
		goods.
Activity Ratios	Operational Cycle	This ratio measures how long it takes to convert operations into money in order to pay creditors. Generally the longer the operational cycle, the longer creditors will have to wait to receive payment.
Activity Ratios	Cash Cycle	The length of time between the purchase of materials and collection of accounts receivable generated by the sale of the products made from the materials.
Profitability Ratios	Profitability	Norm 15% A ratio that helps to explain the profitability of an entity during a defined period of time.
Profitability Ratios	Return on Equity (ROE)	Norm 10% This ratio measures the return or profit generated on the capital provided by the owners of the concern.
Profitability Ratios	Return on Assets (ROA)	This ratio measures the company's overall effectiveness in generating profits with its available assets. The higher the company's return on total assets, the better.
Profitability Ratios	Return on Non-current Assets	This ratio measures the company's overall effectiveness in generating profits with its non-current (fixed) assets.
Profitability Ratios	Operating Profit Margin	This ratio measures a firm's profitability by examining profit before interest and tax generated from primary operations in relation to revenue.
Profitability Ratios	Profitability of Capital Employed	This ratio tells us how much profit is made from the investments that shareholders have made in the company.
Debt Management Ratios	Total Debt to Total Equity Ratio	Norm < 100% A measure of a company's financial leverage calculated by dividing total liabilities by total stockholder equity. It indicates what proportion of equity and debt the company is using to finance its assets.
Debt Management Ratios	Debt Equity Ratio	A measure of a company's financial leverage calculated by dividing (Interest Bearing Debt + Non-Redeemable Preference Shares - Bank Overdraft) by total stockholder equity.
Debt Management Ratios	Effective Debt to Equity Ratio	Norm < 30% A measure of a company's financial leverage calculated by dividing effective liabilities (long term debt and bank overdraft) by total stockholder equity.
Debt Management Ratios	Interest Bearing Debt Repayment Period	This is the period taken to repay long-term debt plus short-term bank debt, bills payable and accounts payable. The shorter the debt repayment period the quicker Transnet will reduce its liabilities, thus increasing equity.
Debt Management Ratios	Ratio of Total Liabilities to Total Assets	Norm < 50% This ratio is used to measure what portion of assets is being financed by external funds. The result of this ratio also shows what portion of the Assets is not encumbered, depending on the marketability of the Assets. Assets are marketable if they can be converted into cash within a reasonable time.

Section	Content Field	Guideline
Debt Management Ratios	Ratio of Current Assets to Total Assets	The higher the current assets, the lower the risk as the company contains a higher proportion of "liquid" assets.
Debt Management Ratios	Ratio of Current Liabilities to Total Assets	Your business should not have debt that exceeds your invested capital. This ratio measures the proportion of funds that current creditors contribute to your operations. Note: For small businesses a ratio of 60 percent or above usually spells trouble. Larger firms should start to worry at about 75 percent.
Cash Flow Ratios	Cash Flow Ratio	Norm 15% This ratio measures how the cash generated by operations covers the total outstanding liabilities of the concern. A sharp decline in this ratio will illustrate that a company is losing its ability to cover its total outstanding liabilities.
Cash Flow Ratios	Credit Limit Cover	This ratio shows you by how much your business's assets can decline in value before it becomes insolvent. Note: Those businesses with ratios above 200 percent are safest.

Figure 8: List of ratios and definitions used in financial analysis

3.6.11.4. Subjective factors

3.6.11.4.1. Evaluator provides comments regarding: capital structure and liquidity layout, applicant outlook summary and subjective factors.

3.6.11.4.2. Cognisance to be taken of the following influencing factors:

- Volume of business (current growth and potential);
- Declining usage of customers product/ service;
- Adverse information found in cash flow and notes to the financial statements;
- A history of satisfactory industrial relations; and
- Confirmations of customer's trade references and service satisfaction etc.

3.6.11.4.3. Make use of ad-hoc resources (i.e. Financial Mail, newspapers, internet etc.), and where possible obtain information on applicant's credit worthiness from other divisions and subsidiaries of Transnet, to substantiate evaluation.

3.6.12. Once the relevant information had been completed in the Financial statements, Total Credit with Transnet Operating Divisions, Financial ratio analysis and Subjective factors workbooks, a risk assessment and evaluation certificate is populated in the final worksheet of the template.

3.6.13. A balanced scorecard is generated systematically in the risk assessment and evaluation certificate.

3.6.14. The balanced score card is to be used as a guideline only – expert judgment and common sense must prevail when determining the overall risk profile of the customer.

3.6.15. Assign a risk profile to the customer, and complete with motivation in the relevant information box (refer to *Determine risk profile* for risk categories).

3.6.16. Print and forward the credit risk assessment and evaluation certificate to the relevant authority as delegated by the Operating Division for review and/ or authorisation. The authorities are to complete their name, designation (if not all ready completed in the template by the preparer), date of review and then sign the certificate as evidence of review and/ or authorisation.

3.6.17. File the credit check report, completed risk evaluation template and signed risk assessment and evaluation certificate in the customer's masterfile in a central document repository.

Balanced Scorecard For Risk Analysis

Note: The balanced scorecard is to be used as a guideline for determining a risk profile. It is at the discretion of the evaluator to allocate a risk profile.

Total Liabilities / Total Equity	Effective Liabilities / Total Equity	Total Liabilities / Total Assets	ROE	Profitability	Interest Cover	Cash Flow	Score	Risk Profile
<100% Score 5		<60% Score 5					33-35	Low Risk
Between 100 & 110% Score 4	Between 30 & 40% Score 4	Between 60 & 70% Score 4	9% Score 4	Between 12 & 15% Score 4	Between 2 & 3 Score 4	Between 12 & 15% Score 4	25-33	Moderate Risk
Between 110 & 120% Score 3	Between 40 & 50% Score 3	Between 70 & 80% Score 3	8% Score 3	Between 10 & 12% Score 3	Between 1 & 2 Score 3	Between 10 & 12% Score 3	18-25	Medium Risk
Between 120 & 130% Score 2	Between 50 & 60% Score 2	Between 80 & 90% Score 2	7% Score 2	Between 8 & 10% Score 2	1 Score 2	Between 8 & 10% Score 2	14-18	High Risk
Higher than 130%	Higher than 60% Score 1	Higher than 90% Score 1	6% Score 1	Lower than 8% Score 1	Less than 1 Score 1	Lower than 8% Score 1	<14	Unacceptable Risk
1	5	4	5	5	5	5	30	

Credit Bureau Report

Assessment Enquiry Amount :	R 1,200,000.00	Do the applicant's bankers consider them good for the enquiry figure?	Yes
Have any judgements been taken against the applicant?	No	Assessment Enquiry Terms (Days) :	0
Has any adverse information been reported?	No	Time period for which applicant has been in operation :	5<years<10
Independent Business Intelligence Partner :	N/A -Existing customer	Independent Business Intelligence Risk Allocation :	1
		Independent Business Intelligence Partner's reference no. :	0

Figure 9: Example of a section of an automatically generated risk assessment and evaluation certificate

3.7. Allocate risk profile

3.7.1. Allocate risk profiles using the credit risk assessment and evaluation template (refer to *Credit risk assessment*). The risk categories as automatically determined by the balanced scorecard are to be used as a guideline only. It is at the discretion of the evaluator to allocate a risk profile.

3.7.2. The guarantees as determined by Transnet's risk categories (below) are to be used, yet it is at the evaluator's discretion to determine whether or not a greater percentage of security is required for the stipulated risk category e.g. it could be decided that a 100% guarantee is required for a "Moderate Risk" customer as the customer is a recently formed entity.

Risk Category	Guarantee Required
Low Risk	No guarantees required
Moderate Risk	50% guarantee required
Medium Risk	75% guarantee required
High Risk	100% guarantee required
Unacceptable Risk	Cash account only

Figure 10: Transnet's risk categories

3.8. Security and guarantee

3.8.1. Obtain open-ended (infinite) security, where deemed necessary, prior to credit facilities being extended.

3.8.2. Base the granting of credit facilities within the parameters of the Transnet Group credit policy in order to reduce potential losses. It is however not necessary to demand security when the financial strength of the debtor is such that unsecured credit facilities can be justified without sacrificing the required safety criteria i.e. Blue Chip Company (top 40 corporate listed on the JSE).

3.8.3. An authority defined by the Operating Division's structure is responsible for the valuation and acceptance of all securities.

3.8.4. The appropriate Operating Division department (Legal/ Finance) informs guarantors in writing of Transnet's receipt of and acceptance of their guarantees.

3.8.5. All letters sent to guarantors informing them of receipt and acceptance of guarantees should be sent via registered mail with a return receipt requested.

3.8.6. Review and revalue all securities annually, or at such time that is deemed necessary by the authority as per the basis defined by the Operating Division's preferred structure, and store in a fire-resistant safe or similar device.

3.8.7. The following forms of security are acceptable by Transnet, subject to valuation:

3.8.8. Bank Guarantee

3.8.8.1. A bank or creditable insurance company guarantee is the preferred security to be requested when a customer is not deemed creditworthy.

3.8.8.2. An acceptable bank guarantee must comply with the following:

- Full names of two official bank employees;
- Designations of the two bank employees;
- Name of the bank (must be a South African bank or cleared through a South African bank);
- Registered name and number of the mutual Customer;
- Bank guarantee amount must be endorsed both in written and numerical form;
- Each page must be initialled and the last page must be signed by the two bank employees and two witnesses;
- Approved bank stamp is required if the guarantee is not printed on the banks official letter head page; and
- Bank guarantee must comply with the wording as contained in the standard bank guarantee utilised by Transnet.

3.8.9. Personal Guarantee

3.8.9.1. A personal guarantee is not to be requested from a Sole Proprietor.

3.8.9.2. An acceptable personal guarantee must comply with the following:

- Full names and identity number of the guarantor;
- Registered name of the relevant business concern;
- Personal guarantee amount must be endorsed both in written and numerical form;
- Each page must be initialled and the last page must be signed by the guarantor and two witnesses;
- Revenue Stamp is required;
- Personal guarantee must comply with the wording as contained in the standard personal guarantee utilised by Transnet; and
- Statement of the personal assets and liabilities of the guarantor is required.

3.8.10. Director's Guarantee

3.8.10.1. An acceptable director's guarantee must comply with the following:

- Full names and identity number of the director;
- Registered name and number of the company that is being guaranteed;
- Guarantee amount must be endorsed both in written and numerical form;
- Each page must be initialled and the last page must be signed by the authorised director and two witnesses;
- Revenue stamp is required; and
- Director must be currently registered with the Registrars Office as a director.

3.8.11. Inter Company Guarantee

3.8.11.1. The company must form part of the Group Company, which is providing the Inter Company guarantee.

3.8.11.2. The financial statements of the Group Company must be provided to credit management for evaluation purposes.

3.8.11.3. An acceptable Inter Company guarantee must comply with the following:

- Full names and identity numbers of the directors;
- Registered name and number of the company that is being guaranteed, as well as the Group Company's registered name and number;
- Inter Company guarantee amount must be endorsed both in written and numerical form;
- Each page must be initialled and the last page must be signed by the authorised director and two witnesses;
- Director and the two witnesses must sign in full on the last and appropriate page; and
- Revenue stamp is required.

3.8.12. Letter of Comfort and Resolution

3.8.12.1. The company must form part of the Group Company, which is providing the Inter Company guarantee.

3.8.12.2. This is not a tangible security. An acceptable guarantee must comply with the following;

- Full names and identity numbers of the directors;
- Registered name and number of the company that is being guaranteed, as well as the registered name and number of the company providing the letter of comfort;
- Letter of comfort amount must be endorsed both in written and numerical form;
- Each page must be initialled and the last page must be signed by the authorised Director and two witnesses;
- Date of the Board meeting is required in the resolution;
- Authorised directors of the Board must specifically state that they acknowledge the fact that they are providing the letter of comfort to Transnet;
- Revenue stamp is required; and
- Financial statements of the Company issuing the letter of comfort must be provided to credit management for evaluation purposes.

3.8.13. With regards to the handling of securities:

3.8.13.1. Full names and identity numbers of the directors;

3.8.13.2. All securities must be legally enforceable – if in doubt, consult with the Operating Division's Legal Department;

3.8.13.3. A facility must only be granted when the original security document is in Transnet's possession;

3.8.13.4. Security documents will be kept in accordance with Transnet's Policy for Records, Archives and Document Retention; and

3.8.13.5. To institute a claim the security document should be forwarded to the bank manager of the branch from which the guarantee was issued.

3.8.14. A letter of comfort will not necessarily be regarded as tangible security. Credit applications must be referred to the authority as per the basis defined by the Operating Division's preferred structure when a credit facility is proposed or is solely based on a letter of comfort. The letter of comfort must then be scrutinised and approved by Transnet's internal advisors.

3.8.15. Letters of credit must not be misconstrued as a security document but rather only a payment option similar to a cheque and can be defaulted on the bank when a sum of money promised is not advanced by the customer/s securing the facility. This option is not acceptable for a credit account and should therefore only be applied with cash customers.

3.9. Conditions of credit

3.9.1. Conditions of credit stipulated on the reverse side of the Transnet Standard credit application (extension) form must be adhered to at all times.

3.9.2. All customers should be made aware of Transnet's conditions of credit in writing.

3.9.3. Transnet's standard credit payment terms are a maximum of 30 days after statement date. Extensions of the credit term are only granted once the Operating Division's Credit Management and Chief Financial Officer approve the request from the customer.

3.9.4. Generally no credit discount is offered for early settlement. Operating Division's Management is encouraged to negotiate a discount for early settlement only if it proves to be to the benefit of enhanced cash flow and only with acceptable dilution of margins. Settlement discount arrangements are documented in an agreement separate to the credit agreement and subject to review and authorisation by the Operating Division's Finance.

3.9.5. Deviations from the conditions of credit will require the prior specific review and opinion from the Transnet Group Legal Department.

3.10. Credit re-evaluation

3.10.1. Based on the most recent, audited annual financial statements and historic transactional data, the authority as per the basis defined by the Operating Division's preferred structure performs an annual credit risk assessment and business review of all customers transacting with a credit facility i.e. credit re-evaluations are performed for all customers once per annum throughout the year to re-determine and/ or gain assurance of their creditworthiness.

3.10.2. It is at the discretion of the authority as per the basis defined by the Operating Division's preferred structure as to when the risk assessment on a customer is performed. Some influencing factors which may result in a precautionary ad-hoc risk assessment are:

3.10.2.1. Customer constantly disputing accounts;

3.10.2.2. Continuous requests by the customer for higher credit limits;

3.10.2.3. Requests, by customer, for extension of payments;

3.10.2.4. Obvious stalling tactics, by the customer, to delay payments;

3.10.2.5. Adverse information received by the Operating Division about the customer i.e. report from independent business intelligence partner (credit bureau);

3.10.2.6. A customer defaulted on their payments, but subsequently paid the outstanding amounts and still requires a credit facility; and

3.10.2.7. A customer's account was suspended, but subsequently paid the outstanding amounts and still requires a credit facility.

3.10.3. Perform the credit risk assessment electronically by using the standard credit risk assessment template (refer to *Credit risk assessment)*.

3.10.4. The drawing of a credit report from an independent business intelligence partner (credit bureau) is to be at the evaluator's discretion.

3.10.5. Deterioration in a company's financial position may be compensated for by equivalent guarantees or a decrease in the existing credit facility.

3.11. Credit approval

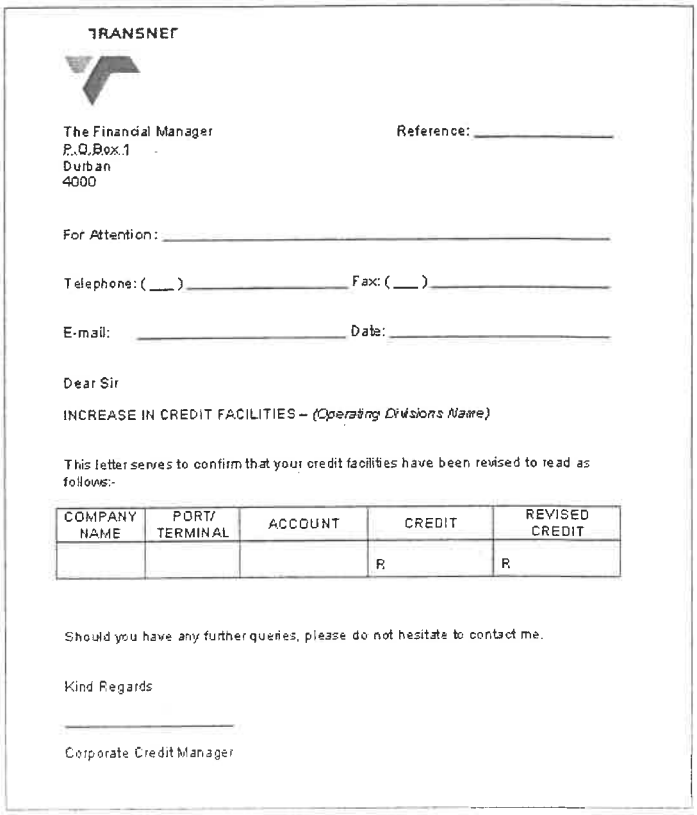
3.11.1. Approved credit limits must be sufficient to accommodate invoices for a period of 60 (sixty) days and be appropriate to the actual usage by the customer and the customer's financial ability.

3.11.2. Authorities as defined in the Transnet Limited Delegation of Authority Framework (refer to *Authority levels*) sign the risk assessment and evaluation certificate as evidence of review and approval.

3.11.3. Prepare and forward customer communication to the customer informing them of the success of their credit application and expected activation of the credit facility.

3.11.4. Prepare a three way match of the customer communication, signed customer masterfile amendment report (in the case of existing customers) and risk assessment and evaluation certificate to ensure the accuracy of the credit limit on financial application and credit limit that the customer will be informed of.

3.11.5. Store customer communication, risk assessment and evaluation certificate and customer masterfile amendment report (in the case of existing customers) in the paper based customer file in a central document repository.



TRANSNET

The Financial Manager
P.O.Box.1
Durban
4000

Reference: _____

For Attention: _____

Telephone: (___) _____ Fax: (___) _____

E-mail: _____ Date: _____

Dear Sir

INCREASE IN CREDIT FACILITIES – *(Operating Divisions Name)*

This letter serves to confirm that your credit facilities have been revised to read as follows:-

COMPANY NAME	PORT/ TERMINAL	ACCOUNT	CREDIT	REVISED CREDIT
			R	R

Should you have any further queries, please do not hesitate to contact me.

Kind Regards

_____

Corporate Credit Manager

Figure 11: Example of customer communication

3.12. Credit decline

3.12.1. The relevant authorities as set out in Transnet Limited Delegation of Authority Framework (refer to *Authority levels*) stamp "Declined" on the risk assessment and evaluation certificate as evidence of review and disapproval.

3.12.2. When a credit facility is declined:

3.12.2.1. It is not permitted for a person at a lower authority level to grant a smaller credit facility to a customer without referral to the person at the authority level at which the original decision was taken.

3.12.3. When credit is declined within an Operating Division it is not possible for a facility to be opened in another Operating Division without the customer providing the necessary security requested originally.

3.12.4. No credit is to be granted to an illicit business or unregistered company (refer to *Granting of credit*).

3.12.5. No credit facilities or cash transactions shall be allowed to customers "Blacklisted" by Transnet (refer to *Granting of credit*).

3.12.6. Prepare customer communication and forward to the customer informing them of the decline of their credit application and of possible alternatives.

3.12.7. Store customer communication and declined risk assessment and evaluation certificate in the customer masterfile in a central document repository.

3.13. Financial application system masterfile maintenance

3.13.1. Complete a masterfile request form and attach to this the authorised risk assessment and evaluation certificate and submit to the authority as per the basis defined by the Operating Division's preferred structure for reviewal and approval.

3.13.2. The masterfile request form is then signed as evidence of review and approval.

3.13.3. Capture the new credit limit onto the Financial system.

3.13.4. Generate a masterfile amendment report detailing changes to the customer masterfile, from the Financial system and review for accuracy.

3.13.5. The masterfile amendment report is then signed and dated by the authority as per the basis defined by the Operating Division's preferred structure and stored in the customer masterfile.

3.14. Customer file maintenance

3.14.1. A paper based customer file is opened for every customer applying for a credit facility.

3.14.2. Maintain and update a register of all paper based customer files.

3.14.3. Every paper based customer file is to have a completed customer file completeness checklist attached to the inside of the front cover to ensure that the file contains accurate and complete customer information.

3.14.4. The paper based customer file is to have clearly divided and labelled sections for all documents mentioned in the customer file completeness checklist.

3.14.5. All paper based customer files are to be clearly labelled with the customer number and either the company name or names of the directors.

3.14.6. The authority as per the basis defined by the Operating Division's preferred structure is to ensure that the paper based customer file is up to date and is to perform regular reconciliations between the customer information in the paper based customer file and the customer information as depicted on the Financial system.

3.14.7. Clearly mark those paper based customer files of customers whose credit applications an extensions have been declined as "Declined".

3.14.8. Clearly mark the paper based customer files of those customers whose accounts have been closed as "Dormant".

TRANSNET

Customer file completeness checklist

(Complete Applicable)	Check	
Approved Credit Applications	Yes	No
Completed Transnet standard credit application (extension) form, which has been signed as authorisation of the credit limit reflected on the Financial system.		
Completed and signed checklist for correct supporting documents.		
Independent business intelligence partner credit check report (should it be deemed necessary).		
Completed risk assessment and evaluation template and certificate, which has been signed as authorisation of the credit limit reflected on the Financial system.		
Completed masterfile amendment request forms.		
Masterfile amendment reports which have been signed as authorisation of the credit limit or customer details reflected on the Financial system.		
Signed customer communication.		
Declined Credit Applications	Yes	No
Completed Transnet standard credit application (extension) form, which has been signed as authorisation of the credit limit reflected on the Financial system.		
Completed checklist for correct supporting documents signed by Credit Team member.		
Independent business intelligence partner credit check report (should it be deemed necessary).		
Completed risk assessment and evaluation template and certificate marked "Declined".		
Signed customer communication.		

Signed by: _____

Designation: _____

Date: _____

Figure 12: Example of a customer file completeness checklist

3.15. Document storage and archive

3.15.1. All customer information is stored in paper based customer files.
3.15.2. Maintain and update a register of all paper based customer files – the register should reflect customer number, company name and director's names.
3.15.3. Archive paper based customer files in a central document repository according to customer number – files should also be able to be located via company name and names of company directors.
3.15.4. The authority as per the basis defined by the Operating Division's preferred structure is to ensure that all active customer files are constantly kept up to date and stored in a central document repository at the relevant location.
3.15.5. All inactive customer files are archived in a document repository for a period of five years for audit purposes.
3.15.6. All customer files of declined credit applicants are archived in a central document repository for a period of at least two years for audit and regulatory purposes.

3.16. Credit monitoring

3.16.1. Credit monitoring includes:
3.16.1.1. Dynamic review of customers exceeding credit limit;
3.16.1.2. Static review of customer masterfile – masterfile changes;
3.16.1.3. Static review of customer masterfile – credit portfolio;
3.16.1.4. Annual credit risk assessment/ business review; and
3.16.1.5. Security requirements vs. credit limit review.

3.16.1.1. Dynamic review of customers exceeding credit limit

3.16.1.1.1. Draw an Unsettled Customer Report and Debtors Age Analysis from the Financial system on the day after the payment due date every month (dynamic review).
3.16.1.1.2. The Unsettled Customer Report includes:
- Customer account number;
- Customer name;
- Amount previously due;
- Amount last paid with the date last paid;
- Amount of receipts; and
- Total amount due.

3.16.1.1.3. The Unsettled Customer Report includes:
- Customer account number;
- Customer name;
- Total amount outstanding; and
- Breakdown of amounts outstanding per 30-day intervals (1-30, 31-60, 61-90, 91-120 and 120+ days).

3.16.1.1.4. Inform customers who have not paid, both telephonically and in writing, that their account will be suspended should no payment be received within three days.
3.16.1.1.5. In the case that disputes arise, a corresponding valid Operating Division reference number against which payments are being withheld is to be created and the reason for the dispute entered into the text field next to the open items on the Financial system.
3.16.1.1.6. Draw a Debtors Age Analysis, Customer Payment Report or an outstanding payments Exception Report daily.
3.16.1.1.7. Note: Operating Divisions must exercise good judgement before considering/ executing certain procedures and the timing thereof to maintain ongoing and commercial relationships.
3.16.1.1.8. Should no payment be received after three working days from the payment due date:

- Complete and approve a customer masterfile change request (masterfile amendment form), and suspend the account on the Financial system (refer to *Account Suspension*).

3.16.1.1.9. Should no payment be received after ten working days from the payment due date:

- Draft and forward a Letter of Demand informing the customer that the matter may be handed over to Attorneys for collection if the outstanding payment is not paid with in five working days.

3.16.1.1.10. Should no payment be received after fifteen working days from the payment due date:

- Approve the handover of the customer to the Operating Division's Legal Department or third parties for collection.
- Maintain ongoing consultations with the customer and Operating Division's Legal Department/ third parties.

3.16.1.2. Static review of customer masterfile – masterfile changes

3.16.1.2.1. Draw a masterfile amendment report, monthly and review (static review).

3.16.1.2.2. A masterfile amendment report should include:

- Customer account number;
- Customer Number;
- Customer Name;
- Old Credit Limit;
- New Credit Limit;
- Old NCA Indicator;
- New NCA Indicator;
- Old Security Amount;
- New Security Amount;
- Old Security Expiry Date;
- New Security Expiry Date;
- User ID and Name; and
- Date.

3.16.1.2.3. Compare changes on the masterfile amendment report to signed and dated masterfile amendment forms and initiate corrective actions for errors.

3.16.1.2.4. Sign, date and file the customer masterfile amendment report in the customer masterfile.

3.16.1.3. Static review of customer masterfile – credit portfolio

3.16.1.3.1. Extract customer accounts with credit limits from the Financial system. Consolidate and aggregate the credit limits from sub-accounts for the customer into a single credit limit and sort customers from highest credit limit to lowest credit limit.

3.16.1.3.2. If a decentralised credit function exists, forward the credit limits spreadsheet Operating Division's Head Office.

3.16.1.3.3. Credit limits spreadsheets are consolidated and aggregated at H/O in to one credit portfolio report which details from highest to lowest credit limit:

- Customer Number;
- Customer Name; and
- Consolidated Credit Limit.

3.16.1.3.4. Credit portfolio report submitted to Transnet Group Management prior to Financial Statement Close Process or as required.

3.16.1.3.5. Credit portfolio reports collated by Transnet Group Management Team and overall credit risk exposure per customer assessed. Queries and instructions resolved by Operating Divisions.

3.16.1.4. Annual credit risk assessment/ business review

3.16.1.4.1. Perform an annual credit re-evaluation and business review on all customers with credit facilities. (refer to *Credit re-evaluation*).

3.16.1.4.2. Initiate risk mitigating and/ or other corrective actions upon unfavourable results from annual credit evaluation and business review.

3.16.1.5. Security requirements vs. credit limit review

3.16.1.5.1. Scrutinise customer security requirements at least annually.
3.16.1.5.2. Review and scrutinise that the security offered by the customer is still appropriate for their credit limit and risk profile.
3.16.1.5.3. Reconcile securities that indicate if the organisation providing the security still exists and if the security provides sufficient cover for customer credit limit.
3.16.1.5.4. Sign, date and file the security reconciliation in the customer masterfile.
3.16.1.5.5. Should further security be required re-perform a credit re-evaluation to determine new security required (refer to *Credit re-evaluation*).

3.16.2. One of the following actions may be initiated at any stage throughout the process, based on the merit of the situation:
3.16.2.1. Re-perform credit risk assessment and evaluation to determine if the customer is good for maintaining the current limit or an increase in limit of existing credit facility; or
3.16.2.2. Customer to re-perform Transnet standard credit application (extension) process.

3.17. Account suspension

3.17.1. Contact customers with outstanding payments on the day after the payment due date telephonically or by letter to inform them that their payments are outstanding and that all payments due from (and including) the day after the payment due date onwards are subject to compounded interest at a rate disclosed in the conditions of credit and that if no payment is received or alternative arrangements made within three working days then the credit account will be suspended.
3.17.2. Should no payment be received three working days after the payment due date, complete a customer masterfile change request (masterfile amendment form) and forward and obtain the signature of the authority as per Operating Division's delegation as evidence of review and approval.
3.17.3. Perform a masterfile amendment procedure on the Financial system to block the accounts for all transactions.
3.17.4. Outstanding balance to remain on the customer's account.
3.17.5. Draft a letter and forward it to the relevant departments within the Operating Division, informing them of the suspension.
3.17.6. Inform the customer both telephonically and in writing of the suspension of their account and that no sales orders can be processed while the account is suspended.
3.17.7. Should a customer wish to re-activate their suspended account they must make a payment directly into the Operating Division's bank account and fax/ email through a remittance advice. The payment made on the bank statement is then identified and the payment allocated to the relevant debtor account. The open items on the customer's account are then cleared in the financial system.
3.17.8. Once the open items have been cleared the customer is to re-perform the Transnet credit application (extension) process.

3.18. Cash customers

3.18.1. Applicants whose purchasing requirements will not exceed R10,000 per month should be encouraged to operate through the Operating Division's cash sale policy.
3.18.2. Work is only performed for parties with valid cash accounts or in possession of a cash receipt.
3.18.3. Receipts are detailed to include miscellaneous services and additional costs.
3.18.4. Review the age analysis of cash customers daily, to ensure no cash accounts are in debit balance.
3.18.5. All cash procedures per treasury cycle should be adopted.
3.18.6. Where cheques are accepted, accept only current bank guaranteed cheques for payment of cash sale invoices.

3.18.7. Post-dated cheques are not accepted as a current payment, but should not be returned to the debtor until alternative payment arrangements have been secured.

3.18.8. Store all cheques received in a safe place e.g. safe, locked drawer.

3.19. Provision for doubtful debt

3.19.1. Where the debtors aging exceeds 61 days on the Debtor's Age Analysis and Unsettled Customer Report, impairment loss provision should be assessed.

3.19.2. Create a debtors list in Microsoft Excel of all debtors and their outstanding amounts.

3.19.3. Remove the debtor from the debtors list and individually assess for impairment based on losses not yet recorded although already incurred (in terms of IAS 39) if:

3.19.3.1. debtors are individually significant to the debtors list, i.e.:

- have an outstanding balance greater than R10 000 000.00 (ten million Rand);
- or are greater than 5% of the total debtors book;
- or display a significant loss event.

3.19.3.2. there is evidence that a debtor in the debtors list is impaired.

3.19.4. Impairment losses are incurred if, and only if, there is objective evidence of impairment as a result of one or more events that occurred after the initial recognition of the asset or "loss event". Therefore a "loss event" (or events) needs to be identified for significant debtors.

3.19.5. Losses expected as a result of future events, no matter how likely are not recognised.

3.19.6. Should there be no objective evidence i.e. a loss event, of impairment for an individually assessed debtor, whether significant or not, the debtor is to be included in a group of debtors with similar characteristics (mainly credit risk characteristics) and collectively assessed for impairment.

3.19.7. The authority as per the basis defined by the Operating Division's preferred structure splits the debtors on the debtors list into categories according to similar characteristics (mainly according to credit risk characteristics, namely: Low Risk, Moderate Risk, Medium Risk, High Risk and Unacceptable Risk (refer to *Allocate risk profile*).

3.19.8. The provision is for losses not yet recorded although already incurred (in terms of IAS 39). In order to determine the expected cash flows, past payment history should be taken into account and extrapolated for loans with similar criteria across the group. The calculated rate should then be used to predict future repayments for current loans.

3.19.9. The discount rate to be used should be a market based rate for a similar company with similar debtors. This rate should be reviewed, at least on an annual basis. The precision of the rate can be tested using a ratio of actual bad debt to the debtors book and comparing it to the related bad debt provision. This will give an indication whether the discount rate used is fair.

3.19.10. A collective impairment calculation is done on the total debtors listing (per category), in Microsoft Excel, by the authority as per the basis defined by the Operating Division's preferred structure.

3.19.11. Debtors that are already impaired under the specific provision are excluded.

3.19.12. Provisions calculated are to be signed by the authority as per the Operating Division's delegation prior to a journal being created and processed(refer to *Authority levels*).

3.20. Writing-off of bad debt

3.20.1. Should there be relevant evidence that all reasonable measures have been taken to secure payment of a debt and that given the outcome, the value of the debt, should be written-off, then draft a motivation for the write-off of debt and forward for approval by the authority as per the basis defined by the Operating Division's preferred structure.

3.20.2. The motivation for bad debt write-off of the customer's balance is to be accompanied by supporting documentation of the correspondence between the customer and Transnet Limited regarding disputed charges, or with third parties regarding attempts to recover amounts owing by the customer, which support the amounts considered irrecoverable.

3.20.3. Every journal entry recorded to write-off irrecoverable accounts receivable balances is to be approved and signed as evidence of review and approval

3.20.4. Segregation of duties is to be in place with regards to the receipt or recording of cash receipts or remittances from customers, and approval of journal entries to reduce risk of misappropriation of cash and cover up by means of a journal write-off of amount owing.

3.20.5. Perform masterfile adjustments to alter the customer account status to "closed" or similar on the Financial system (refer to *Financial application system masterfile maintenance*).

3.20.6. Notify other Operating Divisions, credit bureaux and the customer in writing of closure of customer's account.

3.20.7. In the case of debtors being impaired, recognise the impairment loss.

3.21. Default and legal matters

3.21.1. Exhaust all avenues available before handing the account over to the Operating Division's Legal Department/ third parties.

3.21.2. Hand all debts that remain unpaid 45 days from due date, without authority and not subject to a dispute, over to the Operating Division's Legal Department or third party for collection.

3.21.3. Co-ordinate all accounts handed over to the Attorneys for collection.

3.21.4. In the event of liquidations, an assessment will be done in conjunction with the Operating Division's Legal Department to determine the chances of recovering outstanding money owed.

3.21.5. Thereafter accurate claims will be prepared and lodged by the Operating Division's Legal Department with the liquidators.

3.21.6. The Operating Division's Legal Department will consult with the liquidators for the recoverability of the debt claims handed over.

3.22. Credit reporting

3.22.1. Transnet must be able to provide the following to the National Credit Register or credit bureaux:

3.22.1.1. Details of credit agreements entered into (i.e. Transnet's and consumer's details and registration number if any).

3.22.1.2. If the agreement is a credit facility, the credit limit under that facility, and the expiry date of the agreement.

3.23. NCA Compliance

Credit Risk Assessment

3.23.1. Inform the applicant in writing of details of the credit bureau, if they fall within ambit of National Credit Act (NCA), if the independent credit risk opinion (credit check report) obtained is unfavourable.

3.23.2. Make a special note that the National Credit Act applies to the applicant where the asset value or annual turnover of the customer (juristic person as defined by the National Credit Act) is less than ZAR 1,000,000 the Credit team member

3.23.3. Transnet can use its own scoring or evaluative mechanism or model to manage, underwrite or price credit risk, provided the primary basis of the categorisation does not discriminate.

Conditions of credit

3.23.4. Credit agreements and the associated provisions (terms and conditions) upon which the credit facility will be granted may not be set out in separate documents. Deferred payment terms (days), interest payable and settlement discounts offered must be disclosed in the agreement.

Credit Approval

3.23.5. If applicant falls within ambit of NCA, applicant has right to pre-agreement statement and quotation for period of five days. Fee for original documents and delivery thereof may not be charged. Credit applicant can choose where to have documents delivered.

3.23.6. Where the National Credit Act applies, credit agreements must be reduced to writing. Transnet must deliver to the customer, free of charge, a copy of the document that records the credit agreement. It must be submitted in paper form or printable electronic form.

Credit Decline

3.23.7. If applicant falls within ambit of NCA, at request of applicant, Transnet to give applicant, in writing, main reasons for:

- **3.23.7.1.** Refusing to enter in to credit agreement (credit facility);
- **3.23.7.2.** Giving lower limit than applied for, or reducing credit limit;
- **3.23.7.3.** Refusing to increase credit limit; or
- **3.23.7.4.** Refusing to renew expiring or renewable credit facility.

Financial application system masterfile maintenance

3.23.8. If the credit agreement falls within the ambit of the National Credit Act, the credit team member sets the NCA indicator on the customer masterfile to "Y".

Document storage and archive

3.23.9. Declined credit application files and supporting documents are archived by the Division finance administrative team member at the same secure location for at least 18 months.

Account suspension

3.23.10. Transnet is to suspend the customer's credit facility if the customer is in default under the agreement, or close the credit facility by giving written notice to the customer at least ten business days before the credit facility is to be closed or suspended. (Customer need not have defaulted before notice to close facility given).

Default and legal matters

3.23.11. If the customer is in default, Transnet is to give the customer notice of default and suggest that the credit agreement be referred to a debt counsellor, Alternative Dispute Resolution (ADR) or consumer court to resolve the dispute or devise a plan to bring payments up to date.

3.23.12. The customer in default is to pay all amounts overdue together with default charges and reasonable costs that Transnet incurred in enforcing the agreement and reinstate the agreement.

3.23.13. Transnet is not to close or terminate credit facility solely because:

- **3.23.13.1.** Transnet declined customer's request to increase credit limit;
- **3.23.13.2.** Customer declined Transnet's offer to increase credit limit;
- **3.23.13.3.** Customer requested reduction in credit limit; or
- **3.23.13.4.** Devices used to access credit facility expired.

3.23.14. The unilateral termination of a credit agreement by Transnet does not suspend or terminate any continuing or remaining obligations of Transnet to the customer under that agreement or in terms o. the NCA.

Credit Reporting

3.23.15. If customer falls within ambit of NCA Transnet must provide the following to National Credit Regulator or credit bureau on a basis required by National Credit Regulator or NCA respectively:

- **3.23.15.1** Details of credit agreements entered into (i.e. Transnet's and customer's details and registration numbers if any); and
- **3.23.15.2** If agreement a credit facility (as defined by National Credit Act), credit limit under that facility, and expiry date of agreement to be disclosed.

3.24. PFMA Compliance

Provision for doubtful/ bad debt

3.24.1. PFMA does not envisage that all revenue, regardless of circumstances, must be collected. It may be ineffective or inappropriate to collect revenue due and payable to Transnet where:

3.24.1.1. Debtor may not be traceable;

3.24.1.2. Legal or recovery expenses in collecting receivable outweighs value of receivable;

3.24.1.3. Debtor not in position to make payments due.

3.24.2. Steps to be taken to collect all revenue and appropriate processes and controls developed and implemented by management.

3.24.3. Losses incurred by Transnet as a result of third parties are reportable as soon as :

3.24.3.1. Nature and/ or circumstances of losses and expenditure ascertainable;

3.24.3.2. They exceed the reporting thresholds; and

3.24.3.3. Reportable as "potential losses" pending outcome of investigation or criminal charges.

Authorising/ writing-off of bad debt

3.24.4. In accordance with PFMA, debt write-offs to be undertaken if Transnet satisfied that all debts written-off in accordance with approval policy, in terms of which:

3.24.4.1. All reasonable steps been taken to recover debt and debt is recoverable; or

3.24.4.2. Transnet convinced that:

- Recovery of debt uneconomical;
- Recovery cause undue hardship to debtor or dependents; or
- Would be to advantage of State to effect a settlement of claim or waive claim.

3.24.5. Material debts written-off closed in annual financial statements, indicating policy in terms of which debt written-off.

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Appendix A

TRANSNET

Table of Required Supporting Documents

Please use the checklist provided to ensure the correct documentation is attached to the credit application:

	Sole Trader	Partnership	Company (either (Pty) Ltd or Ltd	Close Corporation	Office Use (tick if present)
Certified Copy of Registration Documents	✓	✓	✓	✓	☐
Certified Copy of VAT Certificate	✓	✓	✓	✓	☐
Certified Copy of the Current Letterhead of the Applicant			✓	✓	☐
Certified Copies of the Founding Statement of the Applicant (Forms CK1 & CK2) and Association Agreement				✓	☐
Certified Copy of the most recent audited, annual Financial Statements (or Management Accounts)	✓	✓	✓	✓	☐
If Directors / Members / Partners / Owners / Shareholders are prepared to sign a Suretyship and are Married, then a certified copy of the Marriage Certificate and Ante-Nuptial Contract must be attached	✓	✓	✓	✓	☐
Certified copy of Cancelled Cheque	✓	✓	✓	✓	☐
Marital state of Applicant and Certified Copy of Ante-Nuptial Contract	✓				☐
Certified Copy of the Current Partnership Agreement of all the Partners					☐
A Certified Copy of the Certificate of Incorporation of the Applicant			✓		☐
Certified Copy of the Certificate to Commence Business			✓		☐
Certified Copy of the Memorandum and Articles of Association			✓		☐
Nationality and Certified Copy of ID (of Directors, Members, Partners, Owners)	✓	✓	✓	✓	☐
Proof of Group Structure of Entity	✓	✓	✓	✓	☐
Other Applicable Registration / Certification i.e. Container Terminal Handler, Clearing Agent etc.	✓	✓	✓	✓	☐

FOR OFFICE USE ONLY

Complete and required documentation attached:

Date: d d / m m / y y

Name: _____

Designation: _____

Signed: _____

Appendix B

APPLICATION FOR CREDIT FACILITIES

TRANSNET

1. Applicant's Particulars (Please complete the following in full)

Registered Name:

E-mail address:

Website (URL):

Trading as: (Full Trading Name)

Type of Business:

Registration No.:

Date Established / Incorporated: d mm y

VAT Registration No.:

Postal Address:

Code:

Physical Address:

Code:

Registered Address:

Code:

Telephone No.: ( )

Fax No.: ( )

Contact Person Details:

Full Name:

Designation:

Postal Address:

Code:

Physical Address:

Code:

Telephone No.: ( )

Fax No.: ( )

E-mail address:

TRANSNET

Table of Required Supporting Documents

Please use the checklist provided to ensure the correct documentation is attached to the credit application:

	Sole Trader	Partnership	Company (either (Pty) Ltd or Ltd	Close Corporation	Office Use (tick if present)
Certified Copy of Registration Documents	✓	✓	✓	✓	☐
Certified Copy of VAT Certificate	✓	✓	✓	✓	☐
Certified Copy of the Current Letterhead of the Applicant			✓	✓	☐
Certified Copies of the Founding Statement of the Applicant (Forms CK1 & CK2) and Association Agreement				✓	☐
Certified Copy of the most recent audited, annual Financial Statements (or Management Accounts)	✓	✓	✓	✓	☐
If the Directors / Members / Partners / Owners / Shareholders are prepared to sign a Suretyship and are Married, then a certified copy of the Marriage Certificate and Ante-Nuptial Contract must be attached	✓	✓	✓	✓	☐
Certified copy of Cancelled Cheque	✓	✓	✓	✓	☐
Marital state of Applicant and Certified Copy of Ante-Nuptial Contract	✓				☐
Certified Copy of the Current Partnership Agreement of all the Partners					☐
A Certified Copy of the Certificate of Incorporation of the Applicant			✓		☐
Certified Copy of the Certificate to Commence Business			✓		☐
Certified Copy of the Memorandum and Articles of Association			✓		☐
Nationality and Certified Copy of ID (of Directors, Members, Partners, Owners)	✓	✓	✓	✓	☐
Copy of Group Structure of Entity	✓	✓	✓	✓	☐
Other Applicable Registration / Certification i.e. Container Terminal Handler, Clearing Agent etc.	✓	✓	✓	✓	☐

FOR OFFICE USE ONLY

Complete and required documentation attached:

Date: dd | mm | yyyy

Name:

Designation:

Signed: _____

TRANSNET

2. Business Structure (Please complete relevant section in full)

Is the business a: (Tick Applicable)

- Sole Trader: ☐
- Partnership: ☐
- Company (either (Pty) Ltd or Ltd): ☐
- Close Corporation: ☐

Holding Company and/or Subsidiary/Associated Company's details:

Full Name:		Registration No.		Shares:	%
Full Name:		Registration No.		Shares:	%
Full Name:		Registration No.		Shares:	%

Holding / Group Structure of Entity: (Please Insert Diagram or Description)

TRANSNET

2.1 If a Sole Trader: Please complete the following in full:

Applicant's full name:

Nationality of Applicant:

ID No. of Applicant:

Passport No. of Applicant:

Physical Address of Applicant:

Code:

Home Telephone No. of Applicant: ( )

Cellular No. of Applicant:

Name of Spouse of Applicant:

Marital Status of Applicant: (i.e. divorced, single, married by ANC or COP or other)

2.2 If a Partnership: Please complete the following in full:

#	Full Name of Partner:	ID Number of Partner:	Physical Address of Partner:	Contact details:
			Code:	Cellular No. of Partner: Business Telephone No. of Partner: ( )
#	Full Name of Partner:	ID Number of Partner:	Physical Address of Partner:	Contact details:
			Code:	Cellular No. of Partner: Business Telephone No. of Partner: ( )
#	Full Name of Partner:	ID Number of Partner:	Physical Address of Partner:	Contact details:
			Code:	Cellular No. of Partner: Business Telephone No. of Partner: ( )
#	Full Name of Partner:	ID Number of Partner:	Physical Address of Partner:	Contact details:
			Code:	Cellular No. of Partner: Business Telephone No. of Partner: ( )

TRANSNET

2.3 If a Company (either (Pty) Ltd or Ltd): Please complete the following in full:

Holding Company:

Subsidiary Company(ies):

The Amount of the Authorised Share Capital:

The Amount of Issued Share Capital:

The Number of Issued Shares Issued and to Whom Issued:

Issued to:(Name)		Number of Shares:		Shares:		%
Issued to:(Name)		Number of Shares:		Shares:		%
Issued to:(Name)		Number of Shares:		Shares:		%
Issued to:(Name)		Number of Shares:		Shares:		%
Issued to:(Name)		Number of Shares:		Shares:		%

#	Full Name of Director:	ID Number of Director:	Physical Address of Director:	Contact details:
				Cellular No. of Director:
				Business Telephone No. of Director: ( )
#	Full Name of Director:	ID Number of Director:	Physical Address of Director:	Contact details:
			Code:	Cellular No. of Director:
				Business Telephone No. of Director: ( )
#	Full Name of Director:	ID Number of Director:	Physical Address of Director:	Contact details:
			Code:	Cellular No. of Director:
				Business Telephone No. of Director: ( )
#	Full Name of Director:	ID Number of Director:	Physical Address of Director:	Contact details:
			Code:	Cellular No. of Director:
				Business Telephone No. of Director: ( )

TRANSNET

2.4 If a Close Corporation: Please complete the following in full:

#	Full Name of Member:	Member's Interest:	Physical Address of Member:	Contact details:
		%		Cellular No. of Member:
	ID Number of Member:	Nationality of Member:		Business Telephone No. of Member:
			Code:	( )
#	Full Name of Member:	Member's Interest:	Physical Address of Member:	Contact details:
		%		Cellular No. of Member:
	ID Number of Member:	Nationality of Member:		Business Telephone No. of Member:
			Code:	( )
#	Full Name of Member:	Member's Interest:	Physical Address of Member:	Contact details:
		%		Cellular No. of Member:
	ID Number of Member:	Nationality of Member:		Business Telephone No. of Member:
			Code:	( )
#	Full Name of Member:	Member's Interest:	Physical Address of Member:	tact details:
		%		Cellular No. of Member:
	ID Number of Member:	Nationality of Member:		Business Telephone No. of Member:
			Code:	( )

3. Credit Requirements (Please ... e follc ...

Estimated Monthly Credit Required: R

Credit Facility Applied for: R

Specify if you have other credit facilities of any other nature with Transnet Limited? YES ☐ NO ☐ (Tick Applicable)

If so, name the Division or Business Unit and Account No.

Division/Business Unit:

Account No.:

If answered yes, state the reason for additional application:

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Fill in the break-down of the credit required by reference to the following Ports/Centres:(Please complete relevant section in full)

Transnet Port Terminals			
Port of Durban:			
Terminal	Credit Required in Rand Value	Terminal	Credit Required in Rand Value
Multi-Purpose Terminal:	R	Container Terminal:	R
Maydon Wharf:	R	Car Terminal:	R
Agriport:	R	Pier 1:	R
Port of Port Elizabeth:			
Multi-Purpose Terminal:	R	Container Terminal:	R
Port of Cape Town:			
Multi-Purpose Terminal:	R	Container Terminal:	R
Port of Richards Bay:			
Multi-Purpose Terminal:	R	y Bu Termina	R
Port of Saldanha Bay:			
Multi-Purpose Terminal:	R	n O Terminal:	R
Port of East London:			
Terminal:	R		

Transnet National Ports Authority			
Ports	Credit Required in Rand Value	Ports	Credit Required in Rand Value
Port of Durban:	R	Port of Port Elizabeth:	R
Port of Richards Bay:	R	Port of Cape Town:	R
Port of East London:	R	Port of Ngqura:	R
Port of Mossel Bay:	R	Port of Saldanha Bay:	R
City Deep:	R		

Transnet Freight Rail			
Regions	Credit Required in Rand Value	Regions	Credit Required in Rand Value
	R		R
	R		R
	R		R

	R		R

Transnet Pipelines		Transnet Rail Engineering	
	Credit Required in Rand Value		Credit Required in Rand Value
	R		R

4. Business Banking Details (Please complete the following in full)

Name of Account Holder:

Bank: Branch:

Account No.: Telephone No. of Bank: ( )

Date Account opened:

Previous Bankers & Branch: (Discontinued Accounts)

Bank Name: Branch Code:
Bank Name: Branch Code:
Bank Name: Branch Code:
Bank Name: Branch Code:
Bank Name: Branch Code:

Will the right to use this account be ceded to another person or institution? YES ☐ (Tick Applicable)

If yes, state the Full Names and Physical Address of such person

Full Name:

Physical Address:

Code:

Full Name:

Physical Address:

Code:

Full Name:

Physical Address:

Code:

TRANSNET

Whether the Applicant is a Sole Trader, Partnership, Close Corporation or Company, also give details of Owners/Partners/Members Personal Bank Accounts:

#	Bank:	Branch:	Branch Code:
	Account Name:	Account Type:	Account No.:
#	Bank:	Branch:	Branch Code:
	Account Name:	Account Type:	Account No.:
#	Bank:	Branch:	Branch Code:
	Account Name:	Account Type:	Account No.:
#	Bank:	Branch:	Branch Code:
	Account Name:	Account Type:	Account No.:

5. Auditors' Details (Please complete the following in full)

Auditors'/Accountants' Name:

Auditors'/Accountants' Registered Address:

Code:

Auditors'/Accountants' Tel N. ( ) Date of Applicant's Financial Year-End:

6. Security and Credit History (Please complete the following in full)

Are you able/willing to offer Transnet any Security? YES ☐ NO ☐ (Tick Applicable)

If so, what type of Security can you offer?:

Are Guarantees by a Financial Institution available to support this Application? YES ☐ NO ☐ (Tick Applicable)

If yes, then name the Financial Institution, its Registered Address and the Amount of the Guarantees:

Financial Institution's Name:

Financial Institution's Registered Address:

Code:

Amount of the Guarantees: R

TRANSNET

Are the Directors/Members/Partners/Owners/Shareholders prepared to sign a Suretyship? YES ☐ NO ☐ (Tick Applicable)

If yes, please furnish the Full name and Marital Status of each Person who is prepared to sign the Suretyship:

(If any person is married then a copy of his or her Marriage Certificate and Ante-Nuptial Contract must be attached.)

Full Name:

Marital Status:

Full Name:

Marital Status:

Full Name:

Marital Status:

Has the Applicant ever previously had an Account with Transnet Limited or any of the Business Units or trading divisions of Transnet Limited which has been Closed or Discontinued for any reason: YES ☐ NO ☐ (Tick Applicable)

If so, please furnish full details of the reasons for such closure:

Previous Account No.: Date of Closure or Discontinuation:

Have any of the Owners/Partners/Members/Directors of the Applicant ever been Declared Insolvent? YES ☐ NO ☐ (Tick Applicable)

If so, Whom? When?

Full Name: Date of Declaration:

Full Name: Date of Declaration:

Full Name: Date of Declaration:

Have you ever supplied Security to your Bankers and/or any Third Party? YES ☐ NO ☐ (Tick Applicable)

If so, please provide details thereof below: (Please Tick Type of Security given and the Name and Telephone Number of Secured Creditor)

		Cession of Debts	Personal Guarantee	Bank Guarantee	Reversionary Cession of Books	Inter-Company Guarantee	Insurance Policies	Notarial Bond	Mortgage Bond	Pledge
#	Secured Creditors Name: Telephone No.: ( )	☐	☐	☐	☐	☐	☐	☐	☐	☐
#	Secured Creditors Name: Telephone No.: ( )	☐	☐	☐	☐	☐	☐	☐	☐	☐

		Cession of Debts	Personal Guarantee	Bank Guarantee	Reversionary Cession of Books	Inter-Company Guarantee	Insurance Policies	Notarial Bond	Mortgage Bond	Pledge
#	Secured Creditors Name: Telephone No.: ( )	☐	☐	☐	☐	☐	☐	☐	☐	☐
#	Secured Creditors Name: Telephone No.: ( )	☐	☐	☐	☐	☐	☐	☐	☐	☐
#	Secured Creditors Name: Telephone No.: ( )	Other: (Please Specify)								

7. Trade References (Please complete the following in full)

Name and Address of Company/Institution/Legal Entity:

Name:

Registered Address:

Code:

Contact Person (Full Name):

Business Telephone: ( ) Cellular No.:

Average Monthly Purchases: R Period Account Held:

Name and Address of Company/Institution/Legal Entity:

Name:

Registered Address:

Code:

Contact Person (Full Name):

Business Telephone: ( ) Cellular No.:

Average Monthly Purchases: R Period Account Held:

TRANSNET

Name and Address of Company/Institution/Legal Entity:

Name:

Registered Address:

Code:

Contact Person (Full Name):

Business Telephone: ( )

Cellular No.:

Average Monthly Purchases: R

Period Account Held:

ssets & Liabilities (Please complete the following in full in accordance with latest financial results)

Assets			
Asset Type	Rand Value	Asset Type	Rand Value
Value of Equipment:	R	Value of Property:	R
Value of Fittings/Furniture:	R	Va e of Moto ehi es:	R
Value of Debtors:	R	O	

Liabilities			
Liability Type	Rand Value	Liability Type	Rand Value
Overdraft:	R	Personal Sureties:	R
Creditors:	R	Loans:	R
Cession Book Debts:	R	Lease/Mortgage Bonds:	R
Hire Purchases:	R	Other:	R

Other			
	Rand Value		Rand Value
Revenue	R	Net profit/ (loss) for the period	R

TRANSNET

9. Declaration

APPLICANT'S SIGNATURE & DISCHARGE

I/We hereby authorise Transnet Limited to make use of the information contained herein and to contact any person and/or undertaking in order to determine whether or not to establish a credit account for me/us.

I/We warrant and certify that:

- The above information is true and correct;
- I am/we are duly authorised to sign this application for credit facilities; and
- We, the undersigned, hereby acknowledge that we have read and understood the Conditions of Credit set out on reverse side of this form and acknowledge and agree that should we be granted credit by Transnet Limited, such Conditions of Credit will apply to and govern our contractual relationship with Transnet Limited and we agree to be bound thereby.

Name of Account Holder: (For Applicant who warrants that he/she is duly authorised)

Full Name:

Signature of Applicant: _____ Date:

Witnesses

Witness Name:

Witness Address:

Code:

Witness Name:

Witness Address:

Code:

FOR TRANSNET LIMITED USE ONLY

Approved subject to the Conditions of Credit set out on reverse side of this form:

Date:

Name:

Signed: _____ For

Transnet Limited who warrants that he/she is duly authorised: _____

TRANSNET

CONDITIONS OF CREDIT

CONDITIONS OF CREDIT TRANSNET LIMITED trading as (Insert Operating Division) (hereinafter referred to as "the Company") (REGISTRATION NO. [1990/000900/06])

1. After submission by the Applicant to the Company of an application for credit facilities on the prescribed form, and the approval thereof by the Company, an account ("the Customer Account") shall be established by the Company in the name of the applica Holder") for operation by it.

2. The credit limit applicable to the Customer Account shall:
2.1 be the sum of R_____, or, subject to the National Credit Act 34 of 2005 ("the Act") if applicable, such other amount as may be fixed by the Company in its sole discretion from time to time and notified to the Account Holder in writing;
2.2 shall be reduced in accordance with Section 118(1) of the Act upon the Account Holder's written request, which shall stipulate the reduced credit limit required by the Account Holder. Such reduced credit limit shall thereafter be confirmed by the Comp Holder in writing, which shall also stipulate the date of commencement thereof, which will be a date not more than 30 (thirty) days after the Account Holder's written request.

3 The Account Holder shall:
3.1 faithfully observe the credit limit applicable to the Customer Account as notified in writing from time to time and be required to make an immediate interim payment in order to bring the Customer Account balance within the authorised limit when necess
3.2 be liable to the Company for all amounts which the Company may pay, or become liable to pay, to any of its divisions or business units or any carrier or other person in respect of services rendered by the Company at the request of or on behalf of the of which amounts shall be debited to the Customer Account by the Company;
3.3 make payment to the Company of all amounts debited to the Customer Account in the manner and before expiry of the period specified in clause 5;
3.4 where the Act does not apply, only be entitled to terminate the Customer Account by giving the Company 30 (thirty) days notice in writing of its intention to do so;
3.5 be liable for all amounts debited against the Customer Account by the Company up to the expiry of the period of notice referred to in clause 3.4 and shall upon the last day of such period of 30 (thirty) days' notice, pay the total of all amounts so de without deduction or demand;
3.6 where the Act applies the Account Holder shall be entitled to terminate the Customer Account immediately by paying the settlement amount to the Company. The settlement amount is the unpaid balance of the principal debt at that time and the unpaid int all other fees and charges payable by the Account Holder to the Company up to the settlement date; and
3.7 subject to the Act, if applicable, additional charges for other services rendered will be debited against the Customer Account and will be payable by the Account Holder in terms of this agreement.
3.8. Any amendment or extension of credit facilities will be subject to a re-evaluation of credit worthiness.

4. The Company shall render a monthly statement to the Account Holder at the end of the particular month to which such statement refers, the contents of which shall serve as proof of the amount owing by the Account Holder;

5. All amounts debited against the Customer Account by the Company during any particular month, and included in the monthly statement referred to in clause 4, shall be paid by the Account Holder to the Company without deduction or demand on or before the Day)th day of the following month at the address appearing on such monthly statement. When the stipulated date is either a public holiday, Saturday or Sunday, payment is required prior to the said days.
5.1 All payments must be accompanied by an itemised remittance advice and any payment withheld must also be clearly indicated in the same advice.
5.2 The Account Holder shall not be entitled to withhold payment of any amount due for services rendered.
5.3 The Account Holder may not set off any amounts due against amounts due to him.
5.4 No discount is offered if payment is made on or before the due date referred to in these Conditions of Credit.

6. All amounts outstanding and not paid to the Company by the Account Holder on or before the due date set out in clause 5, shall bear interest calculated and compounded monthly in arrears, at the rate of 1 % (one per cent) above the prime bank lending ra from time to time in respect of overdraft facilities. Any changes to the aforesaid prime rate shall result in the interest rate charged in terms hereof being altered on the first day of the month following such change.

7. In the event of the Account Holder at any time exceeding the credit limit in clause 2, or in the event of any amount which is due and payable by the Account Holder not being paid by it on the due date for payment as stipulated in clause 5, the Company in its discretion to refuse any further consignments or to handle cargo and/or vessels for the Account Holder on credit, without incurring any liability to any person in respect of such refusal, and the Account Holder does hereby indemnify the Company and against any claim of whatsoever nature which may be made against it by any person as a result of the Company exercising the rights afforded it herein.

8. The Account Holder shall query any debit raised on the monthly statement of account within 3 (three) months from date of posting thereof, failing which all debits appearing on the statement shall be deemed correct and lawfully raised against the Accoun

9. All payments by the Account Holder to the Company shall be appropriated firstly in settlement of the interest referred to in clause 6, thereafter in payment of the charges referred to in clause 23, thereafter in payment of the charges referred to in cl reduction of the debits referred to in the monthly statements provided for in clause 3.2.

10. The Account Holder shall not be entitled to withhold payment, or claim set-off, of any amount owing to the Company arising out of the operation by the Account Holder of the Customer Account by virtue of any claim which the Account Holder may have agai Company for compensation for loss of or damage to consignments, vessels, cargo, property, or for any other reason whatsoever, nothing whatever excepted.

11.1 Where the Act does not apply, the Company may at any time in its sole discretion and without supplying any reasons therefore
11.1.1 suspend the Customer Account in the event of the Account Holder being in default, or
11.1.2 terminate the Customer Account after having given the Account Holder 10 (ten) business days' prior notice in writing of its intention to do so, and
11.2 in either event, the full amount of the Account Holder's indebtedness to the Company as reflected in the Customer Account shall immediately become due and payable and shall be paid to the Company [illegible] deduction or demand by the Account Holder, tog any interest as is referred to in clause 6 and charges such as are provided for in clause 10 and clause 23.
11.3 Where the Act applies and the Account Holder is in default, the Company may at any time and without supplying any reasons summarily terminate this agreement. Where th[illegible] applies and the Acco[illegible]older is not in default, the Company may at any tim without supplying any reasons, terminate this agreement giving 10 (ten) days to the Account Holder, in which event the credit facility remains in effect to the exte[illegible]ry until [illegible]ccount Holder has pai[illegible] amounts [illegible]harged to that account

12. Subject to the protections against discrimination in respect of credit and consumer credit rights which are to be found in sections 61 and 65 of t[illegible] Company [illegible] have [illegible]ight at any time in its [illegible] to review the amount of the c the Account Holder and, in its sole and unfettered discretion, to decrease the credit limit referred to in clause 2, which decrease shall [illegible]annunc[illegible]by the Company [illegible]e Acc[illegible] Holder by written not[illegible] shall take effect on delivery of such noti purposes, the Account Holder agrees to furnish the Company with such information and documentation as the Company may require [illegible]me to ti[illegible] enable it to per[illegible] any s[illegible] review.

13. If so required by the Company, the Account Holder shall furnish the Company with a written guarantee ir[illegible] of the Company [illegible] by a fin[illegible]l institution [illegible]able to t[illegible] company, for such amo[illegible]nt as may be fixed b[illegible] the Company, which guarantee lodged with the Company as security by the Account Holder for the fulfilment by it of all [illegible]'s payment obliga[illegible]rms of these [illegible]ic[illegible]s of Cr[illegible]t. If the [illegible]g of such g[illegible]ntee is made a condi[illegible] ther[illegible] Credit, then they and effect until such time as the Company has received the guarantee and has accep[illegible] writing.

14. The Account Holder may not cede, assign or in any [illegible] over any of its ri[illegible]ht[illegible] interest in or t[illegible] Customer Acco[illegible]t to [illegible] person, [illegible]out the prior written conser[illegible]t of the Company which shall be entitled to withhold such consent in its giving any reasons therefor.

15. In the event of the Account Holder with the [illegible]r consent of the Company, aut[illegible]rising any [illegible]r person [illegible]r und[illegible]rtaking [illegible]nstruc[illegible] Compa[illegible]e handle consignments and/ or cargo on ships on the Customer Account, then the Account Holder shall be l debits raised against the Customer Account in [illegible]espect thereof by the Company. [illegible] such de[illegible]ad been [illegible]red by [illegible]A[illegible]unt Hol[illegible]

16. No authorisation such as is contemplated [illegible]n 15 shall be of any force [illegible] until th[illegible]r cons[illegible]e Comp[illegible] has been obtained. Should it be forthcoming, then upon termination thereof by the Account Holder, it shall without Company in writing of the cessation of the utilis[illegible] Account [illegible]d party.

17. No amendment or variation of, or addition to, these Conditions, [illegible] credit [illegible]ce of any force o[illegible]f[illegible]ct u[illegible]reduced to writing and signed by both parties hereto.

18. The Account Holder shall abide strictly by and conform to all th[illegible]rms, [illegible]ditions, requirements and regulations laid down in, and where applicable in, the Official Harbour and Goods Tariff Books and supplements thereto, the goods consignment notes, Regulations referred to in section 21(2) of th[illegible]gal Succession [illegible]e Sou[illegible]frican Transport Services Act 9 of 1989, as amended ("the Legal Succession Act"), and any regulations which may be promulgated in terms of section 21(1) of the Legal Succession any other documentation which may be pres[illegible]by the C[illegible]y from time to time. Any breach of such terms, conditions and/or other requirements shall be deemed to be a breach of these Conditions of Credit, entitling the Company to proceed to protect its act in terms of clause 11.

19. All documentation, including photocopies thereof, which at face value appears to have been compiled by the Company in the execution of any services in respect of which debits have been raised, shall be admissible in litigation between the parties and prima facie proof of the contents thereof.

20. A certificate in writing signed by a duly authorised Senior Official of the Company certifying the amount due by the Account Holder to the Company at any one time, shall be prima facie proof of the amount owing and due and payable by the Account Holde Company as at the date of such certificate;

21. Should the Account Holder be declared insolvent, or placed in provisional or final liquidation, or under provisional or final judicial management, or enter into any compromise with its creditors, or remain or permit any judgment to remain unsatisfied days after the granting thereof, it shall immediately notify the Company of such occurrence and furnish full details thereof;

22. The parties agree that any Magistrates' Court which has jurisdiction over the person of the defendant shall have jurisdiction in terms of section 29 of the Magistrates' Courts Act 32 of 1944, to entertain any cause of action arising out of these Condi though the amount of such claim may exceed the jurisdiction of the Magistrates' Court.

23. The Account Holder shall be liable on the scale as between attorney and client for all legal costs which the Company may incur in the enforcement of its rights in terms of these Conditions of Credit, including collection fees, collection costs, defaul and tracing charges.

24. The Company is hereby irrevocably authorised by the Account Holder to perform any credit investigation into the Account Holder's creditworthiness and financial affairs as the Company in its sole discretion may consider appropriate.

25. The Account Holder chooses the following physical address as its domicilium citandi et executandi for all purposes arising out of these Conditions of Credit:

_____ Fax No. : _____ Code : _____ I, the undersigned,
_____ Code: _____ E-mail address : _____ Code : _____ do hereby confirm that I have read the above Conditions of
_____ in my capacity as a Sole Proprietor / Director / Partner / Member (* delete which is not applicable) of _____
Credit, that I know and understand the contents and agree to be bound by them. _____ For: Self / Partnership / Company / Close Corporation Who warrants that he / she is duly authorised

26. It should be noted, where applicable, that these Conditions of Credit should be read and interpreted in conjunction with the Transport Agreement and/ or any other applicable contractual agreements by both parties hereto.

27. The Account Holder undertakes to inform the Company immediately upon changes of the status of the entity.

28. If the Act applies to this agreement, the Company shall deliver to the Account Holder any document required in terms of the Act in the manner selected by the Account Holder when entering into this agreement.

29. If the Act applies to this agreement, the Consumer Notice attached hereto forms part of this agreement.

30.1. If an event of default occurs and the Act applies, the Company:
30.1.1. may propose that the Account Holder refers the agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the Company and the Account Holder resolve any dispute under the a develop and agree on a plan to bring the payments under the agreement up to date; and,
30.1.2. subject to the Act, may commence legal proceedings to enforce the agreement after (i) providing the notice referred to in clause 30.1.1 or terminating the review in terms of section 86(10) of the Act (as the case may be); and (ii) meeting any furt out in section 130 of the Act.
30.2 If an event of default occurs and the Act does not apply, the Company may immediately begin legal proceedings to recover all amounts owing to it in terms of this agreement.
30.3. An event of default shall occur or shall be deemed to have occurred if:
30.3.1. the Account Holder should fail to comply with any of its obligations in terms of this agreement; or
30.3.2. the Account Holder fails to pay any amount in terms of this agreement; or
30.3.3. the Account Holder does anything which may prejudice the value, priority or legality of any security held by the Company or anything which may cause the Lender to suffer any loss or damage under this Agreement; or
30.3.4. the Account Holder fails to fully and timeously comply with any of the undertakings given by the Account Holder; or
30.3.5. a failure to pay any amount due in terms of this Agreement on its due date which is not rectified within three days after such due date.
30.4.if an event of default occurs and if the Act applies and the Company has complied with the Act, all the Account Holder's indebtedness to the Lender (actual or contingent), whether in terms of any finance document or any other agreement or obligation, payable irrespective of any terms or conditions that may be applicable to such indebtedness. For the avoidance of doubt, the Account Holder's indebtedness includes all fees that the Account Holder is or would have been liable to pay to the Company in ter

TRANSNET

CONSUMER NOTICE

This Consumer Notice applies if the Agreement is subject to the NCA, and sets out certain prescribed information in terms of the regulations to the NCA.
In this document Consumer means the party to whom or at whose direction money is advanced or credit granted under any credit agreement. In this document Credit Provider means Transnet Limited.

1. INFORMATION SHARING

1.1. The Consumer confirms that the Credit Provider may transmit to any credit bureau data about the application, opening and termination of any account in respect of the Consumer pursuant to this Agreement.
1.2. The Credit Provider will transmit to any credit bureau notice of any non-compliance by the Consumer with the terms and conditions of this Agreement. The names and contact details of the credit bureaux to which the Credit Provider transmit information is included in this Notice. The credit bureaux to which the Credit Provider transmits information will provide a credit profile and possibly a credit score on the creditworthiness of the Consumer.
1.3. The Consumer has the right in terms of the NCA to contact the credit bureaux, have its credit record disclosed and correct inaccurate information.

2. STATEMENT OF ACCOUNT

2.1. The Credit Provider will deliver all statements of account to the Consumer in the manner chosen by the Consumer for delivery of documents from the options available in terms of the NCA.

3. DISPUTE RESOLUTION

3.1. The Consumer may:
3.1.1 resolve a complaint by way of alternative resolution in terms of the NCA
3.1.2. apply to a debt counsellor for assessment and debt review in terms of Section 86 of the NCA, pursuant to which:
3.1.2.1. the debt counsellor may make an appropriate proposal to the Consumer and Credit Provider regarding (among other things):
3.1.2.1.1. a re-arrangement or re-calculation of the Consumer's obligations to the Credit Provider;
3.1.2.1.2. a postponement of the Consumer's obligations to repay the Total Amount; and
3.1.2.1.3. an extension of the term of the Loan;
3.1.2.2. the Consumer may be found to be over-indebted, in which case the debt counsellor may make an appropriate recommendation to the relevant Magistrate's Court regarding (amongst other things) whether the Loan constitutes reckless credit for the purposes of the NCA;
3.1.3. file a compliant with the National Credit Regulator established in terms of the NCA ("National Credit Regulator");
3.1.4. file a complaint with the National Consumer Tribunal established in terms of the NCA ("Tribunal");
3.1.5. during office hours and upon reasonable, written request to Credit Provider, access any of its perso[illegible]rmation which is held by Credit Provider.

4. PRESCRIBED CONTACT DETAILS

4.1. The contact details of the National Credit Regulator, National [illegible]dit [illegible]unal and [illegible]mb[illegible]sman for Ba[illegible]king Services are as follows:
4.1.1. The National Credit Regulator is PO Box 269[illegible]oughton [illegible]; Te[illegible]011 647[illegible]400; [illegible]ax: 011 484[illegible]22.
4.1.2. The National Credit Tribunal is P[illegible]ate Bag X[illegible]Pretoria [illegible]; Te[illegible]1450; [illegible]x: 012 394 2[illegible]
4.1.3. The Ombudsman for Banking S[illegible]es is PO[illegible]6728, [illegible]oh[illegible]nes[illegible]rg 2000; Tel: 0[illegible]838[illegible]5 / 0860 800 900; Fax: 011 838 0043.

Appendix C

RISK ASSESSMENT TEMPLATE

TRANSNET

Full Name of Evaluator :

Designation :

Applicant Name :

Date : dd / mm / yyyy (Select Applicable)

Financial Statements

Company Information

Account Number :		
Age of Account (Years):		
Company Registration Number :		
VAT Registration Number :		
Industry :	Agri. / Forestry / Fishing	(Select Applicable)
Is Applicant a Juristic Person? (i.e. Individual, Sole Proprietor)	No	(Select Applicable)
Previous Credit Limit :		
Credit limit applied for :		
Current Credit Limits with Other Transnet Operating Division's?	No (If yes, kindly fill out relevant de	(S ect Applicable)

Company Report

Date Of Analysis :	dd m yyyy	S ect / ..cable)
Financial Period :		
Age of Statements :		

Audit Report

Auditor :		
Date :	dd mm yyyy	(Select Applicable)
Commentary :		

Credit Bureau Report

Independent Business Intelligence Partner :	N/A -Existing customer	(Select Applicable)
Time period for which applicant has been in operation :	< 5 years	(Select Applicable)
Have any judgements been taken against the applicant?	No	(Select Applicable)
If yes, commentary :		
Has any adverse information been reported?	No	(Select Applicable)
If yes, commentary :		

Do the applicant's bankers consider them good for the enquiry figure?	Yes	(Select Applicable)
If no, commentary :		
Assessment Enquiry Amount :		
Assessment Enquiry Terms (Days):		
Independent Business Intelligence Risk Allocation :	1	(Select Applicable)

Risk Scale : 1 (low risk) - - - - 10 (high risk)

Independent Business Intelligence Partner's reference no. :

Balance Sheet Items

(Please insert full value)

Financial Year End (please insert current year date)	Current 2006	Previous 2005
Total Equity *(Ordinary Share Capital, Share Premium, Distributable & Non-Distributable Reserves)*		
Total Assets *(Cash Reserves, Debtors, Stock and Tangible Assets i.e. Buildings, Machinery, Equipment, Furniture & Land*		
Non-current Assets		
Investments		
Intangible Assets *(i.e. Patent Rights or Goodwill)*		
Current Assets *(i.e. Prepaid Expenses & Marketable Securities)*		
Debtors/ Accounts Receivable		
Stock		
Total Liabilities *(Long Term [illegible] Deferred Ta[illegible] Shareholders Loans and [illegible])*		
Interest Bearing Debt		
Redeem[illegible]e Preference Shares		
Current Liabilities		
Creditors/ Accounts Payable		
Bank Overdraft		

Income Statement Items

Revenue		
Cost of Sales		
Investment Income *(Dividends Received and all Interest Earned)*		
Profit (Loss) Before Interest and Tax		
Interest Paid		

Cash Flow Statement Items

Cash Generated by Operations		

National Credit Act compliance

NCA Applicable : No

Full Name of Evaluator : 0

Designation : 0

Applicant Name : 0

Date : dd / mm / yyyy

TRANSNET

Credit Limits with Core Operating Divisions

Transnet Port Terminals

Port of Durban

Terminal	Credit in Rand Value	Terminal	Credit in Rand Value
Multi-Purpose Terminal:		Container Terminal:	
Maydon Wharf:		Car Terminal:	
Agriport:		Pier 1:	

Port of Port Elizabeth

Terminal	Credit in Rand Value	Terminal	Credit in Rand Value
Multi-Purpose Terminal:		Container Terminal:	

Port of Cape Town

Terminal	Credit in Rand Value	Terminal	Credit in Rand Value
Multi-Purpose Terminal:		Container Terminal:	

Port of Richards Bay

Terminal	Credit in Rand Value	Terminal	Credit in Rand Value
Multi-Purpose Terminal:		Dry Terminal	

Port of Saldanha Bay

Terminal	Credit in Rand Value	Terminal	Credit in Rand Value
Multi-Purpose Terminal:		Iron Ore Terminal	

Port of East London

Terminal	Credit in Rand Value	Terminal	Credit in Rand Value
Terminal:			

Transnet National Ports Authority

Port of Durban

Terminal	Credit in Rand Value	Terminal	Credit in Rand Value
Port of Durban:		Port of Port Elizabeth:	
Port of Richards Bay:		Port of Cape Town:	
Port of East London:		Port of Ngqura:	
Port of Mossel Bay:		Port of Saldanha Bay:	
City Deep:			

Transnet Freight Rail

	Credit in Rand Value		Credit in Rand Value

Transnet Rail Engineering			
	Credit in Rand Value		Credit in Rand Value

Transnet Pipelines			
	Credit in Rand Value		Credit in Rand Value

Total Credit with Transnet P t T minals:	R 0.00
Total Credit with National Ports Authority:	R 0.00
Total Credit with Transnet Freight Rail:	R 0.00
Total Credit with Transnet Rail Engineerin	R 0.00
Total Credit with Transnet Pipelines:	R 0.00
Total Credit with Transnet Operating Divisions:	R 0.00

TRANSNET

Full Name of Evaluator : 0

Designation : 0

Applicant Name : 0

Date : dd / mm / yyyy

Financial Ratio's

Liquidity Ratio's

Current Ratio : (2 : 1)

Current Assets
Current Liabilities

Current Year : R -
R -
- : 1

Previous Year : R -
R -
- : 1

Industry Average :

Commentary :

Observation :	Comment :
(Select Applicable)	

Acid Test Ratio : (1 : 1)

Current Assets - Stock
Current Liabilities

Current Year : R -
R -
- : 1

Previous Year : R -
R -
- : 1

Industry Average :

Commentary :

Observation :	Comment :
(Select Applicable)	

Solvency Ratio : (1 : 1)

Total Assets
Total Liabilities

Current Year : R -
R -
- : 1

Previous Year :	R - / R - = - : 1
Industry Average :	

Commentary :

Observation :	Comment :
(Select Applicable)	

Interest Cover : (3 : 1)

$$\frac{\text{Profit Before Interest and Tax}}{\text{Interest Paid}}$$

Current Year :	R - / R - = - Times
Previous Year :	R - / R - = - Times
Industry Average :	

Commentary :

Observation :	Comment :
(Select Applicable)	

Activity Ratio's

Stock Turnover :

$$\frac{\text{Cost of Sales}}{\text{Stock}}$$

Current Year :	R - / R - = -
Previous Year :	R - / R - = -
Industry Average :	

Commentary :

Observation :	Comment :
(Select Applicable)	

Stock Days :

$$\frac{\text{Stock}}{\text{Cost of Sales}} \times 365$$

Current Year :	R	-	X 365
	R	-	
		-	
Previous Year :	R	-	X 365
	R	-	
		-	
Industry Average :			

Commentary :

Observation :	Comment :
(Select Applicable)	

Debtors Days :

$$\frac{\text{Debtors}}{\text{Revenue}} \times 365$$

Current Year :	R		X 365
	R		
Previous Year :	R	-	X 365
	R	-	
		-	
Industry Average :			

Commentary :

Observation :	Comment :
(Select Applicable)	

Creditors Days :

$$\frac{\text{Creditors}}{\text{Cost of Sales}} \times 365$$

Current Year :	R	-	X 365
	R	-	
		-	
Previous Year :	R	-	X 365
	R	-	
		-	

Industry Average :	

Commentary :

Observation :	Comment :
(Select Applicable)	

Operational Cycle :

Stock days + Debtors Days

Current Year : _____ - _____ + _____ - _____

_____ - _____

Previous Year : _____ - _____ + _____ - _____

_____ - _____

Industry Average :

Commentary :

Observation :	Comment :
(Select Applicable)	

Cash Cycle :

Stock days + Debtors Days - Creditors Days

Current Year : _____ - _____ + _____ - _____ - _____

_____ - _____

Previous Year : _____ - _____ + _____ - _____ - _____

_____ - _____

Industry Average :

Commentary :

Observation :	Comment :
(Select Applicable)	

Profitability Ratios

Profitability: (Norm 15%)

Profit Before Interest and Tax - Interest paid / Total Assets X 100

Current Year : R _____ - _____ / R _____ - _____ X 100

_____ - _____ %

Previous Year :	R - / R - X 100 = - %
Industry Average :	

Commentary :

Observation :	Comment :
(Select Applicable)	

Return on Equity (ROE) :(Norm 10%)

$$\frac{\text{Profit Before Interest and Tax - Interest Paid}}{\text{Total Equity}} \times 100$$

Current Year :	R - / R - X 100 = - %
Previous Year :	- / - X 100 = - %
Industry Average :	

Commentary :

Observation :	Comment
(Select Applicable)	

Return on Non-current Assets :

$$\frac{\text{Profit Before Interest and Tax - Interest Paid}}{\text{Non-current Assets}} \times 100$$

Current Year :	R - / R - X 100 = - %
Previous Year :	R - / R - X 100 = - %
Industry Average :	

Commentary :

Observation :	Comment :
(Select Applicable)	

Operating Profit Margin :

$$\frac{\text{Profit Before Interest and Tax - Interest Paid}}{\text{Revenue}} \times 100$$

Current Year :	R	-	X 100
	R	-	
		-	%
Previous Year :	R	-	X 100
	R	-	
		-	%

Industry Average :

Commentary :

Observation :	Comment :
(Select Applicable)	

Profitability of Capital Employed

$$\frac{\text{Profit Before Interest and Tax + Investment Income - Interest paid}}{\text{Total Equity - Intangible Assets}}$$

Current Year :	R	-
	R	-
		-
Previous Year :	R	-
	R	-
		-

Industry Average :

Commentary :

Observation :	Comment :
(Select Applicable)	

Debt Management Ratios

Total Debt to Total Equity Ratio : (Norm <100%)

$$\frac{\text{Total Liabilities}}{\text{Total Equity}} \times 100$$

Current Year :	R -	X 100	
	R -		
	-	%	
Previous Year :	R -	X 100	
	R -		
	-	%	
Industry Average :			

Commentary :	Observation :	Comment :
	(Select Applicable)	

Debt Equity Ratio :

$$\frac{\text{Interest Bearing Debt + Redeemable Preference Shares - Bank Overdraft}}{\text{Total Equity}} \times 100$$

Current Year :	R		100
	R		
	-	%	
Previous Year :	R -	X 100	
	R -		
	-	%	
Industry Average :			

Commentary :	Observation :	Comment :
	(Select Applicable)	

Effective Debt to Equity Ratio : (Norm <30%)

$$\frac{\text{Interest Bearing Debt}}{\text{Total Equity}} \times 100$$

Current Year :	R -	X 100	
	R -		
	-	%	
Previous Year :	R -	X 100	
	R -		
	-	%	
Industry Average :			

Commentary :

Observation :	Comment :
(Select Applicable)	

Interest Bearing Debt Repayment Period :(The shorter, the better)

$$\frac{\text{Interest Bearing Debt}}{\text{Profit Before Interest and Tax}}$$

Current Year :	R -	
	R -	
	-	
Previous Year :	R -	
	R -	
	-	
Industry Average :		

Commentary :

Observation :	Comment :
(Select Applicable)	

Ratio of Total Liabilities to Total Assets : (%Norm <50%)

$$\frac{\text{Total Liabilities}}{\text{Total Assets}} \times 100$$

Current Year :	R -	X 100
	R -	
	-	%
Previous Year :	R -	X 100
	R -	
	-	%
Industry Average :		

Commentary :

Observation :	Comment :
(Select Applicable)	

Ratio of Current Assets to Total Assets : (The higher the current assets, the lower the risk)

$$\frac{\text{Current Assets}}{\text{Total Assets}} \times 100$$

Current Year :	R -	X 100
	R -	
	-	%
Previous Year :	R -	X 100
	R -	
	-	%

Industry Average :	

Commentary :

Observation :	Comment :
(Select Applicable)	

Ratio of Current Liabilities to Total Assets :

$$\frac{\text{Current Liabilities}}{\text{Total Assets}} \times 100$$

Current Year : R - / R - X 100 = - %

Previous Year : R - / R - X 100 = - %

Industry Average :

Commentary :

Observation :	Comment :
(Select Applicable)	

Cash Flow Ratio's:

Cash Flow Ratio : (Norm %)

$$\frac{\text{Cash Generated from Operations}}{\text{Total Liabilities}} \times 100$$

Current Year : R - / R - X 100 = - %

Previous Year : R - / R - X 100 = - %

Industry Average :

Commentary :

Observation :	Comment :
(Select Applicable)	

Credit Limit Cover

$$\frac{\text{Total Equity}}{\text{Credit Required}}$$

Current Year : R - / R - = - Times

Previous Year :	R - R - - Time
Industry Average :	
Ob ation :	Co nent :
(S ct pli able	

Commentary :

Full Name of Evaluator :	0
Designation :	0
Applicant Name :	0
Date :	dd / mm / yyyy

TRANSNET

Other factors to consider

Capital Structure and Liquidity Layout

Off Balance Sheet Events : (i.e.Legal action/ claims against the entity, agreements in principle, the entity entering into negotiations for the sale of/ purchase of assets, etc.)	
Effect of the bank financing in place and implications on counterparty's future liquidity requirements and ongoing viability :	
Changes in dividend requirements :	

Applicant Outlook Summary

Merger and acquisition activity :	
Changes in sources of liquidity :	
Significant CapEx or investment activity :	
Equity analyst's research reports :	
Please list recent events relating to the counterparty, which are of interest :	

General Performance Updates:

Subjective Factors

Tenure / experience level of management :

Observation :	Comment :
(Select Applicable)	

Market share :

Observation :	Comment :
(Select Applicable)	

Competitiveness of product line :

Observation :	Comment :
(Select Applicable)	

ize :

Observation :	Comment :
(Select Applicable)	

Geographic diversity :

Observation :	Comment :
(Select Applicable)	

Product life cycle :

Observation :	Comment :
(Select Applicable)	

Please list any changes in Risk Management Policy, Internal Controls, etc.

Customer Credit Risk Assessment and Evaluation Certificate

TRANSNET

Prepared by:

Full Name of Evaluator : 0

Designation : 0

Applicant Name : 0

Credit limit applied for : R 0.00

Date : dd / mm / yyyy

Signed :

Reviewed by:

Full Name of Reviewer : << Preparer to insert name of Reviewer>>

Designation : << Preparer to insert designation of Reviewer>>

Date : dd / mm / yyyy

Signed :

Financial Ratio Analysis

Page	Ratios	Observations	2006	2005	Industry Average
5	Acid Test Ratio	(Select Applicable)	-	-	-
5	Solvency Ratio	(Select Applicable)	-	-	-
6	Interest Cover	(Select Applicable)	-	-	-
6	Stock Turnover	(Select Applicable)	-	-	-
7	Stock Days	(Select Applicable)	-	-	-
7	Debtors Days	(Select Applicable)	-	-	-
7	Creditors Days	(Select Applicable)	-	-	-
8	Operational Cycle	(Select Applicable)	-	-	-
8	Profitability	(Select Applicable)	-	-	-
9	Return On Equity (ROE)	(Select Applicable)	-	-	-
11	Total Debt to Total Equity Ratio	(Select Applicable)	-	-	-
11	Effective Debt to Equity Ratio	(Select Applicable)	-	-	-
12	Ratio of Total Liabilities to Total Asset	(Select Applicable)	-	-	-
13	Cash Flow Ratio	(Select Applicable)	-	-	-
13	Credit Limit Cover	(Select Applicable)	-	-	-

Balanced Scorecard For Risk Analysis

Note: The balanced scorecard is to be used as a guideline for determining a risk profile. It is at the discretion of the evaluator to allocate a risk profile.

Total Liabilities / Total Equity	Effective Liabilities / Total Equity	Total Liabilities / Total Assets	ROE	Profitability	Interest Cover	Cash Flow	Score	Risk Profile
<100% Score 5	<30% Score 5	<60% Score 5	>10% Score 5	>15% Score 5	>3 Times Score 5	>15% Score 5	33-35	*Low Risk*
Between 100 & 110% Score 4	Between 30 & 40% Score 4	Between 60 & 70% Score 4	9% Score 4	Between 12 & 15% Score 4	Between 2 & 3 Score 4	Between 12 & 15% Score 4	25-33	*Moderate Risk*
Between 110 & 120% Score 3	Between 40 & 50% Score 3	Between 70 & 80% Score 3	8% Score 3	Between 10 & 12% Score 3	Between 1 & 2 Score 3	Between 10 & 12%	18-25	*Medium Risk*
Between 120 & 130% Score 2	Between 50 & 60% Score 2	Between 80 & 90% Score 2	7% Score 2	Between 8 & Scor	1 Score 2	Between 8 & 2	14-18	*High Risk*
Higher than 130% Score 1	Higher than 6 Sc	Hig han S	% S e 1	an 8% Score 1	Less than 1 Score 1	Score 1	<14	*Unacceptable Risk*
#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	#N/A	

Evaluator's Recommendation

Allocation of Risk Profile:

(Low Risk)	No Guarantees required
(Moderate Risk)	50% Guarantees required
(Medium Risk)	75% Guarantee required
(High Risk)	100% Guarantee required
(Unacceptable Risk)	Cash Account only

Recommendation

<< Preparer to comment>>

Subjective Factors

Tenure / experience level of management :	(Select Applicable)	Product life cycle :	(Select Applicable)
Competitiveness of product line :	(Select Applicable)	Geographic diversity :	(Select Applicable)
Market share :	(Select Applicable)	Size :	(Select Applicable)
Total credit with other Operating Divisions :	R 0.00	For further subjective factors and comments refer to the detailed analysis.	

Assessme Enq y Amount	R 0.00
judgements been against the applicant?	No
Has any adverse information been reported?	No
Independent Business Intelligence Partner :	N/A -Existing customer

Do the applicant's bankers consider them good for the enquiry figure?	Yes
Assessment Enquiry Terms (Days) :	0
Time period for which applicant has been in operation :	< 5 years
Independent Business Intelligence Risk Allocation :	1
Independent Business Intelligence Partner's reference no. :	0

Reviewed by: (Select Applicable)

Full Name of Delegated Authority : << Preparer to insert name of Delegated Authority>>

Designation : << Preparer to insert designation of Delegated Authority>>

Signed :

Date : / /

Authorised by: (Select Applicable)

Full Name of Delegated Authority : << Preparer to insert name of Delegated Authority>>

Designation : << Preparer to insert designation of Delegated Authority>>

Signed :

Date : / /

Reviewed by: (Select Applicable)

Full Name of Delegated Authority : << Preparer to insert name of Delegated Authority>>

Designation : << Preparer to insert designation of Delegated Authority>>

Signed :

Date : / /

Authorised by: (Select Applicable)

Full Name of Delegated Authority : << Preparer to insert name of Delegated Authority>>

Designation : << Preparer to insert designation of Delegated Authority>>

Signed :

Date : / /

Please find further notes and commentary overleaf

TRANSNET-REF-BUNDLE-05909

Commentary:

Full Name of Delegated Authority : _____ Signed : _____

Commentary:

Full Name of Delegated Authority : _____ Signed : _____

Commentary:

Full Name of Delegated Authority : _____ Signed : _____

Commentary:

Full Name of Delegated Authority : _____ Signed : _____

Commentary:

Full Name of Delegated Authority : _____ Signed : _____

TRANSNET-REF-BUNDLE-05910

TRANSNET

STANDARD OPERATING PROCEDURES/ TRANSNET CREDIT POLICY CHECKLIST

Checklist

	Part A	Credit Granting	Authority Levels	Related Parties / Interests	Processing of Credit Applications Received	Credit Application / Extension Evaluation	Credit Risk Assessment	Unsuccessful Credit Application Criteria Applied	Determine Risk Profile	Security and Guarantee	Conditions of Credit	Credit Re-evaluation	Credit Approval	Credit Decline
	5. External Loans (business rules and associated procedures)													
5.1	All Transnet employees involved in the receipt, consideration, processing and management of credit facilities afforded to clients or customers must conduct credit related business activities in accordance with the specific credit requirements and standards applicable to each credit transaction in a manner that:	✔	✔		✔		✔	✔	✔	✔	✔	✔	✔	✔
5.1.1	► Achieves compliance with the provisions of th													
5.1.2	► Supports compliance with the requirements of Transnet's credit-related business objectives which are aimed at overall sound credit practices within Transnet;													
5.1.3	► Will avoid exposure due to non-compliance with the letter and spirit of the NCA;													
5.1.4	► Ensures that instances of non-compliance which arise are promptly resolved in a manner which minimises any adverse consequences;													
5.1.5	► Results in an overall acceptable level of credit risk exposure to Transnet.													
5.2	All credit agreements made and entered into must be signed in accordance with the business unit Delegation of Authority documents. All credit agreements may be subject to review by the CFO.	✔	✔				✔	✔	✔	✔	✔	✔	✔	
5.3	In the event that the business unit CEO's authority levels are reached, as determined in the Delegation of Authority, approval to conclude such a credit agreement must be referred to the Board for authorisation.	✔	✔				✔					✔	✔	
5.4	Trading on credit with a customer may not commence before a fully executed credit agreement is established. In the case of certain long term customer contracts, due process must be followed in conducting commercial negotiations with a customer. The Standard credit terms and conditions of Transnet Group must be enforced and adhered to at all times.	✔			✔	✔	✔	✔	✔	✔	✔	✔	✔	
5.5	All customers or potential customers have the right to apply for credit but not the right to be automatically granted credit without due process being followed. Credit may be refused on any reasonable commercial grounds; however no customer may be unfairly discriminated against.	✔	✔		✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
5.6	Only duly completed Transnet Group credit application forms, credit agreements or commercial contracts (for long term agreements) with complete and valid supporting documents will be considered.	✔			✔	✔	✔	✔			✔	✔	✔	✔

TRANSNET-REF-BUNDLE-05911

	Part A	Credit Granting	Authority Levels	Related Parties / Interests	Processing of Credit Applications Received	Credit Application / Extension Evaluation	Credit Risk Assessment	Unsuccessful Credit Application Criteria Applied	Determine Risk Profile	Security and Guarantee	Conditions of Credit	Credit Re-evaluation	Credit Approval	Credit Decline
5.7	Transactions should be conducted with customers, both local and international, that satisfy soundly based assessment procedures and only after formal limits have been set and, when deemed necessary, acceptable security obtained. Any decision to extend credit to a customer on an unsecured basis can only be taken after complying with the provisions of paragraphs 6.1.1 to 6.1.3.					✔	✔		✔	✔	✔	✔	✔	✔
5.8	Local credit applicants must be suitably registered for Value Added Tax (VAT) and other applicable transactional taxes in compliance with South African legislation and provide suitable evidence of such upon application. International applicants may not be required to be registered for VAT.							✔					✔	✔
5.9	Transnet's standard credit payment terms are a maximum of 30 days from statement date. An extension of the credit term will only be granted once the Operating Division (OD) Credit Management and OD Chief Financial Officer have approved such a request from a customer. Generally no credit discount id offered for early settlement. Operating Division Management is however encouraged to negotiate a discount for early settlement if this is to the benefit of [illegible]	✔				✔	✔				✔	✔	✔	✔
5.10	Credit limits are set for individual legal entities and should be strictly adhered to.								✔		✔	✔	✔	✔
5.11	Credit limits must be approved in writing and in accordance with the OD Delegation of Authority.	✔	✔				✔		✔		✔	✔	✔	✔
5.12	When a credit facility is declined, it is not permitted for a person at a lower authority level to grant a smaller credit facility to a customer without referral to the person at the authority level at which the original decision was taken.	✔	✔				✔	✔	✔	✔	✔	✔		✔
5.13	All customers must be assigned a risk profile based on the outcome of the credit assessment procedure.	✔					✔		✔		✔	✔	✔	
5.14	Credit insurance is deemed unnecessary, as customers who are assessed to be a credit risk are required to provide security thereby minimizing the risk of Transnet not being able to recover the debt or suitable compensation.									✔	✔		✔	
5.15	All security accepted must be legally enforceable and verified against the "Security Guidelines" – a document issued by Transnet Legal and used by Transnet Credit Managers to assess the legal requirements for securities received.						✔		✔	✔	✔	✔	✔	
5.16	Letters of credit and other guarantees may only be accepted from reputable and responsible financial institutions.						✔		✔	✔	✔	✔	✔	
5.17	Only those securities not detailed by the Transnet "Security Guidelines" are subject to review by Transnet Legal. All guarantors should be informed in writing by the Legal department of Transnet's receipt of and acceptance of their guarantees. All letters should be sent via registered mail with a return receipt requested.								✔	✔		✔	✔	

TRANSNET-REF-BUNDLE-05912

	Part A	Credit Granting	Authority Levels	Related Parties / Interests	Processing of Credit Applications Received	Credit Application / Extension Evaluation	Credit Risk Assessment	Unsuccessful Credit Application Criteria Applied	Determine Risk Profile	Security and Guarantee	Conditions of Credit	Credit Re-evaluation	Credit Approval	Credit Decline
5.18	A credit check from an independent source must be performed on all prospective credit customers and be reviewed and signed off by the relevant OD Credit Manager prior to the conclusion of any credit agreements.						✔	✔	✔			✔	✔	✔
5.19	All counterparty credit risk is to be prudently analysed, measured and monitored on a regular basis so as to mitigate the risks and potential loss that may result from counterparty activities or default.	✔					✔		✔			✔	✔	
5.20	Credit agreements are to be suitably archived in a central repository by the Finance administrative function and regular reviews must be performed of archived agreements.	✔			✔	✔	✔		✔			✔	✔	
5.21	Segregation of duties between Commercial teams and Credit teams must be enforced.		✔		✔	✔	✔		✔			✔		
5.22	Within the credit management function, duties must be segregated for:	✔	✔		✔	✔	✔	✔	✔		✔	✔	✔	
5.22.1	▶ The recording of data;													
5.22.2	▶ The authorisation of transactions;													
5.22.3	▶ The custody of assets; and													
5.22.4	▶ The ownership of the process and associated key controls.													
5.23	Where it is not possible to segregate duties appropriately, compensating controls must be documented and enforced.	✔	✔		✔	✔	✔	✔			✔	✔	✔	
5.24	Credit limit exception and override authorisation will only be allowed if the provisions of paragraphs 7.1.1 to 7.1.4 are followed.		✔										✔	
5.25	Only suitably authorised personnel may be granted system access to perform credit limit overrides.		✔			✔								
5.26	Active controlling and management procedures of the external credit portfolio in terms of collections, provision for doubtful or bad debts and bad debt write offs should be adhered to.									✔		✔		
5.27	Monitoring of the credit quality of customers is to be performed on a regular basis by the credit function. Credit limit reviews must be performed at least annually by the applicable credit function.	✔				✔	✔			✔			✔	
5.28	Credit limit exceptions and overrides are monitored on a monthly basis by the relevant OD Credit Manager.		✔											
5.29	Any deviations from the policy for whatever reason will require the prior specific approval of the Sponsor / Owner of this policy.									✔	✔	✔	✔	
	6. Unsecured credit													
6.1	In the event that unsecured credit is required, the following procedures must be followed. The counterparty may give up some or all of their rights if the contractual arrangements are not fully executed:		✔				✔							
6.1.1	▶ A full motivation must be provided and authorised in line with the Operating Divisions Delegation of Authority;													

TRANSNET-REF-BUNDLE-05913

	Part A	Credit Granting	Authority Levels	Related Parties / Interests	Processing of Credit Applications Received	Credit Application / Extension Evaluation	Credit Risk Assessment	Unsuccessful Credit Application Criteria Applied	Determine Risk Profile	Security and Guarantee	Conditions of Credit	Credit Re-evaluation	Credit Approval	Credit Decline
6.1.2	▶ The customer profile must reside within the lowest credit risk profile as determined in the credit risk assessment or review; and													
6.1.3	▶ The authorised motivation may be subject to review by the OD CFO or, if above the delegated authority, the Group CFO.													
	7. Credit limit override													
7.1	The following criteria are to be satisfied and procedures followed in order for a credit limit override to be approved:		✔								✔			
7.1.1	▶ The customer's credit record must be exemplary;													
7.1.2	▶ The customer's average debtor days does not exceed 55 days '(immaterial unresolved disputes/ disputes under investigation should not be considered in the calculation of average debtor days);													
7.1.3	▶ A credit limit override application form must be completed and signed; and													
7.1.4	▶ The override request must be authorised as per the Operating Division Delegation of Authority.													
	8. Internal loans													
8.1	As the objective of the NCA expounds sound credit granting requirements Transnet has elected to give effect to the spirit of the NCA insofar as Internal Loans are concerned. This commitment implies that all Internal Loans must	✔												
8.1.1	Ensures compliance with the general principles of the NCA;													
8.1.2	▶ Supports Transnet's commitment to provide its employees with responsible, employee benefits;													
8.1.3	▶ Conduces to responsible credit practices and the reduction of over-indebtedness of employees;													
8.1.4	▶ Provides for informal dispute resolution mechanisms where this is beneficial to													
8.1.5	▶ Protects the overall financial stability of both Transnet and its employees.													
	9. Non compliance with group policy													
	Non-compliance to the NCA and applicable credit policies, standards and procedures will result in disciplinary action in accordance with the Transnet Code of Conduct.	✔				✔		✔			✔	✔	✔	✔
	10. Disciplinary action													
	Employees may be subject to disciplinary action in accordance with the Transnet Code of Conduct or other applicable Transnet processes and procedures.	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔

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Checklist

	Part B	Financial Application System Masterfile Maintenance	Customer File Maintenance	Document Storage and Archive	Credit Monitoring	Account Supension	Cash Customers	Provision for Doubtful / Bad Debt	Authorising/ Writing off of bad-debt	Default and Legal Matters	Credit Reporting	NCA Compliance	PFMA Compliance
	5. External Loans (business rules and associated procedures)												
5.1	All Transnet employees involved in the receipt, consideration, processing and management of credit facilities afforded to clients or customers must conduct credit related business activities in accordance with the specific credit requirements and standards applicable to each credit transaction in a manner that:					✔			✔	✔		✔	✔
5.1.1	► Achieves compliance with the provisions of the NCA;												
5.1.2	► Supports compliance with the requirements of Transnet's credit-related business objectives which are aimed at overall sound credit practices within Transnet;												
5.1.3	► Will avoid exposure due to non-compliance with the letter and spirit of the NCA;												
5.1.4	► Ensures that instances of non-compliance which arise are promptly resolved in a manner which minimises any adverse consequences; and												
5.1.5	► Results in an overall acceptable level of credit risk exposure to Transnet.												
5.2	All credit agreements made and entered into must be signed in accordance with the business unit Delegation of Authority documents. All credit agreements may be subject to review by the CFO.	✔				✔							
5.3	In the event that the business unit CEO's authority levels are reached, as determined in the Delegation of Authority, approval to conclude such a credit agreement must be referred to the Board for authorisation.												
5.4	Trading on credit with a customer may not commence before a fully executed credit agreement is established. In the case of certain long term customer contracts, due process must be followed in conducting commercial negotiations with a customer. The Standard credit terms and conditions of Transnet Group must be enforced and adhered to at all times.												
5.5	All customers or potential customers have the right to apply for credit but not the right to be automatically granted credit without due process being followed. Credit may be refused on any reasonable commercial grounds; however no customer may be unfairly discriminated against.												
5.6	Only duly completed Transnet Group credit application forms, credit agreements or commercial contracts (for long term agreements) with complete and valid supporting documents will be considered.	✔	✔	✔									
5.7	Transactions should be conducted with customers, both local and international, that satisfy soundly based assessment procedures and only after formal limits have been set and, when deemed necessary, acceptable security obtained. Any decision to extend credit to a customer on an unsecured basis can only be taken after complying with the provisions of paragraphs 6.1.1 to 6.1.3.												
5.8	Local credit applicants must be suitably registered for Value Added Tax (VAT) and other applicable transactional taxes in compliance with South African legislation and provide suitable evidence of such upon application. International applicants may not be required to be registered for VAT.									✔			

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	Part B	Financial Application System Masterfile Maintenance	Customer F... Maintenance	Document Storage and Archive	Credit Monitoring	Account Supension	Cash Customers	Provisi... Doubtful ... Debt	Authorising/ Writing off of bad-debt	Default and Legal Matters	Credit Reporting	NCA Compliance	PFMA Compliance
5.9	Transnet's standard credit payment terms are a maximum of 30 days from statement date. An extension of the credit term will only be granted once the Operating Division (OD) Credit Management and OD Chief Financial Officer have approved such a request from a customer. Generally no credit discount id offered for early settlement. Operating Division Management is however encouraged to negotiate a discount for early settlement if this is to the benefit of enhanced cash flow and only with the acceptable dilution of margins. Settlement discount arrangements must be documented in an agreement seperate to the credit agreement and are subject to review and authorisation by the OD Financial Officer.					✔		✔	✔	✔			
5.10	Credit limits are set for individual legal entities and should be strictly adhered to.				✔	✔		✔		✔			
5.11	Credit limits must be approved in writing and in accordance with the OD Delegation of Authority.							✔					
5.12	When a credit facility is declined, it is not permitted for a person at a lower authority level to grant a smaller credit facility to a customer without referral to the person at the authority level at which the original decision was taken.	✔		✔	✔								
5.13	All customers must be assigned a risk profile based on the outcome of the credit assessment procedure.												
5.14	Credit insurance is deemed unnecessary, as customers who are assessed to be a credit risk are required to provide security thereby minimizing the risk of Transnet not being able to recover the debt or suitable compensation.												
5.15	All security accepted must be legally enforceable and verified against the "Security Guidelines" – a document issued by Transnet Legal and used by Transnet Credit Managers to assess the legal requirements for securities received.				✔								
5.16	Letters of credit and other guarantees may only be accepted from reputable and responsible financial institutions.				✔					✔			
5.17	Only those securities not detailed by the Transnet "Security Guidelines" are subject to review by Transnet Legal. All guarantors should be informed in writing by the Legal department of Transnet's receipt of and acceptance of their guarantees. All letters should be sent via registered mail with a return receipt requested.												
5.18	A credit check from an independent source must be performed on all prospective credit customers and be reviewed and signed off by the relevant OD Credit Manager prior to the conclusion of any credit agreements.												
5.19	All counterparty credit risk is to be prudently analysed, measured and monitored on a regular basis so as to mitigate the risks and potential loss that may result from counterparty activities or default.												
5.20	Credit agreements are to be suitably archived in a central repository by the Finance administrative function and regular reviews must be performed of archived agreements.	✔	✔	✔	✔								
5.21	Segregation of duties between Commercial teams and Credit teams must be enforced.	✔	✔	✔	✔			✔					
5.22	Within the credit management function, duties must be segregated for:	✔	✔	✔	✔	✔							
5.22.1	▶ The recording of data;												
5.22.2	▶ The authorisation of transactions;												
5.22.3	▶ The custody of assets; and												
5.22.4	▶ The ownership of the process and associated key controls.												
5.23	Where it is not possible to segregate duties appropriately, compensating controls must be documented and enforced.	✔	✔	✔	✔	✔		✔					

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	Part B	Financial Application System Masterfile Maintenance	Customer File Maintenance	Document Storage and Archive	Credit Monitoring	Account Supension	Cash Customers	Provisio Doubtful / Bad Debt	Authorising/ Writing off of bad-debt	Default and Legal Matters	Credit Reporting	NCA Compliance	PFMA Compliance
5.24	Credit limit exception and override authorisation will only be allowed if the provisions of paragraphs 7.1.1 to 7.1.4 are followed.				✔			✔	✔	✔			
5.25	Only suitably authorised personnel may be granted system access to perform credit limit overrides.	✔			✔								
5.26	Active controlling and management procedures of the external credit portfolio in terms of collections, provision for doubtful or bad debts and bad debt write offs should be adhered to.							✔	✔				
5.27	Monitoring of the credit quality of customers is to be performed on a regular basis by the credit function. Credit limit reviews must be performed at least annually by the applicable credit function.				✔			✔		✔			
5.28	Credit limit exceptions and overrides are monitored on a monthly basis by the relevant OD Credit Manager.				✔			✔	✔				
5.29	Any deviations from the policy for whatever reason will require the prior specific approval of the Sponsor / Owner of this policy.					✔		✔	✔				
	6. Unsecured credit												
6.1	In the event that unsecured credit is required, the following procedures must be followed. The counterparty may give up some or all of their rights if the contractual arrangements are not fully executed:				✔								
6.1.1	▶ A full motivation must be provided and authorised in line with the Operating Divisions Delegation of Authority;												
6.1.2	▶ The customer profile must reside within the lowest credit risk profile as determined in the credit risk assessment or review; and												
6.1.3	▶ The authorised motivation may be subject to review by the OD CFO or, if above the delegated authority, the Group CFO.												
	7. Credit limit override												
7.1	The following criteria are to be satisfied and procedures followed in order for a credit limit override to be approved:				✔					✔			
7.1.1	▶ The customer's credit record must be exemplary;												
7.1.2	▶ The customer's average debtor days does not exceed 55 days '(immaterial unresolved disputes/ disputes under investigation should not be considered in the calculation of average debtor days);												
7.1.3	▶ A credit limit override application form must be completed and signed; and												
7.1.4	▶ The override request must be authorised as per the Operating Division Delegation of Authority.												
	8. Internal loans												
8.1	As the objective of the NCA expounds sound credit granting requirements Transnet has elected to give effect to the spirit of the NCA insofar as Internal Loans are concerned. This commitment implies that all Internal Loans must be granted, administered and managed in a manner that:									✔			
8.1.1	Ensures compliance with the general principles of the NCA;												
8.1.2	▶ Supports Transnet's commitment to provide its employees with responsible, employee benefits;												
8.1.3	▶ Conduces to responsible credit practices and the reduction of over-indebtedness of employees;												
8.1.4	▶ Provides for informal dispute resolution mechanisms where this is beneficial to stakeholders; and												
8.1.5	▶ Protects the overall financial stability of both Transnet and its employees.												
	9. Non compliance with group policy												

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Part B	Financial Application System Masterfile Maintenance	Customer File Maintenance	Document Storage and Archive	Credit Monitoring	Account Supension	Cash Customers	Provision Doubtful / Bad Debt	Authorising/ Writing off of bad-debt	Default and Legal Matters	Credit Reporting	NCA Compliance	PFMA Compliance
Non-compliance to the NCA and applicable credit policies, standards and procedures will result in disciplinary action in accordance with the Transnet Code of Conduct.	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔
10. Disciplinary action												
Employees may be subject to disciplinary action in accordance with the Transnet Code of Conduct or other applicable Transnet processes and procedures.	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔

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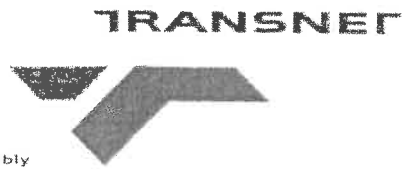
REPORT 2(A) – PART E – EXHIBIT 2



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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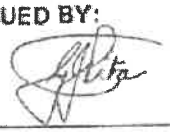

Garry Pita
Group Chief Supply Chain Officer
Date: 6 SEPTEMBER 2012

SECTION A:

BACKGROUND AND CONTEXT

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- National Objectives
- iSCM Procurement Objectives
- iSCM Control Objectives

Chapter 2: Definitions, Abbreviations and Acronyms

Chapter 3: Scope and Exclusions

Chapter 4: Applicable Legislation and Policies

Chapter 5: Code of Ethics

Chapter 6: Delegation of Authority for Procurement Processes

Procurement planning

Go to Market

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

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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.

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.

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

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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

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.

CHAPTER 3 : SCOPE AND EXCLUSIONS

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

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

3.1 PROCUREMENT PROCEDURES

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

3.2 COMPLIANCE WITH THE PPM

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

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

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

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

3.3 PURCHASING PROCEDURES

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

3.3.1 Ferrous and non-ferrous scrap

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

3.4 PPM EXCLUSIONS

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

TABLE 1

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

3.5 APPLICATION

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

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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)

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

4.2 POLICIES

4.2.1 General Overview of Transnet Policies

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

TABLE 3

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

4.2.2 Preferential Procurement

a) Strategic Intent

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

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

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

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

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

b) Scope and applicability

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

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

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

c) Objectives

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

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

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

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

d) Preferential procurement targets and reporting

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

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

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

4.2.3 Supplier Development – Strategic Intent

a) Background

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

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

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

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

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

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

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

b) Applicability

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

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

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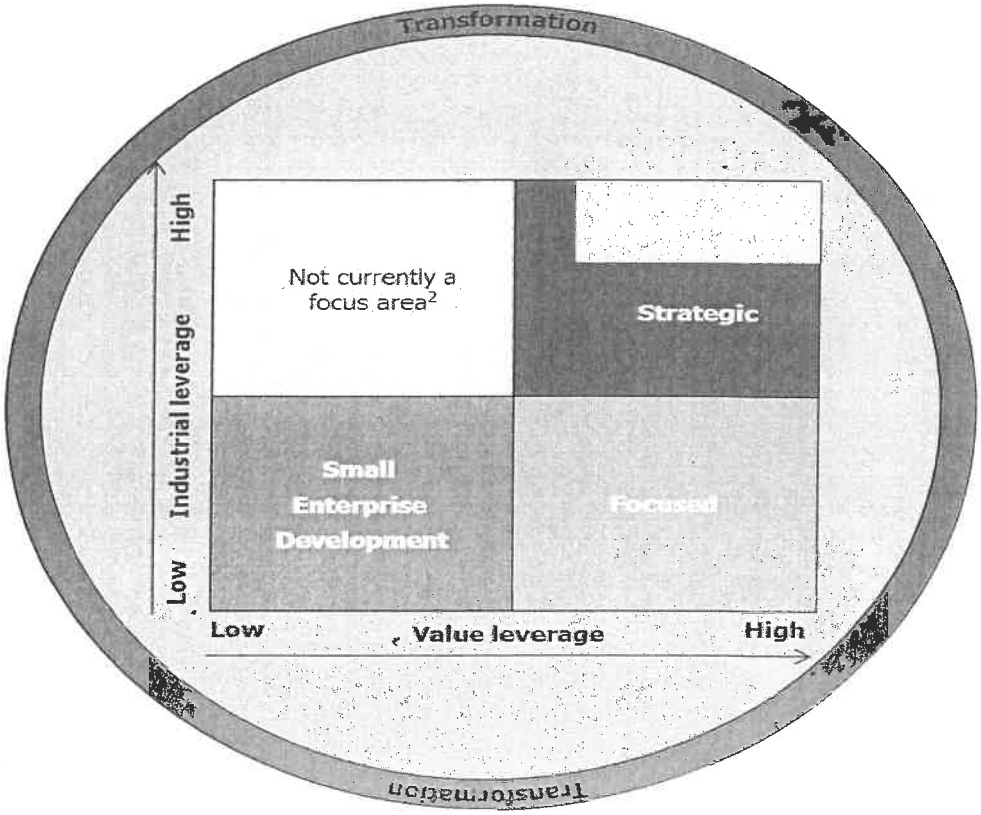


Figure [1] – IC[3] SD Classification Matrix

The IC[3] Supplier Development Classification Matrix (refer Figure [I] above) assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet.

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

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

CHAPTER 5 : CODE OF ETHICS

5.1 SUPPLY CHAIN CODE OF ETHICS

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

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

5.1.2 All Transnet employees should uphold the following key values:

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

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

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

5.1.5 Former employees of Transnet shall not be restricted from doing business with Transnet unless they have been restricted from doing so in terms of paragraph 5.1.6 below. Due diligence should be exercised by evaluation teams to determine whether any undue influence/unfair advantage could have been possible between any Transnet employees and the former employee. This should be brought to the AC's attention, and should be stated clearly in submissions to the AC or to the delegated Manager for transactions falling below the AC's jurisdiction.

5.1.6 Former employees of Transnet who were dismissed following disciplinary action or who had resigned to circumvent disciplinary action following charges relating to dishonesty (e.g. bribery, corruption, theft, etc.) shall be formally excluded from future business dealings with Transnet. They will be blacklisted for a specific period and their names shall appear on Transnet's List of Excluded Bidders (see Chapter 23 on *Blacklisting*).

5.2 CONFIDENTIAL INFORMATION AND TRADE SECRETS

5.2.1 Employees have access to information related to Transnet's business strategies and contractual relationships with third parties. This information must be regarded as trade secrets. It includes intellectual property, know-how, processes, techniques, technical detail, methods of operating, cost and source of material, pricing and purchasing policies, systems design and development information. It also includes the contractual and financial arrangements between Transnet and its customers and suppliers. In this regard, all employees have a duty of trust and confidence and a duty to act at all times in the best interests of Transnet. The disclosure of trade secrets or any other confidential information could cause serious damage to Transnet, and possibly claims of damages for breach of contract against Transnet.

5.2.2 No employee may discuss or disclose prices which have been quoted or charged to Transnet.

5.2.3 No employee may disclose information which would, or could be perceived to place a Bidder in a better position than its competitors, or which would put Transnet at a disadvantage against Bidders or suppliers.

5.2.4 Where it is necessary to disclose confidential information to potential suppliers in order to solicit Bids, Non-Disclosure Agreements ("NDAs") must form part of the bid documentation. The NDAs must be signed by all Bidders.

5.3 INTELLECTUAL PROPERTY RIGHTS OF SUPPLIERS/TRANSNET

5.3.1 Transnet will acknowledge and respect suppliers' intellectual property (IP) rights. Transnet will also seek to promote fair competition.

5.3.2 It is recommended that in cases where the IP of suppliers is at stake, Transnet should hold clarification sessions with potential Bidders in order to clarify the position regarding IP rights. Furthermore, before concluding a contract, Transnet should ensure that all issues of IP are properly addressed in the contract and that both parties understand the nature of the agreement.

5.3.3 Depending on the merits of each case, one of the following approaches will be followed and must be stipulated upfront in the Request for Proposal ("RFP") document:-

a) Transnet may choose to pay the supplier outright for its IP in the Goods and purchase the Goods with its IP. In such instances, the supplier relinquishes its rights to the IP and Transnet acquires all rights to the Goods. This applies to all specifications, drawings and/or prototypes. Transnet will disclose this at RFP stage and all aspects pertaining to IP will be negotiated and captured in the contract between the parties. Transnet shall have the right to procure its future requirements via an Open Bid process and the original designer/developer will be free to participate.

b) Transnet may choose to share the IP with the supplier where Goods were jointly developed by Transnet and the supplier. In this scenario, Transnet shares the IP and the royalties emanating from the development of the Goods. This must be clearly set out in the contract between the parties.

c) Where an existing patented article is required by Transnet, Transnet may choose to confine the tender to the manufacturer concerned or issue an Open Bid stating that the patented item or "anything similar" is required. In

this instance the supplier remains the owner of the IP in respect of the article.

5.4 GIFTS AND GRATUITIES

5.4.1 All business decisions and transactions must be made with uncompromised integrity, honesty and objective judgment. Transnet does recognise that in executing its business and applying industry norms, employees may be required to accept or give gifts as a token of appreciation. The Transnet Gifts Policy regulates and controls the acceptance and giving of gifts.

5.4.2 The acceptance and giving of gifts exceeding the value (currently R750.00) stipulated in the Transnet Gifts Policy, as amended from time to time is prohibited.

5.4.3 The occasional exchange of gifts not exceeding this value may be accepted, provided that such gifts are not specifically intended to influence any procurement or sales decisions and are:

a) Declared to the employee's immediate Manager; and

b) Recorded in a Declaration of Gifts Register.

5.4.4 Under no circumstances should gifts be accepted from prospective suppliers, regardless of value, during any bid evaluation period including a period of 12 months after such bid has been awarded. This may be perceived as undue and improper influence over the bid process.

5.4.5 Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefits or Services. Such favours will be considered bribery. This is unlawful and the appropriate criminal / civil action will be enforced. If a supplier or employee offers or accepts such "favours" or bribes, it must immediately be reported to the Manager in charge of the function for appropriate action. In accordance with the ordinary principles of delictual liability, Transnet is entitled to recover all damages suffered as a result of the employee's corrupt or negligent conduct from that employee. Any person who has offered a bribe to a Transnet employee may also face criminal or civil action and/or exclusion from future Transnet business.

5.4.6 Employees are not permitted to accept gifts or buy Goods or Services at artificially low prices, not available to the public. Employees are also not allowed to accept personal favours and hospitality which might be deemed by others, to impinge upon the employee's sound business judgment.

5.4.7 Overseas visits on invitation by and at the expense of prospective suppliers will under no circumstances be permitted. Should an overseas visit be deemed necessary for the purposes of evaluating the supplier, this should be for Transnet's own account. All overseas visits have to be fully motivated in terms of the normal procedures for overseas visits. If current suppliers offer to pay for Transnet employees to travel to their offices or plants overseas, these requests need to be properly motivated and approved by the GCE or the relevant divisional CEO or Group Executive.

5.4.8 The following business courtesies are allowed, provided that the cost per instance does not exceed the amount as stipulated in the Gifts Policy:

a) entertainment;

b) advertising material of small intrinsic value such as pens, paper-knives (letter opener), diaries, calendars, etc.

5.4.9 A monetary limit will not be placed on the following:

a) business meals; and

b) hospitality packages to sports, arts and culture events held in the Republic of South Africa, with the objective of enhancing business relationships. Gifts received while on overseas business trips and from foreign delegates, which

exceed the limit set in the Transnet Gifts Policy, should be accepted, entered into the gifts register and submitted to the Group Company Secretariat for disposal in terms of the Gifts Policy.

5.4.10 In addition to the procedure for accepting gifts set out in the Gifts Policy, Supply Chain staff may only accept gifts after approval from their Manager. Supply Chain staff must declare all gifts irrespective of value. Supply Chain Managers must keep a proper gift register of all gifts and hospitality offered to their employees by suppliers and contractors, and vice versa. Unauthorised gifts that have not been accepted (e.g. exceeding the abovementioned limit) should also be entered into the gift register with an indication that they have been returned to the supplier or surrendered to Transnet or any other appropriate action that may have been taken.

5.4.11 All Supply Chain gift registers must be submitted to the relevant AC Chairperson for review on a quarterly basis. A Gift Register Template is attached to the Transnet Gifts Policy and must be used at all times to ensure that all relevant information and signatures of approval are captured.

5.5 DECLARATION OF INTEREST

5.5.1 In terms of the Companies Act 71 of 2008, directors or officers of a company have a duty to disclose their interests in contracts.

5.5.2 For the purposes of the Transnet Declaration of Interest and Related Party Disclosure Policy the requirement to disclose interests in contracts is extended to include all employees.

5.5.3 The Transnet Declaration of Interest and Related Party Disclosure Policy defines a conflict of interest as "a situation in which private interests or personal considerations affect, may affect, or may be perceived to affect, an employee's judgment in acting in the best interests of Transnet. This includes using an employee's position, confidential information, corporate time, material or facilities for:

- *private gain or advancement; or*
- *the expectation of private gain or advancement of the employee or any member of the employee's family, or friends or business associates of the employee."*

5.5.4 The Transnet Declaration of Interest and Related Party Disclosure Policy places a duty on all employees who have an interest, either directly or indirectly, in any new or existing contracts with an entity external to Transnet which may conduct, or does conduct business with Transnet, to declare such interest.

5.5.5 A direct interest in a bid includes the following:

a) Where the employee or Transnet Board member is -
   (i) a shareholder, member or director of a bidding enterprise;
   (ii) a shareholder, member or director of the holding company of a bidding enterprise; or
   (iii) a shareholder, member or director of a subsidiary of a bidding enterprise.

b) Where the employee or Transnet Board member is a direct family member or a close friend or associate of a person who is -
   (i) a shareholder, member or director of a bidding enterprise;
   (ii) a shareholder, member or director of the holding company of a bidding enterprise; or
   (iii) a shareholder, member or director of a subsidiary of a bidding enterprise.

5.5.6 Declaration of a direct interest will result in automatic recusal of an employee.

5.5.7 An indirect interest may include, but is not limited to:

a) being involved with the drafting of the specification or bid documents;

b) being involved with issuing / advertising of the bid; or

c) being involved in the evaluation, and subsequently being involved in the adjudication of the bid (applicable to members and/or alternates serving on the relevant AC).

5.5.8 Any indirect interest of an employee in a bid or offer must be declared and the Manager concerned will determine whether the employee should recuse him/herself. The reasons for this decision must be officially recorded and kept on file.

5.5.9 Bid documents must always contain a clause for prospective Bidders to declare any possible direct family or business relationship with a Transnet employee. Direct family or business relationships includes husband/wife, children (own and step), parents and grandparents (own and in-law), brothers and sisters (own, step and in-laws) and business associates.

5.5.10 Although business with Enterprises that have relationships with Transnet employees in terms of 5.5.9 above is not prohibited, it is imperative that it be properly declared and explicitly pointed out in the submission to the AC. This will allow the AC to consider all relevant facts and decide whether such involvement by a Transnet employee could be regarded as fair or whether other prospective Bidders will be prejudiced or may be perceived to have been prejudiced thereby. Bidders failing to declare such relationship(s) will be disqualified from the bid process. Contracts concluded without adherence to this rule, will be terminated and disciplinary action will be taken against the relevant Transnet employee(s). The company or companies involved will be placed on Transnet's List of Excluded Bidders.

5.5.11 All Transnet employees / board members involved in procurement activities are under a duty to declare their interests as soon as they become aware that they have a direct or indirect interest in a particular matter. If any doubt arises as to whether an interest should be declared or not, the employee concerned shall seek guidance from the office of the Company Secretary. The following must be noted with regard to the duty to declare interests:

a) in terms of the "Declaration of Interest and Related Party Disclosures Policy" all employees are required to submit an annual declaration of interest. These declarations are kept by the Group Company Secretary for employees at Group. Depending on the specific OD, declarations are kept by the OD Company Secretary, Compliance officer or the Legal department in respect of OD employees;

b) in addition to annual declarations, all employees involved in procurement should make a quarterly declaration of interest which must be kept by the relevant Manager;

c) all employees involved in the evaluation, Post Tender Negotiation ("PTN") or adjudication of Bids must sign a declaration of interest certificate indicating whether or not they have an interest in the matter at hand. This declaration must be placed on the relevant bid file; and

d) employees involved in procurement activities other than evaluation, post tender negotiation, or adjudication (such as buyers) will only be required to declare an interest if they in fact have an interest in a particular matter. Should such an employee not make any declaration in a particular matter, he/she will

be deemed not to have an interest in the matter. If it is later discovered that an employee did have an interest which he/she failed to declare, such employee will be found to have failed to comply with the duty to declare conflicts of interests.

e) A proper register of Declarations of Interest should also be kept by Managers responsible for departments involved in purchasing and disposal functions as well as by the Secretariats of the relevant ACs.

5.6 FRAUD AND CORRUPTION

5.6.1 Transnet insists on honesty, integrity and acting beyond reproach at all times and will not tolerate any form of improper influencing, bribery, corruption, fraud or any other unethical conduct on the part of Bidders / Transnet employees.

5.6.2 If Transnet's GCFO (or a duly authorised person) has determined that a Bidder / contractor / supplier has or has caused to be promised, offered or given to any Transnet employee, any bribe, commission, or any unauthorized gift, loan, advantage or other consideration, Transnet shall be entitled to revoke the bid / contract by following the process that governs the Exclusion of Bidders. Upon approval by the GCFO or duly authorized delegate, Transnet will be entitled to place any Bidder / contractor / supplier who has contravened the provisions of Transnet's business ethics on its List of Excluded Bidders. Furthermore, in terms of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2001, Transnet will refer all matters of suspected corruption to the South African Police Services (SAPS) for further investigation.

5.6.3 Transnet reserves the right to exclude a Bidder from further business and/or to cancel all existing contracts, should a Bidder/supplier be found to have acted in bad faith or engaged in misconduct towards Transnet. Furthermore, no part of a contract may be subcontracted to an Excluded Bidder.

5.6.4 Bid documents should always contain a clause indicating that any suspected fraud, corruption or other unethical activities should be reported to Transnet Tip-offs Anonymous at any of the following addresses and contact numbers. Confidentiality is guaranteed at all times.

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

5.7 SANCTION

Non-compliance with the Code of Ethics is considered to be misconduct and employees may be subject to disciplinary procedures that could lead to dismissal as well as criminal and/or civil action.

CHAPTER 6 : DELEGATION OF AUTHORITY FOR PROCUREMENT PROCESSES

6.1. HOW DELEGATION OF AUTHORITY WORKS

Figure 2 below explains how authority is delegated from the Minister of Public Enterprise to the various structures and persons within Transnet via a series of sub-delegations:

How Delegation of Authority works within the context of Procurement

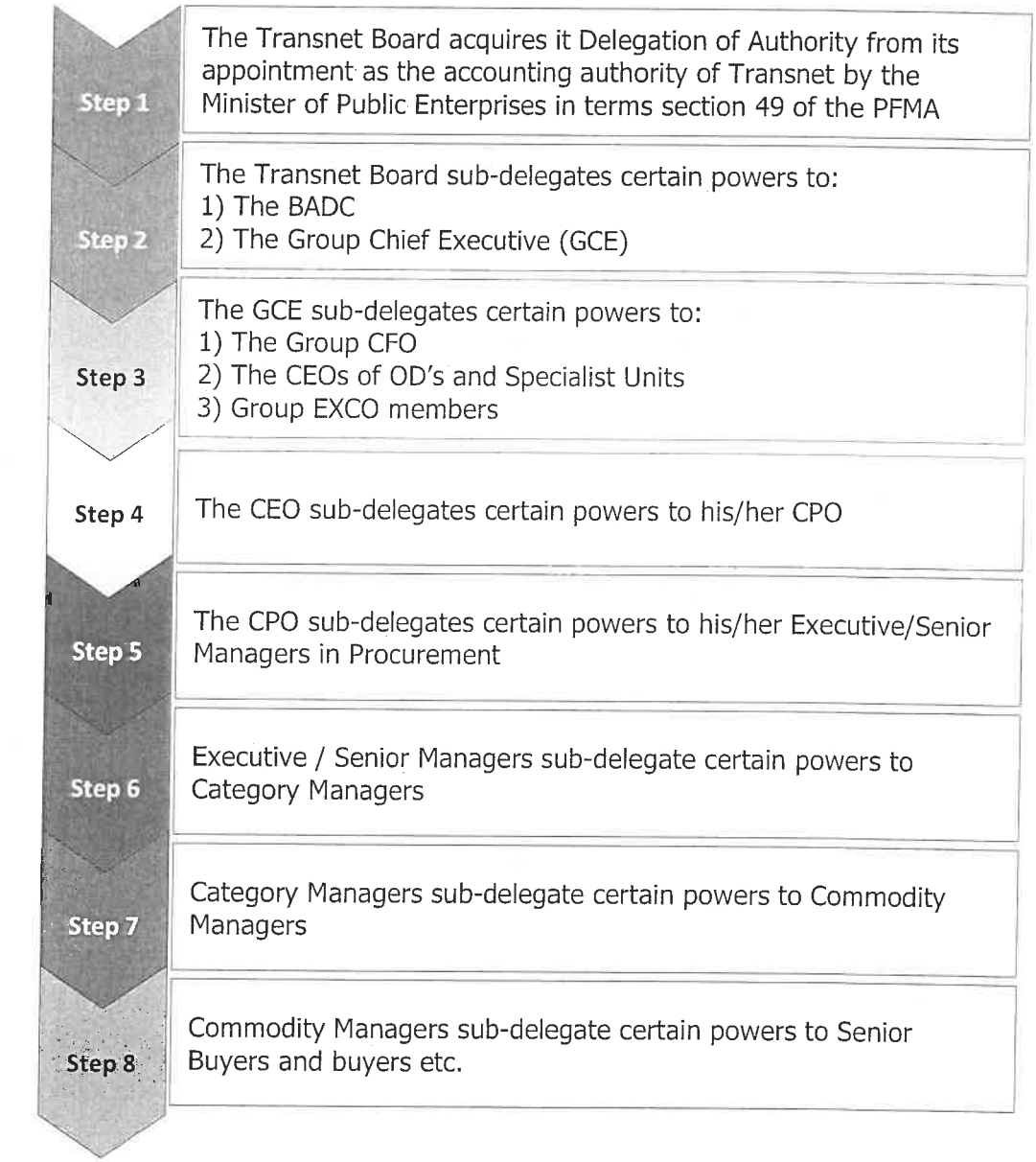


Figure [2] – Delegation of Authority

6.2. DELEGATION OF AUTHORITY FRAMEWORK

The Transnet Delegation of Authority (DoA) Framework sets out the powers delegated to certain officials (e.g. GCE, GCFO, OD CEO, etc) to perform specified tasks in relation to various areas of operation (e.g. finance, treasury, procurement, etc). The following powers, depicted in Table 4 below, are derived from the Transnet Delegation of Authority Framework dated 1 May 2012. **However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.**

TABLE 4

	Approval Authority (R million)							
Procurement delegation	Group Exco Members (Specialist Units, excl.TCP	CEO/ HOD (budget owner) of Specialist Unit, excl. TCP	OD CEOs & TCP GE	GCSCO	GCFO	GCE	BADC	Board
Appointment of Consultants - Clause 5.4.1 of DoA Framework (Cumulative per annum)	≤R10m	Nil	≤R25m	Nil	≤R50m	≤R200m	≤R300m	>R300m
Approval to approach market with Open Bids - Clause 5.4.2 of DoA Framework	Nil	≤R75m	≤R450 m	≤R525m	≤R600m	≤R750 m	≤R1,500m	>R1,500m
Approval to approach market with Confined Bids - Clause 5.4.3 of DoA Framework	Nil	Nil	Nil	Nil	Nil	≤R250m	≤R1,000m	>R1,000m
Management's intervention to address non-compliance with procurement policies & procedures - Clause 5.4.4 of DoA Framework (Condonation)	Nil	Nil	Nil	Nil	Nil	≤R50m	≤R1,000m	>R1,000m
Enter into & signing of contracts - Clause 5.5.1 of DoA Framework	≤R30m	≤R5m subject to the contract period not exceeding 5 Years	≤R450 m	≤R525m	≤R600m	≤R750m	≤R1,500m	>R1,500m

6.3. POWERS VESTED IN TRANSNET OFFICIALS

It is important to bear in mind that not all powers vested in Transnet officials are contained in the DoA Framework. In the procurement context, certain powers are also vested in officials in terms of this PPM whilst other powers are inherent to the job function e.g. the day to day running of the procurement function. Figure 3 below explains the powers vested in Transnet officials in terms of the DoA Framework, the PPM and their job function, respectively:

Delegatee	From Whom	Delegation in terms of Transnet DoA Framework	Powers acquired in terms of the PPM	Delegation in terms of a "general blanket" delegation
GCE	Transnet Board	•Approve Confinements ≤R250m •Consultants ≤R50m •Condonations ≤ R250m •Going to market on open tender & sign contracts ≤ R500m	Final arbiter for appeals on blacklisting	Responsible for the day-to-day running of Transnet
GCFO	GCE	•Consultants ≤R25m •Going to market on open tender & sign contracts ≤ R400m	Approve decision to blacklist	N/A to procurement
OD CEOs	GCE	•Approve consultants ≤ R5m •Going to market on open tenders & sign contracts ≤ R300m	Approve OD Approved Lists Appoint AC & Chair/ members Mediate disagreements between AC and line/procurement, etc.	Responsible for the day-to-day running of the operating division
CPO	OD CEO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CEO	Delegate powers to CFSTs, CFET & PTN teams, empower procurement to utilise quotation system & emergency purchases and initiate blacklisting proceedings	Responsible for the day-to-day running of the OD procurement function
Procurement	OD CPO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CPO	Facilitate CFSTs, CFET & PTN teams Utilise quotation system and emergency purchases, issue open tenders and initiate blacklisting cases	Responsible for the day-to-day procurement tasks and functions

Figure [3] – Types of Delegated Authorities

6.4. DOA SUMMARY

Figures 4 to 9 below collectively represent a summary of the Delegations of Authority required for various procurement approval processes and thresholds as at 1 May 2012. However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.

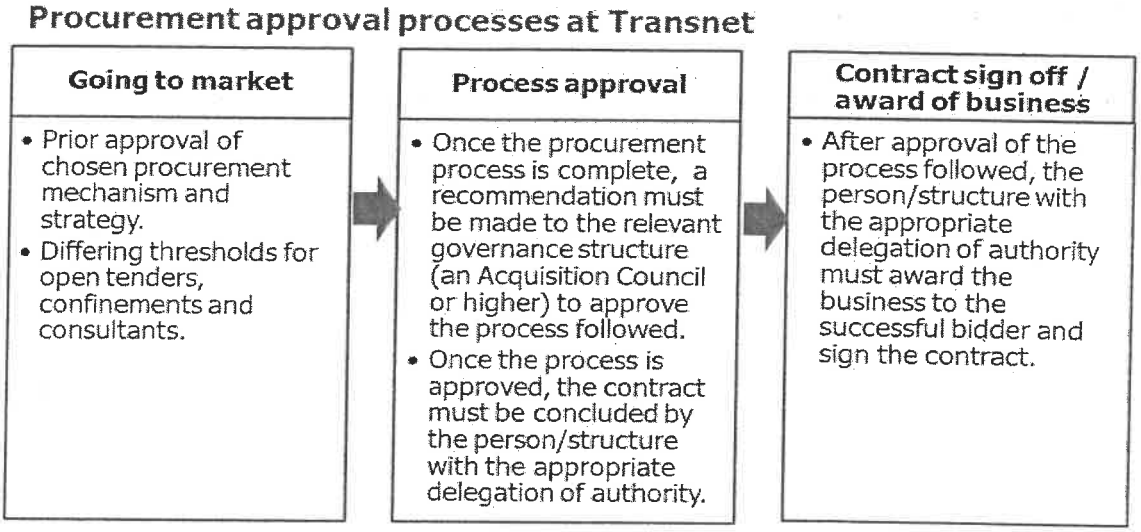


Figure [4] – Procurement approval processes

The thresholds applicable to the various approval steps are depicted in the diagrams below.

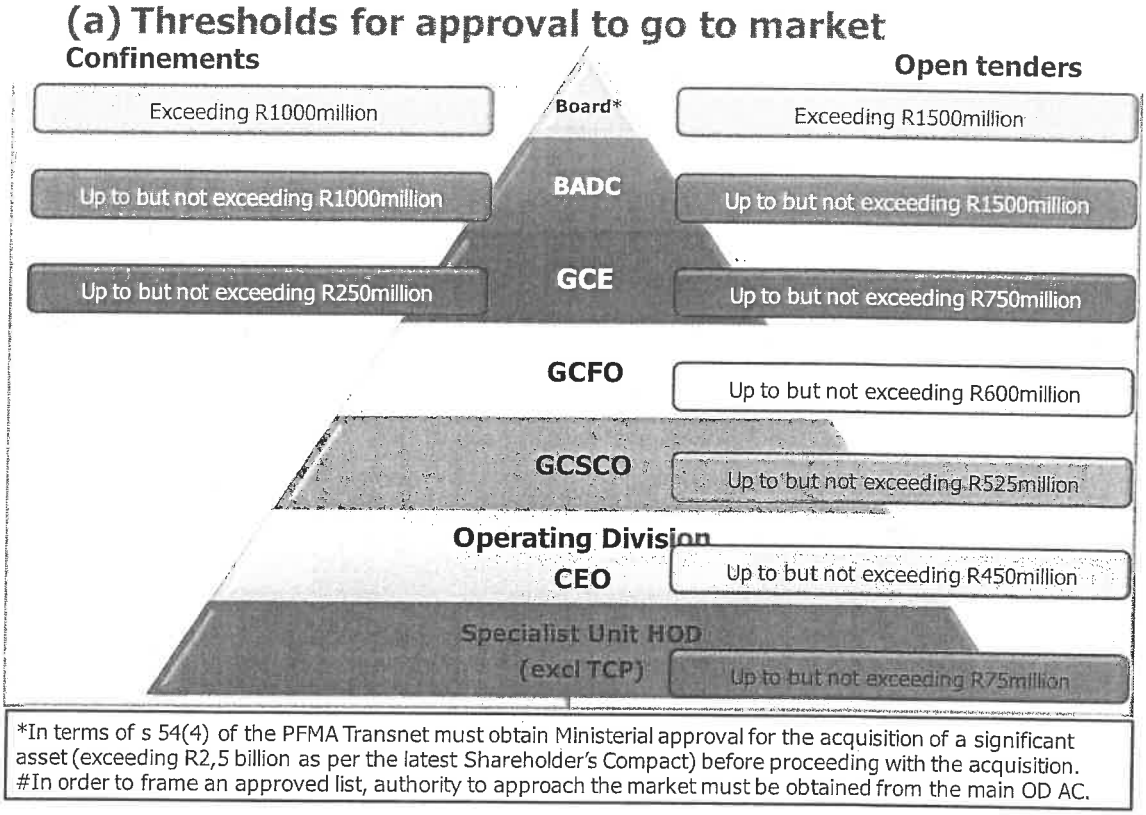
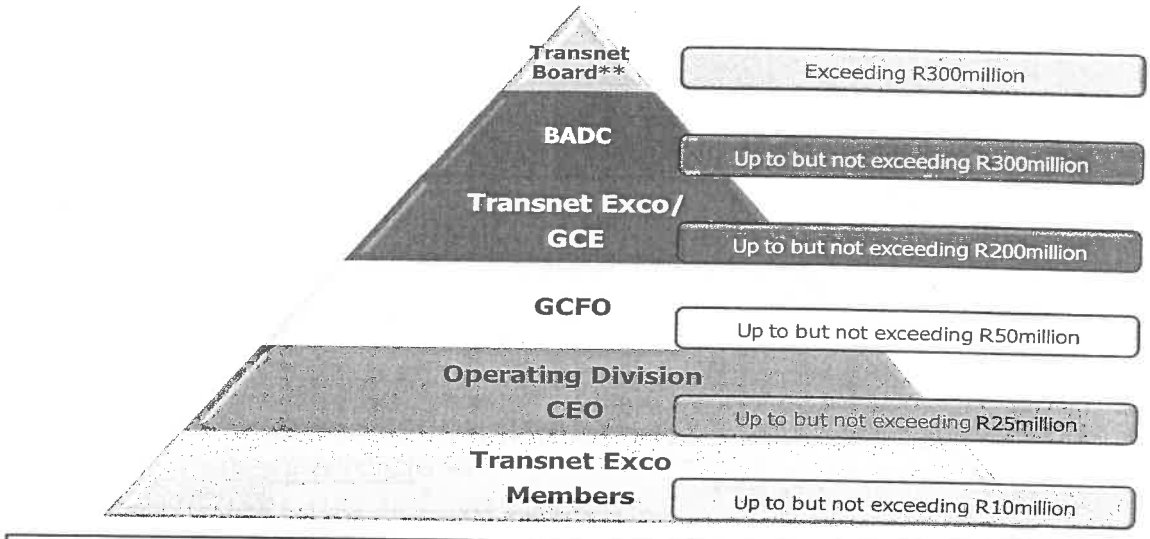


Figure [5] – Thresholds for approval to go to market

(b) Appointment of consultants*

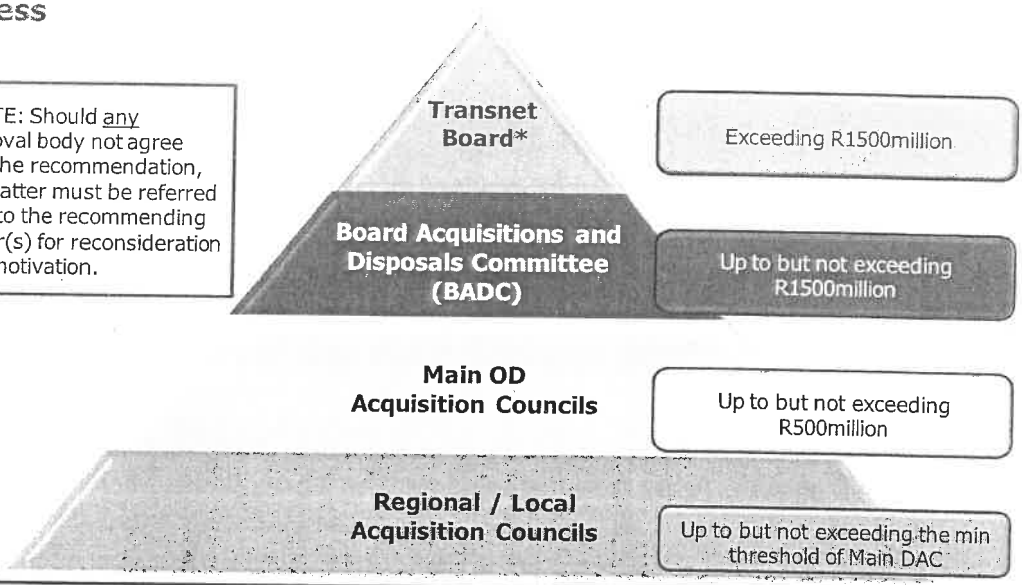


* Approval limits are cumulative per annum.
**In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R2,5 billion of the value of Transnet's asset base) before proceeding with the acquisition.
#In order to frame an approved list, authority to approach the market must be obtained from the main OD AC.

Figure [6] – Appointment of consultants

(c) Thresholds for Governance Structure approval of process

*NOTE: Should any approval body not agree with the recommendation, the matter must be referred back to the recommending officer(s) for reconsideration or remotivation.



Recommendations: The RAC, main AC and the BADC will support the recommendation for transactions above their thresholds. Local/Regional AC normally only consider transactions <R2m but OD CEOs may at their discretion increase these thresholds.
* In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R2,5 billion of the value of Transnet's asset base) before proceeding with the acquisition

Figure [7] – Thresholds for governance structure approval of process

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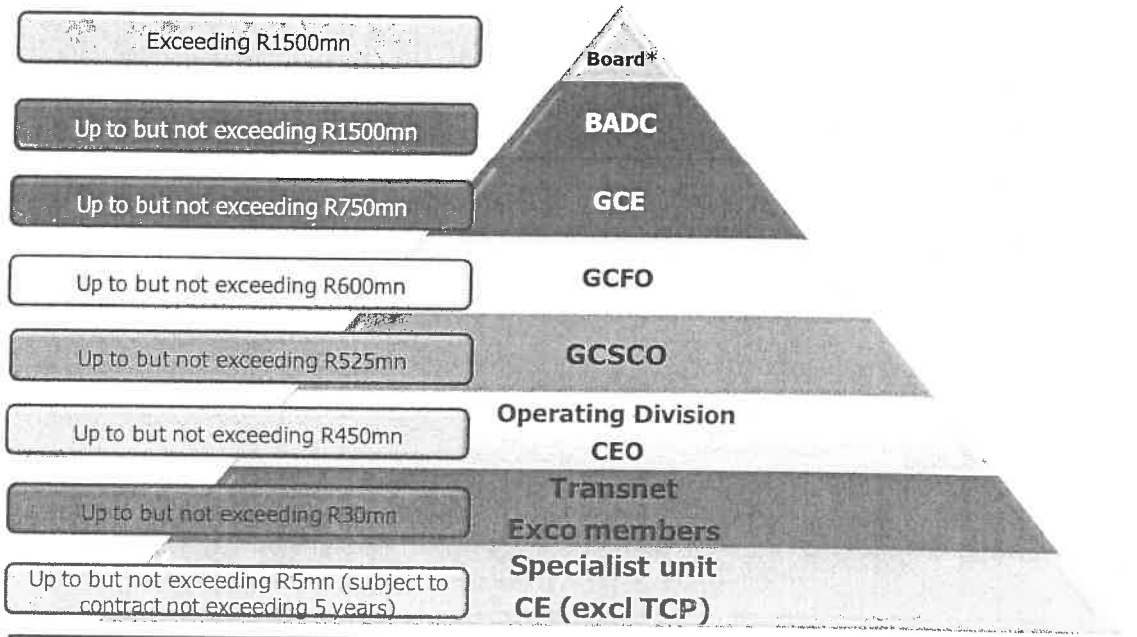
(d) Thresholds for contract sign off / award of business



*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)

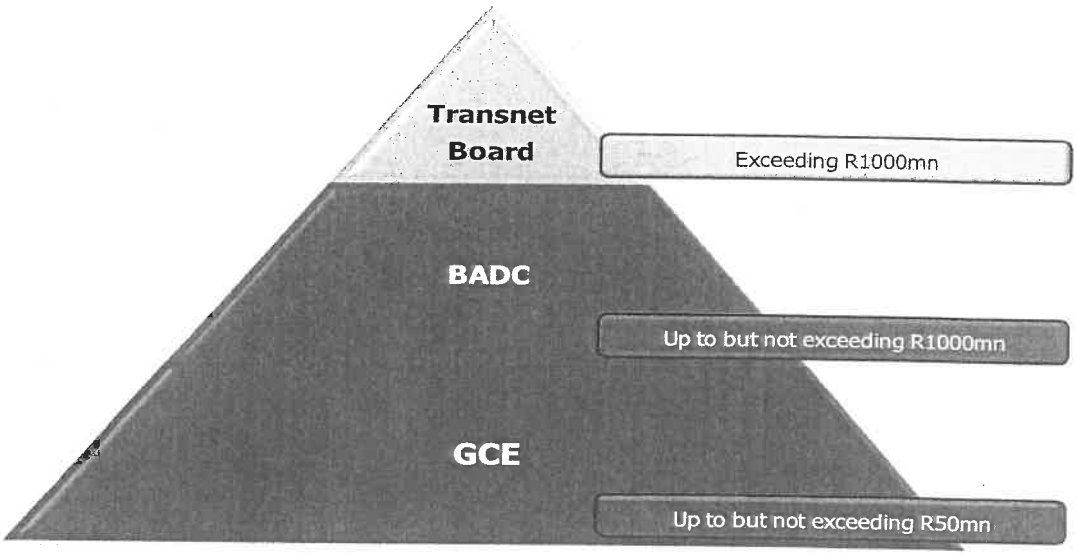


Figure [9] – Management's intervention to address non-compliance with procurement policies & procedures

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

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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:

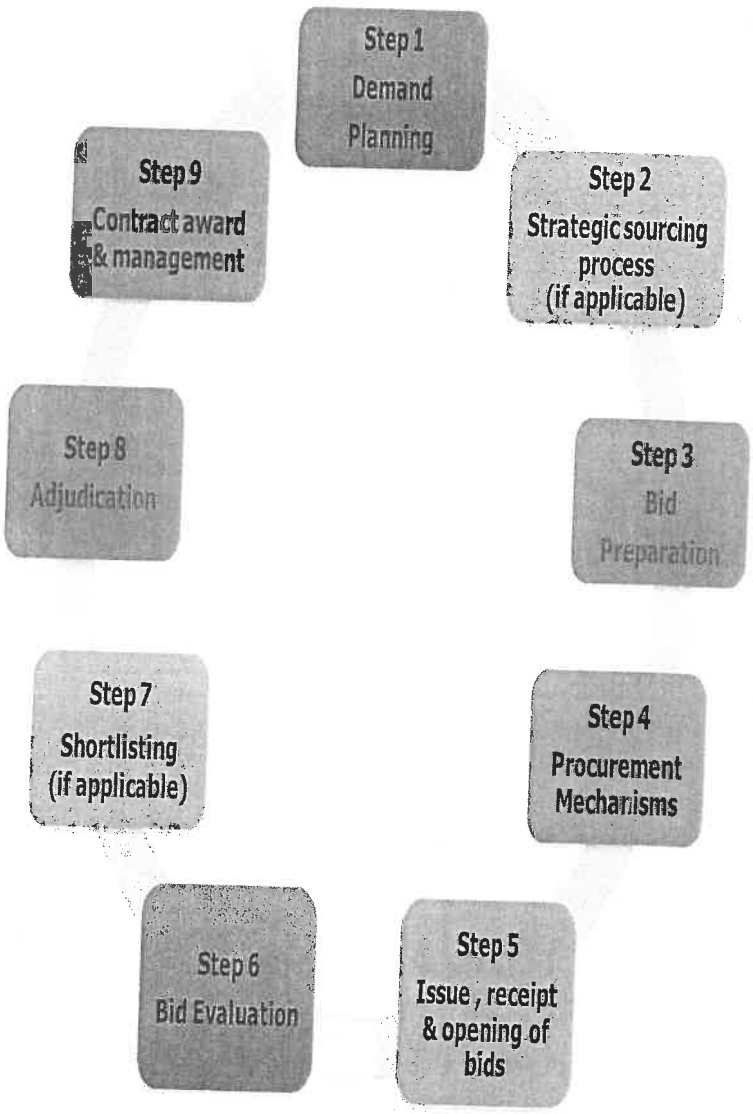

Figure [10] – The Procurement Cycle

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Background and Context

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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.

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.

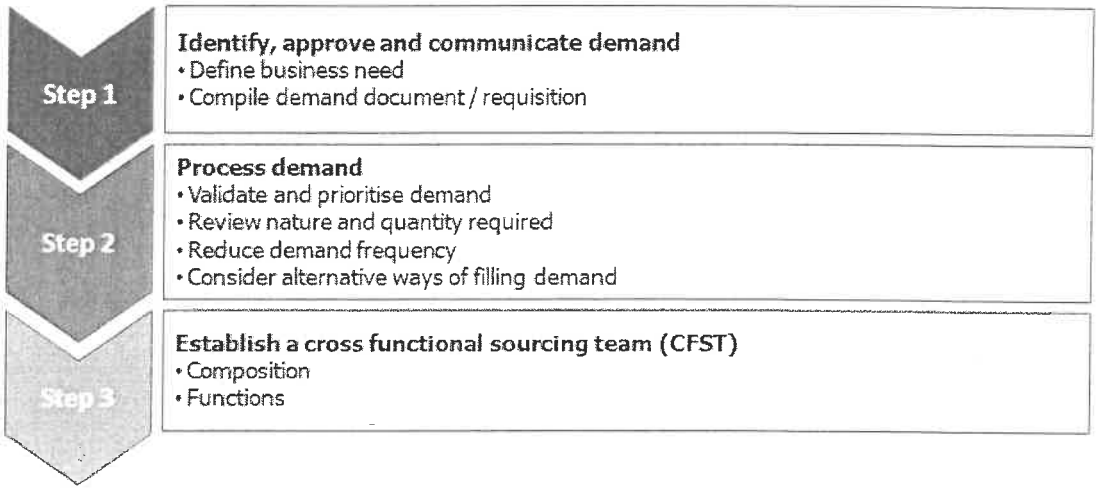
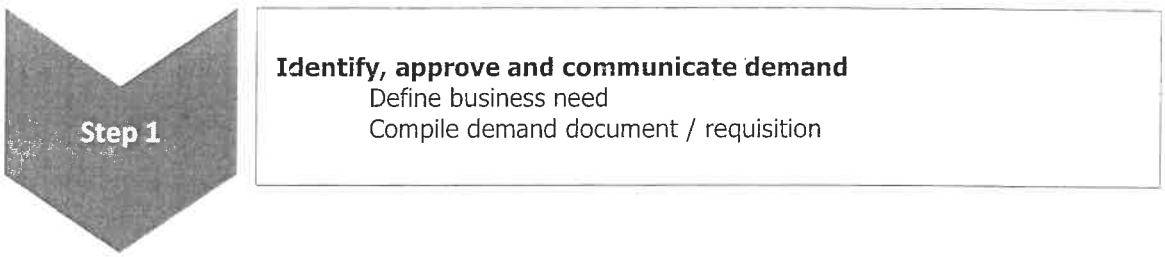


Figure [11] – Demand Steps

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

Process demand
Validate and prioritise demand
Review nature and quantity required
Reduce demand frequency
Consider alternative ways of filling demand

7.4.2. STEP 2 : Processing Demand

a) **Validate and prioritise demand**

Procurement shall establish the following:

(i) Is the demand document/requisition duly approved by operations?
(ii) Is this a critical demand? ("Critical" is defined as having an impact on the Service provided by Transnet or the profit made by Transnet).
(iii) What would be the impact on operations if the procurement did not occur?

b) **Review nature and quantity required**

Procurement shall establish and review the following:

(i) Establish whether this is a requirement for Goods or a Service?

(ii) If Goods are required, whether the demand will be on-going or once-off?

(iii) If Goods are required, determine how many types of items and quantity of each item are required in total by operations at present time and going forward? What are the options (if any) for reducing volume?

(iv) If a Service is required, determine for what length of time the Service is required? (Indicate length of Transnet's previous use (if any) of the specific Service). Could this be reduced or extended?

(v) Determine the estimated value of the sourcing event (if not provided by operations) to establish which sourcing process must be followed:

- if below R2 million, or lower threshold set by the OD CEO for Open Bids, use the quotation system (see Chapter 14);
- if over R2 million use an "open RFX", approach (see Chapter 14); and
- if within the threshold for High Value Tenders, use the High Value Tender process (see iSCM Transnet Intranet portal).

c) **Reduce demand frequency**

Procurement shall establish and review the following:-

(i) If the Goods to be purchased will require additional purchases going forward, is it reasonable for an "as-and-when call off" contract to be established? State reasons either for or against an "as-and-when call off" contract.

(ii) If a Service is required, what is the length of the anticipated contract? Explain rationale for this time period.

d) **Consider alternative ways of fulfilling demand**

Procurement shall establish and review the following whether:-

(i) the required Goods can be re-engineered or reclaimed from existing assets or Goods;

(ii) any other OD can manufacture the required Goods or provide the required Service;

(iii) the Goods are currently available in another OD with spare capacity;

(iv) this is a stock item; or

(v) this item is available on a current contract– even if it is potentially at another OD.

Establish a cross functional sourcing team (CFST)
Composition
Functions

7.4.3. STEP 3 : Establish a Cross Functional Sourcing Team ("CFST") in the case of acquisitions greater than R5 million or where the quality criteria is not a simple yes/no decision

a) **Rationale for the formation of a CFST**

Demand management shall be a cross-functional exercise with a view to ensuring that end users, procurement and all stakeholders are brought together in order to enhance efficiency and achieve value.

b) **Composition of the CFST**

Procurement shall establish a CFST, consisting of at least the following roles: Procurement, operations (end users), SD (including B-BBEE) and risk. Other possible representatives are finance, treasury, maintenance, logistics/warehousing, disposal and legal or governance.

In instances where the sourcing event is uncomplicated and the risk to Transnet is low, the CFST can be comprised of only procurement and Quality (technical) representatives.

Procurement must ensure that the CFST consists of the relevant expertise; and that the size of the team is not of such a nature that it cannot function effectively. Nonetheless, in all instances, procurement and operations must reach agreement on the composition of the CFST.

In order for the CFST to be effective, consistent attendance by the same members is required for continuity.

c) **Functions of the CFST**

(i) Determining specifications:-

"Specification" is the terminology used to describe the requirement for goods.

If Goods are being sourced, consider whether there is any opportunity to purchase standard "off-the-shelf" Goods.

If there are technical specifications:-

- these must be compiled with a view to promoting the broadest possible competition, whilst still assuring that critical elements of performance or other requirements are achieved;
- ascertain whether similar (albeit not identical) Goods are currently in use elsewhere in Transnet, which could enable standardisation;
- interrogate the specification, i.e. determine whether it is possible to provide a functional/performance-based specification rather than a detailed specification;
- determine whether the specification has been over-engineered; and
- verify that the specification is not biased in favour of a particular brand or type of Goods.
- If a functional specification is the chosen option, the following must be observed and described in detail:

- functions and characteristics;
- desired performance and/or result parameters, based on both inputs and outputs;
- method statement templates on how outputs will be reached; and
- inclusion of relevant KPIs.

If a detailed specification will be issued, ensure that the latest specification is used, and that the quality standards (e.g. SANS, ISO) are included where applicable. In addition, ensure that the drawings are up to date and that detailed descriptions of manufacturing processes, workmanship and/or materials are indicated.

The following must be observed and indicated in the RFX in respect of functional as well as detailed specifications:

- the location(s) of required provision;
- details of qualifications required where appropriate;
- details of the conditions in which the Goods must operate;
- environmental and safety features;
- packaging, marking and labelling requirements;
- inspection or testing requirements;
- documentation required, i.e. manuals, user guides, licenses, test certificates, etc.;
- size/dimensions;
- integration with other Goods/Services;
- security requirements;
- health, safety, electrical, environmental requirements;
- training requirements, if applicable;
- timing considerations; and
- interfaces with other systems.

(ii) Determining Terms of Reference

"Terms of Reference" (ToR) is the terminology used to describe the requirement for services.

The following must be observed and indicated in respect of the ToR:

- project title;
- background;
- objective of the project
- expected outcomes/deliverables;
- competency and expertise requirements;
- timeframes;

- reporting requirements;
- whether a site inspection or information session are required with date, time and venue stated;
- available documentation; and
- minimum requirements.

(iii) Reduce portfolio or range complexity:

- Options for rationalisation of the range of Goods/Services must be considered.
- Implications for users if choice options are reduced must be considered.

(iv) Identify and mitigate risks:

- All risks to Transnet associated with the demand must be identified and addressed in the eventual RFX;
- It should be ascertained whether suitable skills are available within procurement to address the demand and its management process.

(v) Establish the evaluation methodology to be employed – See Chapter 13 on Determining bid Evaluation Criteria.

(vi) Establish evaluation criteria and weightings – See Chapter 13 on Determining Evaluation Criteria. Clear evaluation criteria must be established, as bids may only be evaluated according to the criteria stipulated in the bid documents.

(vii) Oversee preparation and sign off of the bid documentation – See Chapter 16 on Bid Preparation.

(viii) Determine who should serve on the evaluation committee – See Chapter 18 on Evaluation.

(ix) Handover the sourcing event to procurement

7.5. CHECKLIST FOR DEMAND PLANNING & MANAGEMENT

The following checklist could be used as a template to identify the progress with respect to the Demand Management process:

TABLE 6

Demand Planning & Management Focus	Responsible
Is there a business case and approval of the demand?	Business
Has the demand been identified in the annual Procurement Plan? (The Procurement plan forms the basis of demand management)	Business & Procurement
Is there a budget allocated for this demand?	Business
Is there an approval as per the associated DoA?	Business
Have the options of fulfilling the demand (such as existing contracts and critical items) been assessed?	Business & Procurement
What is the outcome of reviewing the quantity required (i.e. are	Procurement

Demand Planning & Management Focus	Responsible
the Goods/Services required on an on-going or once-off basis)?	
Has the possibility of reducing the demand frequency, such as further purchasing or call-off, been assessed?	Business & Procurement
Have the options of alternate ways of fulfilling this demand, such as whether other Transnet ODs could manufacture these Goods, been assessed?	Procurement
Have the options of re-use been assessed? (e.g. re-engineered Goods from existing Goods or whether the Goods are available from other Transnet ODs) Have the 3 Rs (Reduce-Reuse-Recycle) been considered?	Business & Procurement
Has the possibility of standardising the Goods and its specifications, such as off-the-shelf and customised, been assessed?	Business
Has the opportunity of reducing the Goods portfolio, such costing and risk implications associated with it, been identified?	Procurement
Have the strategic risks associated with this demand, such as strategic nature of this demand been identified?	Business
Has internal availability been assessed, i.e. • Can the needed Goods be re-engineered / reclaimed from existing assets/Goods? • Can any OD of Transnet manufacture the required Goods or provide the required Service? • Are these Goods currently available in another OD with spare capacity? • Is this a stock item? • Is this item available on a current contract?	 Business & Procurement Business & Procurement Business & Procurement Business & Procurement Business & Procurement
Was the CFST properly constituted?	Procurement
Have the risks associated with the CFST working on this demand, such as capacity and capability not available within the Transnet been identified?	Procurement
Does the CFST represent all the necessary disciplines for identifying the risks associated with the event?	Procurement
Did the CFST members sign confidentiality agreements and declarations of interest?	CFST
Did the CFST properly interrogate the specification?	CFST
Were all risks identified and included in the RFX?	CFST
Has it been considered whether this should be a transversal event in the interests of Transnet as a whole?	CFST
Has an 'As-and When' contract option been investigated, in order to cater for future demand?	CFST
Was the appropriate evaluation method chosen?	CFST
Were thresholds set for SD and Quality/Functionality?	CFST
Were proper evaluation criteria set for:	

Demand Planning & Management Focus	Responsible
• SD • Functionality • Preference • Price / TCO?	CFST
Were appropriate weightings allocated to each criterion?	CFST

7.6. SOURCING STRATEGY

Once a CFST has been established, the next step is to determine the sourcing strategy. The methodology for determining a sourcing strategy is depicted in the figure below. Please refer to the Strategic Sourcing Standard Operating Procedures (SOP) which provides detailed guidance on the strategic sourcing process. The SOP can be downloaded from the iSCM Transnet Intranet.

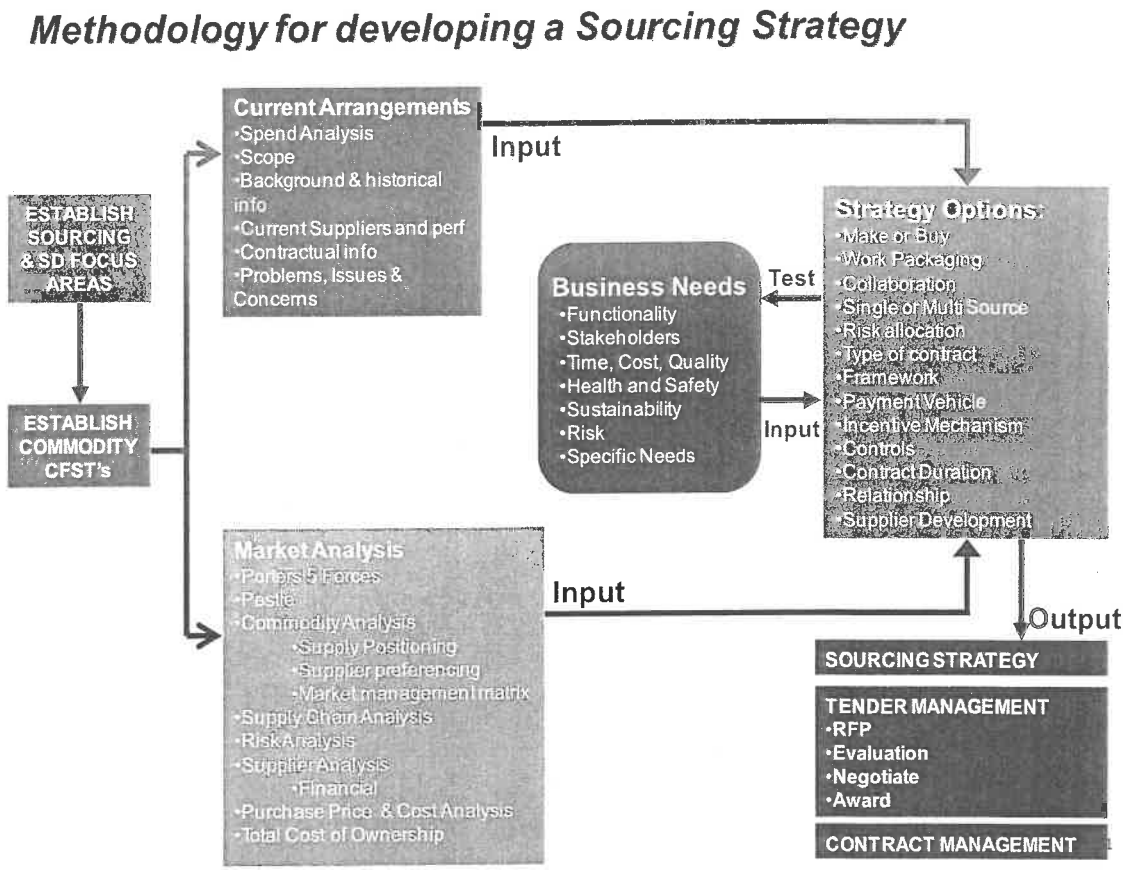

Figure [12] – Methodology for developing a sourcing strategy

CHAPTER 8 : INTERNAL PROCUREMENT/INTERDIVISIONAL SUPPORT POLICY

8.1 INTERDIVISIONAL RELATIONSHIPS

Transnet Entities are required to develop trust and a sound interdivisional working relationship with one another in the interest of Transnet. To achieve this, such entities **must** be afforded the right of first refusal in the procurement of Goods and Services.

8.2 STRATEGIC SPECIALIST UNITS

The following Specialist Units have been identified as strategically important to the Transnet Group:

TABLE 7

Division or Specialist Unit	Goods and/or Services Provided
Transnet Rail Engineering ("**TRE**", a specialist core Division)	TRE is responsible for: • heavy engineering including locomotive, wagon and coach repairs, upgrades and maintenance • component manufacture, locomotive manufacture and assembly • port equipment, and is being positioned for maintenance and repairs thereof
Transnet Capital Projects ("**TCP**")	TCP is responsible for: • multi-disciplinary design Services • project management and construction management Services Construction projects >R300 million **must** be carried out by TCP. In the case of construction related projects <R300 million, the following rules apply: • The project may be carried out by the OD itself if the OD has the necessary in-house resources; and • If the OD decides not to run the project itself, TCP must be given the first right of refusal before the external market can be approached
Transnet Fuel Solutions (TFS, previously known as HSA)	TFS is responsible for: • Transnet-wide fuel acquisition, distribution and management
Transnet Freight Rail ("**TFR**") School of Rail	TFR School of Rail is responsible for: • training tailored exclusively for core businesses, e.g. School of Rail, train drivers, train control officers, • software training in general, etc.
Transnet National Ports Authority ("**TNPA**") School of Ports	TNPA School of Ports is responsible for: • Facilitation of knowledge transfer as the provider of marine training programmes in South Africa • Planning to position itself as Africa's training leader in Marine Operations, Port Management and Port Engineering.

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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.

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	

Ref	Contract Options	Description	Characteristics	Best Suited For
		• Group-wide Transversal contracts		Consolidation of Goods / Services used Group wide
		• Transversal between ODs/Corporate		Consolidation of Goods / Services used between ODs
		• OD-wide Transversal contracts		Consolidation of Goods / Services used within an OD
		• Regional Transversal contracts		Consolidation of Goods / Services used within a region by one or more than one OD
5	Lease/Rental contracts	Lease contract for the use of moveable assets entered into for a fixed period	• Specified/unspecified period • Agreed Rental • Option of renewal	• Goods /Services where it would be more economically viable to lease than to purchase
6	Inter-Divisional Memoranda of Understanding (MOUs)	A 'contract' to govern the service performance agreed between ODs	• Not a formal contract • It governs the internal relationship between the ODs	• Governing the performance as agreed between the ODs
7	Income-generating (revenue) contracts	Although excluded from the PPM, associated procurements fall within the ambit of the PPM (See paragraph 15.6)	• Listed as a process excluded from PPM • Associated procurement must follow the PPM	• As per OD requirements
8	CIDB and NEC3 Engineering & Construction Contracts	Contracts for construction procurement	• Refer to the TCP Construction Manual	• Construction supply, engineering & construction and services contracts

**Any of the above-mentioned contract options can originate from any of the defined procurement mechanisms and/or special mechanisms for procurement.*

9.2 CONTRACTS FOR A PERIOD LONGER THAN TWO YEARS

Contracts for a period longer than two Years require prior AC approval. However, if the RFP provides for a number of bid options including a period of up to two Years and more than two Years, prior AC approval is not required. (Also see paragraph 21.9). Irrespective of which of the two options above is followed, the award of the business has to be approved by the relevant AC in the normal manner.

9.3 STANDARD TRANSNET TERMS AND CONDITIONS OF CONTRACT

Standard templates must be used unless there are cogent reasons why such standard agreements cannot be used in a particular instance. Refer to the Standardised Transnet Templates available on the iSCM Transnet Intranet, including but not limited to:

- Standard Terms and Conditions of Contract
- Master Agreements

Any additions or deletions from the above-mentioned templates must be contained in a Special Conditions Schedule. (Also see paragraph 21.7.2)

9.4 CONSOLIDATION OF CONTRACTS

Refer to paragraph 15.5 for the process to be followed when there is an opportunity to consolidate two or more existing contracts in the best interest of Transnet rather than engaging the market anew.

9.5 CHOICE OF SALES/PURCHASE TERMS FOR IMPORTED GOODS (INCOTERMS)

The Incoterms rules or International Commercial terms are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) widely used in international commercial transactions. A series of three-letter trade terms related to common sales practices, the Incoterms rules are intended primarily to clearly communicate the responsibilities, costs and risks associated with the transportation and delivery of Goods. The Incoterms rules are accepted by governments, legal authorities and practitioners worldwide for the interpretation of most commonly used terms in international trade. They are intended to reduce or remove uncertainties arising from different interpretation of the rules in different countries. First published in 1936, the Incoterms rules have been periodically updated, with the eighth version (Incoterms 2010) having been published and made effective on January 1, 2011. "**Incoterms**" is a registered trademark of the ICC[1].

Refer to Appendix C for a detailed explanation of all Incoterms.

[1] *Source: Wikipedia*

CHAPTER 10 : PREFERENTIAL PROCUREMENT APPROACH AND DESIRED OUTCOMES

10.1 TARGETS

In accordance with its vision of being a significant agent of empowerment within the South African society, Transnet has adopted the following plan to achieve its B-BBEE targets. These targets are more ambitious than those prescribed in the DTI Code of Good Practice:

TABLE 9

Sub Element	DTI Generic Targets	Base Line	Short-term Target 2012/2013	Interim Target 2013/2014	Long-term Target 2014/2015
B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	70%	To be completed after completion of base line exercise			
B-BBEE procurement spend from QSEs or from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend.	10%	To be completed after completion of base line exercise			
B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: • Suppliers who are more than 50% Black-owned (3 out of 5 points); and • Suppliers who are more than 30% Black women-owned (2 out of 5 points)	15%	To be completed after completion of base line exercise			

10.2 MECHANISMS

Transnet's exemption from applying most of the provisions of the PPPFA regulations affords it a greater degree of flexibility in determining its preferential procurement framework than is currently allowed for in the PPPFA.

Transnet would like to conduct a holistic assessment of bidders' B-BBEE performance based on the following:

- bidders' past B-BBEE performance based on the B-BBEE scorecard;
- the extent to which bidders' present black ownership, black management and employment equity exceed certain minimum targets set by Transnet. [This is referred to as Further Recognition Criteria (Current)]; and
- the extent to which bidders undertake to improve or maintain their future B-BBEE status in excess of certain minimum targets over the contract period. [This is referred to as Further Recognition Criteria (Future)].

Preference points will be allocated for each of the above categories.

Transnet therefore applies the following additional mechanisms to ensure its B-BBEE targets are achieved:

10.2.1 **Allocating additional points for preference**

Transnet has adopted a scoring methodology based on a sliding scale of 20 to 40 points to be allocated to preference depending on the nature of the transaction involved. The points allocated to preference should be split between the following categories: B-BBEE scorecard, B-BBEE Further Recognition Criteria (Current) and/or Further Recognition Criteria (Future). FRC (Current) must be given a higher weighting than FRC (Future) if both FRC (Current) and (Future) are included in a particular tender. Should it be decided that only B-BBEE scorecard is going to be used to evaluate preference, the total points for B-BBEE scorecard may range from 20 to 40 points. Table 10 below indicates how the point allocation should take place, depending on the total number of points allocated to preference[2]:

Table 10

	Total of 20 points allocated to preference	Total of 30 points allocated to preference	Total of 40 points allocated to preference
B-BBEE Scorecard	**10**	**10**	**10**
B-BBEE FRC (Current)	**7**	**15**	**20**
B-BBEE FRC (Future)	**3**	**5**	**10**

10.2.2 **Further Recognition Criteria (Current)**

This would entail allocating points to entities based on the extent to which their current black ownership, management control and employment equity exceeds stipulated minimum targets.

10.2.3 **Further Recognition Criteria (Future)**

This would entail allocating further points to Bidders based on the extent to which they commit to improving their B-BBEE status over the contract period in the areas of black ownership, management control, employment equity, preferential procurement and enterprise development.

[2] Note that this table is a guideline. Depending on the nature of the commodity/service being purchased, it must be determined whether FRC (Current) and/or FRC (Future) are appropriate.

10.2.4 Minimum B-BBEE threshold

On a case by case basis, Transnet may set minimum B-BBEE thresholds as pre-qualification criteria in its bidding process in instances where it is considered that the application of the normal preference point system will not bring about the required transformation. In order to give effect to the principles of fairness, competitiveness and cost effectiveness, while at the same time promoting equity, the threshold should not be set at an unrealistically high level. A thorough market analysis must be undertaken prior to setting a B-BBEE threshold.

10.2.5 Limiting participation in a bid process to persons previously disadvantaged by unfair discrimination (set asides)

South Africa's economy still excludes the vast majority of its people from ownership of productive assets and the possession of advanced skills. Unless further steps are taken to increase the effective participation of the majority of South Africans in the economy, the stability and prosperity of the economy in the future may be undermined to the detriment of all South Africans, irrespective of race. The introduction of "set asides" is required in sectors that have been historically lagging behind in terms of transformation. On a case by case basis, Transnet may decide to limit (set aside) participation in a bid process to persons previously disadvantaged by unfair discrimination e.g. black owned companies, black women owned companies, exempted micro enterprises, persons with disabilities, persons in rural areas, etc. Set asides will be considered where there is evidence that applying only a preference point system will not achieve desired transformation objectives. The application of set asides must also be conducted in a manner that does not materially undermine the constitutional principles of fairness, competitiveness and cost effectiveness.

Set asides must be approached with great circumspection, as it has the potential to create unfairness if dealt with incorrectly. Set asides must therefore be based on a proper market analysis and rationale to justify the use of this mechanism in a particular instance. The following guidelines are provided for the use of set asides:

- identify the specific contract or commodity where a set aside will apply;
- give an indication of the number of black owned and/or black women owned companies which operate within the sector;
- give an indication of the percentage of Transnet's procurement spend on black owned and black women owned companies operating in the sector over the previous 3 to 5 Years;
- identify the obstacles to success i.e. why are black owned and black women owned companies not achieving success when bidding for Transnet contracts e.g. pricing, quantity, etc.
- explain why an increased weighting for black ownership is unlikely to achieve the desired result and why a set-aside is the only solution;
- explain that the percentage spend in relation to the contract/sector targeted for the set aside is relatively small when compared with Transnet's overall spend;
- demonstrate that the set aside will not operate in an overly harsh manner in relation to entities that are not black owned or black women owned;
- explain that the use of set asides will not be a permanent feature in relation to the procurement of the relevant commodity, but will be used on a case by case basis to increase Transnet's procurement spend on black owned and black women owned companies;

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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.

certificate in respect of such B-BBEE JV-partners and / or sub-contractor/s, as well as a breakdown of the distribution of the aforementioned percentage must also be furnished.

10.3.3 Transnet has adopted a scoring methodology based on a maximum 20 to 40 points to be allocated to preference of which a maximum of 10 points will be allocated to a Bidder based on its B-BBEE scorecard.

10.3.4 Based on the overall performance of a supplier using the Generic Scorecard, it receives one of the following B-BBEE statuses and a point out of 10 is awarded based on Figure [13] below:

BEE Status	Qualification	Recognition level	Ten Preference Points based on scorecard
Level **One** Contributor	≥100 points on the Generic Scorecard	135%	10
Level **Two** Contributor	≥85 but <100 points on the Generic Scorecard	125%	9
Level **Three** Contributor	≥75 but <85 on the Generic Scorecard	110%	8
Level **Four** Contributor	≥65 but <75 on the Generic Scorecard	100%	6
Level **Five** Contributor	≥55 but <65 on the Generic Scorecard	80%	4
Level **Six** Contributor	≥45 but <55 on the Generic Scorecard	60%	3
Level **Seven** Contributor	≥40 but <45 on the Generic Scorecard	50%	2
Level **Eight** Contributor	≥30 but <40 on the Generic Scorecard	10%	1
Non-Compliant Contributor	<30 on the Generic Scorecard	0%	0

Figure [13] – B-BBEE Scorecard

10.3.5 B-BBEE points must be claimed by Bidders utilising the B-BBEE Preference Points Claim Form. This Claim Form must be listed as a returnable document and is annexed as Appendix D.

10.3.6 **Measurement based on Further Recognition Criteria (FRC) (Current)**

Points will be allocated in respect of preference to measure the Respondent's CURRENT B-BBEE status at the time of submission of their bid. These points are allocated based on the extent to which the Respondent's current ownership, management control and employment equity meets or exceeds certain minimum targets. Please note that a Respondent's ownership, management control and employment equity at the time of the submission of the bid, may differ from that which is reflected in the B-BBEE scorecard. When claiming points for FRC (Current) the bidder must reflect his B-BBEE status at the time of submitting the bid. Supporting documentation may be requested in this regard. Please see Table 12 below - a guideline on evaluating FRC (Current).

TABLE 12

Indicator	Required Responses	Compliance Target	Score out of 10
A. Ownership (O/S):			

Indicator	Required Responses	Compliance Target	Score out of 10
1. The percentage of the business owned by Black persons.	Indicate ownership in the hands of Black persons as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >25% to 100%, on a sliding scale	26 - 30% = 1 31 - 40% = 2 41 - 50% = 3 51 - 60% = 5 61 - 70% = 6 71 - 74% = 7 75 - 100% =10
2. The percentage of the business owned by Black Women.	Indicate ownership in the hands of Black women as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >10% to 100%, on a sliding scale	10 - 20% = 1 21 - 30% = 2 31 - 40% = 4 41 - 50% = 5 51 - 60% = 6 61 - 70% = 7 71 - 75% = 8 76 - 100% = 10
3. The percentage of the business owned by black youth.	Indicate ownership in the hands of Persons living with Disabilities as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >5% to 100%, on a sliding scale	6 – 20% = 1 21 - 30% = 2 31 - 40% = 3 41 - 50% = 4 51 – 60% = 5 61 – 70% = 6 71 – 80% = 7 81 – 90% = 8 91 – 95% = 9 96 – 100% = 10
4. The percentage of the business owned by black youth and/or black Persons living with Disabilities	Indicate ownership in the hands of Persons living with Disabilities as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >3% to 100%, on a sliding scale	3-5% = 1 5.1-7% = 2 7.1-10% = 3 11-20% = 4 21-30% =5 31-40% = 6 41-50% = 7 51-60% = 8 61-70% = 9 71-100% = 10
5. The percentage of the business owned by Employment Schemes/Co-Operatives.	Indicate ownership in the hands of Employment Schemes/Co-Operatives as a percentage of total ownership of the organisation.	Points will be allocated for any percentages >5% to 100%, on a sliding scale	6 – 10% = 1 11 - 20% = 2 21 - 30% = 3 31 - 40% = 4 41 – 50% = 5 51 – 60% = 6 61 – 70% = 7 71 – 80% = 8 80 – 100% = 10
B. Board Participation (BP):			
1. The percentage of Black Board members in relation to the total number of Board members.	Indicate the number of black Board members as a percentage of the total Board.	Points will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8

Indicator	Required Responses	Compliance Target	Score out of 10
			91-95% = 9 96-100% = 10
2. The percentage of Black Female Board members in relation to the total number of Board members.	Indicate the number of black female Board members as a percentage of the total Board.	Points will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
C. Management (MC):			
1. The percentage of Black Senior Top Management involved in day to day management of the organisation, in relation to the total Top Management cadre.	Provide the percentage of Blacks that are appointed by the Board and operationally involved in the day to day **Top management** of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of overall strategy of the organisation.	Points will be allocated for any percentages >40% to 100%, on a sliding scale	41-45% = 1 46-50% = 2 51-55% = 3 56-60% = 4 61-65% = 5 66-70% = 6 71-75% = 7 76-80% = 8 81-85% = 9 86-100% = 10
2. The percentage of Black Middle Management involved in day to day management of the organisation, in relation to the total Middle Management cadre.	Provide the percentage of Blacks appointed by the organisation in the **middle management** cadre and operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the day to day management of the organisation.	Points will be allocated for any percentages >63% to 100%, on a sliding scale	64-67% = 1 68-71% = 2 72-75% = 3 76-79% = 4 80-83% = 5 84-87% = 6 88-91% = 7 92-95% = 8 96-100% = 10
3. The percentage of Black Junior Management involved in day to day management of the organisation, in relation to the total Junior Management cadre.	Provide the percentage of Blacks appointed by the organisation in the **junior management** cadre and operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a supervisory role with regard to the day to day management of the organisation.	Points will be allocated for any percentages >68% to 100%, on a sliding scale	69-71% = 1 72-74% = 2 75-77% = 3 78-80% = 4 81-83% = 5 84-86% = 6 87-89% = 7 90-92% = 8 93-95% = 9 96-100% = 10
D. Employment Equity (EE):			
1. The percentage of Black employees as a percentage of the total workforce i.e. of all employees in the organisation.	Indicate the number of Black employees as a percentage of the organisation's total workforce.	Points will be allocated for any percentages >65% to 100%, on a sliding scale	66-68% = 1 69-71% = 2 72-74% = 3 75-77% = 4 78-80% = 5 81-83% = 6

Indicator	Required Responses	Compliance Target	Score out of 10
			84-86% = 7 87-89% = 8 90-92% = 9 93-100% = 10
2. The percentage of Black women employees as a percentage of the total workforce.	Indicate the number of Black women employees as a percentage of the organisation's total workforce.	Points will be allocated for any percentages >40% to 100%, on a sliding scale	41-45% = 1 46-50% = 2 51-55% = 3 56-60% = 4 61-65% = 5 66-70% = 6 71-75% = 7 76-80% = 8 81-85% = 9 86-100% = 10
3. The percentage of Black youth and/or Black disabled employees in relation to the total number of employees in the organisation.	Indicate the percentage of Black disabled employees in relation to the total of all employees in the organisation.	Points will be allocated for any percentages >2% to 10%, on a sliding scale	3% = 1 4% = 2 5% = 3 6% = 4 7% = 5 8% = 6 9% = 7 10% = 8 11 - 12% = 9 13 - 15% = 10

Once all FRC (Current) evaluation criteria have been scored, the scores must be reduced to the weighting allocated to FRC (Current).

For example, assume a weighting of 10 points has been allocated to FRC (Current). A particular Bidder scored 100 for FRC (Current) out of 130 points (as there are 13 criteria for FRC (Current) scored out of 10). The Bidder's score must be divided by 130 and multiplied by the weighting of 10 in order to obtain the weighted score for FRC (Current) i.e. $\frac{100}{130} \times 10 = 7.7$

10.3.7 Measurement based on Further Recognition Criteria (FRC Future)

In addition to points allocated on the basis of the scorecard and FRC (Current), further points may also be allocated in respect of FRC (Future). Bidders may earn points for FRC based on the extent to which they commit to improving their B-BBEE status over the contract period. Points are allocated on an ascending scale calculated on the extent to which Bidders propose to maintain, meet or exceed Transnet's compliance targets. The contract with the Successful Bidder must contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the preference targets in the contract. Furthermore, failure to achieve FRC Future targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract. Milestones in terms of achievement of FRC (Future) targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.Please see Table 13 below - a guideline on evaluating FRC (Future).

TABLE 13

Indicator	Required Responses	Compliance Target	Score out of 10
A. Ownership (O/S):			
1. The percentage of the business owned by Black persons.	Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
2. The percentage of the business owned by Black women.	Provide a commitment based on the extent to which ownership in the hands of Black women as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >30% to 100%, on a sliding scale	31-35% = 1 36-40% = 2 41-45% = 3 46-50% = 4 51-55% = 5 56-60% = 6 61-65% = 7 66-70% = 8 71-75% = 9 76-100% = 10
3. The percentage of the business owned by Black youth	Provide a commitment based on the extent to which ownership in the hands of black youth as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Points will be allocated for any percentages >5 to 100%, on a sliding scale	1 = 6 -20% 2 = 21-30% 3 = 31-40% 4 = 41-50% 5 = 51-60% 6 = 61-70% 7 = 71-80% 8 = 81-90% 9 = 91-95% 10 = 96-100%
4. The percentage of the business owned by Black Persons living with Disabilities	Provide a commitment based on the extent to which ownership in the hands of persons living with disabilities as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Points will be allocated for any percentage above 3%to 100% on a sliding scale	3-5% = 1 5.1-7% = 2 7.1-10% = 3 11-20% = 4 21-30% =5 31-40% = 6 41-50% = 7 51-60% = 8 61-70% = 9 71-100% = 10
5. The percentage of the business owned by Employment Schemes/Co-Operatives.	Provide a commitment based on the extent to which ownership in the hands of Employment Schemes/Co-Operatives as a percentage of total ownership of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Points will be allocated for any percentages >10% to 100%, on a sliding scale	11-20% = 1 21-30% = 2 31-40% = 3 41-50% = 4 51-60% = 5 61-70% = 6 71-80% = 7 81-90% = 8 91– 100% = 10
B. Board Participation (BP):			

Indicator	Required Responses	Compliance Target	Score out of 10
1. The percentage of Black Board members in relation to the total number of Board members.	Provide a commitment based on the extent to which the number of black Board members as a percentage of the total Board will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
2. The percentage of Black Female Board members in relation to the total number of Board members.	Provide a commitment based on the extent to which the number of Black Female Board members as a percentage of the total Board will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Points will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
C. Management (MC):			
1.The percentage of Black Senior Top Management involved in day to day management of the organisation, in relation to the total Top Management cadre.	Provide a commitment based on the extent to which the percentage of Blacks appointed by the Board and operationally involved in the day to day **Top management** of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of overall strategy will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >40% to 100%, on a sliding scale	41-45% = 1 46-50% = 2 51-55% = 3 56-60% = 4 61-65% = 5 66-70% = 6 71-75% = 7 76-80% = 8 81-85% = 9 86-100% = 10
2.The percentage of Black Middle Management involved in day to day management of the organisation, in relation to the total Middle Management cadre.	Provide a commitment based on the extent to which the percentage of Blacks appointed by the organisation in the **middle management** cadre and operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the day to day management of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the	Score will be allocated for any percentages >63% to 100%, on a sliding scale	64-67% = 1 68-71% = 2 72-75% = 3 76-79% = 4 80-83% = 5 84-87% = 6 88-91% = 7 92-95% = 8 96-100% = 10

Indicator	Required Responses	Compliance Target	Score out of 10
	contract period.		
3.The percentage of Black Junior Management involved in day to day management of the organisation, in relation to the total Junior Management cadre.	Provide a commitment based on the extent to which the percentage of Blacks appointed by the organisation in the **junior management** cadre and operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a supervisory role with regard to the day to day management of the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >68% to 100%, on a sliding scale	69-71% = 1 72-74% = 2 75-77% = 3 78-80% = 4 81-83% = 5 84-86% = 6 87-89% = 7 90-92% = 8 93-95% = 9 96-100% = 10
D. Employment Equity (EE):			
1. The percentage of Black employees as a percentage of the total workforce i.e. of all employees in the organisation.	Provide a commitment based on the extent to which the number of Black employees as a percentage of the organisation's total workforce will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >65% to 100%, on a sliding scale	66-68% = 1 69-71% = 2 72-74% = 3 75-77% = 4 78-80% = 5 81-83% = 6 84-86% = 7 87-89% = 8 90-92% = 9 93-100% = 10
2. The percentage of Black women employees as a percentage of the total workforce.	Provide a commitment based on the extent to which the number of Black women employees as a percentage of the organisation's total workforce will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >40% to 100%, on a sliding scale	41-45% = 1 46-50% = 2 51-55% = 3 56-60% = 4 61-65% = 5 66-70% = 6 71-75% = 7 76-80% = 8 81-85% = 9 86-100% = 10
3. The percentage of Black youth and/or Black disabled employees in relation to the total number of employees in the organisation.	Provide a commitment based on the extent to which the percentage of Black disabled employees in relation to the total of all employees in the organisation will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >2% to 10%, on a sliding scale	3% = 1 4% = 2 5% = 3 6% = 4 7% = 5 8% = 6 9% = 7 10% = 8 11 - 12% = 9 13 - 15% = 10
E. Preferential Procurement (PP) :			

Indicator	Required Responses	Compliance Target	Score out of 10
1. B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	Provide a commitment based on the extent to which B-BBEE spend will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >50% to 100%, on a sliding scale	51-55% = 1 56-60% = 2 61-65% = 3 66-70% = 4 71-75% = 5 76-80% = 6 81-85% = 7 86-90% = 8 91-95% = 9 96-100% = 10
2. B-BBEE procurement spend from QSEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend.	Provide a commitment based on the extent to which B-BBEE spend from QSEs will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >10% to 100%, on a sliding scale	11-20% = 1 21-30% = 2 31-40% = 3 41-50% = 4 51-60% = 5 61-70% = 6 71-80% = 7 81-90% = 8 91-95% = 9 96-100% = 10
3. B-BBEE procurement spend from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend.	Provide a commitment based on the extent to which B-BBEE spend from EMEs will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >10% to 100%, on a sliding scale	11-20% = 1 21-30% = 2 31-40% = 3 41-50% = 4 51-60% = 5 61-70% = 6 71-80% = 7 81-90% = 8 91-95% = 9 96-100% = 10
4. B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: • Suppliers who are more than 50% Black-owned • Suppliers who are more than 30% Black women-owned	Provide a commitment based on the extent to which spend from suppliers who are more than 50% Black owned or 30% Black women owned will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Score will be allocated for any percentages >15% to 100%, on a sliding scale	16-20% = 1 21-30% = 2 31-40% = 3 41-50% = 4 51-60% = 5 61-70% = 6 71-80% = 7 81-90% = 8 91-95% = 9 96-100% = 10
F. Enterprise Development (ED) :			
1. The organisation's annual spend on Enterprise Development as a percentage of Net Profit after Tax (NPAT)	vide a commitment based on the extent to which your organisation's annual spend on Enterprise Development initiatives as a percentage of its Net Profit after Tax will (a) be increased; or (b) be maintained in excess of the compliance target over the contract period.	Scores will be allocated for any percentages >1% of NPAT, on a sliding scale OR based on the actual Rand-value spent on ED	<1% = 0 1%-1.4% = 1 1.5– 2.9% = 2 3%-4.9% = 3 5% -10% = 4 >11% = 10

Once all FRC (Future) evaluation criteria have been scored, the scores must be reduced to the weighting allocated to FRC (Future).

For example, assume a weighting of 15 points has been allocated to FRC (Future). A particular Bidder scored 100 for FRC (Future) out of 180 points (as there are 18 criteria for FRC (Future) scored out of 10). The Bidder's score must be divided by 180 and multiplied by the weighting of 15 in order to obtain the weighted score for FRC (Future) i.e. $\frac{100}{180} \times 15 = 8.33$

CHAPTER 11 : LOCAL CONTENT

11.1 Increased Local Production and Content ("LC") forms an integral component of Transnet's Supply Chain Strategy. This is aligned to Government's vision as articulated in IPAP 2 and the NGP as well as Transnet's Supply Chain Policy. Transnet Entities are therefore required to actively promote local content and production in their bidding processes.

11.2 Designated sectors

11.2.1 The PPPFA Regulations, 2011 which came into effect on 7 December 2011, prescribe how Local Production and Content is to be measured in public sector Bids. In accordance with Regulation 9(1), when issuing bids involving "designated sectors" Transnet must advertise such bids with a specific Bid condition that only locally produced goods, services or works which meet a **stipulated minimum threshold** for Local Production and Content will be considered.

11.2.2 Designated sectors are those sectors which have been designated by the Department of Trade and Industry ("DTI") for Local Production and Content. The following table indicates the designated sectors and minimum threshold for local content as determined by the Department of Trade and Industry and National Treasury:

TABLE 14

Designated sector	Prescribed minimum % for local content
Textile, clothing, leather and footwear	100%
Power Pylons (not including Steel)	100%
Rolling Stock	65%
Canned/processed vegetables	80%
Buses (bus body)	80%

11.2.3 Please note that the above reflects only the first wave of designated sectors as at the date of issue of this PPM. Future changes to the list of designated sectors and/or the applicable thresholds will be communicated as they are issued by National Treasury.

11.3 Non designated sectors

11.3.1 When issuing bids in sectors that have not been specifically designated for Local Production and Content ("non designated sectors"), Transnet will actively promote Local Production and Content where possible. Therefore, before approaching the market, Transnet Entities are required to conduct proper market analysis to determine on a case by case basis whether opportunities for Local Production and Content exist. Where opportunities do exist, this must be reflected in the

procurement strategy. Furthermore, in accordance with Regulation 9(3), the RFP must reflect the minimum threshold for LC that must be met by bidders to qualify for further consideration. Bidders who fail to achieve the set minimum thresholds will be disqualified from the bidding process.

11.3.2 In this regard Transnet must consciously look for ways to incorporate local content in its tenders, where appropriate, particularly where the tender falls within one of the sectors clusters identified in IPAP II. These sector clusters are as follows in terms of the IPAP 2012/2013 – 2014/2015:

a) Cluster 1 Qualitatively New Areas of Focus

- Metal fabrication, capital and transport equipment sectors;
- Oil and gas sectors;
- 'Green' and energy saving industries;
- Agro-processing linked to food pricing and security; and
- Boatbuilding.

b) Cluster 2 Scaled up and Broadened Interventions in Existing IPAP Sectors

- Automotive products and components;
- Plastics, pharmaceuticals and chemicals;
- Biofuels;
- Forestry, paper, pulp and furniture;
- Strengthening of links between cultural industries and tourism; and
- Business processing.

c) Cluster 3 Sectors with Potential for Long Term Advanced Capabilities

- Nuclear;
- Advanced Materials; and
- Aerospace.

11.4 Definition of LC

11.4.1 Local Content is defined as that portion of the Bid price which is not included in the Imported Content, provided that local manufacture actually does take place. Local Production and Content is therefore determined as a percentage of the Bid price. For example, if the stipulated minimum threshold for Local Production and Content is 60%, this means that 60% of the Bid price must be spent on Local Production and Content (i.e. everything that is not included in Imported Content.) "Imported Content" is given a very specific meaning in the regulations. It means "*that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry.*"

11.5 Evaluation of LC

11.5.1 The calculation of LC can therefore be expressed in the following simple formula:

Bid price-value of Imported Content (cost of components, parts & materials)
= value of Local Production & Content

The value of the Local Content must be reflected as a percentage of the bid price to determine whether it meets the stipulated minimum threshold.

11.5.2 National Treasury requires that the value of Local Production and Content be calculated according to the following formula:

$$LC = \left(1 - \frac{x}{y}\right) \times 100$$

Where

x imported content

y bid price excluding VAT

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank at 12:00 on the date, one week (7 calendar days) prior to the closing date of the Bid.

11.6 DTI and National Treasury are in the process of issuing directives and guidelines to ensure compliance with the regulations. These directives and guidelines will be provided to Transnet Entities as soon as they have been issued by DTI and NT.

11.7 It is important to note that LC does not form part of SD evaluation and must be evaluated as the first threshold in the evaluation process. The evaluation of LC must not overlap or be duplicated in the evaluation of "local capability and capacity building" which forms part of the SD evaluation. LC is purely concerned with the percentage of the bid price that will be spent locally. "Local capability and capacity building" on the other hand also takes non monetary measurements into account, such as the number of local suppliers to be utilised, etc.

11.8 It is a requirement of National Treasury that the Declaration Certificate for Local Content (SBD 6.2) form part of the RFP, whenever a minimum threshold for LC is required. In such instances, SBD 6.2 must be listed as a compulsory returnable document. SBD 6.2 has been annexed as Appendix E.

11.9 **Note:** LC will always be the first threshold – i.e. LC will always be evaluated as a first step, to determine whether bids comply with the minimum stipulated threshold for that particular designated sector or non designated sector where Transnet intends to set a minimum threshold for LC. Bidders that do not meet the set minimum threshold for LC must be rejected at this stage.

CHAPTER 12 : DETERMINING SD APPROACH AND DESIRED SD OUTCOMES

SD (including CSDP and/or B-BBEE) should form an integral part of the procurement strategy in every procurement transaction. The nature and extent of the SD opportunities will depend on the nature of the transaction.

Increased Competitiveness, Capability and Capacity (IC^3) matrix:

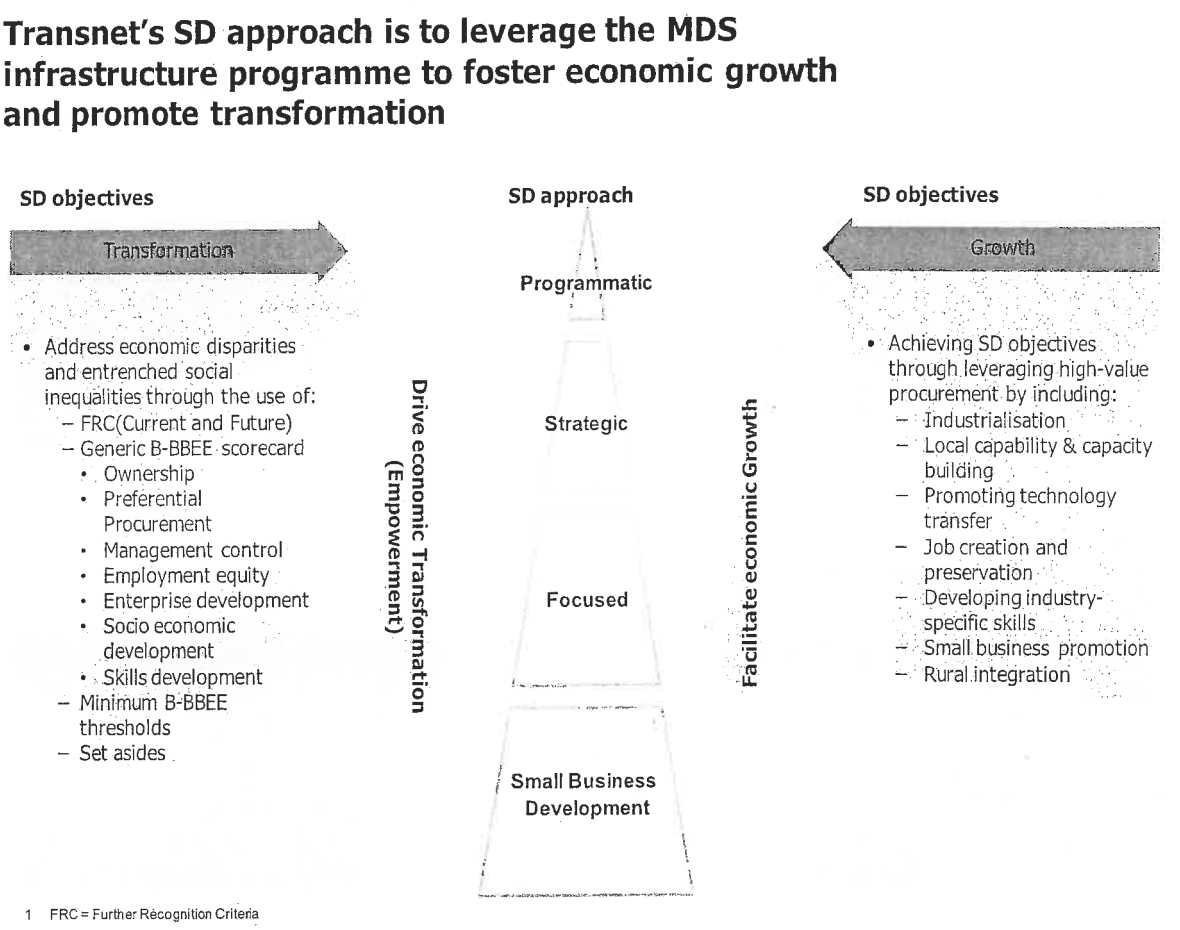


Figure [14] – SD Approach

The Figure referred to above, categorises SD opportunities based on their value, extent of industrial leverage and strategic importance to Transnet.

12.1 SD CATEGORIES

All transactions involving SD should be evaluated against the IC^3 Supplier Development Matrix. The IC^3 Supplier Development Classification Matrix assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet. Once opportunities are identified it will be possible to identify the tools that should be implemented to maximise the full SD potential from these opportunities.

The categories of SD identified in the Matrix are as follows:

12.1.1 **Programmatic**

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet's balance sheet. They are identified either in IPAP II or through Transnet as a strategic fleet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructural development and industrialisation are attained through joint support and in some cases public spending.

Investment is focused in plant, technology and skills in both intermediate and advanced capabilities to develop competitive advantage. An example is the Transnet locomotives fleet.

12.1.2 **Strategic**

Strategic initiatives follow a 3 to 5 Year planning horizon, involving investment in technology and/or skills in intermediate capabilities to achieve local capability and capacity building. This ensures that multinational corporations, original equipment manufacturers (OEMs) and service providers develop a certain percentage of their Goods locally. Strategic initiatives can therefore be used to achieve local capability and capacity building objectives by increasing the competitiveness, capability and efficiency of local suppliers. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require government support to develop local capability.

12.1.3 **Focused**

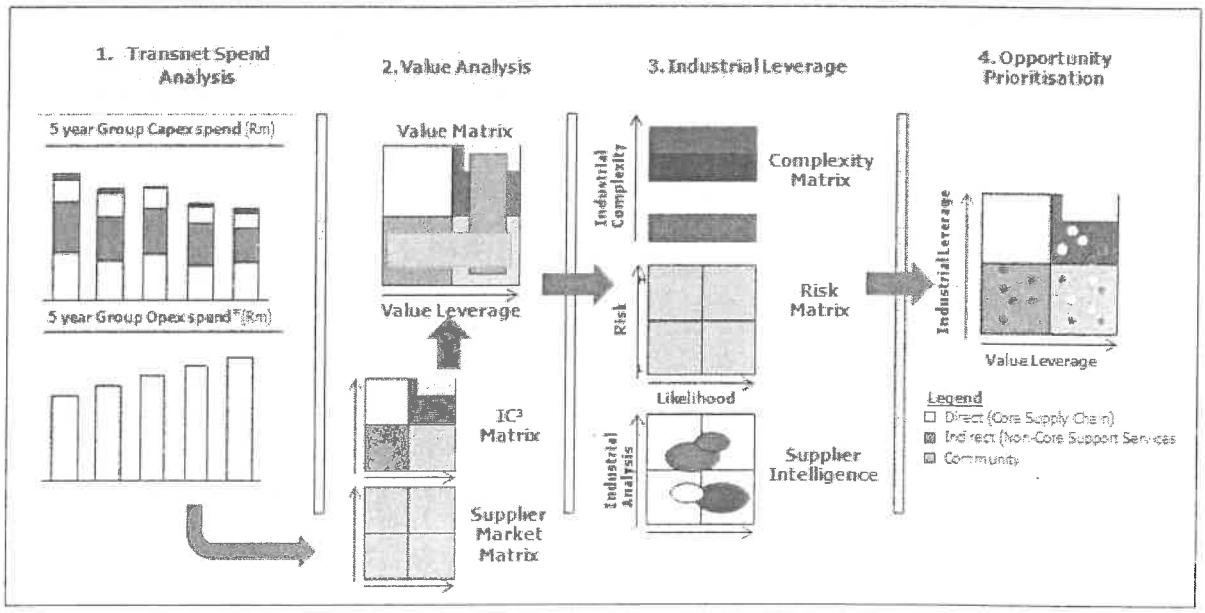
Focused initiatives include all medium to high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium term contracts that can be leveraged to encourage supplier and product development. The focus on investment in technology or skills enhances existing local industrial capability and/or the ability to supply strategic Services. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local suppliers. It furthers the objectives of empowerment, transformation, regional development and rural upliftment.

12.1.4 **Small Enterprise Development**

Small Enterprise Development transactions are typically of low value and have no industrial leverage as it is characterised by low complexity Goods and high competition. These initiatives concentrate on increasing the capability of small local suppliers and are targeted toward previously disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of financial and non-financial Services that help entrepreneurs to start new businesses and to grow existing ones.

12.2 CATEGORISATION OF TRANSACTIONS INTO THE RIGHT SD QUANDRANT

Transnet has designed a focused four-step process for identifying high value generating SD opportunities (see *Figure [15]* below). The process takes Transnet's CAPEX and OPEX spend and then filters specific commodities by value to identify significant spend items. Significant spend items are likely to have the most leverage for SD opportunities. The industrial leverage analysis provides a view on the risk and the complexity of the commodity to understand the risk to the supplier and to Transnet. The process needs to be conducted in its entirety in order to determine the true nature of the opportunity as there are various elements which impact on the categorisation of opportunities. Each transaction must be analysed on a "case by case" basis, taking cognisance of the nature and complexity that is involved in that particular SD activity.



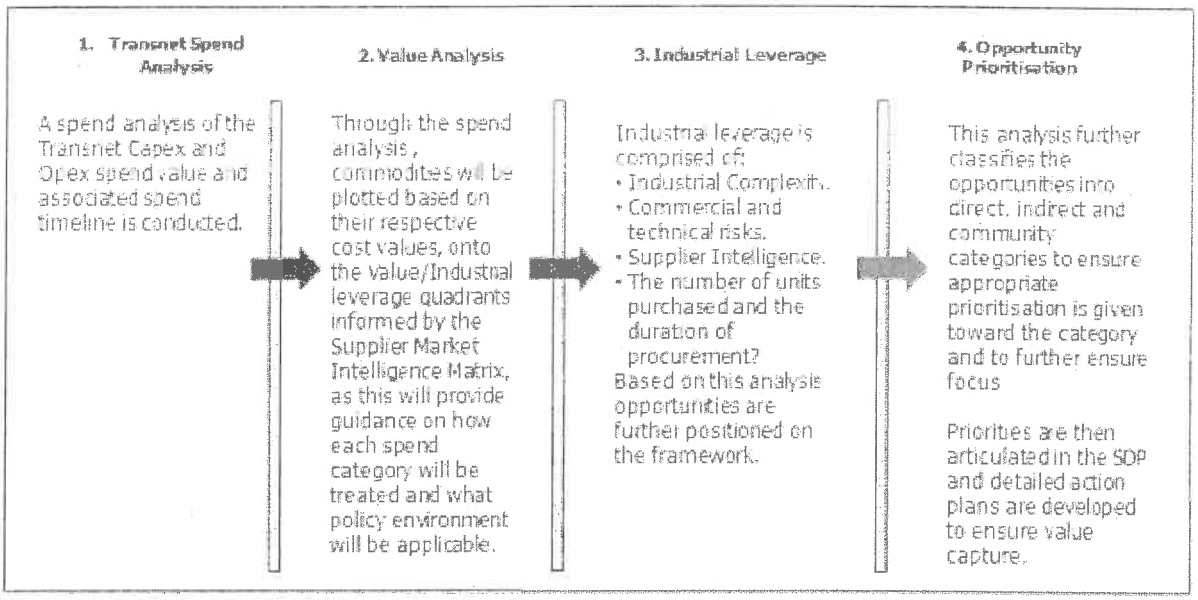


Figure [15] – 4 Step Process

This process is briefly described above, but a detailed description can be obtained in the Transnet Supplier Development Plan.

12.3 SUPPLIER DEVELOPMENT (SD) EVALUATION CRITERIA

If a specific commodity has been earmarked as a SD commodity, SD should be included in the evaluation criteria. A rigid "one size fits all" approach cannot be implemented as each procurement transaction will need to be evaluated on its own merits based on the nature of the transaction with specific focus areas. The assistance and guidance of the SD COE must always be sought when developing SD criteria.

Depending on the supplier market and what is feasible and achievable on a specific bid, SD criteria will differ on a case by case basis. For example, in one case local manufacture, local assembly, industrialisation may be feasible, whilst in another the focus may fall on skills transfer, job creation/preservation and skills development (*Figure [16]* below).

The IC³ framework developed by the DPE was adopted to assist in the prioritisation of SD opportunities and includes transformation

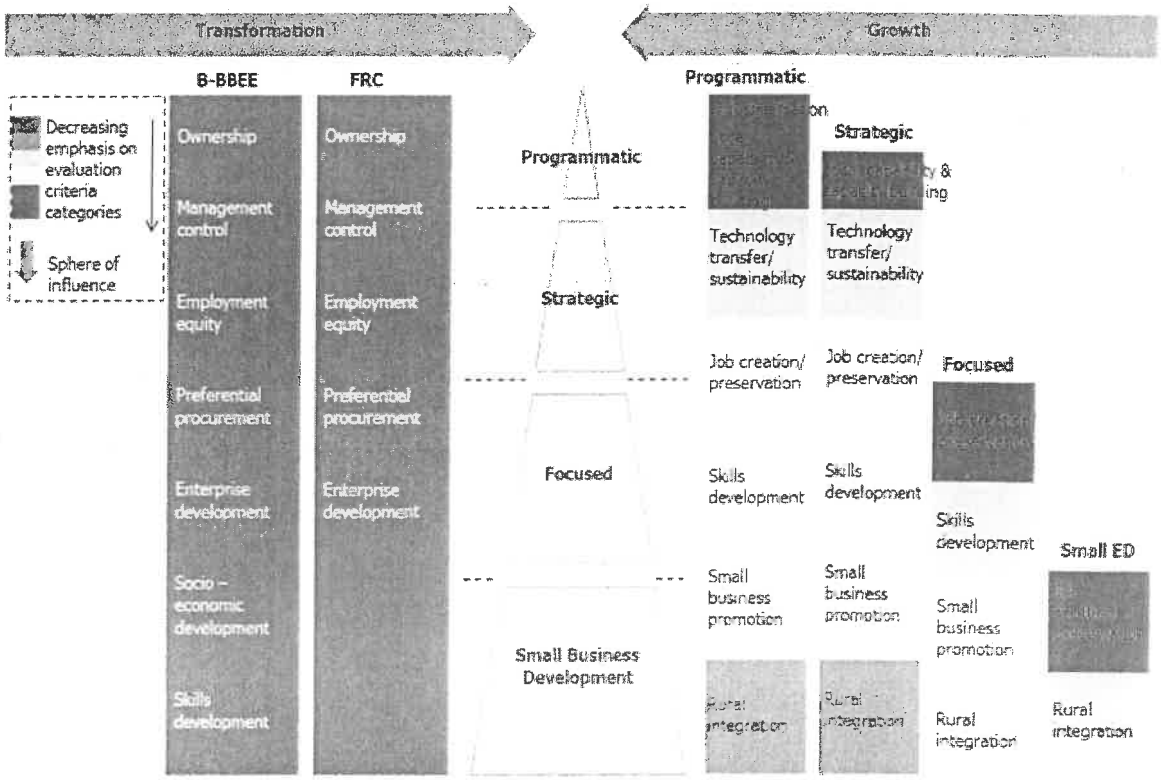


Figure [16] – SD Criteria

These broadly stated evaluation criteria that were developed during the planning phase, should be broken down into specific measurable components and incorporated in the bid documents. This is shown in the table below:

TABLE 15

Evaluation criteria	Measurable areas	Further explanation
Industrialisation	• Value of investment in plant • % of Local Content utilised in the investment in plant • Reduction in import leakage • Potential increase in export content	• Quantification of the monetary value invested in machinery, equipment, buildings • % of the value invested in machinery, equipment, buildings that are sourced from local companies • A percentage indication of the increase in locally supplied Goods and therefore the resultant decrease in imports as a result of the contract • The % increase in exports that will result from increased industrial capability developed in relation to the award of the contract

Evaluation criteria	Measurable areas	Further explanation
Capability & capacity building	• % Local Content • Value of local parts in relation to the bill of materials • Value spent on local suppliers • Number of local suppliers in the supply chain of the Bidder	• Planned use of local parts as a percentage of the total contracted items • Planned monetary value of the parts utilised in the bill of materials (as a percentage of the total spend) • Planned percentage monetary value spend on procurement of Goods and Services procured from SA suppliers • Number of South African suppliers that are to be utilised in the fulfilment of the contract
Technology transfer and sustainability	• Technology transfer including: o Methods of manufacturing o Introduction of new technologies o IP transfer (no. and value)	• Introduction of a new/improved method of manufacturing o Provision of new technologies o For processes o ICT o The transfer of patents, trademarks and copyrights
Skills development	• Number company employees to be trained including: o Number of artisans o Number of technicians o Number of Black People o Total number of people • Number of downstream supply chain individuals to be trained, including o Number of artisans o Number of technicians o Number of Black People o Total number of people • Certified training • Rand value on training to be spent in the industry • Number of bursaries / scholarships (specify field of study)	• No. of individuals within the company (in South Africa) that the supplier plans to train over the contract period; training undertaken in the previous Year will not be taken into account as past employee training appears in the skills development pillar of the BBBEE scorecard; criteria broken down as for industry training above • No. of individuals that the supplier plans to train in the industry over the contract period; training undertaken in the previous Year will be taken into account to make allowance for suppliers who have just completed a training drive within the industry • What percentage of training for 1 and 2 above complies with local and/or international skills accreditation • Total planned monetary value spend (as a % of contract value) on skills development/training for the contract period within the industry; money spent in the previous Year will be included in Year 1 to make allowance for suppliers who have just completed a training drive within the industry • The number of higher education bursaries/scholarships provided in the previous Year and planned for the duration of the contract • The number of apprentices that the company plans to enlist during the course of the contract • The monetary value that the supplier is

Evaluation criteria	Measurable areas	Further explanation
	• Number of apprentices (specify industry) • Investment in schools in specific sectors (e.g. engineering)	prepared to invest in the development and running of schools to increase technical skills development
Small business promotion	• % of planned procurement from QSEs • % of planned procurement from EMEs • % of planned procurement from start-ups • Non-financial support provided to small business • Joint ED initiatives with Transnet	• Refers to the planned procurement from small business as a % of the total planned procurement spend • Suppliers will be given a point for each non-financial ED support that they are planning to give to small business e.g. Professional support; employee time allocated to assisting small business • Suppliers will be given a point for each financial ED support initiative that they are planning to undertake during the contract period e.g. Shorter payment terms; interest free loans • The number of ED initiatives that the supplier will jointly run with Transnet: • That are aligned to Transnet's objectives ◦ That are financial or non-financial in nature
Rural development and regional integration	• Number of local employees • Value spent on local business • Proximity of business to operations • Number of rural businesses to be developed • CSI spend	• Number of people to be employed from within the town / city of operation • Monetary value to be spent on business within the town / city of operation • The locality of the bidder's business in relation to operations. Preference is given to regional (provincial) locality • The monetary value of CSI to be spent on rural community development projects

12.4 SUCCESSFUL BIDDER'S FAILURE TO MEET SD TARGETS

The contract with the Successful Bidder must contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the SD targets in the contract. Furthermore, failure to achieve SD targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract with the Successful Bidder. Milestones in terms of achievement of SD targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.

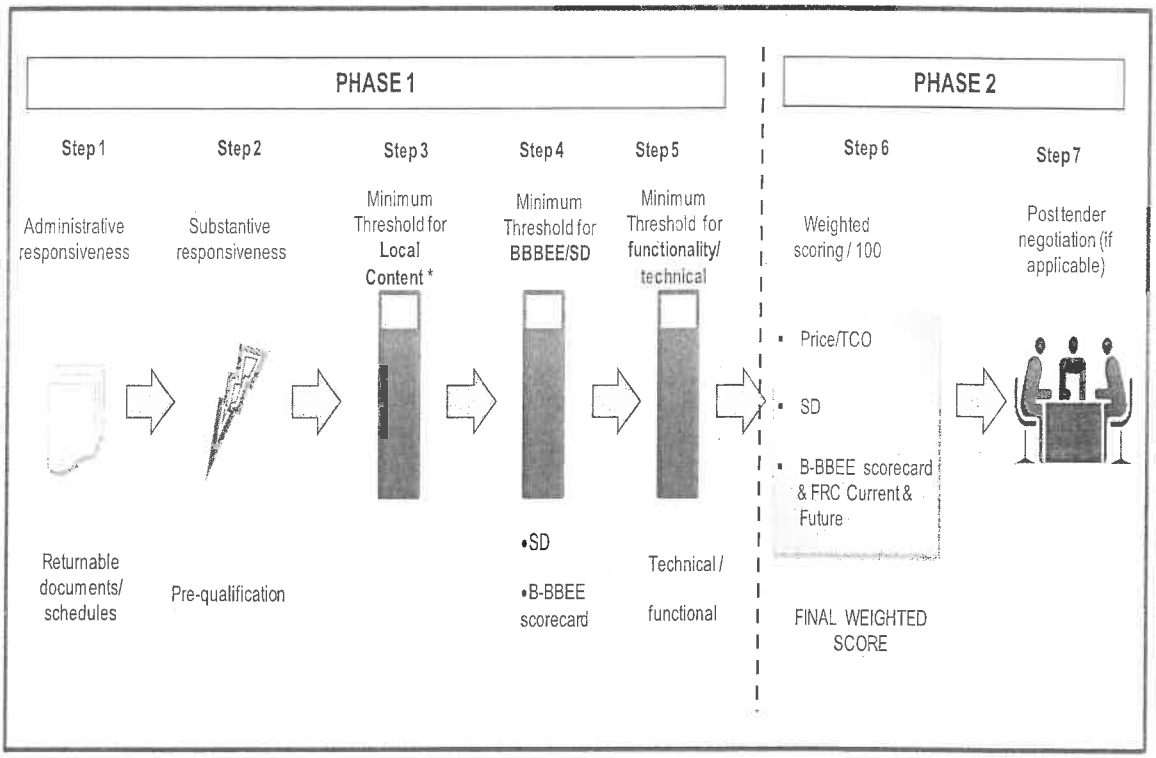
CHAPTER 13 : DETERMINING BID EVALUATION CRITERIA

13.1 CHOOSING AN APPROPRIATE EVALUATION METHOD

There are two possible evaluation methods that can be followed when evaluating a bid.

Method 1 follows a two-stage methodology where minimum thresholds are set for Local Content (where applicable – designated sectors), B-BBEE/SD and Quality. Only those bidders that meet (or exceed) the relevant minimum thresholds, advance to the next evaluation phase (step 6 in diagram below, where Price/TCO, SD and BBBEE are scored using the pre-determined weightings. Method 1 is the preferred method for evaluating bids within Transnet. Method 2 is used only in instances where Quality is of critical importance and assigned a greater weighting than price in Step 6 of Phase 2 (SD, B-BBEE and FRC weights remain unaffected).

13.1.1 Method 1 (Preferred Method)



*When issuing a tender in a designated sector, Transnet **must** set a minimum threshold for Local Content. When issuing a tender in a non designated sector, Transnet has a discretion whether to include a minimum threshold for Local Content or not. However, as a general rule Transnet will actively pursue opportunities for Local Content in all bids.

Figure [17]: Method 1

- Phase 1: A minimum threshold must be set for Local content (where applicable) and both SD/B-BBEE and Quality. These are separate thresholds, and the Bidder must meet the minimum criteria for all of these in order to proceed to phase two.
- Phase 2: The suppliers who meet the minimum threshold for Local content, SD and Quality (phase 1) will then be evaluated against each other using price, SD and BBBEE (including FRC) as criteria

13.1.2 **Method 2**

(An alternative used in limited instances where Quality is of critical importance)

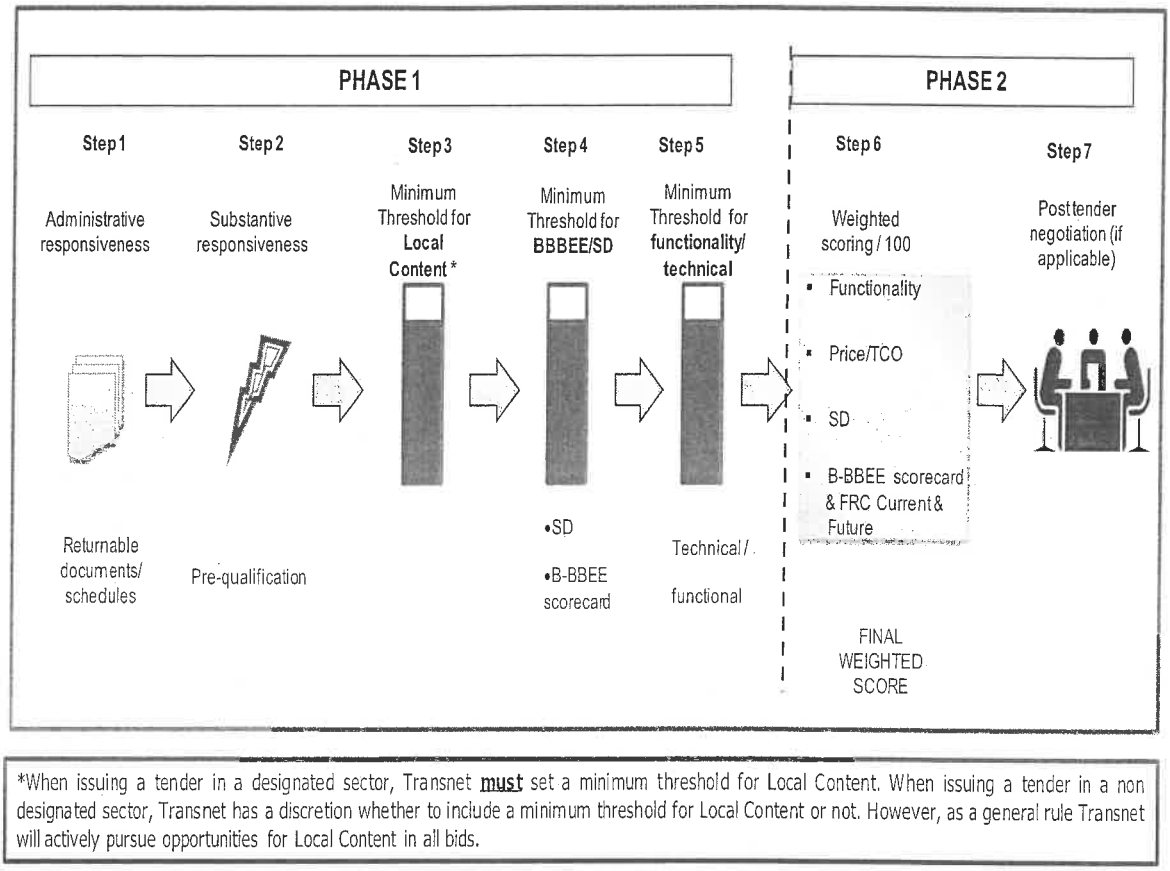


Figure [18]: Method 2

- 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.

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- **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.

13.3 DETERMINING THE WEIGHTING FOR EVALUATION PURPOSES

The weighting of the various components i.e. Quality, Price, SD, and B-BBEE need to be considered on a case by case basis as each procurement event will differ. It is important that these be determined upfront and included in the RFX document. Once included in the RFX document one cannot deviate from that and the evaluation has to be done strictly in accordance with what was stated in the RFX document.

The weighting of Quality requirements as a whole, as well as the sub-requirements within the Quality section, need to be carefully determined to ensure that the end product/service is optimal and fit for purpose.

It is suggested that the component weighting should vary in terms of preference, SD and Quality/price, depending on the particular IC^3 quadrant. (see *Figure [19]* below).

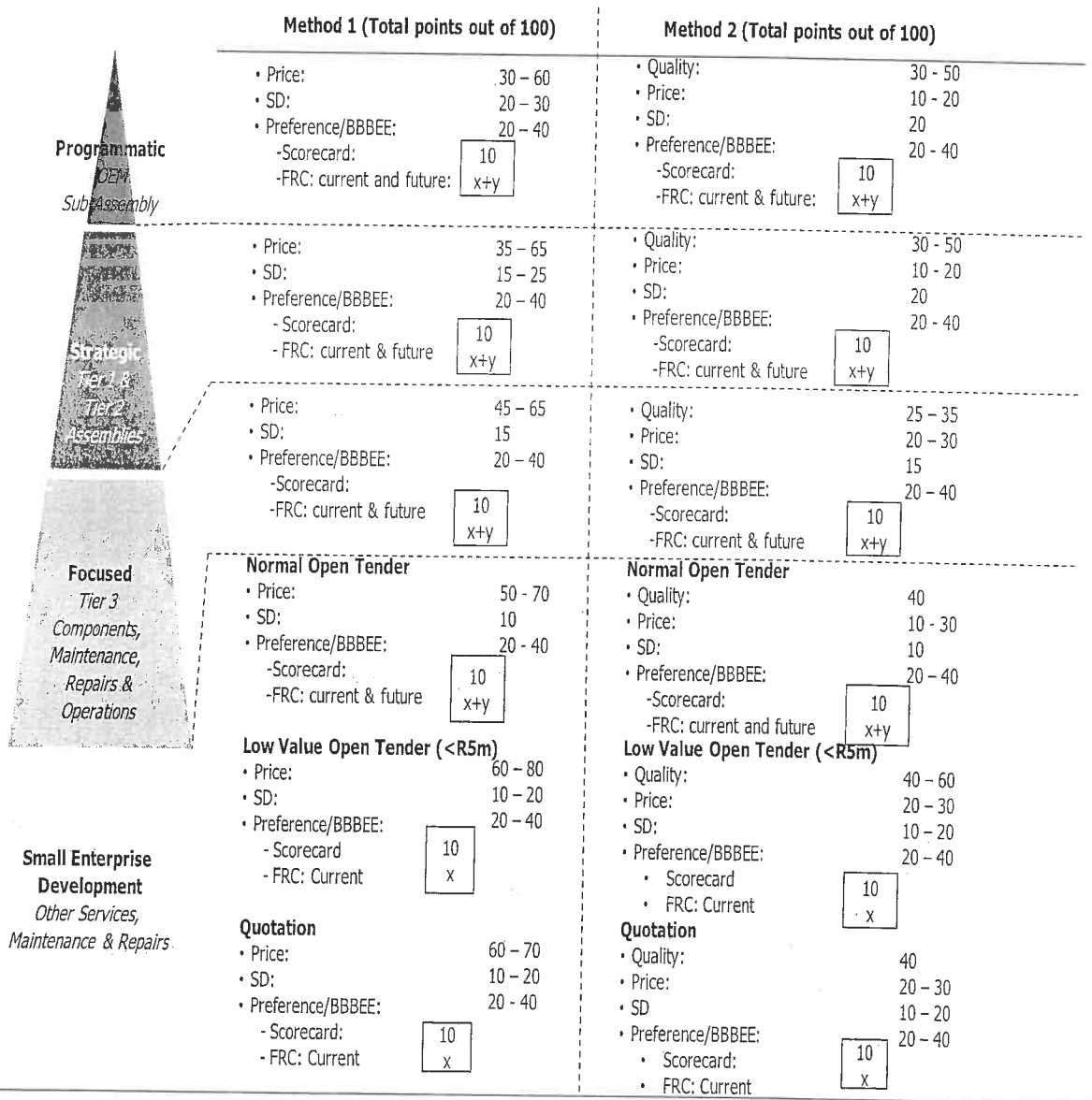


Figure [19]: Methods 1 & 2

13.4 It is important that all of the above should be carefully considered by the CFST and included in the sourcing strategy, the RFX and RFX sign-off template prior to issuing the RFX to the market, as neither the evaluation criteria, nor the weightings, nor the evaluation methodology (i.e. Method 1 or 2) may be changed during the evaluation phase.

CHAPTER 14 : MAIN PROCUREMENT MECHANISMS

14.1 FACTORS TO CONSIDER WHEN SELECTING THE APPROPRIATE PROCUREMENT MECHANISM

Sourcing/procurement strategies are closely linked to the strategic importance and value of the Goods/Services. The first step is to classify Goods/Services on a risk/value matrix. In order to determine the importance of Goods/Services to Transnet as well as the appropriate procurement mechanism to be used, the commodity should be plotted on the four quadrant matrix below:

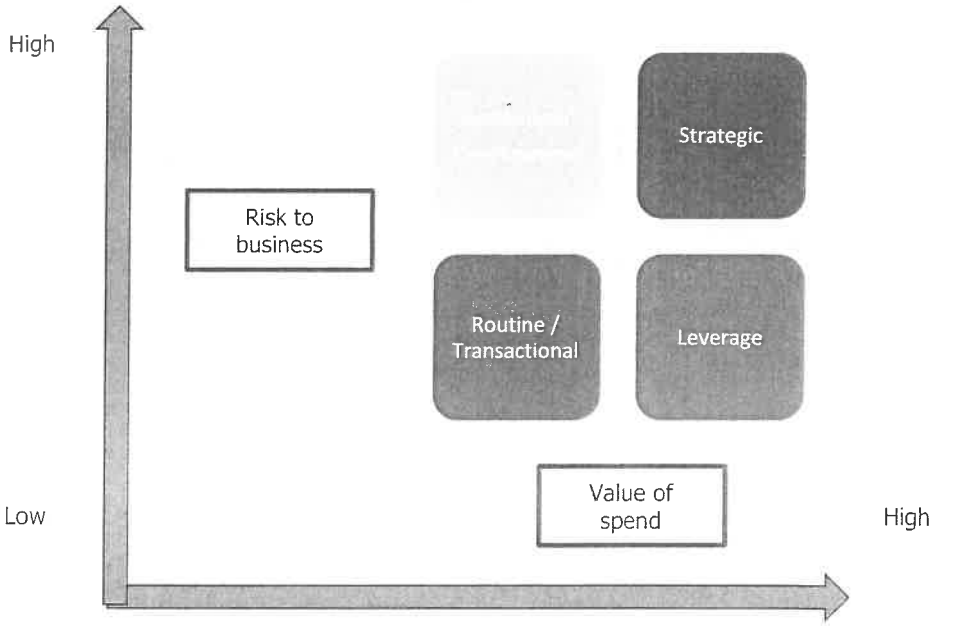


Figure [20] – Risk / Value Matrix

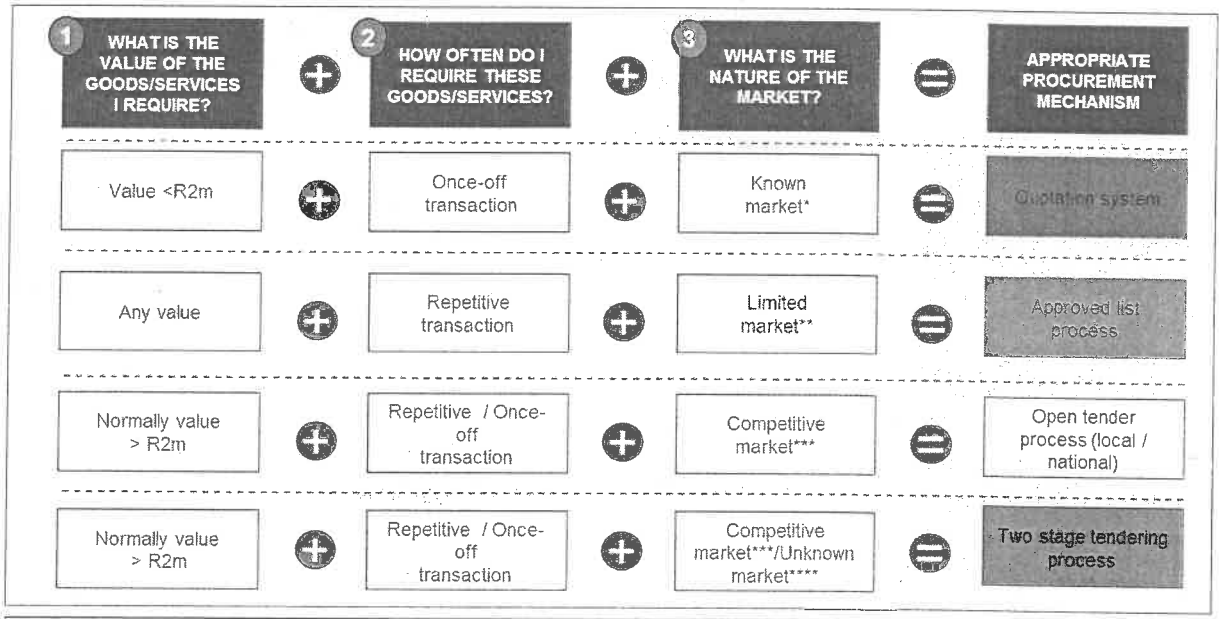
The following guidelines will assist in determining the correct procurement mechanism to use depending on where in the matrix particular the Goods/Services are placed:

TABLE 16

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
Routine/ Transactional	• Low risk; low spend • Non-critical items • Many suppliers in the market • Objective is to minimise spending significant time and effort on obtaining these Goods / Services through 'as and when' contracts	• Open Bid • Quotation system (only when non repetitive and under R2 million)	• "As and when" contract for short and medium term • Transversal contract
Leverage	• Low risk; high spend • Non-critical items • Many suppliers in the market	• Open Bid	• Transversal contract • "As and when" contract for short and

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
	• Objective is to leverage economies of scale		medium term
Bottleneck/ Development	• High risk; low spend • Limited suppliers • These are items that Transnet must have but which are difficult to obtain • Critical items • Includes specialised equipment, instrumentation or software from proprietary suppliers • Objective is to secure supply	• Two stage bidding system • Approved list • Confinement	• "As and when" contract for medium term • Fixed quantity
Strategic	• High risk; high spend • These are items that are critical to Transnet's business	• Open Bid • Two stage bidding system • Approved list • Confinement	• Medium to long term contract • Transversal contract

Depending on the circumstances of each requirement for the procurement of Goods or Services, any one of the following main procurement mechanisms or procurement paths may be utilised:



* Known market - suppliers are listed on the vendor database
** Limited market - only a restricted number of suppliers exist eg. Original Equipment Manufacturers, limited suppliers or a sole supplier
*** Competitive market - many suppliers exist in the market
**** Unknown market - there is no clear specification of requirements and/or the availability of the goods/services is unknown

Figure [21] – Procurement Mechanisms

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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

Greater than R1000 000.00 – R2 000 000.00	Formal RFQ process (receipt of bids at the tender box)	3 or more

14.3.5 Number of quotes to be requested

a) As a general rule, a minimum of three quotations should be requested. However, a buyer may request more than three quotes if necessary. Where it is impossible to request three quotes e.g. patented articles, OEM spares etc., one or two quotes will suffice. However, a submission must be prepared with the reasons for not being able to request at least three quotations. This must be approved by the CPO or his/her delegate, depending on the value of the transaction and the delegated authority of the procurement official. Since OEM spares and components will in all probability be required on a regular basis, consideration should be given to either the framing of an Approved List, or the conclusion of an "As-and-when required" term contract.

b) It is important to note that once a request for quotations has been made to prospective Bidders, a buyer cannot subsequently request further quotes if all Bidders approached have not responded to the request by the closing date.

14.3.6 Transnet Vendor Portal

a) An automated Transnet wide Vendor Portal (TVP) has been created for all potential suppliers wishing to do business with Transnet to register and update their company profiles. The web address is https://vendorportal.transnet.net.

b) Potential suppliers should provide full details of the Goods/Services on offer, their tax clearance certificate, their BBBEE level, including % Black ownership and area of operation. Suppliers will be classified accordingly on the TVP.

c) Buyers who wish to obtain quotations must proceed to search the TVP and/or the OD's own vendor database for potential Bidders.

d) The TVP should ultimately have the functionality to invite quotes from potential suppliers on a rotational system to ensure an equitable spread of opportunities among all potential suppliers.

14.3.7 Process

a) As indicated above, the buyer will request quotes from at least 3 potential Bidders on the TVP where possible.

b) For relatively low value, simple Goods/Services, the RFQ should ideally be open for 3 to 4 Working Days in order to afford Bidders a reasonable opportunity to respond. For higher value, more complex Goods/Services, the RFQ should be open for a minimum of one week.

c) The bids must be received in a controlled environment, e.g. a dedicated email address, dedicated fax number or a tender box.

d) As a general rule, quotations are to be evaluated on the basis of price and B-BBEE. In addition to the 10 points allocated to the B-BBEE Scorecard, bidders

will be evaluated against the current status of their Ownership and Management Control. Ten points will be allocated to Ownership and a further 10 points to Management Control (see Figure [19] above). A minimum B-BBEE threshold of Level 4 should be used as pre-qualification criteria for quotations, unless not possible. In the event that technical evaluation is also necessary, the technical evaluation criteria must be pre-determined and included in the RFQ document. The highest scoring Bidder is to be selected as the Successful Bidder.

e) In instances where quotes are invited from potential new bidders, the prices quoted should, where possible, be benchmarked against previous prices paid, to ensure that Transnet obtains optimal value for money, whilst achieving its social obligation.

f) As indicated in paragraph 14.3.6 (d) above, quotations should be invited from potential bidders on the TVP on a rotational basis so as to ensure an equitable spread of opportunity among all potential suppliers.

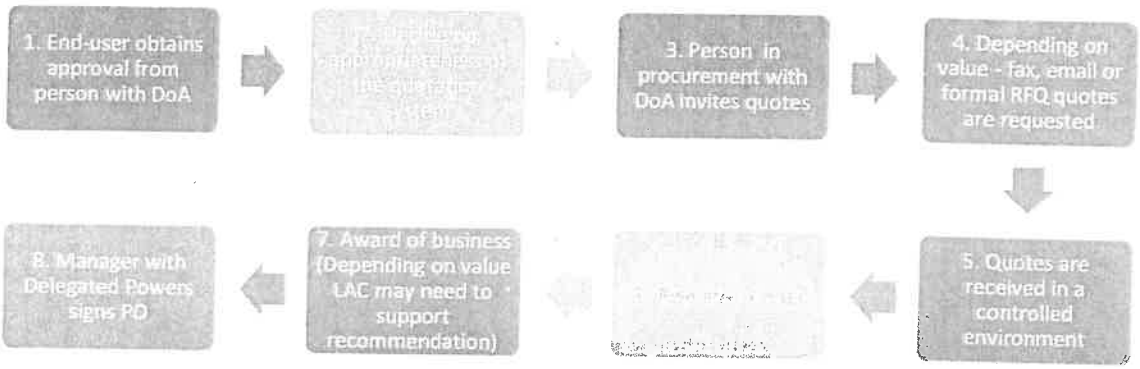

Figure [22] – Quotation Process

14.4 THE OPEN BID PROCESS (RFP)

- Generally used for transactions greater than R2 million in value
- There must be a competitive market and a clear detailed specification available to which many prospective Bidders are able to respond
- Bids may be advertised in local, national and / or international media depending on the market

14.4.1 Definition

The Open Bid Process (RFP) is a competitive process where the general public is approached with an invitation to bid that is published in the media. All interested parties are granted an equal opportunity to bid for Transnet's business. Once the bid has closed, the winning Bid is selected by means of a transparent evaluation, recommendation and adjudication process.

14.4.2 When to use the open bid process

The Open Bid system is the procurement/disposal mechanism best suited to the following circumstances:

a) the monetary value of the purchases is in excess of R2 million;

b) even if the bid value is less than R2 million, an Open Bid should be issued if the market is not known or the Goods or Services are required on a repetitive basis;

c) the market is competitive (i.e. many potential suppliers are able to provide the required Goods/Services);

d) there are clear and unambiguous specifications to ensure that all potential suppliers bid for the same product;

e) there is enough time available;

f) the value of the transaction must warrant the cost, time and effort taken to use an Open Bid process; and

g) in cases where Transnet's needs / specifications etc. are still too vague to issue a formal bid, the two-stage Bid system (RFI) should be followed.

14.4.3 Advantages and disadvantages of the open bid process

Advantages	Disadvantages
The Open Bid system is regarded as the procurement mechanism which best ensures open and fair competition.	The Open Bid process is time consuming. In order to ensure that Goods / Services are delivered to the business when they are needed, the need for the Goods / Services needs to be anticipated well in advance. Requires significant resources (cost, time, etc.)

14.4.4 Process

a) Before any bid document may be issued to the market, the person with the necessary delegated authority must provide written authority to approach the market. This must include approval of the evaluation methodology, evaluation criteria and the availability of funds. The evaluation team is also to be decided on at this point.

b) The bid document should be compiled according to the guidelines set out in Chapter 16 *(Bid Preparation)*.

c) Bids may be advertised in local, national and / or international media depending on the market and value of the bid.

d) Bids should be kept open for a reasonable period. Refer to paragraph 16.3 for more detail.

e) Bids are to be finalised as soon as possible after the closing date of the bid.

See process below to be followed in the case of an Open Bid process

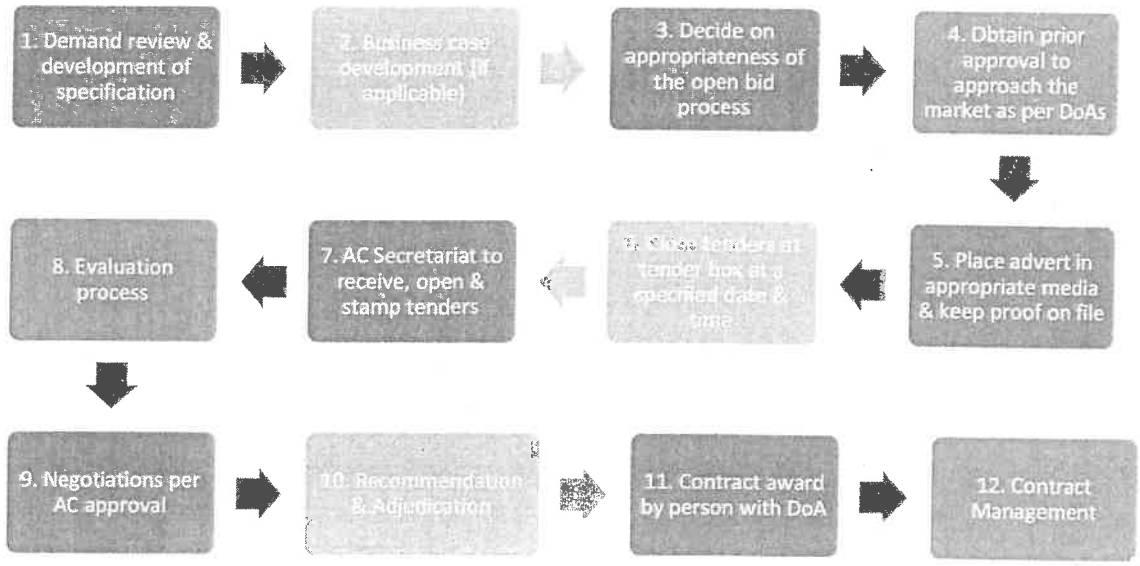

Figure [23] – Open Bid Process

14.5 APPROVED LIST PURCHASES

- An approved list is utilised for Goods or Services that are required according to unique specifications, on a continual basis and from a limited number of suppliers.
- This mechanism is used for non-standard items that are not available off the shelf.

14.5.1 Definition

An approved list is generally used for Goods or Services that are required according to unique specifications, e.g. OEM spares or proprietary articles. An approved list is framed and utilised for Goods or Services required on a continual basis.

14.5.2 General principles

a) In order to qualify for inclusion on any approved list a supplier must be able to supply Goods or Services of the quantity and quality required. Furthermore, if so required, the supplier must have submitted samples or delivered Goods which have satisfactorily passed Transnet's quality tests.

b) Approved supplier status cannot be acquired merely by being on a Division's Vendor Master or on a B-BBEE Manager's List of EMEs or QSEs for specific Goods or Services. Approved supplier status can only be obtained after following the process stipulated below.

c) Specifications must be drawn up to promote fair competition.

d) ODs and Specialist Units must attempt as far as possible to procure off-the-shelf Goods as opposed to drawing up their own specifications.

e) An Open Bid may not be issued for Goods/Services appearing on an approved list.

f) Information regarding Transnet's Approved Lists may not be disclosed to anyone outside Transnet without the written approval of the GCSCO.

g) The standard template for approved lists must be used.

14.5.3 When to use the approved list process

This procurement mechanism is ideally suited for the following transactions:

a) strategic, high-value, high-risk items, non-standard items which are not available "off-the shelf";

b) where equipment can only be obtained from Original Equipment Manufacturers (OEMs) or limited suppliers; or

c) Goods and specialised Services that cannot be sourced from non-approved suppliers because of Transnet's own unique specifications, Quality standards, or safety requirements i.e. commodities that are not freely available in the market from a range of suppliers.

14.5.4 Advantages and disadvantages of the approved list process

Advantages	Disadvantages
• Reduces administrative burden as there is no need to approach the open market every time there is a requirement for Goods/Services. • Bidders are pre-qualified and need not be evaluated on technical aspects every time there is a requirement. • New entrants can be accommodated at any time.	Delays between identifying and approving new entrants into the market due to stringent testing requirements.

14.5.5 Types of Approved Lists

a) **Type 1: Generic Approved Lists – Indefinite validity**

(i) This type of approved list remains valid indefinitely, subject to the proviso that they must be advertised every 6 months to afford new suppliers an opportunity to be included onto the list.

(ii) Although the list remains valid indefinitely, the suppliers on the list will be subject to periodic quality testing in order to maintain their name on the list. Should suppliers fail to meet quality standards, their names may be removed from the approved list as per paragraph 14.5.8.

(iii) This type of approved list may be framed by following one of the two procurement processes outlined below:

- After public Advertisement of the intention to frame an approved list in a notice requesting all prospective suppliers to formally apply.
- By framing an initial approved list of suppliers based on previous experience and/or tests carried out. The list will nevertheless be advertised publicly thereafter to invite new entrants to the market.

(iv) Testing: Bidders are entitled to a full explanation of the testing process that was/is to be carried out on their product. Bidders may, upon request, be allowed to observe the testing process carried out by Transnet. Those Bidders who's Goods fail the relevant tests, must be provided with detailed reasons why their Goods failed the tests and should be afforded an opportunity to resubmit their Goods for testing once the necessary improvements have been made.

(v) In either of the two processes listed above, aspirant suppliers may apply for inclusion after the approved list has been established. Such suppliers may be provisionally included on the approved list where it is not practical to test their product/sample beforehand e.g. overhaul of traction motors; reconditioning of transformers for electric substations, etc. Potential suppliers in this category will be subjected to a quality check e.g. ISO certification, previous experience on work of a similar nature and complexity, quality control systems etc. Qualifying suppliers will then, subject to AC and CEO approval, be placed on the approved list as "aspiring suppliers". When obtaining bids from suppliers already appearing on the approved list, the aspiring prospective suppliers must also be invited to submit bids. If an aspiring applicant is awarded a contract or portion of the contract for testing purposes and performs satisfactorily, their name must be placed on the approved list by following the normal approval process i.e. AC and CEO approval must be obtained.

(vi) A list of all approved lists with their respective specifications, contact details of technical expert, etc. must be displayed on the notice/bulletin boards in bid issuing offices so that potential new entrants are made aware of its existence.

(vii) Although the generic approved list remains valid for an indefinite period, it must be advertised every 6 months in order to afford new suppliers an opportunity to be included. However, such approved lists can be updated at any time. It is not necessary to wait for the 6 month interval to include a new name on the approved list. After a new entrant's product has successfully passed the quality tests, AC and CEO approval must be obtained and the list must be updated accordingly.

(viii) New entrants may apply at any time for inclusion on the approved list. Any new applications received outside of the 6 month advertising intervals must be dealt with immediately and not held over until the next Advertisement.

(ix) It is important to note that when such an approved list is utilised to solicit bids, all approved suppliers (including aspiring suppliers, if applicable), must be approached and invited to submit bids. Under no circumstances may only certain names be selected off an approved list on a selective or rotational basis. Furthermore, all such requests for bids must be dealt with in terms of the standard procedures.

(x) Award of business on the approved list is subject to approval from the person/body with the necessary DoA, as well as the relevant AC if such transaction falls within its jurisdiction.

(xi) It is important to note that the names on the generic approved list will remain on the list unless their names are removed for one or other reason.

b) Type 2: Hybrid Approved Lists – Fixed period validity

Hybrid Approved Lists are typically used in the following circumstances:

- Competitive market where there is a need to prequalify suppliers, as well as to limit the need to continuously evaluate large numbers of bids

(i) "Hybrid approved lists" are publicly advertised and framed for a fixed period. The validity period of the list must be clearly stated in the Advertisement, as well as in the subsequent letter informing successful applicants of their inclusion on the Approved List.

(ii) The nature of the Goods/Services will inform the decision on whether to make use of this type of approved list. Typically, a competitive market must exist in order to use this type of approved list. Examples of such "approved lists" are the Transnet Legal Panel and the Transnet List of Approved Security Service Providers.

(iii) Unlike the generic approved list, no new applications for inclusion on the list may be considered during the period that the existing list is in force.

(iv) The manner in which the approved list is to be structured and implemented must be fully motivated and submitted to the relevant AC for prior consideration and approval by the CEO.

(v) At the end of the fixed period, the list must be re-advertised and a new list must be framed, if there is still a need for such an approved list. Suppliers who were included on the previous approved list must re-apply for inclusion onto the new list, and they must be made aware of this when the new list is being advertised.

14.5.6 Authority to frame an approved list

a) The framing of an approved list or any amendment thereto must be approved by an OD CEO or in respect of Transnet Corporate Centre ("TCC") requirements or transversal contracts, the GCSCO, upon recommendation from the AC.

b) The AC will be responsible for the distribution of the List within the particular entity and to Group iSCM. All Approved Lists should be communicated to the Governance function at Group iSCM, who will distribute the list to all other ACs in the Transnet Group. Group iSCM will be responsible for developing a shared portal to facilitate easier access to all approved lists, by all Transnet entities. The division which initiated the list will, however, be responsible for the periodic updating thereof.

c) Any person or Enterprise whose application for inclusion on the approved list has been refused or whose name has been removed from the list, may make representations to the relevant CEO. Should the person/Enterprise not be satisfied with an OD CEO's ruling, an appeal may be made to the Group Chief Supply Chain Officer ("GCSCO") whose decision shall be final. In respect of TCC, an appeal may be made to the GCFO whose decision shall be final.

14.5.7 Process

a) The OD AC must first provide "in principle" approval for the framing of an approved list.

b) The Advertisement for an approved list must only make reference to the Goods/Services for which the list is being framed and not the names of the approved suppliers.

c) All approved lists have to be advertised at least every 6 months, by means of a public notice in the appropriate media, inviting all interested parties to submit applications for possible inclusion on the relevant approved list.

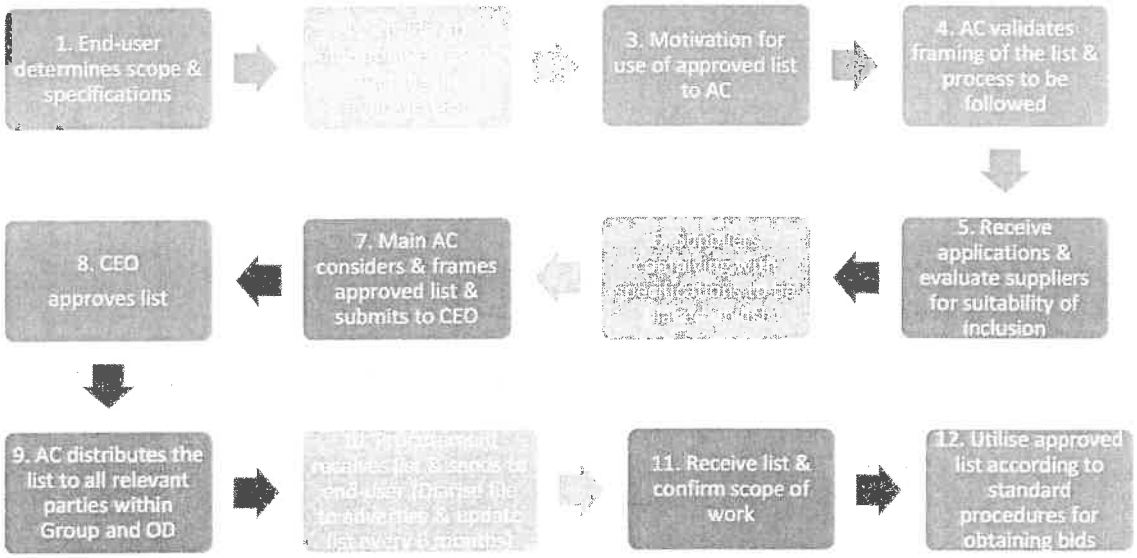

Figure [24] – Process to frame Approved List

14.5.8 Removal of names from the approved list

a) The name of an Enterprise may be removed from an approved list at any time if the Enterprise:

b) has been convicted of any offence under any law relating to wages, hours of work or other conditions of employment;

c) fails or ceases to comply with the requirements of such approved list;

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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.

14.6.2 When to use the two-stage bidding process

a) This mechanism is used in assessing the availability of Goods/Services where there is no clear specification of requirements or where the suitability of service providers must first be determined prior to the undertaking of any development work.

b) The use of this mechanism is appropriate where there are various possible means of meeting the need.

c) The RFI process is ideally suited to projects involving research, development, studies or experiments. In such instances it is not in the best interests of either Transnet or the prospective Bidders to develop a detailed plan when it has not yet been determined as to whether implementation is feasible.

d) The RFI process can be utilised to determine the availability of Goods and different suppliers' specifications in order for Transnet to draft its own specifications in such a way that accommodates as many potential suppliers as possible that are able to provide a product of acceptable quality.

e) To obtain Expressions of Interest (EOI) from the market before stage 2 of the two-stage bidding process is embarked upon.

14.6.3 Advantages & disadvantages of the two-stage bidding process

Advantages	Disadvantages
• Allows Transnet to obtain an indication of what is available in the market before approaching the market with a firm invitation to bid. • Allows Transnet to draft a clear specification when it approached the market	• The two stage bidding process is a time consuming process • There is a risk of possible infringement of IP

14.6.4 Process

A two stage bidding process involves the following steps:

a) **Stage 1 (RFI stage):**

(i) Prospective Bidders are invited to submit their proposals via an open RFI after approval to approach the market has been obtained.

(ii) The evaluation criteria in the first stage may include criteria such as technical, Quality, contractual terms, conditions of supply and the professional and technical competence of the suppliers. Transnet may wish to request rough costing estimates during this first stage. However, price would typically not be requested at this stage.

(iii) The RFI must clearly indicate Transnet's intention during the second stage of the process: i.e. whether:

- suppliers will be subjected to pre-qualification criteria and be short listed in order to proceed to the second stage;
- Transnet will issue an Open Bid based on the responses and specifications received in the first stage; or
- Transnet will approach one or a shortlist of Bidders based on the responses and specifications received in the first stage.

(iv) The RFIs received must be evaluated in terms of pre-determined criteria which have been made available to all contenders in the RFI.

(v) A recommendation is made to the AC or relevant authority regarding the outcome of the first stage, and the eligibility of the bidders to participate in the second stage.

(vi) AC agreement with the recommendation effectively authorises the second stage of the process.

b) **Stage 2 (RFP stage)**

(i) Depending on the option exercised in stage 1, Transnet may either issue an Open Bid or limit the second stage to only one or a shortlist of Bidders, as approved by the AC.

(ii) Bidders are invited to bid in the normal manner.

(iii) The bids are evaluated and awarded in the normal manner.

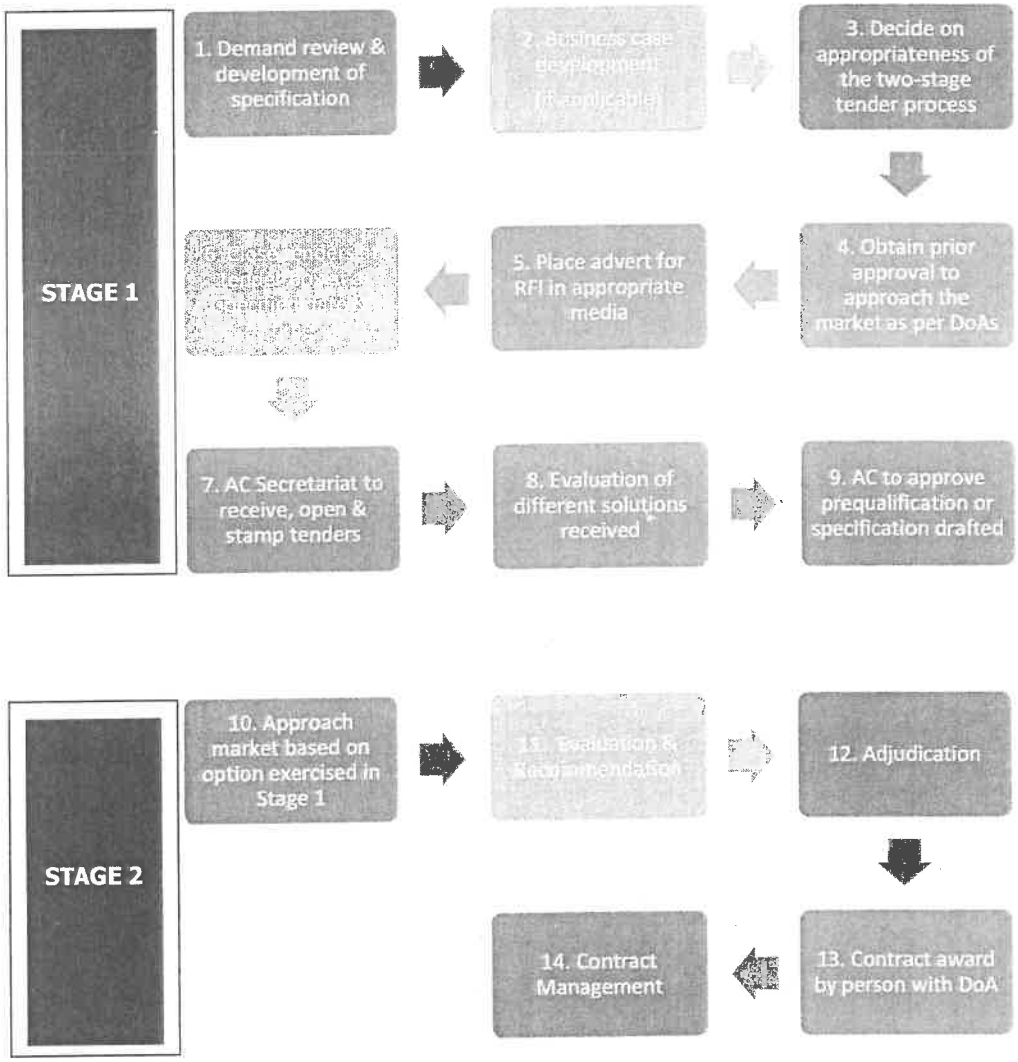

Figure [25] – Two stage bidding process

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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

result in wasted money and/or time for Transnet. When this particular ground is intended to be used as a ground for Confinement, it is important to note that all pre-requisites must be satisfied: The Goods or Services must be highly specialised, almost identical to previous work done and approaching the market again would result in wasted money and time.

15.1.3 Types of confinements

Depending on the circumstances one of the following two Confinement routes will be applicable:-

a) The normal Confinement route:
- prior authority to confine must be obtained from the person with the relevant delegation;
- bids will close at the relevant AC (relevant AC to be indicated in the submission for approval); and
- the relevant AC will consider the award of business.

b) Confine and award which is only to be used in cases where there is a sole supplier and/or cases of extreme urgency:
- prior authority to confine and award must be obtained;
- the submission to the person with Delegated Powers must fully motivate the reason for the urgency and provide an indicative / benchmark price;
- bids will close at the relevant AC (relevant AC to be indicated in the submission for approval);
- the business will be awarded by the person with the delegation to the relevant Bidder provided that the final price is within the benchmark as initially approved by the person with the delegation to approve the Confinement; and
- the AC must be informed after award.

15.1.4 Delegation of authority

a) Depending on the value of the transaction, only the GCE, BADC and the Transnet Board have the authority to authorise a Confinement.

b) The relevant monetary thresholds for authorising confinements are as follows:

(i) GCE – up to but not exceeding R250 million;

(ii) BADC – up to but not exceeding R1 000 million; and

(iii) The Board – exceeding R1 000 million.

15.1.5 Process

a) The submission for Confinement must be fully motivated in writing by the end-user and the OD CPO to the OD's main AC and the OD's CEO for prior written support of the recommendation to confine. It is important to properly motivate submissions taking into account all relevant factors. Poorly motivated submissions will be referred back to the OD concerned for re-motivation. The submission should be submitted on the relevant template under cover of a memo to the GCE.

b) Only if the reasons advanced for the proposed Confinement are supported and considered to be in the best interest of Transnet, should the Confinement of business to one or more contenders be escalated to Group.

c) The Confinement request must be considered by the Transnet GCSCO and the Group CFO each of whom shall indicate whether or not they support the request.

d) The matter must then be submitted to the GCE, the BADC or to the Board itself for final approval depending on the value of the transaction.

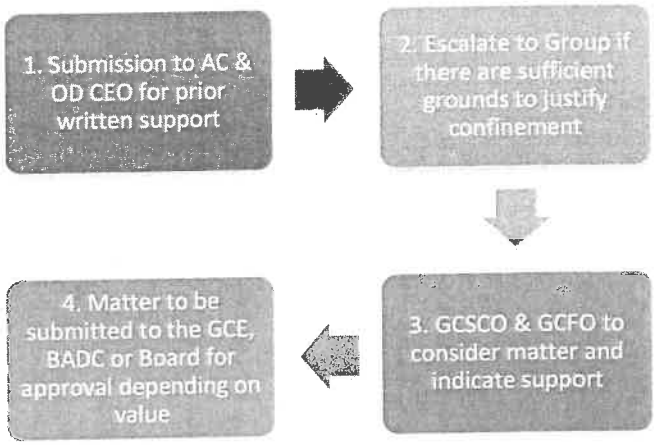

Figure [26] – The Confinement process

15.1.6 Confinement divided between more than one Bidder

Should it be decided to divide the total requirement of a Confinement between more than one Bidder, the total value of the business and not the individual contracts shall determine the level of approval required for the Confinement. Only after the necessary approval has been obtained, may the individual contracts be signed by the Manager with the necessary delegated contractual powers.

15.1.7 Amendment to contracts awarded via Confinement

a) Where a Material Amendment (i.e. the price, duration or scope is increased by more than 10%) to a contract awarded via Confinement is required, the matter must be sent to the relevant AC for support. The AC must submit the amendment to the original approver of the Confinement for prior approval of the amendment. The same principle applies where the cumulative value of amendments equals or exceeds 10% of the original contract value.

b) Where an amendment increases the price, duration or scope by less than 10%, this should be submitted to the AC for approval.

c) Where an amendment to a contract results in the value of the Confinement reaching a higher approval level, the matter must be sent to the original approver for review and recommendation. Approval must then be sought from the person with the delegated authority to approve the higher value of the Confinement.

15.2 EMERGENCY PROCEDURE

The emergency procedure is to be used under the following circumstances:

- Where the circumstances giving rise to the emergency were unforeseeable;
- Where engaging in normal bidding procedures or any other methods of procurement would be impractical; and
- Where the occurrence requires immediate action

The concept of retrospective authority applies only in the context of emergencies. Where an emergency process is followed correctly, condonation is not required.

15.2.1 Definition

a) The following circumstances would normally be regarded as sufficient grounds for invoking the emergency procedure i.e. a situation has arisen where there is an imminent risk of:
   - human injury or death;
   - human suffering;
   - serious business disruption that could not have been reasonably foreseen;
   - interruption of essential services;
   - serious damage to property or financial loss;
   - suffering or death of livestock or other animals; or
   - serious environmental damage or degradation.

b) The concept of an "emergency" must be applied restrictively and should not be used as an excuse for bad planning. As such, in order to qualify for the emergency procedure:
   - the circumstances giving rise to the emergency must not have been foreseeable;
   - engaging in bidding procedures or any other methods of procurement would be impractical; and
   - the occurrence requires immediate action.

An emergency should not be attributable to a lack of proper planning. In such instances appropriate action must be taken against the individual(s) responsible for the bad planning.

15.2.2 Process to institute the emergency process

a) The end-user requests authority from the person with the necessary delegation of authority to institute the emergency procurement procedure. If possible, the end user must notify procurement of the emergency requirement telephonically followed by email.

b) The duly authorised Manager to invoke the emergency process will consider the request and decide on whether to grant such authority. He/she will notify the requestor in the form of an email, SMS or even verbally. If by SMS or verbally, this must be confirmed in writing or by e-mail afterwards.

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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:

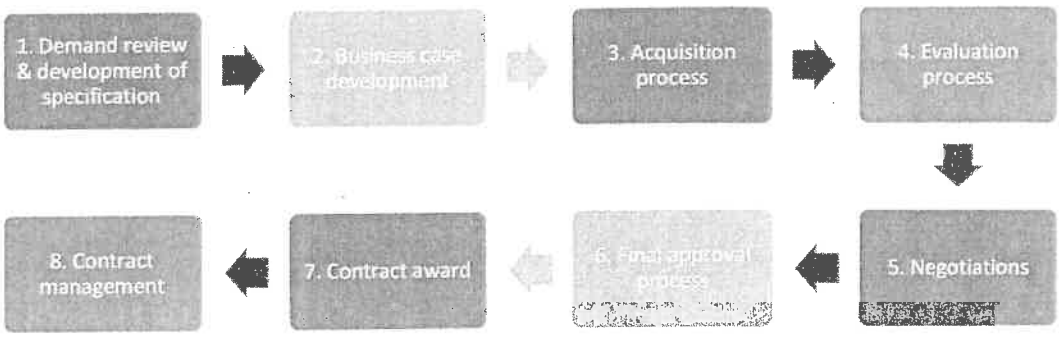

Figure [27] – The HVT process

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.

- 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

The following information must be contained in the recommendation:

a) A detailed description of the goods or services;

b) A detailed description of benefits Transnet is to derive from the envisaged acquisition;

c) The costs associated with the acquisition of the service or product;

d) The validity period of the Unsolicited Bid;

e) Proof of certification that the Bid was submitted by the person who holds the intellectual property rights in the goods or service; and

f) Certification by the evaluation team that there are no other suppliers who can provide the goods or services.

15.5 CONTRACT CONSOLIDATION

Contract consolidation may represent optimal value for Transnet in the following circumstances:

- where more than one Entity have existing contracts for the same Goods / Service with the same or different suppliers with significant price variations and differing contract terms; or
- where one or more Transnet Entity become aware that another Entity has already concluded a contract for the Goods /Services required by it and wish to utilise the existing contract ('piggybacking').

15.5.1 Principles

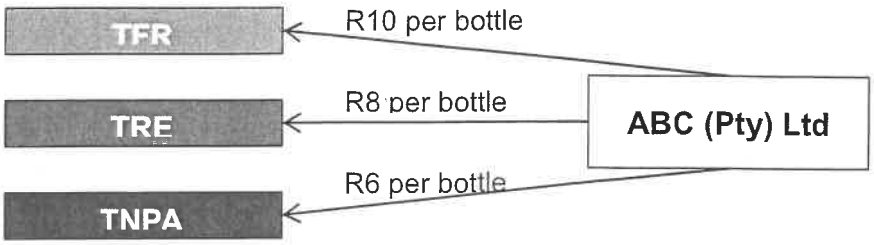
Consolidation of existing contracts is potentially problematic from a governance and operational perspective. For this reason, Transnet must endeavour to approach the market with a consolidated demand signal clearly outlined in a single RFP, rather than having each Entity approach the market in a piecemeal fashion and thereafter seeking to consolidate a number of different contracts. Therefore, when an Entity identifies the need to acquire goods/services that are common to more than one entity, it is imperative that they first ascertain whether it is feasible and advantageous to approach the market with the consolidated requirements of all Entities that require the goods / services.

Transnet can gain significantly from consolidating its demand. Due to economies of scale, it will be in a better position to negotiate price and contractual advantages. In addition, it will lessen the administrative burden on Transnet to manage a multiplicity of contracts.

15.5.2 Triggers for consolidation

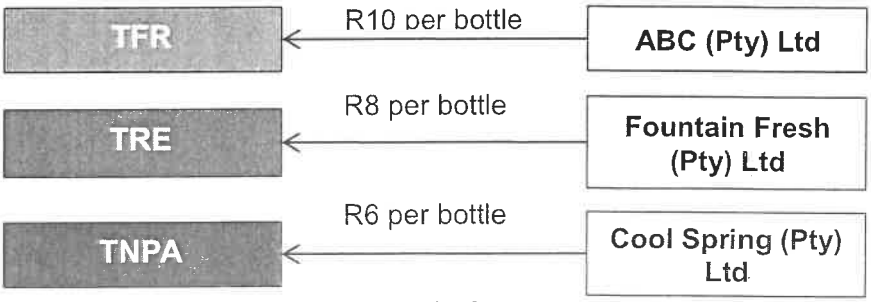
One of the following circumstances should trigger the need for consolidation of existing contracts:

a) The same commodities or categories of commodities are being purchased by more than one entity from the same supplier but with differing prices and contract terms. For example:



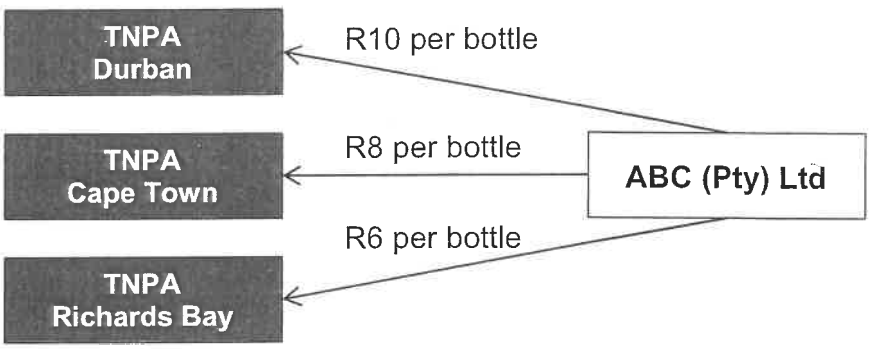
Supply of bottled water

b) The same commodities or categories of commodities are being purchased by more than one entity from different suppliers with differing prices and contract terms. For example:



Supply of bottled water

c) The same commodities are being purchased by one OD from the same or different suppliers, with significant price variations. For example:



Supply of bottled water

15.5.3 Factors to consider when consolidating

The following factors need to be considered when consolidating existing contracts:

a) The probable increase in volumes required from the preferred suppliers (expressed in %) if contracts were to be consolidated;

b) Whether the existing contracts allow volume changes, and what the contract terms and conditions regarding volume changes are;

c) Price differentials between various contracts;

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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 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

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.

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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.

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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.

CHAPTER 17 : BID ADMINISTRATION
(issue, receipt, opening of bids and communication)

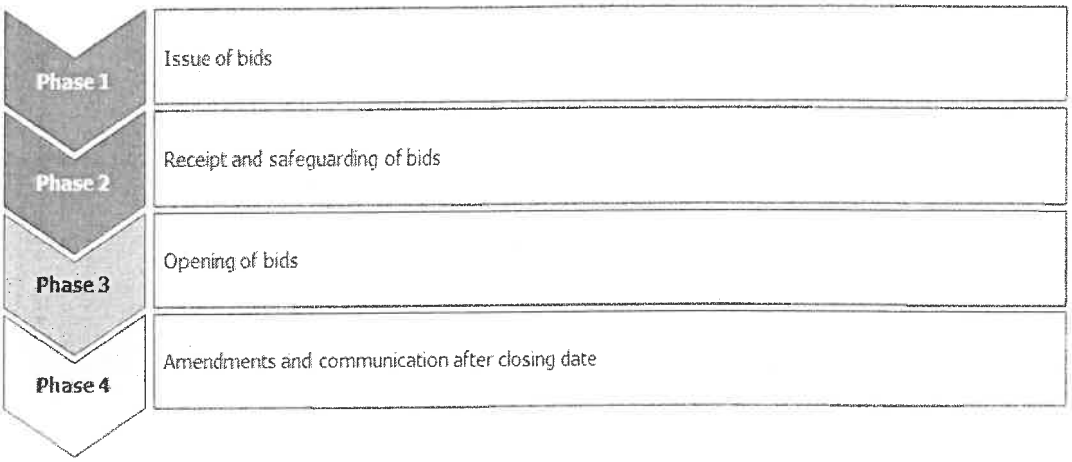
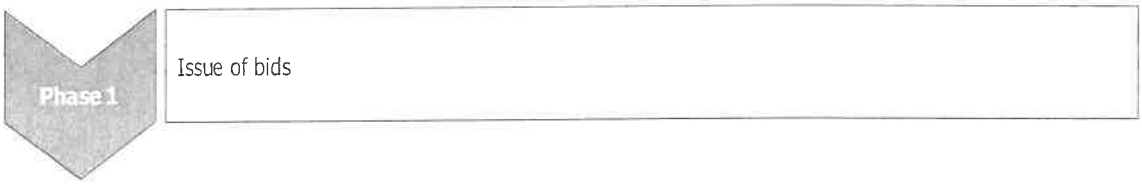


Figure [28] – Four phases of bid administration



17.1 PHASE 1: ISSUE OF BIDS

17.1.1 Bid reference numbers and short descriptions

At this stage in the process, the RFX document, the evaluation criteria and weightings, the evaluation methodology, as well as the going to market strategy has already been signed off by the person or governance structure with the appropriate DoA.

Prior to advertising, each RFX must be issued with a business-unique consecutive number. The issuing of RFX numbers must be controlled by a responsible person. The RFX number must clearly indicate the following:

- whether it was an Open Bid or a quotation; e.g. RFX No, Quotation No, or Approved List No.;
- the entity which issued the bid;
- in the case of a CIDB bid, allocated a prefix to the bid number to indicate that it is a CIDB-bid;
- a specific digit/character can be allocated to indicate whether a bid will close at the AC or at Regional/depot level e.g. BID NO: TPT/CT/11/01/138/CIDB; and
- following the unique number, a short description of the requirement must be added, e.g. "CONSTRUCTION OF NEW ELECTRIC SUB-STATION AT THE CONTAINER TERMINAL AT PIER NO 2, PORT OF SALDANHA".

17.1.2 All notices and adverts to be issued in the name of Transnet SOC Ltd

All documentation relating to bids shall be issued in the name of Transnet SOC Ltd and shall be published (advertised) in the Republic of South Africa,(nationally and/or

regionally), and abroad if necessary. The name of the relevant OD requiring the service shall be clearly indicated, e.g. Transnet Freight Rail, a Division of Transnet SOC Ltd (Reg. No. 1990/000900/30). The rationale for issuing notices in the name of Transnet is that every legal document must reflect the registered company name i.e. the legal persona of the company which will be contracted with.

17.1.3 Important information to be included in notices and Advertisements

The format of the Advertisement is informed by Group Communications guidelines. This format must be used for all Advertisements, and can be obtained on the Transnet Intranet.

The advert should be as short as possible but nevertheless should contain all relevant information. Notices and Advertisements calling for Bids must include the following information pertaining to the collection and lodging of bid documents:

- RFX number;
- brief description of the goods / services required;
- where the prescribed forms may be obtained and the cost to purchase them (if any) and the closing date for collection of bid documents;
- closing date and time for submission of the bid document;
- place where Bids must be lodged;
- information pertaining to site inspections or pre-bid briefing sessions;
- contact person's business address, telephone/fax number and email address; and
- details of Transnet's fraud line.

17.1.4 Bid document fees

a) A Manager with the necessary Delegated Authority for a particular contract may decide, at his/her own discretion, that a non-refundable fee be charged to Bidders for bid documents. This fee must only reflect the administrative costs of preparing and issuing the bid documents. The price to be charged for the bid documentation must be stated in the advertisement and invitation to bid. The decision to charge a document fee must be taken with circumspection as small companies may be unfairly excluded from the process due to the prohibitive costs of the bid documents.

The following guidelines (though not prescriptive) may be used at the discretion of the Manager, to determine a fee for bid documents:

TABLE 18

Value of bid	Bid fee (guideline)
<R2million	no charge
R2million to <R5 million	R250
R5million to <R10 million	R500
R10million to <R35 million	R750
>R35 million	R1000 or higher (discretion of CPO)

b) Where a document fee is to be charged, the advert must clearly state the payment method. Due to the risks involved in handling cash, the sale of bid documents at site meetings should be avoided. Strict control over cash received

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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

Bidder may only communicate with the person listed on the bid document on any matter regarding his Bid prior to the closing date of the bid.

Without identifying which bidder sought the clarification, the clarification provided must be communicated simultaneously in writing to all Bidders who obtained bid documents. The response to such a request must be effected within a reasonable time prior to the deadline of the bid to enable the Bidders to make timely submissions of their Bids, considering the clarification. If necessary, the deadline should be extended.

The disclosure of information to potential Bidders by the contact person must be made with circumspection. For example, it would not be allowed to provide potential Bidders with information such as budget amount approved, names of previous respondents, prices paid on previous contracts, number of bid documents issued to date, etc.

17.1.8 **Amendments before the closing date**

a) Transnet is entitled to amend any bid condition, validity period, specification or plan; or extend the closing date before the closing date, or in the case of a compulsory briefing session, before the scheduled session.

However, such amendments or extensions must be advertised and/or all Bidders who obtained bid documents must be advised in writing per fax or email of such amendment or extension a minimum of three Working Days before the scheduled date. The new closing date and time must be clearly reflected.

b) Where the closing date of a bid is extended, the notice of extension shall also state that Bids already received will be retained unopened in the tender box and be duly considered after the expiry of the extended period. However, the Bidder may request that such Bid be returned to him/her. The Bidder may also cancel the existing Bid by submitting a later dated Bid before the extended closing date. For amendments after the closing date refer to paragraph 17.4.1.

17.1.9 In the event of a Material Amendment to the specification or scope of work, to which other new Bidders could possibly respond, the bid must be cancelled and a revised RFX must be advertised. This would give all other potential Bidders the opportunity to respond. This can only be done after approval by the person who signed off the RFX document (refer paragraph 16.6 above), has been obtained. The cancellation must be advertised in the relevant media. If the cancellation and reissue happen simultaneously, they may be advertised together where the re-issue makes reference to the cancellation.

17.1.10 **Compulsory Site Inspection / Briefing Sessions**

a) A compulsory site inspection or briefing session has to be held in cases where it is necessary for the Bidders to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Bidders with further information to allow them to complete their Bids properly.

b) If a compulsory site inspection/briefing session is convened, minutes of the meeting must be recorded together with an attendance register. The minutes must include the queries/requests raised for clarification at the meeting, together with the responses to those requests without identifying the sources of the requests. It is recommended that questions be submitted in writing by Bidders and that Transnet respond in writing to all bidders within 48 hours of the briefing session. The minutes must be forwarded to all Bidders who attended the meeting so as to ensure that the same information is provided to

all Bidders. This would enable the Bidders to take the minutes into account in preparing their Bids.

c) Bidders are obliged to attend scheduled compulsory briefing sessions, as failure to do so will result in disqualification of the Bids. The bid notices must clearly indicate this. Discretion must therefore be exercised in deciding whether or not a compulsory site inspection or briefing session is absolutely necessary.

d) If a compulsory briefing session is not considered absolutely essential, consideration could be given to having a non-compulsory briefing session. In such instances, attendance at such a meeting would be on a voluntary basis. The RFX documents must clearly state this. The RFX should also state that Transnet will not be held responsible if any Bidder who did not attend the non-compulsory session subsequently feels disadvantaged as a result thereof.

e) Latecomers to any briefing session will be allowed to attend. However, no information will be repeated for the benefit of latecomers. They must be advised that the information will be made available to them by means of the minutes of the briefing session. The minutes will be made available to all attendees who completed the attendance register. Details of latecomers (e.g. company name and names of their representatives, as well as approximate time of (late) arrival) must be recorded on the site register, so as to ensure that Transnet's interest is protected.

17.1.11 Electronic issuing and receipt of Bids

ODs may at their discretion, and provided that they have introduced sufficient controls to prevent abuse, make use of electronic technology to:

- advertise bids electronically (e.g. website);
- issue bid documents electronically;
- enable electronic payment for bid documents where applicable; and/or
- receipt of Bids electronically.

This will only be allowed **provided** that the following basic requirements are complied with:

a) Potential Bidders who are not in a position to access electronic media must also be accommodated;

b) There is an option for potential Bidders to obtain either electronic or hard copies of the bid document;

c) Where applicable, bid documents must be paid for, irrespective of whether the bid documents are obtained in hard copy or electronically;

d) Appropriate measures must be taken to protect electronic versions of the bid document;

e) Bids must be received in a controlled environment, and may only be accessed /downloaded from the dedicated 'Electronic Tender Box' (ETB) after the closing date and time;

f) The ETB should be able to send an automated acknowledgment confirming date and time of delivery;

g) There should be a backup system in case of server failure;

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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;

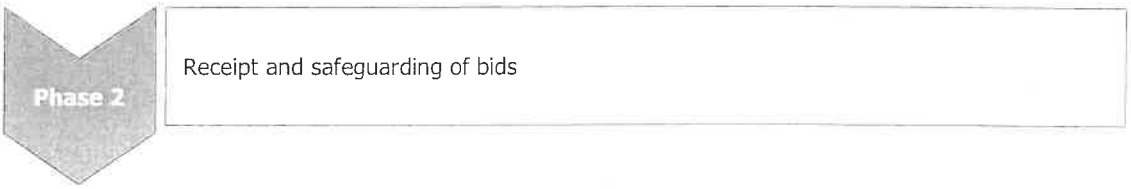
j) The ETB should be able to handle unlimited numbers of last minute Bids. It should be impossible to overload;

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.



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

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

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.

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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.

Background and Context

Procurement planning

Go to Market

SECTION D: EVALUATION AND ADJUDICATION

Chapter 18: Evaluation and Recommendation

- Summary of bid evaluation process
- Test for administrative responsiveness
- Preparation for evaluation
- Substantive test for responsiveness
- Evaluation of bid against pre-determined criteria
- Final evaluation
- Recommendation

Chapter 19: Post Tender Negotiations (PTN)

- Purpose of PTN
- Authority to engage in PTN
- PTN process
- Approval to award business after PTN

Chapter 20: Adjudication

- General principles of adjudication
- The role of the AC during adjudication
- Risk evaluation
- Splitting of business
- Disagreement regarding award
- Non-award / cancellation of bids

Contract Management

Functions of Governance Structures

Appendices

CHAPTER 18 : EVALUATION AND RECOMMENDATION

SUMMARY OF BID EVALUATION

It is the responsibility of the evaluation committee to ensure that the evaluation takes place within the validity period. If there are delays, the validity date(s) of the bids should be extended, using the process described in Chapter 17 *(Bid Administration)*.

The following are the key steps to be followed during the evaluation of Bids.

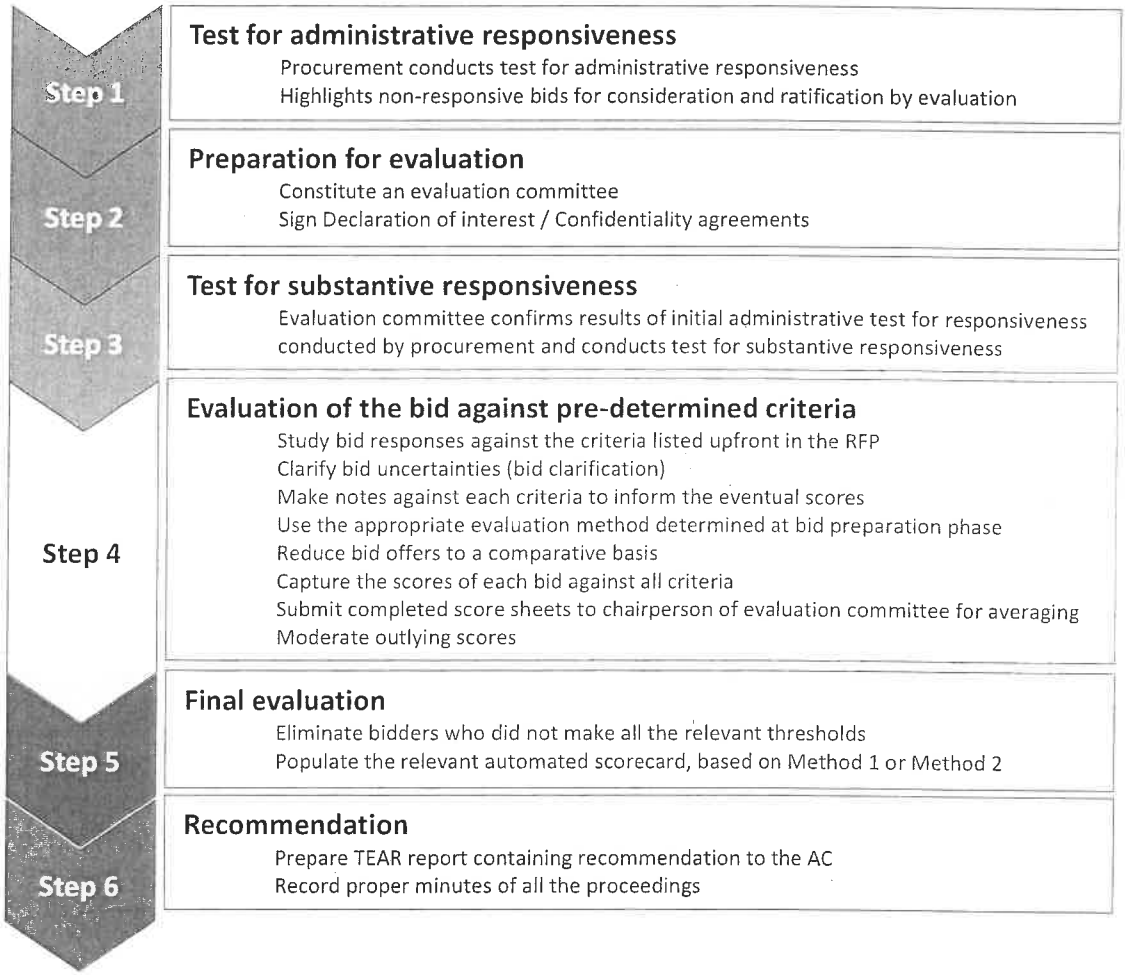
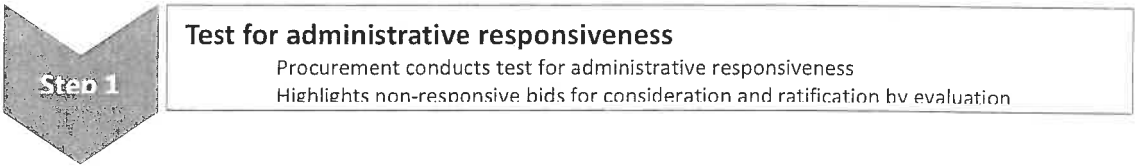


Figure [29] – 6 Steps for Bid Evaluation



18.1 TEST FOR ADMINISTRATIVE RESPONSIVENESS

18.1.1 Test for Responsiveness based on returnable documents submitted and signatures on the Bid documents:

a) Check the Bid document to see whether all returnable documents called for in the bid documents and which are required for evaluation purposes and/or incorporation into the contract have been received.

b) The RFP must clearly identify those material returnable documents which must be submitted upfront with the bid submission. If any such mandatory returnable documents are not provided upfront, the bid must be regarded as non-responsive e.g. tax clearance certificate, etc.

c) Certain other returnable documents, although essential, may not result in automatic elimination if not provided upfront. In such instances, a reasonable grace period (about 5 Working Days) may be afforded to the Bidders to supply the required documents. If the Bidder does not provide the document(s) by the end of the grace period, the Bid(s) must be regarded as non-responsive.

d) A third category of returnable documents are those that are required from an administrative perspective but which are not material or essential to the bid e.g. a completed Vendor Application Form. The failure to submit such documents for the purpose of evaluating and awarding the business will not result in the bid being regarded as non-responsive, but could be requested at a later stage.

e) If a Bidder had omitted to sign certain pages of the Bid documentation, he/she may be requested to do so within a reasonable period of time (about 5 Working Days). If the signature is not provided within the timeframe provided, the Bid must be regarded as non-responsive.

18.1.2 A schedule must be drawn by Procurement to indicate whether the Bids received are administratively responsive or not, and the efforts expended to obtain any outstanding information (see example in Figure [30] below):

Returnable Document Comparative Schedule (add fields for all returnable documents)

RFX Number _____

Bidder	Correctly Recorded by AC Secretary	Tax Clearance Certificate	VAT Registration Certificate	PSIRA Certificate	Due date for responses after grace period	Docs received by due date	Returnable Documents outstanding after due date	Bid responsive	Remarks
A	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	
B	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	
C	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	
D	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	
E	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicate outstanding documents	Yes / No	

Figure [30] – Schedule to record Bid compliance

Preparation for evaluation

Constitute an evaluation committee

Sign Declaration of interest / Confidentiality agreements

18.2 PREPARATION FOR EVALUATION

18.2.1 Composition of Evaluation Committee / Panel

The composition of the evaluation committee would vary depending on the nature of the particular goods/services being procured. As a guide, evaluation committees should be determined as follows:

a) **Low complexity evaluations**

There are very limited criteria for consideration due to the absence of complexity. Typically, criteria can be assessed through a 'yes' or 'no' question. There must be at least two members on the committee - one from the procurement department and the other from the user department.

b) **Complex evaluations**

Where a number of criteria are evaluated on a weighted point system method, the evaluation committee should be cross-functional and should be composed of procurement personnel and officials from the department/s requiring the goods/services.

There must be at least three members, one of which must be a subject matter expert. When it is deemed necessary, independent experts may also be invited to a bid evaluation committee in an advisory capacity.

It is recommended that the people who serve on the CFST do not also serve on the bid evaluation committee. Only if separation of duties is not possible due to a lack of resources/expertise, may the CFST and the evaluation committee be allowed to have the same membership. If the same people served on both the CFST and evaluation committee, this must be recorded in the minutes, and be disclosed to the relevant AC.

c) **Highly complex evaluations**

A properly appointed multi-disciplinary evaluation team must be utilized. The evaluation committee may comprise sub-committees. Each sub-committee must be composed of at least 3 or more specialists in that field of expertise. A sub-committee will evaluate Bids only in the field that they are tasked with, e.g. Quality, commercial, SD, preference, etc.

(For bids falling within the threshold for High Value Tenders also refer to the High Value Tender Process available on iSCM Transnet Intranet).

18.2.2 Declaration of Interest / Confidentiality

a) Prior to commencing with the evaluation all members of the evaluation panel must sign a Declaration of Interest form, indicating whether or not they have an interest in the particular bid or any of the Bidders. Also refer to the Code of Ethics (paragraph 5.5 above) for further information on Declaration of Interest.

b) Information relating to the evaluation of Bids shall not be disclosed to suppliers or to any other person not officially involved in the evaluation or adjudication process. A confidentiality agreement must therefore be signed by all members at the start of every meeting of the evaluation committee.

18.2.3 Setting the ground rules for evaluation and rules of conduct

At the onset of the initial meeting, the Chairperson of the committee must indicate to the members that the following scoring methodology is to be used:

a) Confirm whether Method 1 or 2 will be followed as well as the weighting per category and thresholds as set out in the RFP (See Chapter 13 – Determining Evaluation Criteria).

b) Confirm whether scoring will be done in terms of a desktop evaluation only, or whether it will also include site visits, presentations and/or interviews. This should be indicated in the RFP;

c) Validate scorecard, including the prompts for judgment;

d) Members of the evaluation committee must score each Bid individually, i.e. each member must score every Bid without consulting any other members;

e) Thereafter, the raw scores given by each evaluator in respect of every criterion and sub criterion are populated onto a comparative score sheet;

f) The Chairperson of the evaluation committee identifies any numerical outliers (if any) and follows a process of moderation;

g) After moderation, the scores given by each of the evaluators in respect of each Bidder are averaged and allocated per Bidder;

h) The weightings for each criterion and sub criterion are then allocated against the average score for each Bidder, to determine the final weighted score per Bidder.

18.2.4 Rules of Conduct

a) Consistency throughout the whole bid evaluation process is essential. All members of the evaluation team must evaluate all the bid responses. This also entails having a kick-off meeting where the entire evaluation team is present and all aspects of the evaluation process is agreed upon to ensure that everyone is aligned.

b) Although it would be ideal, the evaluation of all bids need not necessarily be completed at one sitting of the CFET.

c) It is important that all members are present at the moderation session, be it in person or via teleconference. All members must sign off on all the relevant score sheets, including the final automated scorecard (previously known as the B-BBEE scorecard)

d) Minutes must be kept of all decisions and important deliberations taken at each meeting of the evaluation team.

e) Document security must be maintained at all times.

18.2.5 Evaluation criteria

Bids may only be evaluated in accordance with the criteria specified in the bid documentation (such as specific returnable documents, pricing, quality, commercial, SD, preference, financial stability, etc.).

a) In cases where an evaluation criterion was unclear and it resulted in divergent and incomparable responses being received from the Bidders, the criterion should be clarified and sent to all Bidders. They will then be required to resubmit Bids only in respect of such amended criterion/criteria.

b) In cases where a critical factor was not included in the evaluation criteria, an addendum to the RFP should be issued and sent to all Bidders to provide information pertaining to the additional criteria. The CPO must approve the inclusion of the additional criteria as well as the amendment to the RFP.

c) However, if the required clarity in respect of a) above or the introduction of new criteria in respect of b) above, introduces a substantive change to the RFP then, in the interest of fairness, an amended RFP should be issued by issuing a new tender to the market.

Test for substantive responsiveness

Evaluation committee confirms results of initial administrative test for responsiveness conducted by procurement and conducts test for substantive responsiveness

18.3 TEST FOR SUBSTANTIVE RESPONSIVENESS

The evaluation committee is required to confirm the result of the administrative test for responsiveness undertaken by Procurement.

A Bid is substantively responsive if it conforms to all the terms, conditions, scope and/or specifications of the bid documents without material deviation or qualification. A Bid is regarded as substantively responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bid documents. Any such deviations must be quantified as far as possible. These deviations must be considered during the evaluation and comparison of Bids.

Before evaluating the Bids, members of the evaluation team are required to:

18.3.1 Verify the names of the entities appearing on the bid documents against the correspondence (copy of the bid register) received from the AC Secretariat (i.e. check that only those Bids received through the Secretariat, are being considered);

18.3.2 Check that all the pages of the respective Bids had been date-stamped by the Secretariat;

18.3.3 Check that each Bid reflects a consecutive stamped number, consistent with the Secretariat's correspondence. (This normally forms part of the Secretariat's bid date stamp).

18.3.4 Check that all pages of the bidder's covering letter (if any) and all pages containing pricing, delivery and any other conditions, which may have a direct influence on the evaluation process, have also been initialled by the Secretariat;

18.3.5 Check that the last (highest numbered) Bid also reflects the stamp "and last" (or "and only", in respect of instances where only one Bid was received) on all its pages; and

18.3.6 Any deviation from the above must be brought to the attention of the AC Secretary. A memo explaining such deviation must be compiled by the Secretary

and submitted to the evaluation team. Copies of this memo shall be kept on the Secretary's file as well as the evaluation file. The memo shall also be included in the AC agenda pack. The evaluation committee shall express an opinion on such deviation in their final report to the AC.

18.3.7 Confirm the results of the initial test for administrative responsiveness conducted by Procurement.

18.3.8 Reject Bids that do not pass the test for substantive responsiveness.

A Bid is considered substantively non responsive if it:

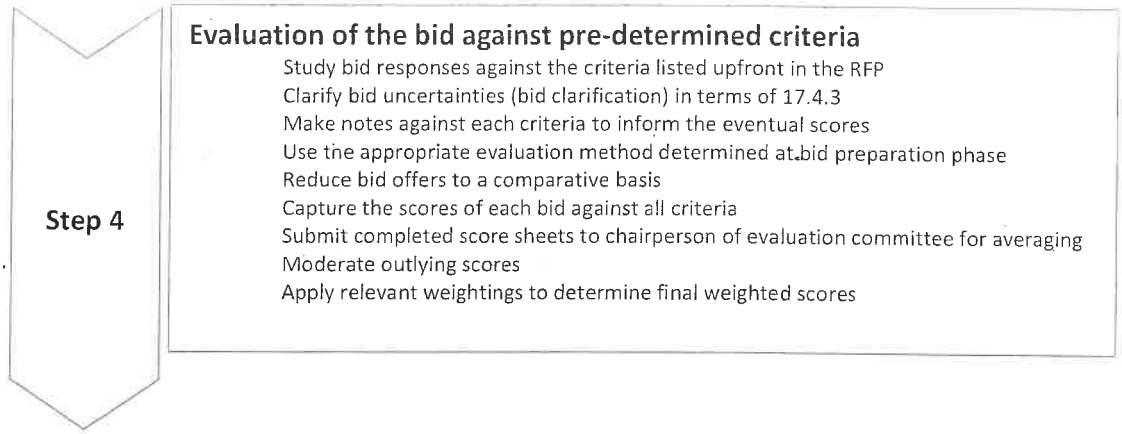
(i) does not contain pricing or response to any other crucial aspect stated in the RFP document;

(ii) does not meet minimum pre-qualification criteria;

(iii) materially departs from the scope, or specification of the Goods/Services requested; and

(iv) would affect the competitive position of other Bidders presenting responsive Bids, if it were to be rectified.

Non-responsive Bids must be rejected and Bidders shall not be allowed to modify their Bids once they have been rejected as non-responsive. Exclusion of a Bid as non-responsive must be defensible based upon objective and justifiable grounds.



18.4 EVALUATE THE BID AGAINST PRE-DETERMINED CRITERIA

Evaluate the Bid against pre-determined criteria using comparative schedules or score-sheets as follows:

18.4.1 Ensure that the evaluation process is strictly aligned with the evaluation methodology outlined in the bid documents, i.e. either Method 1 or Method 2 (see Chapter 13 – Determining Evaluation Criteria). If certain Bidders have not met the thresholds for Phase 1, no further scoring in respect of those Bidders takes place in Phase 2.

a) **Local Content**

If the transaction falls within one of the designated sectors as determined by DTI, and it was stated as such in the RFX document, Local Content/manufacture (LC)

will always be evaluated as a first step, to determine whether such Bid complies with the stipulated minimum threshold for that particular designated sector. Bidders that do not meet the stipulated minimum threshold for LC do not progress any further and are rejected at this stage. This applies irrespective of whether Method 1 or 2 is utilised. The threshold as determined by the DTI is not negotiable and bidders who do not meet the minimum set thresholds will be disqualified and will not be evaluated any further.

b) **Supplier Development/ Quality (functionality) and Preference**

(i) Evaluating each Bid individually

Each member of the evaluation committee is required to study Bid responses and record observations. The evaluator must first get an overall view of each Bid. This is done by studying each Bid individually, and then comparing it to the evaluation criteria.

The prompts that were provided for judgment or qualitative indicators relating to all SD criteria and any sub-criteria that are linked to a specific score should be used in assessing the Bids.

The evaluation of Bids shall be based on the information contained in Bid submissions, and where relevant from interviews, presentations and site visits. **Bids should not be evaluated on the basis of speculation or the personal knowledge or subjective experience which an evaluator has of any particular Bidder.**

The evaluator must record observations on the bidder's response to each specific evaluation criterion on the score sheet. References to page numbers should be added where applicable.

At this stage, no scoring is done.

Score-sheet 1 (*Figure [31]* below is used for such observations and is available on the Transnet Intranet).

Sheet 1	Working scoresheet							
RFP Number	(Insert RFP Number)							
Name of evaluation committee member	(Insert name of evaluation committee member							
CRITERIA (Supplier Development	BIDDER NO.1		BIDDER NO.2		BIDDER NO.2			
	Score	COMMENTS	Score	COMMENTS	Score	COMMENTS		
Value of investment in plant	Do not complete score at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria	Do not complete at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria	Do not complete at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria		
Reduction in import leakage								
Potential increase in export content								
Number company employees to be trained								
Number of downstream supply chain individuals to be trained								
Certified training								
Rand value on training to be spent in the industry								
% of planned procurement from QSEs								

Figure [31] – Score-sheet 1

(ii) Scoring

The next step is to allocate scores on Score-sheet 1 above. This is done by scoring one evaluation criterion at a time for all Bidders. E.g. compare and score the responses to 'Value of investment in plant' for all Bidders before moving on to the next criterion.

All scores must preferably be out of 10 (i.e. the 1 to 10 scale, although a 1 to 5 scale can also be used if specific objective measuring criteria has been set).

Finally, each member's individual scores in respect of each bidder must be carried over from Sheet 1 and inserted on score sheet 2 – see below.

Sheet 2	Final member scoresheet			
RFP Number	(Insert RFP Number)			
Name of evaluation committee member	(Insert name of evaluation committee member			
CRITERIA (Supplier Development)	**BIDDER NO. 1**	**BIDDER NO 2**	**BIDDER NO. 3**	**BIDDER NO. 4**
	Score	**Score**	**Score**	**Score**
Value of investment in plant	5	7	5	7
Reduction in import leakage	4	6	5	6
Potential increase in export content	5	6	4	6
Number company employees to be trained	5	8	5	8
Number of downstream supply chain individuals to be trained	4	5	4	7
Certified training	5	6	3	8
Rand value on training to be spent in the industry	4	7	5	7
% of planned procurement from QSEs	5	6	4	6
Total	**37**	**51**	**35**	**55**

Figure [32] – Score-sheet 2

(iii) Moderating scores

The Chairperson of the evaluation committee transcribes all the individual members' scores from the respective score sheets (Sheet 2) onto the consolidated score-sheet. (Score-sheet 3, see example (*Figure [33]*) below. These scores should be regarded as provisional and subject to moderation.

In the event of significant variances in individual scores, the scores must be moderated at the discretion of the Chairperson of the evaluation committee. An outlying score/s should as a general guideline be determined where there is a point differential of more than 4 points on the 10 point scale as compared to the other scores. The outlying scorer (Nivan, in the example of Sheet 3 below) must be asked to motivate his/her score(s). If the score can be rationally explained, the score can remain unchanged. Other scorers should be afforded the opportunity to reconsider their scores, in light of the explanation provided by the outlier. If the outlier cannot rationally explain his/her score, he/she must be asked to reconsider the score. If the outlier refuses to reconsider the score, the chairperson of the evaluation committee may approach the AC Chairperson for a ruling on whether the outlier should be replaced with a different scorer or not.

The process followed with moderation of scores must be recorded in the minutes of the evaluation committee. Any changes to a score sheet due to the moderation must be countersigned by both the scorer and the Chairperson. This should also be cross-referenced with the relevant minute/resolution.

(iv) Weighting scores

The following provides an explanation on how weighted scores are arrived at. However, there is an automated score sheet available on the iSCM Transnet

Intranet, where the weighted scores are automatically calculated based on the raw scores.

Step 1

The Chairperson calculates the average scores per criterion per Bidder (after moderation). This is done by dividing the sum by the number of evaluators to arrive at an average score for each particular criterion per Bidder.

Sheet 3	Combined score sheet									
RFP Number	(Insert RFP Number)									
CRITERIA (Supplier Development)	Bidder No. 1 Evaluation Member Scores					Bidder No. 2 Evaluation Member Scores				
	Nomhle	Thulani	Bill	Nivan	Average	Nomhle	Thulani	Bill	Nivan	Average
Value of investment in plant	4	5	3	8	5	6	7	7	1	5.25
Reduction in import leakage	3	4	4	8	4.75	5	6	5	1	4.25
Potential increase in export content	4	5	3	9	5.25	5	6	6	2	4.75
Number company employees to be trained	4	5	4	8	5.25	5	8	5	4	5.5
Number of downstream supply chain individuals to be trained	5	4	5	7	5.25	6	5	7	3	5.25
Certified training	4	5	4	8	5.25	5	6	6	2	4.75
Rand value on training to be spent in the industry	3	4	4	7	4.5	5	7	6	2	5
% of planned procurement from QSEs	4	5	3	8	5	6	6	5	1	4.5
Total	31	37	30	63	40.25	43	51	47	16	39.25

Figure [33] – Score-sheet 3

Step 2

The Chairperson must now calculate the weighted scores against each criterion to determine the total weighted score against each Bidder. (See example in Score-sheet 4 - Figure [34] below)

For example, a score of 8 out of 10 for a particular criterion that has a weighting of 20 will be calculated as follows:

$$\frac{8}{10} \times 20 = 16$$

Sheet 4	Final weighted scoresheet								
RFP Number	(Insert RFP Number)								
CRITERIA (Supplier Development)	Weighted maximum	Bidder Number							
		No. 1		No. 2		No. 3		No. 4	
		Score	Weighted	Score	Weighted	Score	Weighted	Score	Weighted
Value of investment in plant	20	5	10	7.5	15	4	8	7	14
Reduction in import leakage	10	4.75	4.75	6	6	5	5	6	6
Potential increase in export content	10	5.25	5.25	6	6	4.5	4.5	6	6
Number company employees to be trained	20	5.25	10.5	8	16	5.5	11	8	16
Number of downstream supply chain individuals to be trained	10	5.25	5.25	5	5	4	4	7	7
Certified training	5	5.25	2.625	6	3	3	1.5	8	4
Rand value on training to be spent in the industry	10	4.5	4.5	7	7	5	5	7	7
% of planned procurement from QSEs	15	5	7.5	5	7.5	4.5	6.75	6	9
Total	100	40.25	50.375	50.5	65.5	35.5	45.75	55	69

Figure [34] – Score-sheet 4

The total weighted score above represents the ranking of each Bidder in respect of SD.

Note: The score for preference (B-BBEE scorecard only), together with the score for SD determines the SD Threshold. See example below, which indicates how the SD score and the B-BBEE score according to recognition level added together are used to determine the consolidated SD/preference score for threshold purposes assuming a 60% threshold.

Bidder	SD (50)	Scorecard (50)	TOTAL (100)	
Bidder No. 1	35	40	75	
Bidder No. 2	41.5	50	91.5	
Bidder No. 3	43.25	35	78.25	
Bidder No. 4	45	45	90	
Bidder No. 5	25	5	30	(Non-responsive - minimum threshold not met)

Figure [35] – Consolidated scorecard for SD /B-BBEE

18.4.2 Quality / functionality offer

For the purpose of evaluation, Quality is considered to comprise all the criteria set out in the RFP, except price (or TCO), SD and preference (B-BBEE and/or FRC).

As with the evaluation of the SD offer, the Quality/Functionality proposal must be evaluated against the criteria as stipulated in the RFP. Repeat the process as stipulated in paragraph b), utilising the Quality/Functionality criteria and component weightings.

18.4.3 Preference

Preference is scored according to the B-BBEE scorecard only and the FRC criteria (Current and Future) will only be used in the final evaluation stage.

Step 5

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.

All Bids that have achieved or exceeded the minimum qualification thresholds for firstly, LC (if applicable), SD/Preference and Quality/Functionality proceed to Phase 2. They must now be evaluated further in terms preference and SD for a second time, as well as Price.

b) **Method 1: Phase 2** (Refer paragraph 13.1.1 above)

Only the Bidders who had met the predetermined thresholds for firstly LC (if applicable) and both SD/Preference and Quality progress to this stage.

(i) Score for SD

With regard to the evaluation of SD in this phase, no new evaluation takes place. The points awarded to Bidders in Phase 1 for SD are simply weighted and added to the weighted scores for preference and FRC both Current and Future strictly in terms of the criteria as stipulated in the RFP document.

(ii) Score for Price

Before conducting a mathematical evaluation of price, a cognitive evaluation will be conducted in order to determine the reasonableness of the price quoted. All bidders will be required to provide supporting documentation motivating their price e.g. complete a checklist indicating which aspects of their bids have been quoted for. Such a checklist will be included as a returnable document in Transnet tenders and will allow Transnet to conduct a comparative analysis in terms of pricing. Bidders who fail to quote on all Transnet mandatory requirements will be declared non responsive.

Next, select and utilise the automated scorecard for Method 1.

The following formula has been built into the automated score sheet to calculate the score for price:

$$Ps = \frac{Pbm}{Pt} \times W1$$

Where:
- Ps = Score for Bid under consideration
- Pt = Comparative price of Bid under consideration
- Pbm = Benchmarked price calculated using average price of bids received less 10%
- W1 = The percentage score given to price

Bidders with a price lower than the benchmark will be given an automatic score of the full points allocated to price.

The method to calculate the benchmark against which all prices are evaluated may be adjusted on motivation to and approval by the GCE.

A bidder's score for price must be added to the consolidated score for SD, BBBEE and FRC. The Bid with the highest score must be selected unless there are objective criteria other than the evaluation criteria that justify the award to another Bidder. This discretion must be exercised sparingly. Examples which would justify the award to a bidder other than the highest ranked bidder includes instances where the highest ranked bidder has just been fined a huge amount by the Competition Commission which impacts on its ability to deliver on the contract; or notice has just been received from iSCM Governance that the company has been placed on Transnet's List of Excluded Bidders.

Where two or more Bids have scored the highest equal points based on Price and SD/Preference, the Successful Bid must be the one with the highest score on preference.

Pricing Offer

All Bid pricing offers must be reduced to a common base in a comparative schedule in order to facilitate a fair comparative analysis. In order to facilitate a fair comparison between Bids, it is necessary to distinguish between the bid price and comparative price as the Bid price may not include certain factors impacting on cost. As stated in chapter 16 above on Bid Preparation, it is necessary to provide all Bidders with a uniform pricing schedule to ensure all Bidders include not only the base price, but all other factors that may influence total cost of ownership (TCO). If a comprehensive pricing schedule is provided by all Bidders, it will ensure that prices received are already on a common basis. Failing this, Bidders must be asked to re-submit prices in accordance with a clear pricing schedule; alternatively, prices must be reduced to a comparative schedule as follows:

- Whether the cost of transport has been factored into the Bid price.
- Incoterm-related costs, i.e. all other transit-related costs in respect of Goods supplied from abroad, must be added to the Bid price. These include: inspection costs, freight and insurance (from the place where the Goods have been offered to the destination where it shall be delivered), landing charges, customs duties, import duties, wharfage, etc.
- Unconditional discounts must be subtracted from the Bid price, where applicable.
- Other considerations which affect a non-fixed Bid price such as price adjustment factors, currency, etc. that affect the prices over the full period or part of the contract period.
- Time value of money where cash flow implications differ, e.g. when upfront or staggered payments are required rather than a lump sum payment at the end of the contract.
- Differences in Quality which can be expressed in monetary value, e.g. if one bidder's brake blocks guarantees a 20% more useful lifespan than another bidder's.
- Any other incidental costs which may arise from the acceptance of an offer.

Any modification to the bidder's original Bid price due to the process of reaching comparative pricing must be validated with the Bidder him/herself.

Arithmetical errors, i.e. obvious arithmetical errors, must be pointed out to the Bidder (with permission from the AC Secretary) and corrected figures utilised for comparative purposes.

The comparative schedule should reflect the comparison of prices under the following headings (delete where not applicable):

- Tendered prices

- Arithmetical corrections
- Comparative prices
- Projected prices
- TCO adjustments
- Total comparative price

(iii) Score for Preference

Preference is scored according to the B-BBEE scorecard and FRC Current and Future in the final evaluation stage.

EXAMPLE 1 (Automated score sheet in respect of Method 1)

BASIS FOR COMPARATIVE OFFER : METHOD 1: PRICE (60) SD (20) BBBEE (10) AND FRC (10)

Name of Tenderer : Ranked lowest to highest Price	Financial Offer (P)	Comparative Offer (Pm)	Points for Financial Offer (Max 60)	Points for SD (Max 20)	BBBEE Level of Contribution (Level 1 to 9)	BBBEE Point out of 10 (scorecard only)	Points for FRC (Max 10)	Total point out of 100	Overall Ranking Price, SD, Function-ality and BBBEE	% Premium payable	Premium payable in Rands
BIDDER E	NON-RESPONSIVE - Minimum threshold for SD and BBBEE not met										
BIDDER A	R 119,000,000	R 119,000,000	60.00	14.00	Level 3	8	7	89.00	2	0.00	R 0
BIDDER B	R 120,837,221	R 119,000,000	59.07	16.67	Level 1	10	5	90.74	1	1.54	R 1,837,221
BIDDER C	R 122,896,753	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.

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		16.6	10	26.6	
BIDDER C	90%	36		17.3	7	24.3	
BIDDER D	95%	38		18.6	9	27.6	
BIDDER E	50%	20		10	1	11	(Non-responsive - minimum threshold not met)

MINIMUM THRESHOLD FOR SD and BBBEE = 15, i.e. 50%

Step 6

Recommendation

Prepare TEAR report containing recommendation to the AC
Record proper minutes of all the proceedings

18.6 RECOMMENDATION

18.6.1 Tender Evaluation and Recommendation Report (TEAR)

After a bid is evaluated a TEAR report should be completed by the Chairman of the evaluation committee setting out how all relevant evaluation criteria were measured and how Bidders were ranked as a result of the evaluation process. The motivation for the award of business must be supported by the evaluation score sheets as well as a copy of the automated scorecard. These documents must accompany the AC submission regarding the final award of business or the submission to short-list for post-tender negotiation.

The TEAR report must substantiate the results of the evaluation. This includes reasons why a Bidder was eliminated, for example, due to non-responsiveness or failure to meet any minimum technical qualifying criteria.

18.6.2 The recommendation to the AC

a) A recommendation for the award of the business must be drafted for submission to the relevant AC. This must be accompanied by the evaluation report motivating how all the relevant selection criteria have been evaluated.

The evaluation panel may be called upon by the AC to clarify any uncertainties.

b) When for whatever reason, it is considered in Transnet's best interest to award only a portion of the scope of requirements, Transnet should consider giving an opportunity to all participants in the bid process to re-bid on the amended scope by a new closing date and time. This is because a reduction in scope may impact on pricing / discounts offered by Bidders which in turn could affect their competitive position.

18.6.3 Reasons for recommendation

a) The reasons for recommending a particular Bid(s) must be clearly stated by the recommending officers.

b) When only one technically Acceptable Bid is received and recommended for acceptance, it shall be indicated whether the prices are fair and reasonable and how this has been determined (e.g. benchmarking against previous prices etc.).

c) If a Bid other than the Bid with the overall highest score is selected, the recommending officer shall provide a full explanation for this decision, and state which objective criteria are relied upon to justify the recommendation of such Bid.

d) In the event that two or more bids have scored equal total points, the successful bidder must be the one which scored the highest number of preference points for B-BBEE, except in the case of Method 2 where the equal scorer, with the highest score for quality will be the successful bidder.

e) Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

CHAPTER 19 : POST TENDER NEGOTIATION

19.1 POST TENDER NEGOTIATION (PTN)

19.1.1 Post Tender Negotiation is an effective tool to drive down cost or extract further value for Transnet and can be used very effectively in conjunction with any procurement mechanism. PTN is used after the evaluation process has been completed and the Preferred Bidder/s have been identified and approved by the relevant AC, based on the criteria as set out in the RFX. PTN is normally reserved for high-value, strategic commodities, but it may also be used in lower value transactions where it is considered that further value for Transnet can be extracted from this process. Depending on the circumstances, this tool can be used either with all technically compliant Bidders, or a selected short-list, or even with the Preferred Bidder only, but subject to the following requirements to ensure good corporate governance.

19.1.2 In order to ensure that PTN is conducted in a fair manner, shortlisted Bidders should be negotiated with individually. The negotiation process should follow the same agenda for all Bidders. After negotiation the Bidders should submit their best-and-final offers, in the relevant tender box, by a specified closing date and time. After proper evaluation of all best-and-final Bids received, business is ultimately awarded to the highest rank Bidder, based on these offers.

19.1.3 PTN may only take place if the RFX document contained a clause stating that 'Transnet reserves the right to enter into post tender negotiations with a Preferred Bidder or any number of shortlisted bidders'.

19.1.4 Before PTNs are conducted with the Preferred Bidder or short-listed Bidders, it must be approved by the relevant AC. The R-value of the proposed contract to be negotiated will determine within which AC's jurisdiction the matter falls. (Refer to paragraph 19.3 below for instances where PTN is envisaged for transactions falling below the AC jurisdiction.) The submission requesting authority to negotiate should include the following:

- list of Preferred Bidders (or Bidder) and how the list has been determined including the threshold set for qualification for PTN;
- the composition of the negotiating team;
- the targeted price reduction;
- the increase in SD commitment;
- B-BBEE commitment;
- the motivation for PTN; and
- other aspects that will be negotiated to achieve a "win-win" situation, e.g. payment terms, minimum order size and frequency, delivery, lead times, etc.

19.2 AUTHORITY TO ENGAGE IN PTN (transactions falling within AC jurisdiction)

19.2.1 Matters falling within the jurisdiction of the AC (i.e. above the minimum R-threshold of the AC), should be submitted for the approval of the AC in the normal manner, indicating in detail the process followed in determining the shortlist of Bidders to be negotiated with, details of the agenda that will be negotiated, etc. (refer to paragraph 19.4 below).

a) Upon receiving AC approval, and completion of the PTN process, and the resultant evaluation and scoring of the best-and-final Bids, full details of the

best-and-final offers, must be provided when a recommendation on the final award of the business is made to the relevant AC

b) On these higher value transactions, the negotiating team to be appointed by the relevant AC, shall comprise of procurement, SD, technical, financial and commercial (marketing) and legal disciplines, (where appropriate), to facilitate unity of purpose from Transnet's perspective and to enable the Bidder to deal with all relevant matters before making a final offer.

19.3 STANDING AUTHORITY TO PTN (transactions falling below AC jurisdiction)

19.3.1 It would also be acceptable, especially in respect of transactions falling below the AC minimum Rand thresholds, for certain officials (preferably in procurement), to be given specific standing Delegated Powers to conduct and/or authorise PTN, without the necessary prior AC approval as contemplated in paragraph 19.2 above.

a) This authority must be obtained from the Manager or CPO and must be included in the Delegation of Authority of the relevant official. Copies of this should be filed with the AC Secretariat. The standing Delegation of Authority must clearly reflect the maximum transaction value for which the official may conduct or approve PTNs, without prior AC approval. Full details of all such PTN transactions undertaken, should be reported to the AC at regular intervals.

b) A standing authority to negotiate is different from a standing authority to communicate (refer to paragraph 17.4.3) and separate PTN authority must be obtained. Standing Delegated Powers to negotiate will be granted with great circumspection and only to employees who have demonstrated the necessary negotiation skills.

c) Detailed records must be kept in the relevant files of the Bidders who have been negotiated with, how their eligibility for PTN was determined, including their best-and-final offers received. Copies of such standing authority must also be kept on the relevant files. Standing authority to conduct/approve PTN should not exceed the minimum R-value thresholds of the AC. In such cases the process as outlined in paragraph 19.2 above detailing the AC's involvement in the various stages, must be followed.

19.4 PTN PROCESS

19.4.1 Under no circumstances may prices of one Bidder be disclosed to another with the request to improve on such price in order to be awarded the business. This is considered as 'horse-trading' and is considered an unfair business practice. Such misconduct will not be tolerated and will result in disciplinary action.

19.4.2 It is important that all members of the PTN team sign declarations of interest and non-disclosure or confidentiality agreements when appointed to such teams. These forms must be kept on the appropriate files as an audit trail.

19.4.3 Negotiations must be preceded by thorough research and a caucus discussion by the cross-functional negotiation team to be able to obtain a co-ordinated approach.

a) To ensure fairness, the same agenda must be used with all short-listed Bidders to ensure that all Bidders are provided with the same information and the same opportunity to improve their Bid in all respects. The agenda must be made known in advance to all shortlisted Bidders so that they can prepare for the negotiations. The final evaluation criteria against which the best-and-final Bids

will be scored should also be disclosed to the shortlisted Bidders. Such criteria may only differ marginally from the original criteria as per the RFX document.

b) The objectives of the negotiating team must be recorded in consultation with the relevant disciplines concerned (e.g. financial, SD, technical and commercial).

c) The objectives should be approved by the relevant AC. The financial advantages, or other objectives sought (e.g. B-BBEE commitment, Enterprise Development initiatives, faster delivery, etc.), must be quantified and no negotiation will be regarded as final until all the approved objectives have been properly negotiated by the negotiating team. After receipt and evaluation of the best-and-final offers, the results must be recorded against the envisaged objectives.

d) Under no circumstances should a Preferred Bidder be informed that he has been awarded a contract prior to the PTN process, as that would jeopardise Transnet's negotiation power.

e) Where PTNs are conducted with a duly approved short-list of Preferred Bidders, all such Bidders must be requested to deposit their "best-and-final offer" in the tender box by a set closing date.

f) This method may also be employed in the single Preferred Bidder scenario, if there is reason to believe that this may yield a further price reduction, or extract further value for Transnet, subsequent to the negotiation session.

g) Although PTN offers shortlisted Bidders the opportunity to improve upon their Bid in areas such as price, quantity, etc., care should be exercised to ensure that the final contract negotiated does not differ substantially from the terms and conditions of tender set out in the original RFP document.

19.5 APPROVAL TO AWARD BUSINESS AFTER PTN

19.5.1 Business may be awarded to one of the shortlisted Bidders or split between any number of shortlisted Bidders.

19.5.2 It is possible and permissible for the ranking of shortlisted Bidders to change from the first evaluation stage when the shortlist was determined, to the final ranking after PTN was conducted and the best-and-final Bids were evaluated, provided that PTN was conducted strictly in terms of the rules as stipulated above.

19.5.3 In instances where the relevant AC has authorised PTN with a shortlist of Preferred Bidders, the ultimate award of the business, whether awarded to one or more than one shortlisted contender (i.e. a split-award) should again be presented to the relevant AC which approved the Preferred Bidder/short-list.

19.5.4 In instances where the relevant AC has authorised PTN with a single Preferred Bidder, the ultimate award of the business must also be presented to the relevant AC for approval to ensure that the final contract is substantially the same as the terms indicated in the RFP, unless the AC approved the preferred bidder and the subsequent award of the contract, upfront, due to operational requirements, (urgency etc), in which case the final negotiated terms, and contract value needs to be reported to the AC for information purposes only.

CHAPTER 20 : ADJUDICATION

20.1 GENERAL PRINCIPLES

Adjudication can best be described as the validation of the process leading to the recommendation of the Successful or Preferred Bidder/s. It is important to note that there are two different elements to this and these are often confused.

20.1.1 The ACs do not have any contracting powers and as such do not actually conclude the contract in the name of Transnet. The AC validates the process of selecting the Successful / Preferred Bidder.

20.1.2 When an AC has approved a submission, it clearly does so subject to the provisos listed in paragraph 21.3.1, one of which is that the person with the necessary DoA has to sign the actual contract. Likewise, the person with the necessary DoA may not execute his DoA and sign the contract, without the relevant AC approval of the process.

20.2 THE ROLE OF THE AC DURING ADJUDICATION

The function of the AC is to validate both the process related aspects as well as the commercial aspects of the bid process. The AC is required to satisfy itself that all Bidders were treated fairly in the bidding process and that the process was conducted in accordance with the applicable regulatory framework and Transnet's internal rules. The AC is also required to determine that the price to be paid by Transnet is market related, that the commercial terms and conditions are fair and reasonable and that the award of business is in the best interests of Transnet.

Factors to be considered during adjudication include whether:

20.2.1 the bid was advertised for a reasonable period of time and in the appropriate media;

20.2.2 all Bids are still valid i.e. still within the validity period;

20.2.3 communication with Bidders after the closing date was properly authorised and conducted in a fair manner;

20.2.4 Bidders were evaluated against the evaluation criteria stated in the RFP;

20.2.5 the scoring of Bidders was reasonable, rational and in accordance with the scoring methodology;

20.2.6 the recommended Bidder scored the highest points overall. If not, whether the recommendation to award the contract to another Bidder is based on other objective criteria

20.2.7 the recommended Bidder is not on the Transnet List of Excluded Bidders, the Treasury list of Bid Defaulters or the Treasury database of Restricted Suppliers;

20.2.8 the recommended Bidder has legal capacity to enter into a contract;

20.2.9 the contract is to be awarded to the same business enterprise as the one which submitted the Bid;

20.2.10 the recommended Bidder submitted a valid and original tax clearance, VAT certificate (where applicable) and whether the recommended Bidder complies fully with all legal requirements stated in the RFP;

20.2.11 the recommended Bidder is not insolvent, in receivership, bankrupt or being wound up, has his affairs administered by a court or judicial officer, has suspended his business activities or is subject to legal proceedings in respect of the aforegoing;

20.2.12 the award of business to the recommended Bidder would not be harmful to Transnet's image. In this regard, it must be borne in mind that Transnet is a public company and its sole shareholder is the Government of the Republic of South Africa. For this reason, business transactions with entities that could harm Transnet's image should be avoided;

20.2.13 price and other commercial terms are market related; and

20.2.14 The award of business does not pose any other legal or material risks to Transnet that has not been mitigated.

20.3 RISK EVALUATION

Upon receiving a recommendation to award business to a particular Bidder, the AC may at its own discretion call for a risk evaluation on the Bidder if it is of the opinion that this was not considered at the evaluation stage. If on reasonable grounds it is determined that there is a material risk involved in awarding the business to that particular Bidder, the AC may, depending on the likelihood and consequence of the risk materialising recommend one of the following:

- not awarding to the Bidder;
- awarding part of the business to the Bidder; or
- splitting the business between the Bidder and another Bidder.

The concept of material risk must be interpreted restrictively and be limited to instances where Transnet would be severely prejudiced by the award of business to a particular Bidder.

20.4 SPLITTING OF BUSINESS

The AC should enquire whether the splitting of the award of business was considered during evaluation, as this is a feasible mechanism to promote the development of new entrants into the market. Transnet's standard bid conditions allow for the selection of multiple suppliers or the award of the whole, or any part of a Bid to any particular Bidder. Transnet may also choose not to make an award if there are valid grounds for doing so.

Bidders who qualify their Bids on the basis that the whole Bid should be accepted (in conflict with the bid conditions) must be advised that the restriction must be withdrawn before their Bid can be considered.

20.5 DISAGREEMENT REGARDING AWARD OF BUSINESS

20.5.1 Should a dispute arise between the recommending officer(s) and the AC regarding a submission after the AC has referred the matter back to the recommending officer for re-motivation, the matter must be escalated to the Entity's CEO for a final decision.

20.5.2 Where the recommendation of the evaluation team conflicts with the opinion of the end user, the matter must be referred to the AC for a ruling.

20.6 NON AWARD / CANCELLATION OF BIDS

20.6.1 Non award of business must be approved by the relevant AC. A motivation for non award may be considered by the AC at any stage of the process before the Successful Bidder is finally selected and informed about the bid award. Once a Successful Bidder has been selected and informed about the outcome of the bid

process (i.e. he/she was awarded the bid), Transnet is said to be functus officio and can no longer cancel the bid process without an order of court authorizing it to do so.

20.6.2 It should be noted that a Bidder can only be regarded as the Successful Bidder when he/she was unequivocally informed that the bid was awarded to him/her. An award that is made subject to further negotiation or qualification cannot be regarded as a final and unequivocal award. Thus the award of "Preferred Bidder status", subject to the successful negotiation and conclusion of a subsequent contract does not amount to being selected as the "Successful Bidder" as the award is conditional and subject to the outcome of the negotiation process.

20.6.3 Group legal / the OD Legal department should be consulted before a decision to cancel a bid is taken to advise on the legal risk associated with cancellation and also whether Bidders should be invited to make representations before a final decision can be taken.

20.6.4 The decision not to award business must as far as possible be taken timeously. Bidders must be advised of this decision as soon as possible after the decision has been approved.

20.6.5 Non-award of business (as a result of Transnet's bad planning) should for obvious reasons be minimised as far as possible as Bidders expend a significant amount of time, effort and money when preparing and lodging Bids. Non award has the effect of cancelling a bid and the AC must therefore act judiciously when authorising a non award so as to minimize prejudice to Bidders.

20.6.6 When no Bid can be recommended for acceptance, the Manager concerned shall provide a motivation to the AC clearly stating the reasons why no Bid can be recommended and give an indication as to how need for the required Goods/Services will now be met.

20.6.7 The AC may approve a non award under the following circumstances:

a) Where due to changed circumstances there is no longer a need for the Goods or Services;

b) Where due to a fundamental change in specification, the bid has to be cancelled and re-advertised;

c) Funds are no longer available to cover the envisaged expenditure;

d) No Acceptable Bids were received;

e) When a material irregularity has occurred in the bidding process which cannot be remedied, other than through cancellation; or

f) All bids received are well over budget and considered to be excessive.

When the AC authorises a non award on the grounds of a), b) or c) above, all Bidders should be reimbursed for the bid document fee, if bid documents were sold. Where a non-award is authorised on the basis of ground e) above, Bidders not involved in the material irregularity should be reimbursed.

Background and Context

Procurement planning

Go to Market

Evaluation and Adjudication

SECTION E: CONTRACT MANAGEMENT

Chapter 21: Award of Business & Contracting Process

- Approval of acceptance of bids not to be anticipated
- Decision to accept bids or offers
- Notices of acceptance & non-acceptance
- Applications received in terms of PAIA
- Delivery of acceptance
- Formal written contract (letter of award)
- Contracting with the second ranked bidder
- Approval of contracts for periods exceeding 2 years

Chapter 22: Post Award Contract Management

- Post award functions
- Service delivery management
- Supplier relationship management
- Contract administration
- Indications of successful contract management

Chapter 23: Blacklisting

- Definition of blacklisting
- Grounds for blacklisting
- Who may be blacklisted
- Factors to consider before blacklisting
- Appropriate blacklisting period
- Representation
- Blacklisting procedure
- Appeal / Rescission

Functions of Governance Structures

Appendices

CHAPTER 21 : AWARD OF BUSINESS AND CONTRACTING PROCESS

21.2 APPROVAL OF ACCEPTANCE OF BIDS NOT TO BE ANTICIPATED

No employee shall anticipate the approval of acceptance of bids. Therefore, no employee may enter into contracts verbally or in writing or place orders before the prescribed adjudication process has been performed and authority has been duly granted by a Manager with the appropriate DoA.

21.3 DECISION TO ACCEPT BIDS OR OFFERS

21.3.1 A Manager may only communicate the acceptance of a Bid i.e. issue a Letter of Award and proceed to conclude the contract if the following provisos have been adhered to:

a) he/she has complied with all internal policies and procedures and obtained the AC's concurrence by means of an AC resolution or (if applicable) approved AC minutes;

b) he/she has confirmed that there is still a need for the Goods/Service(s);

c) he/she has confirmed that the appropriate funds are still available;

d) the value of business awarded is within the level of his/her powers to contract in terms of his Delegation of Authority;

e) where the value exceeds his/her powers, he/she shall obtain a mandate from higher authority to conclude and administer the contract; and

f) where the value of business exceeds the relevant OD CEO's Delegated Powers to contract, the relevant higher authority (e.g. Transnet GCSCO, GCFO, GCE, BADC or Transnet Board) must conclude the contract. Alternatively, a mandate must be sought from the relevant higher authority in Group in favour of the OD CEO to conclude and administer the contract. The award can be to one or more specified contractors for a specific amount/s, but the cumulative value of the business (individual contracts) shall determine the approval authority required. As stipulated in the Transnet DoA Framework, it is advisable to obtain a written mandate from that Approval Authority (as defined) to administer the contract and to effect amendments to it not exceeding 10% of the initially approved contract value. Such mandate must be in writing and kept on the appropriate file for record purposes.

21.4 NOTICES OF ACCEPTANCE AND NON-ACCEPTANCE OF BIDS TO BE FINALISED

21.4.1 As soon as possible after approval to award a contract has been received, the OD which invited the Bids shall arrange to inform the Successful or Preferred Bidder(s) of the acceptance of his Bid. This notice may only be communicated by a person with the necessary DoA, or a person with a written mandate for a specific contract. Unsuccessful Bidders shall be advised in writing of the name of the Successful Bidder. On award of business to the Successful Bidder all unsuccessful Bidders must be informed of the reason as to why their Bids had been unsuccessful, e.g. price, delivery period, Quality, SD, preference or any other applicable reason. Please refer to the standard regret letter templates available on the iSCM Transnet Intranet. It is essential that the reasons for not accepting a Bid are factually correct, as the regret letter could form the basis for litigation against Transnet.

21.4.2 The details of the contract award must be placed on the Transnet internet site. These details must include:

a) bid number and description;

b) name(s) of the Successful Bidder(s) and preferences claimed;

c) the contract price(s); and

d) the duration of the contract.

21.5 APPLICATIONS RECEIVED IN TERMS OF PAIA

Should an application be received in terms of the Promotion of Access to Information Act (PAIA) or the Promotion of Administrative Justice Act (PAJA), the matter should be referred to either the OD Legal Department or Group Legal. It is important to note that all requests received in terms of PAIA or PAJA must be dealt with immediately, as there are deadlines within which to respond to the requestor.

21.6 DELIVERY OF ACCEPTANCE TO BIDDER

21.6.1 When a Bidder has been advised by letter of the acceptance of his Bid, the South African Post Office shall be regarded as the agent of the Bidder and delivery of such notice of acceptance to the above-mentioned offices shall be considered as delivery to the Bidder.

21.6.2 Where a Bidder has been informed per fax of the acceptance of his Bid, the acknowledgement of receipt transmitted by his fax machine shall be regarded as proof of delivery to the Bidder.

21.6.3 Where a Bidder has been informed by e-mail of the acceptance of his Bid, the "delivered message" on the sender's mailbox will be regarded as proof of delivery. Where the bidder's mailbox is set to allow for "Read messages" to be transmitted to the sender, these should also be kept as an audit trail.

21.7 FORMAL WRITTEN CONTRACT (LETTER OF AWARD)

A formal commitment in the form of a written contract is entered into with the Successful Bidder (Letter of Award)

Contracts provide the framework to mitigate risks and to measure operational and financial performance as well as compliance with business obligations and regulatory requirements.

A contract arises when an offer made by the Bidder is accepted. The Bid submitted by the Successful Bidder, read together with Transnet's letter of acceptance and terms and conditions of the RFP, constitute a binding contract between Transnet and the Bidder. Usually, this constitutes an "interim" contract until such time as Transnet and the Successful Bidder have been able to conclude a written contract to formalise their contractual relationship.

Although a verbal contract is equally binding on the parties, it is Transnet's policy that only formal written contracts shall be entered into with the Successful Bidder unless the Goods or Services are for immediate delivery or execution, in which case a formal order must be processed.

21.7.1 Letter of Intent (LOI)

a) A Letter of Intent is issued when a Bidder has been selected as a Preferred Bidder. The LOI informs the Preferred Bidder of Transnet's intention to negotiate and conclude a contract with it. The LOI also makes it clear that if a contract

cannot be agreed upon, Transnet reserves the right not to award the business to the Bidder. No contractual or other legal rights are vested in a Bidder purely by virtue of having been issued a LOI.

b) The validity of such LOI should be for a limited period only and every effort must be made to finalise the signing of the contract within the shortest possible period. The extension of the validity period of a LOI should be avoided and only considered in exceptional circumstances.

c) Only if the Goods/Services are critical for operations, will it be permissible to draw off a LOI, whilst the negotiation process is underway. In such cases the LOI serves as a proxy for the binding legal agreement and under its authority Transnet may place orders on the supplier for its interim requirements, during which period the final agreement will be negotiated and finalised between the parties. Should negotiations between the parties break down for any reason, the supplier may immediately invoice Transnet for all reasonable costs for Goods/Services delivered (based on proof of delivery). Such amounts shall become due and payable by Transnet.

d) It is important to note that the longer the LOI is allowed to continue, the less likely it will be that Transnet will be able to leverage its negotiating power to change a contract condition to benefit Transnet.

e) When issuing an LOI, one of the approved standard templates available on the Intranet must be used.

21.7.2 Use of Transnet's Standard Agreements

Where Transnet has standard agreements or terms and conditions in place, it is imperative that the standard template (available on iSCM Transnet Intranet) be used unless there are cogent reasons why such standard agreements cannot be used in a particular instance. Any omissions or additional clauses to such standard agreements must be captured in a schedule of special conditions. Should it not be possible to utilise a standard agreement, any non-standard agreement must be vetted and signed off by the relevant OD's Legal Department or Group Legal. The deviation from the standard agreement must be properly motivated.

It is always advisable to include Transnet's standard requirements/terms and conditions/agreements in the bid documents and/or RFPs. The respondent(s) will therefore be made aware of Transnet's requirements/expectations in advance.

21.7.3 Process for expediting contracts

On award of the bid, the following process must be followed in expediting a formal contract:

a) The employee responsible must draft the contract using the appropriate Standard Template plus a schedule and service level agreement (SLA) (where applicable).

b) He/she must present the draft contract and SLA to the Transnet representative with the requisite DoA and obtain his/her approval of the contract and SLA in principle.

c) Two duplicate originals of the contract and SLA must then be presented to the external party for signature.

d) Once the external party has signed, the duplicate original contracts and SLA must be returned to the Transnet representative with the DoA for signature.

One original must be forwarded to the external party and the other must be kept by Transnet.

e) The contract and a copy of the SLA must be stored in a secure repository and be readily available when reference to it is required.

21.7.4 **Non adherence to existing contracts ('Maverick Spend')**

a) As a general rule, Transnet is required to acquire the relevant Goods/Services only from the contracted supplier. Transnet is exposed to legal risk if it purchases Goods/Services outside of the contract.

b) If any person wishes to buy outside of a contract, the prior approval of the relevant Manager is required.

21.7.5 **Formal contracts are to be entered into in the name of Transnet SOC Ltd**

All contracts shall be concluded, as soon as possible after the award of the business to the Successful Bidder, in the name of Transnet SOC Ltd, according to guidelines issued. It shall be signed for and on behalf of Transnet by a Manager with the appropriate DoA.

21.7.6 **Transnet may insist on a suitable security/guarantee for fulfilment of contract**

a) When security has to be provided by Successful Bidders in terms of the contract, the delegated Manager entering into a contract shall ensure that adequate security is obtained for the fulfilment of the contract. It shall preferably be in the form of a guarantee by a bank or approved guarantee corporation, or a deposit with Transnet of approved Government or municipal stock in negotiable form. All securities shall be safely held by the OD concerned which shall keep a register thereof and shall ensure that the security does not lapse before the contract is completed.

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

c) Provided that the contract document allows for that, one can also retain part of the payment as retention money. Retention money (performance guarantees), normally 5 to 10% of the individual payments, is held back by Transnet as a guarantee for the satisfactory completion of the project. When such amounts have accumulated sufficiently, consideration is normally given to the refunding of the guarantees or sureties. Retention money is only refunded after completion of the guarantee period (normally 6 to 12 months, depending on the risk of latent defects).

d) Depending on the risk to Transnet, these measures may be relaxed to facilitate Transnet's B-BBEE objectives to develop small or emerging black companies.

21.8 CONTRACTING WITH SECOND-RANKED BIDDER

In the following cases Transnet will be allowed, at its sole discretion, to consider accepting the second most favourable Bid, provided that this option is exercised within a reasonable period after the initial award:

21.8.1 when a Successful Bidder, after having been informed of the acceptance of its Bid, fails to sign a contract within a reasonable period after being called upon to do so;

21.8.2 when a Successful Bidder has failed to provide the necessary security, if required;

21.8.3 when a Successful Bidder fails to meet a condition precedent for the award of business (e.g. to obtain the necessary funding, provide valid and/or original tax clearance certification, etc.), or

21.8.4 when final contract negotiations with a Preferred Bidder fails and a contract is not agreed upon; and

21.8.5 it is not practical within the time available to call for fresh Bids.

The award of business to the second ranked Bidder must be approved by the relevant AC.

21.9 APPROVAL OF CONTRACTS FOR PERIODS EXCEEDING TWO YEARS

The Main AC is to approve all contracts for periods exceeding two Years

No contract shall be entered into for a period longer than two Years without the main AC's (or the person with DoA) written approval, except for large construction contracts where the period allowed will be the completion period of the project. The same principle also applies with respect to the extensions of contracts, i.e. the initial period of the contract together with the extension may not exceed 2 Years without the main AC's (or the person with DoA) approval.

Property leases are also excluded from these Procedures and approval levels are determined by means of the Delegation of Authority of those employees, CEO's and higher authorities of the relevant property division/s.

CHAPTER 22 : POST AWARD CONTRACT MANAGEMENT

(Also refer to the Contracts Management Manual available on the iSCM Transnet Intranet)

Contract Lifecycle Management (**CLM**) is "the process of systematically and efficiently managing contract creation, execution and analysis for maximising operational and financial performance and minimising risk".[7]

Contract Management is an end-to-end process but is often confused with the concept of contract administration which constitutes only one part of it. This Chapter addresses the core components and activities of post-award Contract Lifecycle Management, including contract administration:

Delivery Management	to ensure that the Goods and/or Services are being delivered in accordance with agreed performance, costs and Quality levels set out in the contract
Supplier Relationship Management	to manage Transnet's relationship with the supplier in order to develop and maintain an open and constructive association with the supplier
Contract Administration	to undertake the formal contractual processes and obligations required and to comply with Transnet's post-award policies and procedures

In addition there are three fundamental aspects for consideration in relation to performance measurement:

PERFORMANCE FEEDBACK	SOURCE
Factual, objective information from the supplier	Normally obtained from IT systems and managed by outputs from the Service Level Agreement (**SLA**)
Feedback from users concerning Service/Goods received	A supplier relationship function, typically through questionnaires, surveys, telephone or face-to-face enquiry
The supplier's own experience of dealing with Transnet	A supplier relationship function, reported through supplier feedback

22.1 POST-AWARD FUNCTIONS

The immediate post-award contract management activities establish the basic awareness and procedures required to initiate Transnet's on-going contract management obligations. These include:

- Ensuring that all relevant parties are aware of their roles and responsibilities in the immediate implementation and transition process;
- Checking that the agreed processes for contract management are in place by both parties;
- That knowledge transfer from the procurement or project team (which may not have included members of the contract management team) to the contract management team takes place to ensure successful management of the contract

[7] *Source: Aberdeen Group*

- That, where necessary, the continuity plans for the seamless transition of the Service from the previous supplier to the new supplier will be carried out as agreed.

22.2 DELIVERY MANAGEMENT

This activity is concerned with Transnet's ability to measure the supplier's performance in terms of the contract, whilst managing the associated risks. It is important that the performance measures selected provide clear and demonstrable evidence of the success (or otherwise) of the contractual deliverables. In principle, issues such as the following should typically be considered:

- cost and value obtained;
- performance and customer satisfaction;
- delivery improvement and added value;
- Supplier Development (SD), Empowerment and Local Content (LC) where applicable;
- delivery capability;
- benefits realised; and/or
- supplier responsiveness.

22.2.1 Service Level Agreements (SLAs)

Contracts with suppliers will normally define the service levels and terms under which Services are to be provided. Service level management includes assessing and managing the performance of suppliers to ensure value for money.

It is generally beneficial to establish an SLA, since an SLA creates a common understanding about services, priorities and responsibilities of both parties. Transnet must decide in each instance whether or not it is appropriate to utilise an SLA. However, the default position should be to establish an SLA.

Where applicable, an SLA must be put in place with the Successful Bidder to ensure proper performance management and to mitigate any financial, operational, safety, environmental or reputational risks which may arise during the term of the contract.

The SLA shall, at the very least, govern the following aspects:

- representative(s) from both parties who will attend the meetings;
- schedule of meetings;
- venue(s) for meetings;
- party responsible for taking minutes (to be approved by both parties prior to circulation);
- risk areas to be measured (refer sub-paragraph 22.2.10 below);
- size of the samples to be tested in terms of performance management;
- key performance indicators (KPI);
- required outcomes;
- commitment to remedial actions, when needed;
- reporting on the results; and
- dispute resolution procedure in the event of disagreement or deadlock between the representatives of the parties (dispute resolution procedures are normally set out in the contract, failing which it is the Transnet Relationship Manager's responsibility to set out the procedures to be adopted – refer sub-paragraph 22.3.2 below)

22.2.2 Performance Scorecard

Service levels should be agreed and benchmarked for both Transnet and the supplier and should be:

- established at a reasonable level; if they are set too high they will attract additional charges from the supplier;
- prioritised by Transnet in order of importance and on agreed scales, for example; critical, major, urgent, important, minor;
- easily monitored (objective, tangible and quantifiable);
- unambiguous and understandable; and
- open to renegotiation at any time.

A performance management scorecard reflecting the performance of both parties should form an integral part of the SLA.

(See table below for a typical example of a scorecard for the purchase of Goods)

TABLE 17

KPA	Sample	KPI	Acceptable	Assessment	Remedial Action
DELIVERY	*Daily* all deliveries	On time	99% on time	*88%*	*Supplier to improve to 92%*
	Daily all deliveries	Accurate	99% accurate	*100%*	*N/A*
	Daily 1 in 5 deliveries	Lead-times met	99% lead-times met	*40%*	*Supplier to improve to 70%*
	Daily all deliveries	Paperwork in order	100% paperwork correct	*100%*	*N/A*
QUALITY	*Daily* 1 in 5 deliveries	No. of items rejected by GR	<2% Items rejected	*0*	*N/A*
	Weekly all deliveries	No of items rejected by production	0 items rejected	*0*	*N/A*
	Weekly 1 in 2 deliveries	Items properly packed	<3% items incorrectly packaged	*0*	*N/A*
PRICE REVIEW	*Monthly* 10 prices	Price charged vs. market	95% of items in market pricing range	*91%*	*Supplier to improve to 95%*
PAYMENT	All payments	Payment within 30 days	90% payments on time	*40%*	*Transnet to improve to 80%*

22.2.3 Performance review meetings

The following must be observed by the Relationship Manager (refer sub-paragraph 22.3.1 below) prior to and/or during the performance review meetings between Transnet and the supplier:

- ensure that performance review meetings are convened at intervals as agreed upon with the supplier;
- ensure that tangible proof of the supplier's performance against all the KPAs is obtained prior to the meeting;
- proper minutes shall be kept of all performance meetings; and
- over and above the requirement that minutes should be kept, a specific record (paper trail) shall be kept of recurring instances of poor performance by the supplier. Such record shall reflect the various performance assessments, interventions by the contract Manager, the remedial actions agreed upon, and the results thereof.

22.2.4 Performance monitoring

a) A process for monitoring the delivery of the suppliers must be set up by management to ensure continuing adherence to the supplier contract and service level agreements. Suppliers must be monitored against agreed performance metrics defined in service level agreements and contracts, it must be confirmed that suppliers are meeting current business requirements.

b) Contracted fees must be in line with fees specified in the contracts.

c) Performance metrics must be periodically reviewed to ensure that they continue to support business requirements. Improvements in price, Quality or service must be sought and, where possible and built into the contract terms.

d) Benchmarking against similar organisations, appropriate international standards or recognised industry best practices must be undertaken. Benchmarking results must be used to evaluate and compare supplier prices and services. Results of benchmarking must be used to make adjustments to current supplier contracts and agreements.

e) Independent audits must be undertaken with key suppliers and recommendations obtained from independent audits must be reviewed by Transnet management for subsequent use to improve delivery.

22.2.5 Adherence to contractual sourcing (Goods)

For Goods manufactured in South Africa:

When a contract is placed for Goods to be manufactured in South Africa, the supplier may not be permitted to substitute imported Goods without the AC's prior written approval. For contracts of values below the AC's jurisdiction, the Manager concerned may decide whether imported Goods can be substituted. Where the supplier has secured the business by reason of the Local Content offered, it shall not be allowed to substitute imported Goods for those to be supplied from South African sources. An exception to this ruling may only be considered when the supply from the South African source has been curtailed due to reasons beyond the supplier's control.

22.2.6 Conformance with specifications and delivery instructions (Goods)

a) Inspection and shipment/delivery of Goods:

All Goods are to be delivered strictly in accordance with the contract. Timeous arrangements must be made by Transnet for the inspection and/or shipment and delivery arrangements, as indicated by the contract terms.

(i) In the case of imported Goods:

The supplier must notify Transnet or its nominated clearing and forwarding agent as to when consignments are to be ready for inspection and/or shipment in order that arrangements may be made for inspection and/or shipment, except in instances where it has been specified that the Goods shall be inspected at destination. (Refer *Appendix C – ICC Incoterms 2010* for further details relating to alternative purchase terms and related responsibilities of seller and buyer).

(ii) In the case of locally manufactured Goods:

- where Quality is not assured by means of SANS, ISO or other standards, suitable Quality assurance mechanisms must be provided for in the contract e.g. inspections during manufacturing process, inspections at point of despatch or delivery. A suitable clause should be included in the relevant contract to the effect that Transnet reserves the right to return defective Goods for replacement in accordance with specifications;
- where Goods are of such a nature that Quality inspections are not deemed necessary, a suitable clause should be included in the relevant contract to the effect that Transnet reserves the right to return defective Goods for replacement in accordance with specifications.

b) Acceptance of Goods received:

Transnet employees responsible for the receipt of delivered Goods must ensure that all Goods are provided:

(i) strictly in terms of the contract, i.e. the delivery note may not differ from what was required in terms of the contract or purchase order; and

(ii) that the Goods delivered correspond exactly with the delivery note, i.e. short supplies should be clearly endorsed on the delivery note and over-supplies should be returned to the company, with the delivery note clearly endorsed as such.

22.2.7 Remedy for repetitive instances of poor performances

Where poor performances have been recorded and when no improvement in performance has been demonstrated by the supplier after several interventions on the part of the Transnet representative (including the imposition of penalties, where applicable – refer sub-paragraph 22.2.8 below), the following remedies should apply:

a) Should the contract Manager believe that the supplier is unlikely to improve its performance, the Manager must approach OD Legal or Group Legal to obtain direction regarding cancellation of the contract; and thereafter

b) Procurement is to initiate the blacklisting process, if appropriate.

It is of utmost importance that the specific additional record (a paper trail) of recurring instances of poor performance by the supplier is available to inform the recommendation to cancel the contract and/or to blacklist (see Chapter 23, paragraph 23.4 for Blacklisting protocols).

It must be remembered that poor performance amounts to breach of contract. Transnet's contracts contain a standard "breach clause" in terms of which a defaulting supplier must be notified of the breach and afforded an opportunity to remedy the breach. Only if this fails may steps be taken to cancel a contract.

22.2.8 Imposition of penalties

a) A penalty is a stipulation in a contract (a "penalty clause") providing that a party who acts in conflict with its contractual obligations must pay a sum of money to the other party. Where a contract provides for penalties in the event of breach such penalty should be enforced.

b) However, unless a contract expressly provides for a penalty, a penalty may not be imposed. Where a contract does not contain a penalty clause Transnet must sue for damages arising from breach of contract. Damages must be recovered by way of litigation and only after the amount of damages is proven and awarded by a court.

c) Transnet cannot recover both penalties as well as damages. Furthermore, Transnet cannot claim damages in lieu of penalties unless the contract states so specifically.

d) Penalties should be reasonable and not out of proportion to the prejudice suffered. In terms of the Conventional Penalties Act 15 of 1962, a court may reduce a penalty if it is unreasonable, disproportionate and inequitable.

22.2.9 Failure by a supplier to perform - liability for additional expenses

The bid documents (as well as the eventual contract) shall make provision for the Bidder to undertake that if, after it has been notified of the acceptance of its Bid, it fails to perform, whether by not entering into a contract or by not undertaking any steps when requested to do so within a period stipulated in the bid conditions or within such extended period as Transnet may allow, the supplier will be held liable for any additional expense which Transnet may incur in having to call for Bids afresh and/or accepting any less favourable Bid to complete the whole or remaining portion of the contract. In addition, consideration can also be given to placing such a contractor on Transnet's List of Excluded Bidders (See Chapter 23).

22.2.10 Risk Management

Risk can be defined as 'the probability of an unwanted outcome happening".

It is advisable to seek to remove or at least mitigate risk whenever possible before contract award. The obligations placed upon buyers to analyse, assess and mitigate risk during the pre-award stages of contract management are dealt with in previous chapters of this PPM. These pre-award activities can be collectively summarised as follows:

Analysis The process of identifying all potential issues that can go wrong with an activity and estimating the probability of each happening

Assessment The process of assessing the likely impact of a risk on Transnet

Mitigation Having assessed the risks and identified those requiring action, responsibility for managing and mitigating them is allocated, which allocation must be dependent on the assessment of the likelihood and consequence of the risk

Contracts provide the framework to mitigate risks and to measure operational and financial performance as well as compliance with business obligations and regulatory requirements.

Post-award risk management undertaken during the contract period comprises those activities associated with identifying and controlling the risks that may potentially affect the successful fulfilment of the contract. Risks to the contract include such issues as:

- lack of capacity of the supplier, particularly if there are significant increases in demand;
- reduction in demand leading to higher unit costs borne by the supplier;
- an event which causes an increase in the total price to Transnet;
- an event which causes a programme delay;
- supplier staff changes;
- changes to the supplier's business objectives;
- deterioration in the supplier's financial standing;
- demand changes that cannot be met by the supplier;
- deterioration of Quality;
- *force majeure* issues;
- market fluctuations for commodities; and/or
- labour unrest.

When a risk is anticipated or perceived, to manage this involves the parties working together to identify *who* has the responsibility for the risk, the *method* of minimising it and *how* the risk will be managed. In order to do so the contract Managers must undertake the following actions:

- establish a binding process to encourage early warning system for issues such as those mentioned above;
- identify the party best able to control the situation leading to the risk occurring;
- identify the party best able to control the risk itself;
- identify who should be responsible if the risk cannot be controlled; and
- if the risk is transferred to the supplier, establish whether or not this cost will fall to Transnet, whether transfer will introduce new risks and the legal position of any such transfer.

Finally it should be considered that business risk cannot be transferred to the supplier and that the ultimate responsibility will always remain with Transnet for any failure in the fulfilment of a contract.

22.3 SUPPLIER RELATIONSHIP MANAGEMENT

In addition to the contractual and commercial aspects with Transnet's suppliers, a healthy relationship between Transnet and its suppliers is fundamental to the effective management of a contract. Management structures for contracts need to be designed to facilitate such a healthy relationship. There must be set procedures for raising and handling issues, so that these are dealt with as early as possible and at the appropriate level within the organisations.

The value, risk and strategic positioning of a contract will dictate the appropriate degree of supplier relationship management to be established per contract. This decision must be made by the OD's CPO and recorded accordingly in the supplier's contract file.

22.3.1 Supplier Relationship Managers

a) Transnet management must appoint relationship Managers (a "Relationship Manager") to be responsible for ensuring the quality of the relationships with suppliers. Relationship Managers are responsible for liaising between Transnet and the supplier regarding issues arising and must retain accountability for provisions and Quality of services delivered by suppliers. Supplier roles and responsibilities and Transnet roles and responsibilities for management of overall supplier relationships and individual supplier contracts must be defined and communicated to Transnet and the suppliers. Those involved in managing the supplier must understand Transnet fully and know the contract documentation thoroughly. This is essential if they are to understand the implications of problems (or opportunities) over the life of the contract.

b) Transnet and suppliers need to understand the objectives and business of each other. Transnet must have clear business objectives, coupled with a clear understanding of how the supplier will contribute to them. The supplier must also be able to achieve its objectives, including making a reasonable margin.

c) Supplier relationship management must maintain mutual trust and understanding, openness, and excellent communications which are key to the fulfilment of the formal contract terms and conditions.

22.3.2 Duties of a Relationship Manager

The activities of a Relationship Manager that must be accomplished to effectively manage a Transnet supplier are summarised as follows:

- Relationship Managers must control the technical relationship between Transnet and the supplier regarding the schedule of requirements or statements of work and specification as per supplier contracts and service level agreements.
- Relationship Managers must communicate potential issues for mitigation and immediate diffusion before issues are escalated.
- Relationship Managers will establish and manage a communication framework for the supplier for which they are responsible and ensure that it is employed effectively to sustain communication flow.
- Informal issues resulting in concerns in a supplier relationship must be identified and resolved by the Relationship Manager.
- Relationship Managers can identify and recommend changes to supplier arrangements, communication flows, supplier contracts and SLAs to ensure an effective relationship is maintained.
- Regular formal and informal reporting procedures will be established by Relationship Managers.
- Relationship Managers must be actively involved in supplier dispute resolution processes.
- Relationship Managers will organise the necessary forums, working groups, seminars, road shows, training sessions and other information activities involving Transnet staff and suppliers.
- Ways to improve supplier relationships wherever possible must be proactively considered by Relationship Managers, based on end-user and supplier feedback.

22.3.3 Factors that can inhibit the development of a successful supplier relationship include:

Frequent and rapid recourse to the formal contract to overcome problems

Clashes in company cultures which are so disparate as to prevent the creation of the level of trust and confidence required

Reluctance by the supplier to cooperate in value for money or benchmarking tests conducted by Transnet

Commercial issues, for example lack of real competition resulting in uncompetitive poor value for money terms from the supplier, or conversely that Transnet is critically dependent on one supplier leading to price rise vulnerability and/or problems of management capability, resources or financial capitalisation

Too frequent demands for submission of competitive Bids which reduces trust in the relationship

22.3.4 **Factors that encourage the development of a successful supplier relationship include:**

Securing senior level support in both organisations

Recognising that actions and attitudes affect the tone of the relationship

Ensuring that the governance arrangements are fair

Ensuring that the relationships between the parties are peer-to-peer as far as possible

Ensuring that roles and responsibilities are clearly understood by both parties and that the necessary authority levels have been ascribed

Ensuring that escalation routes are clear and understood but that problems are resolved as early as possible and as low down the management tree as possible

Separating strategic matters from the day-to-day service delivery issues

Ensuring that appropriate attitudes and behaviours are practised and displayed to assist the promotion of a positive and constructive relationship

22.4 CONTRACT ADMINISTRATION

This activity is concerned with the practicalities of the relationship between Transnet and the supplier and the operation of the routine administrative and clerical functions. The importance of contract administration to the smooth running of post-award contract management must not be underestimated and should be resourced appropriately. This is the responsibility of Transnet's Relationship Manager.

The typical functions included under post-award contract administration responsibilities are:

- Change control;
- Charges and cost monitoring;
- Ordering and payment procedures;
- Budget controls;
- Contract meeting schedules and minutes;
- Resource management and planning; and
- Contract termination or extension/renewal.

All the above issues should have been addressed at the pre-award stage and included in the contract documentation, as applicable. The role of Transnet's Relationship Manager is to

manage these functions during the term of the contract. Certain key administrative issues and the governance thereof are further addressed in the following paragraphs.

22.4.1 Change control procedures

Changes will almost inevitably occur during the period of a contract and managing these changes is a particularly important activity. Formal change control procedures should be designed and set out in the original contract documentation to avoid misunderstanding and ambiguity about roles, responsibilities and the actions to be taken in any given situation.

The procedures need to be comprehensive but also flexible and straight forward and should cover such issues as:

How to request changes, including additional demands placed on the supplier

Assessing the impact including contractual implications

Prioritisation and authorisation levels

Agreement on methodology

Controls for implementation

22.4.2 Extension of contracts

The relevant legal principles are explained as follows:

a) A contract may be extended before its expiry date. This will involve an agreed Material Amendment to the existing terms and conditions of the contract. Where the contract expressly allows for an option to extend or renew, such prescribed extension or renewal process must be followed before the termination date.

b) A contract that has lapsed or expired cannot be extended. The purported "extension" of an expired contract either for a given period (e.g. 1 Year) or on a month-to-month basis has inherent risk, because the terms and conditions safeguarding Transnet would have expired with the original contract itself. Transnet would have effectively entered into a "new" contract without the safeguards of the initial contract. This could also give rise to irregular expenditure in terms of the PFMA.

22.4.3 In view of the legal principles set out above, the practice of extending a contract after its termination date is considered to be irregular.

The following approach with regard to the extension of contracts must be followed:

a) Any request for the extension of a contract must be submitted to the AC at least 45 (forty-five) Working Days before the contract is due to expire. This is to ensure that the AC may consider the request before the expiry date.

b) A request for the extension of a contract must indicate whether such extension is as a result of exercising an option to extend or whether the extension sought amounts to an amendment to the contract.

c) Any request for the extension of a contract for a given period (e.g. 1 Year) or on a month-to-month basis should contain proof that the supplier is willing to extend the contract based on the same or better terms and conditions for Transnet.

d) No request for the extension or renewal of a contract after the expiry date of the contract shall be entertained and any proposed continuation of business shall be regarded as a new sourcing event, i.e. open RFX, Confinement or to be effected under laid down emergency procedures.

e) In the event that the contract has been allowed to exceed its termination date, such irregular "extension" shall be submitted to the AC for condonation of the action taken.

f) Should a supplier request extension of the contract completion date, the relevant circumstances must be considered in order to reach a fair decision in response to such a request, as follows:

(i) Where the bid document or contract stipulates that completion of the works, services, project or delivery of the Goods has to take place by a specified date and the supplier completed it / handed it over only after the contractual completion date, penalties may be raised under the terms of the contract.

(ii) A supplier may apply for an extension of the contract completion date if it considers that the reasons for late completion were/are:

- beyond its control (e.g. *Force majeure* events such as acts of God, rain, floods or earthquakes);
- whereas the supplier had exercised reasonable control, the late completion could not have been foreseen, minimised or prevented; and/or
- or the delay(s) had been attributable to Transnet

(iii) The supplier's claims in terms of (ii) above may be lodged at any time during the course of the contract or after the expiry date and must be substantiated by means of site diary entries, etc. Transnet then has to consider the reasoning and if considered to be valid, shall recommend to the AC the refund of some or all penalties already levied in terms of the contract or the waiving of some or all penalties.

(iv) Late completion of the contract due to valid reasons will require an extension of the contractual completion date. This would constitute a Material Amendment to the contract and would require AC approval. Should the extension of time be granted, i.e. approved by the AC, the supplier shall be entitled to price escalation over the extended period only if escalation has been provided for in the original contract.

(v) If Transnet does not consider the supplier's claim for an extension of time to be valid, the contract completion date may nevertheless be extended but penalties may be imposed in terms of the contract. Price escalation will also not be payable after the official completion date. However, Transnet is not obliged to grant the supplier's request for an extension of time and may (especially in instances where time is of the essence) decide to cancel the contract.

(vi) A waiver or reduction of penalties would constitute a Material Amendment to the contract and would require AC approval.

22.4.4 Exercising options

a) If Transnet wishes to reserve the right to extend a contract period, this should be stipulated upfront in the RFP. Furthermore, the inclusion of this option must be brought to the attention of the AC (or the person with DoA) when the initial recommendation to award the business is made.

b) Should it be decided to exercise the option during the course of the contract, the recommendation to exercise the option must be submitted to the AC for prior written approval in the normal manner. An indication must be given at that stage that the exercise of the option is still the best value in the market place (also see paragraph 9.2 and 22.4.3(b)).

22.4.5 Involvement of AC in material contract amendments

Goods/services contracts

These contracts are normally fixed term contracts. The AC must approve all Material Amendments to contracts within their threshold and recommend those above their threshold. This applies even if the initial award had only been submitted for the information of the AC, e.g. an emergency procedure or business awarded via the 'confine and award' process.

Extension of contracts, additional work, increase in quantities, price amendments, cession and assignments, waiving of penalties, etc., are all examples of Material Amendments to contracts, and need prior AC approval.

Where a contract specifies:

(i) estimated quantities at unit prices in respect of "as-and-when required" purchase or service contracts; or

(ii) specified quantities at unit prices in respect of purchase or service contracts over a fixed period,

a Manager may approve any increases or decreases in quantities or additions or additional work of which the total value does not exceed 10% (10 per cent) of the original value of the contract, and must inform the AC accordingly.

This provision does not include price escalations not provided for in the contract, i.e. the same goods to be provided at an increased price. Such matters should be presented to the AC for prior approval regardless of the value of the proposed increase in price.

22.4.6 General amendment principles

General principles applying to amendments of both Goods/Services and engineering/construction-type contracts include the following:

a) where the original value of the contract falls below the AC's jurisdiction, a Manager may approve additions, increases or decreases provided the total value of the contract does not exceed his/her Delegated Powers. However, if the original contract value is below the AC's jurisdiction but amendments bring it within the AC's jurisdiction, the matter must be submitted to the AC; or

b) where the value of the contract falls within the AC's jurisdiction, a Manager may approve the amendment of non-material provisions (less than 10% of the original contract value) provided that such amendment shall be reported for the information of the AC as soon as possible thereafter; or

c) where any material provision needs to be amended (e.g. price or delivery date, cession and assignment of contract, or the termination of a contract, waiving or reduction in penalties, etc.) the Manager concerned shall submit a recommendation for AC consideration together with supporting documentation indicating that the proposed amendment to the contract is in the best interest of

Transnet, that it represents the optimal value for Transnet, and how this has been determined.

Following AC approval such amendment needs to be signed off by the person with DoA who signed the initial contract (or the person mandated to do so) provided the cumulative value of the contract and subsequent amendment(s) still falls within his/her DoA.

22.4.7 Contract closure

This stage concerns the activities associated with finalising the close-out or termination of a contract, whether in accordance with the expiry date or as a result of early contract cancellation. Depending on the nature of the contract, such activities may include the following:

- Complete all administrative matters;
- Record all technical issues have been resolved;
- Determine the extent of any liquidated damages to be deducted from the contract price made against or received from the supplier;
- Record the end of retention and guarantee periods, plus date of final inspection;
- Record the date of release of retention and/or bank guarantees;
- Agree to limits on any on-going obligations, including warranties;
- Record any material reconciliations;
- Transfer any assets, including data, intellectual property and loan items;
- Transfer operating systems (as applicable) to new/replacement supplier;
- Conclude final contract payments;
- Summarise claims made against or received from the supplier; pr
- Ensure retention of records (refer sub-paragraph 22.4.8 below)

On completion of the above activities agreement should have been reached between Transnet and the supplier on all technical and commercial aspects of the contract.

22.4.8 Safe custody of Bid documentation, contracts and contract files

a) Each OD shall arrange for the safe custody of Bid documentation and contracts at a suitable, approved, centralised or regional location.

b) Related documents which should be kept on contract files as part of the contract records include, but are not limited to, documents such as
   - RFP (requisition);
   - the going to market strategy and approval;
   - bid Advertisements;
   - authorisations to confine;
   - minutes of relevant meetings/briefings;
   - evaluation score-sheets;
   - TEAR reports;
   - declaration of interest documents signed by members of evaluation teams and post bid negotiation teams;
   - certificates authorising communication with Bidders;
   - agendas and minutes of post bid negotiation meetings;

- correspondence with Bidders;
- RFX offer from Successful Bidder;
- letters of award and non-award;
- Letter of Intent;
- Approvals of draft contract (sign off schedule);
- Executed original copy of contract;
- Vendor Application Form;
- Insurance details (if applicable);
- Original and valid SARS VAT and Tax Clearance Certificate (to be update annually);
- B-BBEE Verification Certificate;
- Contract Addendums (if any); and
- Confirmation of expiry or extension to contract.

Refer to the iSCM Transnet Intranet for the checklist template of documents and signoffs which should be kept on contract files.

22.4.9 **Document Retention**

The following may be used as guidelines as to how long records should be retained:

a) Unsuccessful Bids must be kept for 5 Years after completion of the contract, and thereafter may be destroyed.

b) Successful Bidder's Bid/contract document, as well as the contract file and related general correspondence must be kept on site in a proper and safe archiving facility for a period of 5 Years after completion of the contract, and thereafter may be archived in an off-site archiving facility in compliance with normal archiving procedures.

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

22.4.10 **CONTRACT LIFECYCLE MANAGEMENT METHODOLOGY**

Transnet has a standardised Contract Lifecycle Management (CLM) methodology. It is a requirement in terms of this PPM document that these CLM prescripts be followed. **INDICATIONS OF SUCCESSFUL CONTRACT MANAGEMENT**

22.5 Successful contract management will achieve benefits by:

Managing Transnet's own responsibilities during the contract

Ensuring the supplier meets the minimum performance criteria, such as compliance

Allowing the achievement of both short and long term supplier performance improvement through developing effective supplier relationships

Ensuring that suppliers deliver Goods/Services of the agreed quality and price

B-BBEE and SD commitments are closely monitored and enforced

Reduction of costs and continuity of supply

Roles, responsibilities, rights, obligations of all stakeholders are clearly communicated and understood

Early identification and resolution of poor performance and disputes thereby minimising risks

Eliminating unethical practices within Transnet

Enhanced Supplier relationships through the visualisation and establishment of win-win scenarios

Entrenching uniformity of managing contracts and the principle of fairness

Creating a database of lessons learnt to aid future planning through the dissemination of good practices

Increased competitive and strategic advantages through effective control and visibility of contracts

Evaluation of the specification against contract performance and identification of contract changes or variations

In summary, successful contract management is indicated if:

The arrangements for service delivery continue to be satisfactory to both parties

The expected business benefits and value for money are being achieved

The supplier is co-operative and responsive

Transnet understands its obligation under the contract

There are no disputes

There are no surprises

A professional and objective debate over changes and issues arising can be had

Efficiencies are being realised

CHAPTER 23 : BLACKLISTING PROCEDURES AND GUIDELINES

23.1 DEFINITION

Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist must be based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.

The Transnet GCFO or his delegate may, upon a recommendation by the relevant AC and the Group Chief Supply Chain Officer decide that no Bid from that person or Enterprise be considered/accepted for any new contracts concluded for a specified period as may be determined.

Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company /person from future business, Transnet may decide to terminate some or all existing contracts with the company /person as well.

A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

23.2 GROUNDS FOR BLACKLISTING

23.2.1 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

a) has withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;

c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;

d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;

e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

(i) he made the statement in good faith honestly believing it to be correct; and

(ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;

g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;

h) has litigated against Transnet in bad faith.

23.2.2 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers. When a dispute arises between Transnet and its supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

(iii) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;

(iv) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;

(v) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.

(vi) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.

23.2.3 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

a) When issuing RFXs, prospective Bidders must be requested to disclose whether the company or any of its directors were found guilty of a serious breach of the law during the preceding 5 Years.

b) Should any prospective Bidder declare a conviction of a serious nature, the blacklisting process should be instituted without delay and dealt with expeditiously, whilst the evaluation of the bidder's Bid continues.

c) Under no circumstances may any prospective Bidder be excluded from the evaluation process or overlooked for the award of business until such time as a final decision to blacklist has been made.

23.2.4 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

23.3 WHO MAY BE BLACKLISTED?

The following persons / entities may be considered for blacklisting:

23.3.1 any person/company who has submitted a Bid in response to a bid request issued by Transnet;

23.3.2 any person/company who has concluded a contract/s with Transnet;

23.3.3 any person who has acted in the capacity of subcontractor to a supplier of Transnet;

23.3.4 any agent or employee of the company concerned, or his/her spouse who may be conducting the same business but under a different name;

23.3.5 Transnet employee found to be involved in fraudulent or corrupt activities;

23.3.6 companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons); and/or

23.3.7 any companies subsequently formed by the person(s) guilty of the misconduct or where such person(s) acquires a controlling stake in an existing company.

23.4 FACTORS TO CONSIDER BEFORE TAKING THE DECISION TO BLACKLIST

23.4.1 A decision to blacklist has far reaching implications for the company/person concerned. Therefore, Transnet must act fairly, reasonably and rationally whenever it decides to blacklist a company/person. The decision to blacklist must be considered on a case-by-case basis and must be based on the merits of the particular matter.

The following factors must be taken into account in deciding whether to blacklist a company/person:

a) the gravity / seriousness of the offence/misconduct/breach;

b) any previous offence/misconduct on the part of the company/person;

c) any remedial action taken by the company, including steps to ensure that the misconduct will not be repeated;

d) the seniority of the person(s) who acted in bad faith;

e) the impact of the proposed blacklisting of the company on Transnet's operations;

f) the reasonableness of the explanation for the misconduct;

g) whether the company/person has received direct or indirect benefit as a result of the misconduct; and

h) whether Transnet suffered actual or potential prejudice.

23.4.2 The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet and must be carefully considered. Associated companies must not be blacklisted by default. The merits of each case will inform the decision as to whether a particular associated company will be blacklisted or not. In addition to considering the factors mentioned above, as a general rule the blacklist should only be extended to associated companies where the directors/members common to both entities were either directly involved in the misconduct against Transnet, or failed to take remedial action for a serious offence. Furthermore, it is important to consider whether the blacklisted director/member plays an active role in the associated company or has a controlling stake in the associated company.

23.5 GUIDELINES FOR DETERMINING AN APPROPRIATE PERIOD FOR BLACKLISTING

Blacklisting cannot be imposed for an indefinite period. The following is a general guideline on the number of Years of blacklisting to impose on suppliers found guilty of misconduct against Transnet:

TABLE 18

Grounds for Blacklisting	Suggested Period
Offences involving bad faith / dishonesty (e.g. theft, corruption, fraud, Fronting, misrepresentation, etc.)	Not less than 5 Years, and not exceeding 10 Years
Other misconduct (e.g. breach of contract, poor performance, etc.)	1 – 5 Years (However, Transnet reserves the right to impose a longer period of restriction to a maximum of 10 Years, depending on the gravity of the misconduct.)

23.6 BLACKLISTING PROCEDURE

The following procedure must be followed in order to blacklist any person/company:

23.6.1 As soon as an OD detects misconduct by a person/company falling within one of the grounds for blacklisting, the matter must immediately be reported to the procurement division of the OD concerned.

23.6.2 Procurement will review the motivation for the blacklisting. If possible grounds for blacklisting exist; a forensic audit may be conducted to establish whether the grounds for blacklisting are valid.

23.6.3 Should the forensic report establish that possible grounds for blacklisting exist; the OD AC shall be approached for approval to proceed with the blacklisting in principle.

23.6.4 Transnet Internal Audit will be requested to conduct ITC searches on the Company and its members/directors in order to ascertain the identity of all companies associated with such members/directors.

23.6.5 The matter must then be referred to the OD legal department or Group Legal where an OD does not have its own legal department, who will be responsible for the following:

a) The company, its directors and all associated entities are to be informed both by registered and hand delivered mail of the intention to blacklist, as well as reasons for the proposed blacklisting. The letter should also indicate whether Transnet intends to cancel any existing contracts with the supplier. Proof of delivery should be obtained. The companies/persons must be afforded a period of 14 Working Days within which to make representations as to why they should not be blacklisted or why existing contracts should not be cancelled.

b) After the 14-day period the Legal Department must consider the responses (if any) from the companies/persons. The motivation must then be completed and signed off by the Legal Department, Management and procurement.

23.6.6 The matter must then be submitted to the AC to consider whether or not to proceed with the blacklisting. Should the AC support the blacklisting motivation, the matter shall be forwarded with all supporting documentation to Group iSCM for further action where the GCSCO will consider the matter. If blacklisting is no longer recommended, the relevant Legal Department is to inform the OD and the relevant entity concerned of this decision.

23.6.7 If supported, Group iSCM will draft the final submission and attach all original documents including the relevant AC minutes for consideration by the GCFO.

23.6.8 Final approval for blacklisting will be made by GCFO.

23.6.9 Group iSCM will then notify all companies/persons by registered (or hand delivered) mail of the blacklisting. Group iSCM will also update and circulate the List of Excluded Bidders.

23.6.10 Group iSCM will notify the Transnet Content Bureau to update the RAMIS and SAP CLM system to either:

a) block the blacklisted company(ies) on the system altogether if all existing contracts have been terminated and ensure that all payments already incurred have been settled; or

b) ensure that no new contract may be loaded on the system if existing contracts with the company have not been terminated so that payments on the existing contracts may still be effected, and

c) Publish the blacklist on Transnet's external website so that blacklisted entities may not be used as subcontractors or JV partners.

23.7 APPEAL AGAINST DECISION TO BLACKLIST

Any company/person against whom a decision with regard to exclusion from future business has been taken may make representations to the GCE whose decision shall be final.

23.8 RESCISSION OF A DECISION TO BLACKLIST

The Transnet GCFO or his duly authorised delegate may at any time, on good cause shown, rescind a decision taken or reduce the period of exclusion as initially determined.

23.9 ENFORCEMENT OF THE TRANSNET LIST OF EXCLUDED BIDDERS

Prior to the approval of the award of business by any AC, the Secretary of the AC shall verify that no business is awarded to companies or persons appearing on Transnet's List of Excluded Bidders. This will include verifying the identity numbers of the directors/members of the recommended Bidder against the identity numbers of the restricted persons on the List. The Secretary and Chairperson of the AC shall sign off a certificate stating that no business is awarded to entities or persons appearing on Transnet's List of Excluded Bidders. The certificate should be retained by the Secretary of the AC.

23.10 ANCILLARY ACTIONS

Furthermore, in cases of corruption or fraud, theft, extortion and forgery involving R100, 000.00 or more, Transnet must:

a) act in terms of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 and report the matter to the South African Police Services for further investigation.

b) in addition to subparagraph (a) above Transnet may also, at its sole discretion, decide to institute criminal and/or civil action.

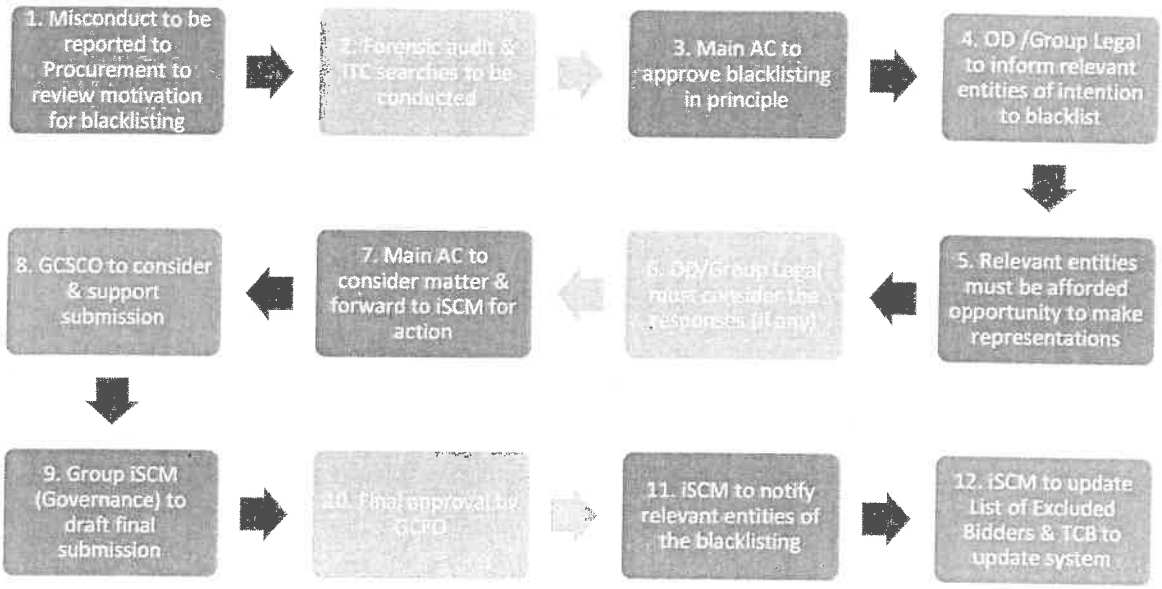


Figure [37] – The blacklisting process

Background and Context

Procurement planning

Go to Market

Evaluation and Adjudication

Contract Management

SECTION F:

GOVERNANCE STRUCTURES

Chapter 24: Functions of Governance Structures and Departments

- Main OD Acquisition Councils
- Transnet Acquisition Council (TAC)
- Procurement Ombudsman
- Capital Investment Committee (CAPIC)
- Board Acquisitions and Disposals Committee (BADC)
- Integrated Supply Chain Management (iSCM)

Appendices

CHAPTER 24 : FUNCTIONS OF GOVERNANCE STRUCTURES AND DEPARTMENTS

24.1 MAIN ACQUISITION COUNCILS (Main AC)

Each division will have its own main AC which will consider and approve all procurement processes, as well as the disposal of scrap, falling within its jurisdiction from R2 million, but not exceeding R500 million. This is subject to the discretion of the OD CEO to lower the R2 million threshold, or to create secondary ACs. Transactions exceeding the CEO's Delegated Powers will likewise be considered by the OD's main AC. If it concurs with the recommendation, the matter will be referred to the relevant governance structure for approval.

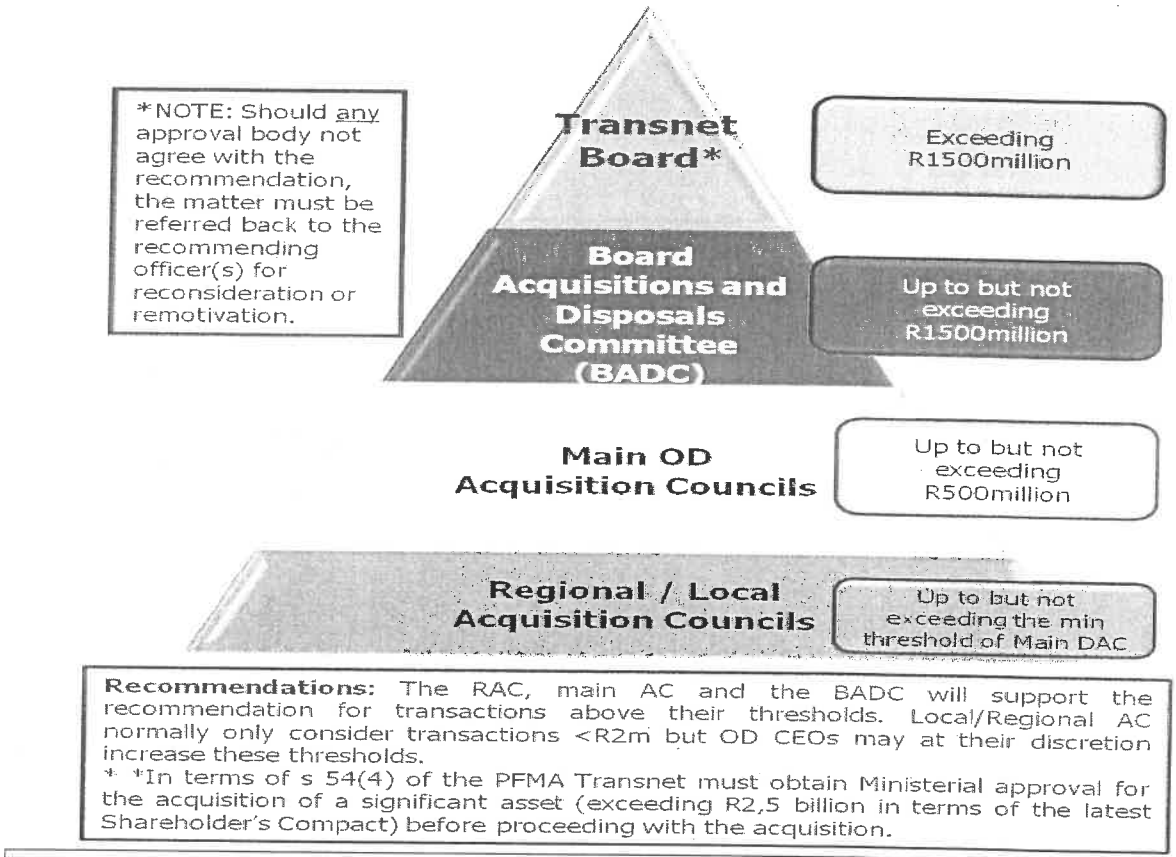


Figure [38] – Thresholds for process approval

The **Transnet Acquisition Council** ("**TAC**") has similar roles and responsibilities to that of the ODs' main ACs but it caters for the Group Corporate Head Office requirements, as well as centre led transversal contracts. The TAC has no higher status than the ODs' main ACs.

24.1.1 Composition of the Main AC

The main AC is constituted as a governance committee of the OD CEO and shall consist of senior management members within the OD. The main AC or CEO shall have the discretion to create regional and/or local ACs, hereinafter referred to as secondary ACs. An AC shall be comprised of the following persons:

a) A Chairperson, who will either be the CEO, or an executive or senior management member, shall be appointed by the CEO of the OD. The Chairpersons of secondary ACs will likewise be appointed by the main AC or CEO.

b) A Deputy Chairperson, who shall be one of the members mentioned in paragraph (c) below and who shall be appointed by the OD CEO or elected by the AC at a properly constituted meeting.

c) Members, all of whom are senior Transnet employees in the particular OD or where applicable seconded from Transnet Group, selected by virtue of their specific expertise or business focus, appointed by the CEO, with the clear proviso that the heads of Procurement, Finance, Legal and Risk in the OD will be mandatory appointments.

(i) Members must be capable of exercising sound, unbiased judgement and offer constructive comment.

(ii) It is a minimum requirement for members and appointed alternates to attend the annual training course on AC Roles and Responsibilities, Procurement and Bid Evaluation, presented by the Group Governance Function.

d) ACs may, at the discretion of the OD CEO or Chairperson, opt to appoint alternates for its members. Should the AC opt to appoint alternates, each member may, in writing, nominate one alternate. Alternates must be formally appointed by the CEO. Should the member be unable to attend a scheduled meeting, the appointed alternate should attend in his/her stead. All alternates are to be of suitable seniority to represent the member adequately and to make decisions on the member's behalf.

e) ACs may, at the discretion of the CEO/Chairperson, opt to appoint members on an ex officio basis. Such members shall not be counted to constitute a quorum and shall have no vote.

f) Secretary: The CEO or duly authorised delegate shall appoint an employee of Transnet as secretary to the AC. The incumbent must have extensive procurement and governance knowledge and experience, and should ideally be part of the procurement structure of the particular OD. However, to ensure a proper segregation of duties, the Secretary should report directly to the chairperson for purposes of day-to-day operations and performance management. This is to avoid any perceived conflict of interest which may jeopardise the objectiveness of the Secretary, as procurement will inevitably be tabling the vast majority of submissions.

24.1.2 Primary Mandate (Main AC)

To consider all recommendations from the OD with regard to the award of external contracts for the procurement of Goods and Services, or the disposal of scrap, where the total value of the business exceeds R2 million (subject to the discretion of the CEO to lower such threshold, or to create secondary ACs – see paragraph 24.1.3 below). Likewise such ACs will also consider any subsequent amendments to the contracts falling within their jurisdiction.

24.1.3 Secondary Acquisition Councils

The Main AC or the CEO of an OD may at their discretion decide to lower the limit set in paragraph 24.1.2 above and/or introduce similar secondary structures on local or regional level, to cater for matters falling below the jurisdiction of the main AC. The Terms of Reference of all ACs have been standardised, except for the ambits and delegations applicable to secondary ACs. The thresholds must be clearly stipulated in the relevant appendices to the Terms of Reference of the respective Main and secondary ACs. It is also a requirement that the Divisional Delegation of Authority, applicable to the signing authorities of individuals (similar to the Transnet DOA

Framework) be included as part of the relevant main and secondary ACs' Terms of Reference so as to ensure that there is no uncertainty as to the approval thresholds.

(Refer to DOA Summary Section A, Chapter 6)

Figure [39] below illustrates the current AC hierarchy within the Transnet Group.

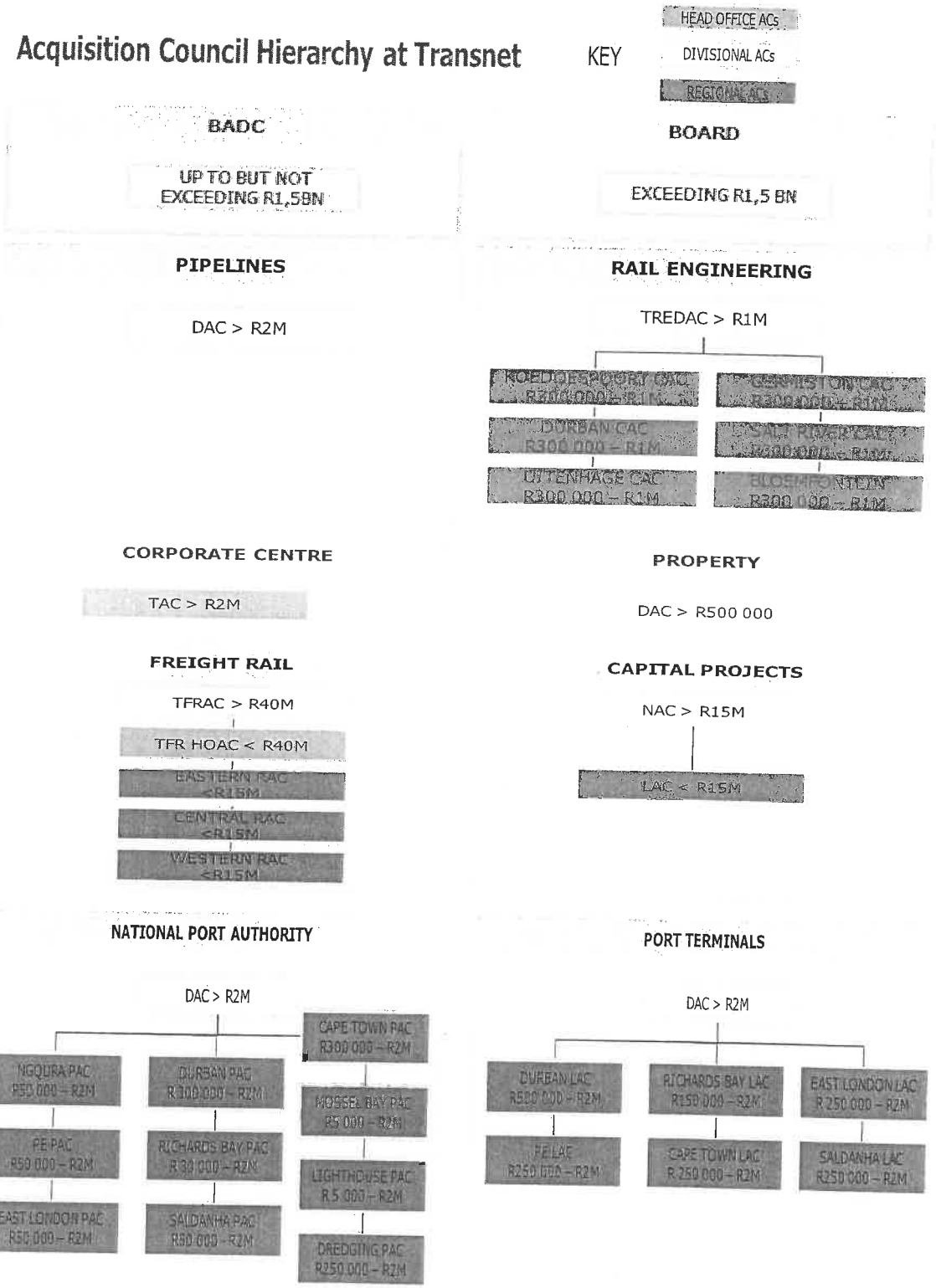


Figure [39] – Acquisition Council Hierarchy at Transnet

24.1.4 Term

Members and alternates will be appointed for a specific term. The letter of appointment shall clearly state the term of appointment (start and end dates) and also whether the appointee is a full member or an alternate to a specific member. The OD CEO shall have the power to, at any time, remove any member from the AC and fill the resulting vacancy.

24.1.5 Confidentiality

Members are required to treat all information they receive as AC members/alternates as strictly confidential. A confidentiality agreement shall be signed by the member at the start of his/her tenure. Information shall not be divulged without proper and specific authority.

Should a member wish to have anything clarified or explained prior to a scheduled meeting or during circulation of a matter, such query should be referred to the AC Secretary.

All AC records shall be kept securely in the custody of the Secretary of the AC. These records shall not be disclosed without proper approval. Likewise, third party confidential information shall not be disclosed unless required by legislation or a court of law.

24.1.6 Conflict of Interest

Instances may arise when a member of the AC or an alternate has a direct or indirect interest in a particular transaction/project or has been or can be deemed to have been personally involved in the RFX process or business decision which gave rise to a recommendation to the AC. In such cases, he/she shall declare such interest by means of a standard declaration of interest form before the meeting commences and also when the AC deliberates the specific matter. Declaration of a **direct interest** will result in automatic recusal. Should an AC member declare an **indirect interest** in a matter before the AC, he/she must declare his/her interest and the Chairman will determine whether the member should recuse him/herself. The reasons for this decision must be officially recorded and kept on file. This will also apply to circulation ('Round Robin' items).

24.1.7 Meetings / Attendance

The AC shall meet at predetermined intervals. Where there is the need, special meetings may be convened by the Chairperson.

Members are required to attend all meetings of the AC. For this reason, AC meetings shall be scheduled well in advance. Should a member not be able to attend a specific meeting, his/her alternate must attend. Attendance and participation by members should be a SPO or at least a KPI, on the member's performance management scorecard. This should be measured by the Chairperson of the AC.

Should a member be absent for more than three consecutive meetings, the Chairperson shall pursue the matter with the member concerned and may recommend to the CEO that such member vacates his/her position on the AC.

Individuals who are not members or alternates may, at the invitation of the Chairperson, attend a meeting of the AC in an *ex officio* capacity or to provide clarification on a specific matter(s). Such individual(s) shall be informed that the information which they will be providing will be formally recorded as part of the minutes of the meeting.

24.1.8 Quorum

A majority of the members/alternates appointed at any given time shall form a quorum.

Should exceptional circumstances necessitate that, both a member and his/her alternate attend the same proceeding, both votes may be taken into consideration to form a quorum as members. Their alternates shall then be appointed on the AC by virtue of their own specific expertise. The provisions of paragraph 24.1.7 above should however be observed.

24.1.9 Voting and deliberation

The Chairperson shall submit any matter to the vote of the members of the AC in the event of a difference of opinion or when requested to do so by a member of the AC.

In the event of a tie, the Chairperson shall have a casting vote in addition to his/her deliberative vote.

24.1.10 Duties of the AC

a) **Chairperson**

The Chairperson of the AC shall chair the proceedings at the meetings and exercise the powers vested in him in terms of these procedures and any other DoA.

b) **Deputy Chairperson**

In the absence of the Chairperson, the Deputy Chairperson shall act in his/her stead and shall be empowered to perform all the duties and exercise all the powers vested in the Chairperson under the laid-down procedures and any other DOA.

In the absence of, both, the Chairperson and the Deputy Chairperson from a meeting of the AC, a Chairperson shall be elected out of the members/alternates who are present.

c) **Secretary**

The Secretary shall undertake the tasks as imposed upon him/her by the Transnet Supply Chain Policy and Procurement Procedures Manual (PPM) and other relevant directives, or by the Chairperson of the AC or the GISCM Function or the CEO of the OD.

The Secretary is regarded as the "gatekeeper" of the AC and he/she has to be a person with impeccable integrity and honesty, who has the assertiveness to make a positive contribution to the effective functioning of the AC. The Secretary:-

(i) has the duty to act in good faith, duty of care, with skill and diligence and avoid conflicts of interest;

(ii) shall keep a central bid (RFX) register and shall be responsible for the issuing of RFP, RFQ and RFI numbers in respect of all bids issued by the OD to the external market, falling within the monetary ambit of the AC. He/she will report on progress with regards to completion of the process. (Register template available on the iSCM Transnet Intranet);

(iii) shall give impartial advice and act in the best interests of Transnet and hence should not be subject to undue influence by any of the AC Members. The integrity of the Secretary's position must be protected as it is one of the most effective internal controls available in governance;

(iv) shall be the only person, apart from the AC Chairperson, to consider authorising procurement staff to communicate with Bidders in the period between the closing of the bids and the award of the business;

(v) shall keep the AC members abreast of the latest policies and procedures and any amendments thereto;

(vi) shall provide the AC, as a whole and members individually, with comprehensive, practical support and guidance as to how their responsibilities should be properly discharged in the best interest of Transnet;

(vii) has an important role to play in the induction of new or inexperienced members and shall assist the chairperson in determining the annual AC meeting schedule, training plan and administration of other issues relevant to the AC; and

(viii) provides a central source of guidance and advice to bid and contract administrators throughout the OD, end users and the bidding public.

Other responsibilities of the Secretary are to:

(ix) plan and arrange meetings of the AC, formulate and distribute proper agenda packs (submissions in the prescribed format) for the meetings of the AC. (Standardised submission templates are available on the iSCM Transnet Intranet);

(x) ensure that all members attending a specific meeting of the AC are provided with the necessary forms to declare any interest in matters serving before the AC in that meeting;

(xi) ensure that a proper register of these declarations of interest is kept with the minutes of that particular meeting;

(xii) arrange for and securely keep a voice recording of the proceedings and, in writing, record proper minutes of the proceedings, deliberations, decisions and resolutions of the AC. He/she should furthermore obtain the signature of the Chairperson on each individual resolution during or as soon as possible after the meeting, communicate such resolutions to the relevant role-players and securely keep copies thereof for record purposes.

The minutes shall contain -

- an outline of material proceedings and deliberations by the AC; and
- all recommendations, decisions, resolutions, provisional approvals and directives issued by the AC.

A draft copy of the minutes shall be circulated to members of the AC prior to the next scheduled meeting.

Before the next scheduled meeting, a member may request that the draft minutes be amended to include certain specific deliberations, etc. and such proposed amendments shall be included by the Secretary.

The Secretary shall table the draft minutes at the next meeting of the AC, for confirmation by the AC and signature by the Chairperson;

(xiii) ensure that, by means of a proper certificate as per the prescribed format (template, available on the Transnet ISCM Intranet), duly signed by the Secretary and the Chairperson of the AC, that no business is being recommended for award to an entity(ies) or person(s) appearing on Transnet's List of Excluded Bidders/Contractors(Blacklist). Such certificate should be kept and securely filed with the minutes of each meeting of the AC;

(xiv) be responsible for the receipt, opening and stamping of Bids where this duty has been assigned to the AC Secretary. (Refer to Chapter 17 for the rules and procedures pertaining to the bid opening process);

In respect of AC submissions:

(xv) verify the comparative schedule/evaluation, plus all the facts stipulated in submissions to the AC;

(xvi) ensure that authorities for all communication and negotiation are indicated in the submission to the AC, and the outcome of such communication/negotiation is stipulated in detail in the submission;

(xvii) ensure that documentary evidence is available (copies to be kept on AC file) in respect of all facts presented and statements made in the submission;

(xviii) proactively pursue the clarification of uncertainties prior to the meeting, so that matters are not referred back unnecessarily;

(xix) edit* submissions to ensure that all requirements are met before the matter is tabled at the meeting of the AC. (*Submissions are not physically edited but an annexure must reflect all corrections and queries resolved by the Secretary); and

(xx) draft "AC circulars" on behalf of the AC in respect of directives to be issued by the AC.

(xxi) ensure that members are provided with an agenda at least 3 Working Days before any scheduled AC meeting, in order for them the do the necessary preparation before the meeting. Should a member have any queries on a matter on the agenda, he/she should raise these with the Secretary timeously, in order that the Secretary may obtain clarity before the meeting.

24.1.11 **Responsibilities and Obligations of Members**

a) Members take collective and individual responsibility for processes followed, decisions taken and resolutions carried by the AC.

b) In performing their legal duties, each AC member shall -

(i) act honestly and in good faith, whilst taking into account the policies and business objectives of the company with a view to fostering the best interests of Transnet;

(ii) exercise the duty of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(iii) act fairly, impartially and objectively, and not allow prejudice or bias or influence of others to override objectivity; and

(iv) act professionally at all times.

c) Duty of care and diligence:

(i) Members owe a common law duty towards Transnet to act with due care and diligence. Members are consequently liable for any prejudice suffered through such Member's failure to carry on the business with the degree of care and diligence that may reasonably be expected from a person of his/her knowledge and experience. Hence, Members must fully inform themselves of all material information available in the AC Pack so as to ensure that they act with due care in the discharge of their duties.

(ii) Members shall study the AC pack and properly prepare for a meeting of the AC prior to AC meetings to ensure that they familiarise themselves with the matters so that there is optimum participation in deliberation and decision making. They shall also make every effort to attend all meetings of the AC.

d) Members shall:

(i) understand and weigh alternative courses of action;

(ii) weigh benefits versus potential harm when considering specific courses of action; and

(iii) ensure that there is no breakdown in effective corporate governance and no impairment in their ability to carry out their responsibilities.

e) Duty to act honestly, ethically and in good faith:

(i) Members shall always act honestly, ethically and in good faith with a view to the best interests of Transnet. Members shall avoid a conflict between the interest of Transnet and their own and, in particular, shall not derive any personal benefit from matters submitted to the AC for consideration.

(ii) Members shall not act in bad faith due to bad judgement or negligence.

e.g. Members do not act in good faith when they know they are making material decisions without adequate preparation and deliberation and simply do not care if their decisions cause breach of governance principles and promote Fruitless and Wasteful Expenditure and consequent financial loss to Transnet.

24.1.12 **Functions of the AC**

a) To consider all recommendations from the OD with regard to the award of external contracts for the procurement of Goods and Services, or the disposal of scrap metal, where the total value of the business exceeds R2 million (subject to the discretion of the CEO to lower such threshold).

b) To consider all subsequent amendments to material provisions (i.e. which have a cost or risk implication) of contracts exceeding R2 million or where the original value of the contract plus the cumulative value of the amendments will exceed R2 million.

c) To consider and approve the non-award of business against any RFX falling within its ambit.

d) To consider recommendations to approach the market to solicit Bids in respect of a contract with a period of more than two Years, regardless of the value (alternatively RFX to provide for different options).

e) The AC must be proactive and clarify uncertainties emanating from submissions, prior to the meeting. This will ensure that matters are not referred back unnecessarily, causing delays. Under no circumstances should matters be referred back by ACs for trivialities.

f) To consider all recommendations in respect of bids as well as any extension of existing contracts of which the original period, or the original period plus the extension of the period together is/are longer than two Years regardless of monetary value, and all subsequent amendments of material provisions to such contracts.

g) With regard to paragraphs 24.1.12 a) and b) above, ACs or the CEO may at their discretion lower these limits and/or introduce similar structures on local or regional level, to cater for matters falling below the jurisdiction of the AC.

h) To consider and approve the framing of the OD's Lists of Approved Suppliers/Goods, as well as any amendments to such Approved Lists, and to administer such Approved Lists utilised within the OD. This function may not be delegated to Local / Regional ACs.

i) To consider and make recommendations to the Group ISCM regarding all aspects pertaining to Transnet's List of Excluded Bidders. The GISCM shall administer the List on behalf of the Transnet Group.

j) Secondary ACs to refer recommended exclusion matters to the main OD AC (where applicable), which will consider and if supported, refer to Group ISCM for finalisation and onward transmission to the GCFO for approval. Refer to Chapter 23 for Blacklisting procedure.

k) To monitor/administer the opening of all bids irrespective of the value. ACs may at its own discretion and depending on internal structures, delegate the opening of bids under a certain monetary value, to procurement offices or secondary ACs, provided that it has satisfied itself that proper procedures and controls as specified in the PPM are in place and are monitored on an on-going basis.

l) To obtain statistics and review, at regular intervals, details of all transactions falling below the AC's jurisdiction (See template available on the Transnet GISCM Intranet). Any alleged irregularities or trends that may arise out of the purchase, sale, hiring or letting of Goods and the procurement of Services, shall be investigated and corrective measures recommended by the AC if deemed necessary.

m) To refer to the Governance COE, (GISCM) for guidance/direction, any policy and/or legal question/s which arise out of the laid-down procedures or out of a bid, contract or contract amendment.

n) To exercise such powers and perform such duties as may be conferred or imposed by the laid-down procedures.

o) To perform other functions as the BADC, the GCE, the Governance COE (Group ISCM) or the OD CEO may determine or deem necessary from time to time.

Notes:

- Purely income generating contracts fall outside the scope of this document. However, the acquisition of Goods and Services to give effect to such income generating contract, fall within the scope of the PPM.
- The AC may refer a matter back only for reconsideration or re-motivation. It may under no circumstances change a submission or change the award of the business. On receipt of a revised/re-motivated submission the AC will again consider the matter. Refer to paragraph 24.1.16d) below for the procedure to be followed in instances where the AC still does not agree with the revised/re-motivated submission of the Manager/procurement.

24.1.13 **Powers of the AC**

When considering any new transaction or any Material Amendment/s to an existing contract, the AC has the power to, at its discretion:-

a) call for any files or papers dealing with offers, enquiries, the invitation and evaluation of Bids in the procurement of Goods and Services;

b) request any information which any employee may have at his disposal relating to the supply of, and/or payment for Goods or Services;

c) require any employee to provide information/advice or to attend any AC meeting in an advisory capacity;

d) invite any Consultant from the private sector to provide additional skills to the AC when necessary;

e) consider and recommend the condonation of any non-compliance with the laid down policies, procedures or directives for sign-off by the CEO en-route to the GCE or higher in terms of the Transnet DoA Framework;

f) offer comments, or note matters submitted for information;

g) refer any submission back for reconsideration/re-motivation;

h) withdraw an item from the agenda of any meeting of the AC, provided that the reasons for such withdrawal are duly recorded in the minutes of the meeting and communicated to the submitter by the Secretary;

i) report any anomalies, irregularities or non-compliance with laid-down policies, procedures or directives to the CEO (should the AC not be chaired by the CEO himself / herself);

j) exercise a discretion in those instances not explicitly provided in the laid-down procedures or as may be entrusted to it by the relevant policies and procedures or the Board Acquisitions and Disposals Committee, the Governance COE (Group iSCM) or the OD's CEO;

k) refer any matter or issue arising from the exercise of the powers or the performance of the aforementioned duties to the Governance COE (Group iSCM);

l) issue 'AC Circulars' to address any trends or issues arising from matters serving before the AC; and

m) periodically review copies of procurement gift registers.

24.1.14 **AC approvals and provisos**

a) The AC does not possess any executive authority to award external contracts for the procurement of Goods and Services or disposal of assets.

b) All AC approvals are subject to the following provisos:

(i) there is still the need for the purchase, sale, hiring, or letting of Goods and procurement of Services before the non-acceptance/regret letters to the unsuccessful Bidder/s and the acceptance of the winning Bid to the Successful Bidder are communicated by a Manager with the appropriate delegation of authority to sign the contract;

(ii) the financial provision is adequate;

(iii) the best interest of Transnet is being served at the time of concluding the contract, and

(iv) the contract is signed by the Manager with the appropriate delegation of authority.

24.1.15 Recording of votes via circulation ('Round Robin')

a) In urgent cases where the OD would be substantially prejudiced if a submission is held over until the next scheduled meeting of the AC, the papers relating to the specific matter may be circulated to the members of the AC. This will be at the discretion of the Chairperson, but subject to the right of any member to demand a meeting. There should be a pre-determined deadline by which all members respond (depending on the urgency). The members who respond by the deadline must record their votes in writing.

(i) Unanimous approval by a quorum of members so made by the stipulated deadline shall be deemed to constitute a resolution of the AC. Such resolution shall be communicated to the recommending officer by the Secretary as soon as possible thereafter.

(ii) The Secretary may extend the deadline should a quorum of votes not be attained by the initial deadline. Alternatively, a special meeting of the AC must be called by the Secretary, with the consent of the Chairperson. Members have the right to cast their vote until the deadline, irrespective of whether a quorum has already been attained.

(iii) If the deadline has lapsed, and a unanimous vote by a quorum of members has been attained, no further votes will be considered.

(iv) A resolution taken in such manner shall be officially noted and recorded in the minutes of the next scheduled meeting of the AC.

b) In exceptional circumstances and only due to the non-availability of members, the votes of a member and alternate may be taken into account in order to attain a quorum. The stipulation contained in paragraph 24.1.7, should, however, be observed.

24.1.16 Disagreement with a decision of the AC

a) In the event of a matter being referred back by the AC for reconsideration of the recommendation made by the recommending officer/evaluation panel, the recommending officer/evaluation panel shall:-

b) make a revised submission to the AC; or

c) should he/she disagree with the reasoning of the AC he/she shall, with the concurrence of his/her executive officer, re-motivate the recommendation and resubmit to the AC, whereafter the AC shall reconsider the matter; and

d) should the AC still not concur in the revised recommendation, the recommending officer shall refer the matter to the CEO, who shall rule on the matter.

24.1.17 Interpretation of PPM and Government Policy

In cases where the AC requires guidance on Government policy matters and in terms of interpretation of the PPM, guidance must be sought from the GCSCO.

24.1.18 **Submissions to the AC (Précis)**

a) All submissions to the AC shall be in the required format. The Secretariat may provide assistance to draw up a précis. (Refer to SAP CLM and the Transnet Group iSCM Intranet for the generic templates).

b) The Governance Function of Group iSCM is the custodian of all submission templates and any suggested changes thereto must be recommended to that office for consideration and implementation.

c) All submissions to the AC must be accompanied by all the relevant supporting documentation, e.g. original bid documents, authority to communicate or negotiate, etc.

d) All submissions should be submitted to the secretariat well before the scheduled meeting, to afford the secretariat enough time to properly vet the submissions. It is suggested that submissions are handed in by 12h00, seven Working Days before a scheduled meeting of the AC.

24.1.19 **Reporting/Monitoring**

a) The main OD AC reports to the CEO through its chairperson.

b) Secondary ACs report to the main ACs, and are responsible to monitor transactions falling below their minimum thresholds, except for TCP, where the Local ACs act autonomously.

c) Reports of all the ACs must include the following:

(i) statistics required for the compilation of the Group iSCM Governance dashboard;

(ii) updates about the council's activities, as appropriate;

(iii) sensitisation on trends, irregularities and other anomalies or matters that may significantly impact on the management of contracts and bids of the OD or cause reputational harm to Transnet.

d) The performance of the main OD AC shall be monitored by the CEO.

e) Local / Regional ACs' performance will be monitored by the main OD AC.

f) The performance of the individual members and secretariat shall be monitored by the chairperson of the AC.

24.2 TRANSNET ACQUISITION COUNCIL (TAC)

24.2.1 Role and Functions of the TAC

The TAC has similar roles and responsibilities to that of the OD main AC's. It will cater for the Group Corporate Head Office requirements, as well as centre led transversal contracts. OD-led transversal contracts will be dealt with by the leading OD main AC. The TAC will have no higher status than the ODs' main AC's.

24.2.2 Refer to section 24.1 regarding the main OD AC as this paragraph is also applicable to the TAC. Any powers assigned to a CEO with regard to the Main AC will apply to the GCFO (or his delegate) as far as the TAC is concerned.

24.2.3 Composition of the TAC

a) The TAC shall consist of senior management members within Group Corporate Head Office who shall be appointed by the GCFO for a specific term:

(i) A Chairperson, who will either be the GCFO or an executive or senior management member appointed by the GCFO;

(ii) A Deputy Chairperson, who shall be one of the members mentioned in paragraph c) hereof;

(iii) Members with alternates, all of whom are Transnet employees in the Group Corporate Head Office, selected by virtue of their specific expertise or business focus. They must be capable of exercising sound, unbiased judgement and offer constructive comment.

(iv) The Heads of Procurement, Legal, Financial Planning, Tax and Risk in the TCC shall be mandatory appointments.

24.3 PROCUREMENT OMBUDSMAN

The Transnet Procurement Ombudsman (the Ombudsman) is appointed to provide Bidders as well as Transnet with a fair, expeditious, and effective dispute resolution process. The Ombudsman acts independently and objectively in resolving disputes and is not influenced by anybody in making his or her decisions.

Below is a short summary of the role of the Ombudsman. For more information, refer to the Terms of Reference of the Procurement Ombudsman, available on the iSCM Transnet Intranet.

24.3.1 The role of the Procurement Ombudsman

a) The role of the Ombudsman is to enhance the integrity and fairness of Transnet's procurement processes by providing an independent and objective assessment of complaints which are lodged by unsuccessful Bidders regarding any aspect of Transnet's bid process.

b) As a general rule, the Ombudsman will only consider complaints pertaining to bids valued at R5 million and above.

c) Complaints involving bids below R5m must be sent to the CPO of the relevant Transnet OD for review.

24.3.2 Powers of the Ombudsman

a) The Ombudsman has the power to conduct a full investigation of a complaint and to make appropriate recommendations to the CPO and the CEO of the relevant OD of Transnet regarding the appropriate remedial measures to be undertaken.

b) Such measures may include, but are not limited to the following:

(i) cancelling a bid if there is a material irregularity;

(ii) referring a bid back for re-evaluation;

(iii) amending a bid decision;

(iv) recommending that letters of censure be sent to any Transnet official; and/or

(v) the institution of disciplinary, civil or criminal proceedings where appropriate.

c) The Ombudsman may also on his own initiative launch a review of any bid award, regardless of whether a formal complaint was received or not.

d) An investigation by the Ombudsman of any bid award may also be initiated by an internal referral.

e) In most instances the Ombudsman will conduct the investigation without the need for a formal, oral hearing. However, in highly exceptional circumstances, the Ombudsman may in his sole discretion conduct an oral hearing if it would assist with the resolution of the matter.

24.3.3 The obligations of Transnet's Operating Divisions

a) Transnet's ODs shall:-

(i) immediately refer any complaints received over the threshold referred to in paragraphs 24.3.1b) and 24.3.1c) above to the Ombudsman;

(ii) act within these Terms of Reference;

(iii) expeditiously comply with requests made by the Ombudsman in terms of the Terms of Reference and Operational Procedures;

(iv) provide the Ombudsman with unrestricted access to relevant information, documentation or persons in relation to an investigation; and

(v) abide by the decision of the CPO and the CEO of the relevant OD of Transnet regarding the implementation of the Ombudsman's recommendation.

b) Transnet's ODs shall not:

(i) prevent a Bidder from making use of the services of the Ombudsman;

(ii) provide the Ombudsman with any misleading information; or

(iii) act vindictively toward a Bidder who made use of the services of the Ombudsman.

24.4 CAPITAL INVESTMENT COMMITTEE (CAPIC)

24.4.1 Purpose

The CAPIC shall ensure that the resources that Transnet SOC Ltd ("**the Group**") invests for the development of capital projects are strategically managed and shall to this end-

a) Ensure that decisions relating to capital expenditure are consistent with the strategic focus of the Group; and

b) Ensure that capital expenditure complies with the budget and business plans approved by the Board.

24.4.2 Composition

CAPIC is constituted as a committee of the Transnet SOC Ltd Group Executive Committee:

- *Chairperson* - GCFO
- *Secretary* - Group Company Secretary

The following shall be members of CAPIC:

- GCFO (Chairperson)

- GCE (*ex officio*)
- Group Executive - Transnet Capital Projects
- Chief Executive Officers - TNPA, TPT, TFR, TRE and Pipelines
- Chief Information Officer
- Group Treasurer
- General Manager - Group Financial Planning
- Group Chief Supply Chain Officer

The GCE may at any time change the composition of this Committee or determine that a person other than the GCFO chair meetings of CAPIC.

The Committee may invite such other officers of the Group as it deems fit to be in attendance at CAPIC meetings.

24.4.3 Terms of Reference

CAPIC shall:

a) Ensure that investment in respect of capital projects is consistent with the strategic focus of the Group and deals with the business of the Group in an integrated manner;

b) Ensure that capital expenditure is in accordance with the budget and business plans approved by the Board;

c) Determine the factors that shall inform the prioritisation of any capital expenditure project over another;

d) Monitor the implementation of project plans to ensure that approved capital expenditure projects are carried out with minimum delays;

e) Review and amend, subject to the limitations of the Board approved budget, expenditure plans in respect of any project should it, as a result of any unforeseen and unavoidable circumstances, it be necessary to effect such amendment;

f) Ensure that in respect of each capital investment project proposed for consideration by CAPIC, certification is given that there was proper compliance with applicable processes relating to amongst others, risk management and that such projects reflect optimum value for money; and

g) Conduct post-implementation reviews through, amongst others, external auditors, to determine, amongst other things, whether value has indeed been derived by the Group as a result of the relevant capital investment.

24.5 BOARD ACQUISITIONS AND DISPOSALS COMMITTEE (BADC)

24.5.1 Purpose

To ensure that the Board's composition and structure enables it to fulfil the obligations of the Board mandate and advance and maintain the Group's acquisition and disposal policies.

- 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.

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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.

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.

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(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)

24.5.2 Composition

a) The Group Acquisition and Disposal Committee ("the Committee") is constituted as a committee of the Transnet Limited Board.

b) At least four directors of the Group shall be members of this Committee, the majority of whom must be independent non-executive directors. The GCFO and the GCE shall be ex officio members of the Committee.

c) The members of the Committee will be selected by virtue of their specific expertise or business focus, but with a preference to members with specific experience in procurement practices, law and finance. They must be capable of exercising sound, unbiased judgment in order to fulfil their duties.

d) The Secretary shall be the Group Company Secretary.

e) The remuneration of the Chairperson and Committee members will be determined by the Group Remuneration Committee and approved by the Board in accordance with the fee structure approved by the Shareholder.

The following shall attend by invitation:

a) The Group Chief Supply Chain Officer; and

b) Such other persons determined by the Committee, who may include, where deemed necessary by the Committee, members of senior management and independent acquisition and disposal experts.

24.5.3 Roles and Responsibilities

a) The Committee has an independent role, operating as an overseer of the acquisition and disposal function within Transnet. The Committee will also have the power to consider and approve acquisitions and disposals in terms of its mandate from the Board.

b) The Committee does not assume the functions of management, which remain the responsibility of the executive directors, officers and other members of senior management.

24.5.4 Authority

a) The Committee has authority to:-

(i) have access to any information it needs to fulfil its responsibilities;

(ii) seek independent advice at the Group's expense, subject to Transnet's procurement policies and procedures;

(iii) have direct access to any executive of the Group or its subsidiaries; and

(iv) make amendments to the mandate subject to approval by the Transnet SOC Ltd Board.

b) The Committee may form, and delegate authority to, committees and may delegate authority to one or more designated members of the Committee.

c) The Committee shall make the recommendations to the Board that it deems appropriate on any area within the ambit of its terms of reference where action or improvement is required.

24.5.5 Terms of reference

The Committee shall:

a) Oversee an annual review of Transnet's Procurement Procedures Manual and the Construction Procurement Policy, Processes, Procedures and Methods within Transnet Capital Projects and ratify any amendments thereto;

b) Pre approve bids within its delegated authority up to the maximum of investment decision/budget, before the bids are issued to market. This includes acquisition and disposal of movable and immovable property, capital investments, operational expenditure, the provision and acquisition of Services, maintenance, refurbishment and the establishment of infrastructure, purchasing of fuel, but excludes guarantees, indemnities and securities;

c) Monitor trends in general procurement spend;

d) Monitor trends in SD spend and progress on plan (includes support of National Growth Plan, SD, preferential procurement, and Enterprise development);

e) Monitor compliance with PFMA and related supply chain management norms and standards and advise the Board of potential risks in relation to irregular as well as Fruitless and Wasteful Expenditure emanating from procurement practices;

f) Consider strategic acquisitions and disposals and make recommendations to the Board;

g) Consider, for recommendation to the Board, potential private sector participation models;

h) Approve, where so delegated by the Board of Directors, the award of bids in accordance with the Company's Delegation of Authority Framework. The Committee may approve modifications to bid awards where the cumulative value of the contract plus the modification does not exceed the limits of its delegation of authority as stated in the Delegation of Authority Framework document.

i) In considering the approval of a bid or Confinement, the Committee shall have regard to any recommendation made by the relevant AC or senior official within Transnet.

j) The Committee shall submit a list of all bids falling within its delegated authority and approved by it to the Board for information purposes only. With regards to matters above its maximum threshold, it will consider such matters in the normal manner, and then make a recommendation to the Transnet Board.

k) When considering any Bid or any amendments thereto, the Committee may:-

(i) investigate any activity within its Mandate;

(ii) ask questions and request information or advice from any person;

(iii) request any employee to appear before the Committee;

(iv) refer the submission back for reconsideration;

(v) note matters presented to it for information, and/or offer comments; and

(vi) reserve a decision pending further information or clarification of a specific matter.

l) The Committee shall also approve disposals in line with the Delegation of Authority Framework document.

24.6 INTEGRATED SUPPLY CHAIN MANAGEMENT (ISCM)

24.6.2 Composition

Using best practice principles, and undertaking a collaborative approach across all ODs and Group, an integrated 'one supply chain management (iSCM)' strategy and operating model has been developed with centre led Centres of Excellence (COEs) with cross-functional teams, comprised of divisional and corporate task team members, to deliver value through improved efficiencies and compliance to the regulatory environment. The iSCM Governance hierarchy is depicted in the flow chart below.

iSCM Governance Structure

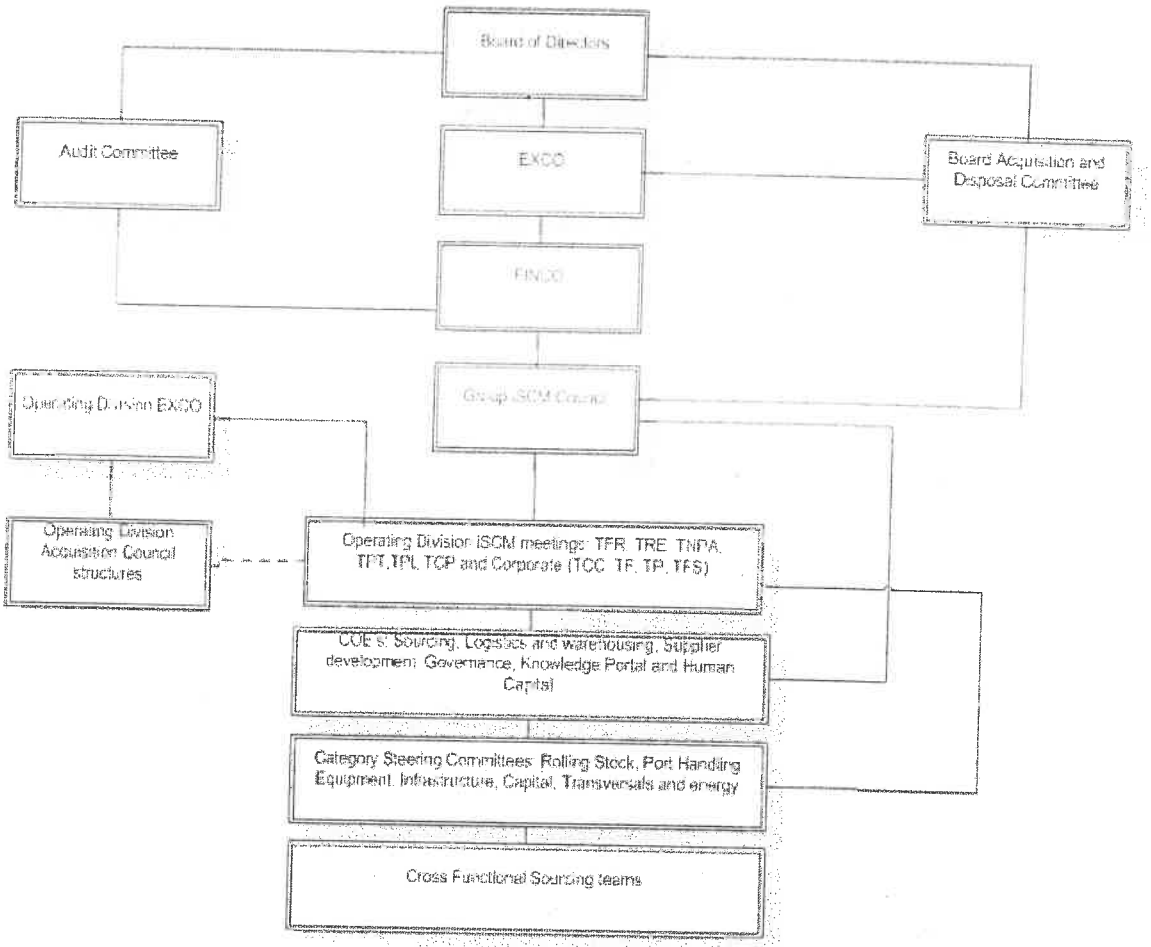

Figure [40] – iSCM Governance hierarchy

24.6.3 Centres of Excellence

a) Centres of Excellence (COEs) are cross-divisional teams focusing on a particular functional area. They focus on tactical issues relating to the functional area, and are aimed at identifying and leveraging on the areas of excellence in Transnet. Key strategic objectives will be executed through the COEs with a risk mitigation plan supported by Enterprise Risk Management (ERM).

The current COEs within iSCM are as follows (*Figure [41]*):

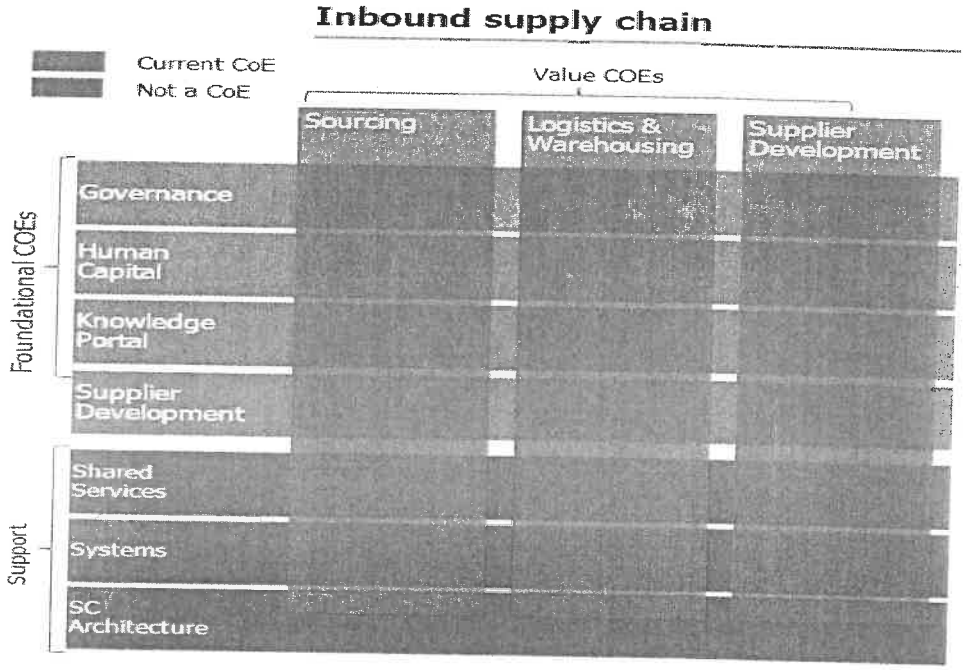

Figure [41] – Centres of Excellence

24.6.4 Integrated Supply Chain Management (ISCM) Strategic Themes

The following are the key strategic iSCM themes:

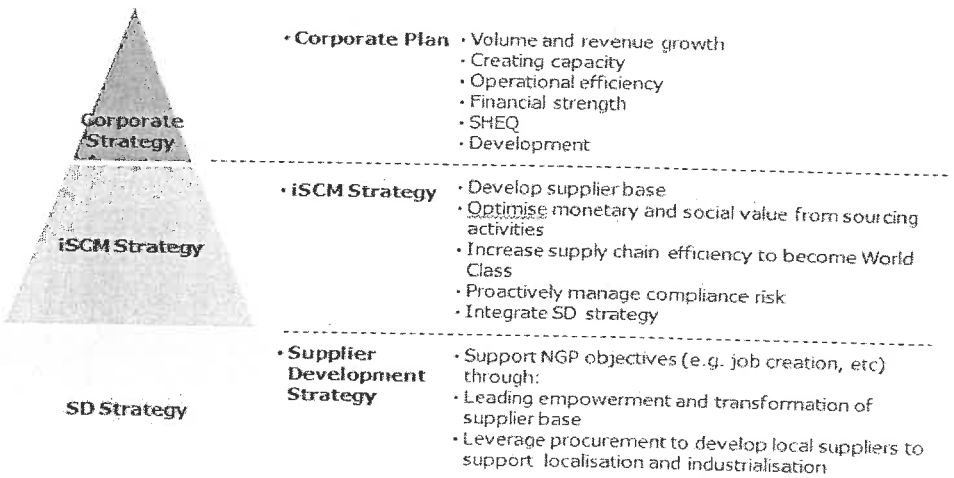

Figure [42] – iSCM themes

24.6.5 Group iSCM Governance

The Group iSCM governance function is the author and custodian of the Transnet Supply Chain Policy and the PPM.

Some of its key functions are to:-

a) issue and review the Transnet Supply Chain Policy and PPM (including standard bid documents and templates);

b) monitor correct interpretation/adherence to policies and control measures in collaboration with audit;

c) conduct research and development applicable to compliance;

d) maintain the iSCM Transnet Intranet as well as update the external website in respect of procurement policies, procedures and bid related matters;

e) continuously build capacity at OD level;

f) administer Transnet's List of Excluded Bidders; and

g) provide assistance and expertise on all governance related issues.

24.6.6 Role and Function of Group Chief Supply Chain Officer (GCSCO)

The GCSCO is the head of the Group iSCM Function. He/she is responsible for the whole of the supply chain function within the Transnet Group. Although the OD CPOs report directly to the OD CEOs, collaboration and synergies between the relevant supply chain functions are achieved via the iSCM Council. This forum meets at predetermined intervals and has representation from all the OD CPOs.

Apart from chairing the iSCM Council, the GCSCO is responsible to vet and recommend all supply chain related submissions requiring Group approval (e.g. confinements, condonations, new contracts and amendments exceeding the DoA of the OD CEOs).

24.6.7 Terms of Reference of the iSCM Council

Group iSCM has been mandated to effectively integrate all supply chain management (SCM) activities across Transnet's core businesses, to ensure that the efficiency and effectiveness of doing business in South Africa is drastically improved through SCM best practices. The iSCM Council is a structure set up to ensure that the iSCM mandate is carried out effectively and efficiently.

The Council will develop the Supply Chain Management Strategy for Transnet, based on consolidation of the individual ODs critical paths.

The Council will ensure alignment of all Operating Divisions' SCM functions in terms of:

- Processes and Procedures;
- Systems;
- Human Capital Development;
- Strategic Sourcing;
- Contract and Supplier Management;
- Capital Procurement;
- Warehousing and Logistics Management;
- Policy and Governance; and

- Knowledge Management.

The Council will also ensure a uniform strategy with regard to Broad-Based Black Economic Empowerment. It will drive the implementation of B-BBEE initiatives with regard to Preferential Procurement and Enterprise and Supplier Development in terms of the Government's New Growth Path strategy, to ensure that Transnet's obligations in terms of these important issues are met.

In addition, the Council will be the custodian/guarantor of world class standards in supply management, professionalism, ethics and the proper implementation of related policies and procedures throughout Transnet. It will also identify commodity groups where standardisation across the Transnet Group, or the consolidation of spend on commonly used Goods and Services can lead to financial and other benefits for Transnet as a whole – transversal contracts.

24.6.8 Composition of iSCM Council

The Forum will consist of the following members:

- Group Chief Supply Chain Officer, (Chairperson)
- Executive Manager (Supply Chain)
- Executive Manager (Strategy & Execution)
- Executive Manager (Supplier Development)
- Executive Manager (Strategic Sourcing)
- CPO – Transnet Freight Rail.
- CPO – Transnet Rail Engineering.
- CPO – Transnet Port Terminals.
- CPO – Transnet National Ports Authority.
- CPO – Transnet Pipelines.
- CPO – Transnet Capital Projects.
- CPO - Transnet Properties.
- CPO – Transnet Corporate Centre.

The following Managers will attend meetings of the Forum on an ex officio basis as and when required:

- All COE Leads.
- Manager: Policy, Governance & Standards, iSCM.
- Manager: Compliance & Risk, iSCM
- Manager: Contracts, iSCM.

For the complete iSCM Council Terms of Reference please refer to the Group iSCM Intranet website)

24.6.9 Role and Function of the Chief Procurement Officers (CPOs)

The CPOs of the Transnet ODs are the heads of procurement (see Section A, Chapter 6, for the role's detailed delegation).

He/she is also responsible for the day-to-day procurement activities of the OD. The role of the CPO is also to ensure that the procurement function runs according to accepted world best practice and that optimal value is achieved when procuring Goods/Services for his/her OD.

REPORT 2(A) – PART E – EXHIBIT 3

TRANSNET

TRANSNET FINANCIAL RISK MANAGEMENT FRAMEWORK (FRMF)

FEBRUARY 2013

(APPROVED BY BOARD ON 29 MAY 2013)

EXCERPT FROM THE DRAFT MINUTES OF THE BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 13/4 HELD ON 29 MAY 2013 AT 09:00 IN THE STIMELA BOARDROOM, TRANSNET ENGINEERING OFFICES, 1ST FLOOR, 160 LYNETTE STREET, KILNER PARK, PRETORIA

"6.6 **Financial Risk Management Framework**

RESOLVED that the Board approved the Financial Risk Management Framework. 13/4/20"

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FINANCIAL RISK MANAGEMENT FRAMEWORK

1. BACKGROUND AND DEFINITIONS

Treasury in Transnet is a centralised division tasked with three main objectives, namely:

- Ensuring that the Group is cost effectively and timeously funded in support of the Group's Market Demand Strategy(MDS), which are mainly executed by the operating Divisions;
- Manage both financial and operational risks; *and*
- Lower the overall cost of doing business and add value to the overall business of Transnet.

All of these objectives are performed in a professional and ethical manner in line with Transnet's governance framework.

It is important that the FRMF is read in conjunction with the approved Delegations of Authority Framework (DOA) as a number of Treasury execution limits are contained in the DOA and are not repeated in the FRMF. The FRMF is supported by procedures within the different areas of Treasury that explain the detail of calculations and processes and this should be updated when processes change.

The following words and expressions bear the following meanings, unless the context indicates otherwise:

"**ACTSA**" means the Association of Corporate Treasurers of South Africa;
"**Board**" means the Board of Directors of Transnet;
"**Operating Division**" means all the operating divisions of Transnet;
"**CAPIC**" means the Capital Investment Committee, a committee of the Group Executive Committee established to make decisions regarding capital expenditure;
"**Code**" means Code of Ethics;
"**DOA**" means the Transnet Delegation of Authority Framework;
"**EBITDA**" means Earnings before Interest, Taxes, Depreciation and Amortization;
"Group **EXCO**" means the Executive Committee established to take responsibility for the day to day execution of strategy and running of Transnet;
"**FINCO**" means the Transnet Finance Committee;
"**FRMF**" means the Transnet Financial Risk Management Framework;
"**GCE**" means the Transnet Group Chief Executive;
"**GCFO**" means the Transnet Group Chief Financial Officer;
"**Group**" means Transnet SOC Ltd together with its divisions and any remaining subsidiaries;
"**Group Risk Co**" means the Group Risk Committee focusing on risk management;
"**Long Term Investment Grade**" means a minimum long term issuer default credit rating (international counterparties), or National Long Term credit rating (local counterparties) of A3 (Moodys), A- (Standard and Poors), A- (Fitch Ratings) or equivalent rating from other rating agencies acceptable to Transnet;
"**JSE**" means the Johannesburg Securities Exchange;
"**NGP**" means the National Growth Path;
"**PCGPS**" means the Protocol on Corporate Governance in the Public sector;
"**Quantum Q Risk**" means the risk management module of the Treasury Management System;
"**SARB**" means the South African Reserve Bank;
"**Shareholder**" means the Department of Public Enterprises;

"**Short Term Investment Grade**" means a minimum short term issuer default credit rating (international counterparties), or National Short Term credit rating (local counterparties) of P-1 (Moodys), A-1(Standard and Poors),F-1 (Fitch Ratings) or equivalent rating from other rating agencies acceptable to Transnet;
"**SOC**" means a State Owned Company;
"**Transnet**" means Transnet SOC Ltd inclusive of its operating divisions, with registration number 1990/000900/30;
"**Treasury**" means the Transnet Group Treasury;
"**Treasurer**" means the Transnet Group Treasurer;
"**VaR**" means Value-at-Risk; *and*
"**WACD**" means the weighted average cost of debt.

2. RISK MANAGEMENT PHILOSOPHY

The overall risk management philosophy of Transnet is to the extent possible, avoid undue risks and manage business risks. However, given the nature of Transnet's business and its major capital investment programme, it is not always possible to avoid risks all together.

In pursuit of its business, the Group is exposed to a myriad of risks, including but not limited to market, credit, liquidity, and operational risks. The long term viability, continued success and reputation of Transnet are dependent on the credibility of risk management, and commitment to applying leading practice in risk management.

3. SHAREHOLDER MANDATE

Transnet's mandate is to assist in lowering the cost of doing business in South Africa, enabling economic growth and security of supply through providing appropriate port, rail and pipeline infrastructure, as well as operating in an efficient and cost-effective manner, within acceptable benchmark standards. Transnet's mandate and strategic objectives are aligned with the Government's New Growth Path (NGP) and Statement of Strategic Intent issued by the Minister of Public Enterprises.

4. STRATEGY

The strategic objectives of Transnet as agreed with the Shareholder fall into six main areas, namely:

- Volume and revenue;
- Capital and financial efficiency;
- Operational efficiency and effectiveness;
- Infrastructure investments;
- Developmental objectives; and
- Safety, health and environment.

Transnet is self-funding and does not receive subsidies and has not utilised government guarantees for its debt since 2004. As such, the Company must earn an appropriate return on invested capital to maintain a strong balance sheet to enable it to access the debt capital markets for funding at cost-effective levels. This in turn will provide the capacity for Transnet to maintain and expand its port, rail and pipeline infrastructure. However, to meet ever-increasing customer demand and to support economic growth in the country, Transnet will need to engage with the private sector for alternative funding sources to create the additional capacity required.

5. TRANSNET CORPORATE GOVERNANCE STRUCTURE

Board of Directors

The purpose of the Committee is to enhance the leadership of Transnet, creating greater alignment of and focus on major strategic programmes. The Company's Articles of Association provide that there shall be no less than ten and no more than fourteen Directors, of whom no less than eight shall be Non-Executive Directors and two Executive Directors. Non-Executive Directors are appointed to the Board by the Shareholder Representative, generally on a three year term which is confirmed annually at the Annual General Meeting (AGM). The Board's primary mandate is to ensure the sustainable and successful continuation of business activities by providing strategic direction to Transnet.

The Board has established the following committees:

- Board Audit Committee;
- Board Risk Committee;
- Remuneration, Social and Ethics Committee;
- Corporate Governance and Nominations Committee; and
- Board Acquisitions and Disposals Committee.

Group EXCO deals with the execution of strategy and is chaired by the Group Chief Executive. The members of Group EXCO consist of the Group Chief Executive, Group Chief Financial Officer, Group Executive: Transnet Property, Group Executive: Group Legal Services, Group Executive: Commercial, Group Executive: Transnet Capital Projects, Chief Risk Officer, Group Executive: Planning and Monitoring, Group Executive: Human Resources, Chief Audit Executive (Ernst & Young) and the Chief Executives of the five major operating divisions of Transnet.

Group EXCO has established subcommittees for the following key functional areas: Finance Committee, Human Resources Committee, Capital Investment Committee, Risk Management Committee, 45 Days Operational Review Committee, NMPP Steering Committee, BBBEE Forum, Public Policy and Regulation Committee and Business Information Management Committee.

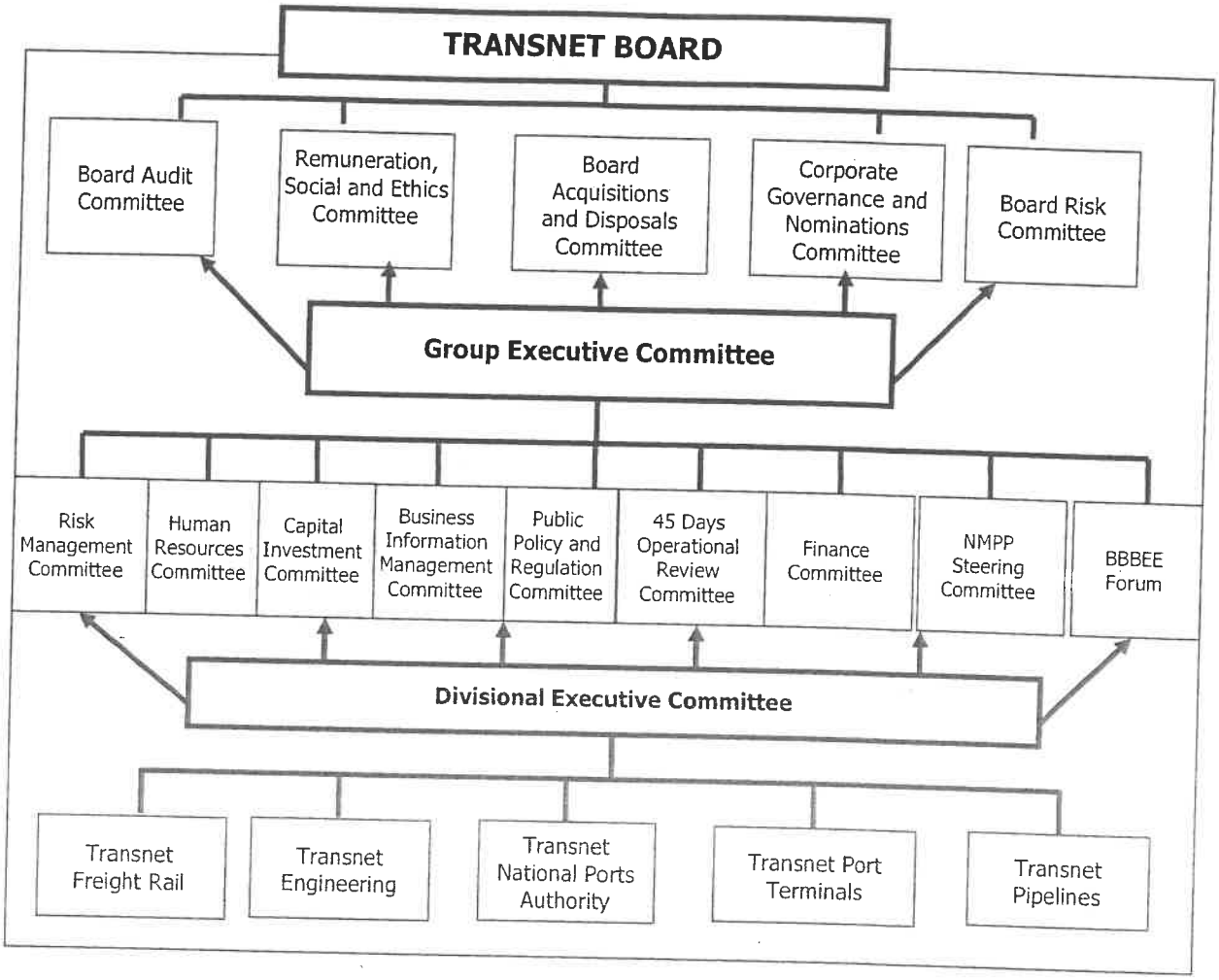
The extended EXCO consists of the Transnet Group EXCO, the EXCO's of the five core operating divisions and the Group General Managers

Guideline Statements on Treasury Best Practice issued by National Treasury states that

"The Board of the company should conduct a periodic (at least every 3 years) review of the effectiveness of the Treasury Risk Management System". It is the responsibility of Group Treasury to initiate the 3 yearly review and inform the Board accordingly of the outcome.

Risk Management is, as set out in the King III code and the PFMA, ultimately the responsibility of the Board and the governance structure is reflected below: The Board has delegated the responsibility for providing assurance on the integrity, quality and reliability of the Group's risk management to the Group Risk Committee and Group Finance Committee.

5.1. The Transnet Governance Structure is as follows:



5.2. Code of Ethics

The Company continues to instil a culture of entrenched values, which form the basis of the expected behaviour of its employees towards all its stakeholders. These values are reflected in the approved and published Code of Ethics (Code). All management employment contracts make reference to this code. The Code is reviewed annually and, commits the Company's Directors and employees to the highest standards of ethical behaviour when engaging with both internal and external stakeholders. The Code applies to all Transnet employees. In instances where an employee breaches the Code, the necessary disciplinary action is instituted in terms of the Company's Disciplinary Code and Procedure. The existence and adherence to the Code at Company level does not necessitate a requirement to include any additional code of ethic behavioural requirements in the FRMF.

The following 7 elements form the core of a Culture Charter which was adopted by employees to steer towards a winning culture.

- We have a safety mindset;
- We are business focussed;
- We deliver on our promises;
- We treat each other with dignity and respect;
- We have good communication;
- We recognise and reward good work; and
- We are empowered to perform in our jobs.

5.3. Summarised Roles and Responsibilities of Risk Committees

5.3.1. Risk Management Committee (Riskmanco)

Terms of reference:

RiskManco is responsible for overall risk management policy setting, monitoring and control, as well as review of compliance.

The specific responsibilities of the Riskmanco:

- Develop, and ensure compliance with risk philosophies, strategies and policies, frameworks and procedures and delegation of risk management responsibility and authority and regulatory requirements;
- Review the adequacy and overall effectiveness of the Group's risk management and its implementation by management; and hence ensure risk is appropriately considered in decision making throughout the Group;
- Review a summary of the Group Risk Committee Minutes and other issues of corporate governance (e.g. compliance with requirements regarding the appointment of directors);
- Determine the structures and systems to be used by the Group to prudently manage risks;
- The specific risks to be reviewed at RiskManco include:
    - Country risks;
    - Technological risks ;
    - Disaster recovery risks;
    - Reputational risks;
    - Legal Risks;
    - Sensitivity risks, e.g., environmental impacts;
    - Human resources risks;
    - Compliance risks;
    - IT risks; and
    - Insurance risks

- The following risks, predominately reviewed by the Finance Committee, may be referred to RiskManco should they become material for the Group:
    - Interest rate risks;
    - Counterparty risk, including provisioning risks;
    - Exchange rate/currency risks;
    - Price risks;
    - Investment risks;
    - Commodity (fuel) risks; and
    - Liquidity risks

5.3.2. Capex Investment Committee (CAPIC)

Terms of reference:

CAPIC shall approve individual business cases after matching requirements from operations with funding constraints; prioritise capital investments to optimise return for available capital; and assess risks associated with projects individually and collectively as a portfolio. In addition, CAPIC shall review the progress of individual capital projects according to approved warrant and timelines.

The specific responsibilities of CAPIC shall be to:

- Ensure capital expenditure is in accordance with the budget and business plans approved by the Board;
- Determine the criteria for prioritising capital expenditure projects;
- Monitor the implementation of project plans to ensure that approved capital expenditure projects are carried out with minimum delays;
- Review and amend project expenditure plans where necessary, subject to Group Limits of Authority and the limitations of the Board approved budget;
- Ensures capital investment projects comply with applicable risk management processes;
- Ensures capital projects are fit for purpose and the associated costs are optimised; and
- Conduct post implementation reviews.

5.3.3. Finance Committee (FINCO)

Terms of reference:

- Review overall governance procedures in relation to financial disciplines;
- Identify measures, monitor all financial risks, including but not limited to interest rate, exchange rate, price, liquidity, taxation risks;
- Identify measures, monitor all shared service, procurement and supply chain associated risks;
- Ensure appropriate financial management frameworks, policies and procedures are adopted in the Group;
- Review the accuracy, validity and completeness of financial results; and
- Assess the performance of the financial and business services structures and any supporting service providers reporting into these structures;

Specific responsibilities

FINCO shall ensure that -

- Limits are set for acceptable levels of risk and that no risk exposures are entered into outside these limits without full disclosure to, and the express authority of FINCO;
- The likely effect of risk exposures on the Group's earnings are assessed and appropriate action is taken;
- Financial results and Key Performance Indicators are monitored and reviewed;
- There is an identification of the accuracy of projected cash flow;
- There is proper focus on cash flow risks and the funding structure in order to properly structure liabilities;
- The profile of funding and related liquidity risk is assessed;
- Liquidity and interest rate mismatches are reviewed;
- Boundary conditions are set for the Group's investment strategy, including hurdle rate for investments and funding constraints;
- The reputation of the Group is upheld at all times in the financial markets;
- Asset and liability management frameworks, policies and procedures are periodically audited and reviewed to confirm that they remain appropriate;
- There is a balance sheet strategy that takes account of, amongst others, the assets and liabilities strategy and market share analysis;
- Off-balance sheet activities and contingent liabilities are reviewed;
- Through a process of limits setting, strategic positioning and the continuous monitoring of exposures, determine/control the amount of earnings at risk and how the risk appetite of the Group is split among the Operating Divisions of the Group.
- Appropriate financial and operational controls are designed and implemented throughout the Group;
- Review progress reports produced by Internal Audit and by management internal control function and in doing so ensure Transnet and its operating divisions comply with the expected timelines for addressing all control issues;

- Develop the one year operational and three year strategic internal control plan which cover all areas of focus including internal audit, forensic (prevention, detection and investigation) as well as enhancement activities;
- Provide the Internal Control department and Transnet Internal Audit with guidance to ensure that the focus of Internal Control is aligned to the Group strategy;
- Comment on and recommend documents that will govern the Internal Audit activities for approval by the Audit Committee; Review the effectiveness of Critical Financial Reporting Controls (CFRC's) and the Business Critical Controls (BCC's) and recommend actions where these are not operating effectively;
- Provide guidance and direction to line management via Operating Division ICSC's as to how to resolve identified control issues;
- Escalate, as appropriate, control issues and other information to the Group Executive Committee and Audit Committee;
- Provide guidance on the management and implementation of the PFMA including compliance thereof, review the outcome of the PFMA compliance assessments and request corrective action including the initiation of disciplinary action against officials where there are instances of non-compliance;
- Review the disciplinary and other actions taken against employees where there has been a breach of control;
- Provide guidance to the Internal Control Department and Transnet Internal Audit regarding possible Group wide enhancement projects to address control breakdowns that are prevalent across the Group;
- Provide guidance and direction on the forensic process, including reviewing the outcomes of fraud prevention, detection and investigation elements;
- Formally review Internal Audit performance at least twice a year;
- Advise Internal Audit and management on the best way to resolve any conflicts that may have arising through the course of their work;
- Produce appropriate reports for the Group Executive Committee, Board of Directors and the Audit Committee when requested to do so;
- Review Transnet's quarterly self assessment (CSA), after service questionnaire results and ICSC effectiveness ratings;
- Review the half yearly and annual process of certification of the adequacy and proper application of internal controls by line management;
- Provide guidance and direction to Shared Services and Procurement and Supply Chain functions to ensure that their focus is aligned to the Group strategy;
- Recommend the overall certification of Transnet's internal financial and operational controls for approval by the Group Chief Financial Officer and Group Chief Executive with or without qualification; and
- With regards to the Scrap metal virtual team, approve the mandate of the team, the governance process to be followed for engaging with the market, the Delegation of Authority for entering into and signing of contracts to dispose of Scrap metal, the disposal framework (rules of how scrap metal can be disposed of), the Scrap metal strategy, and projects and initiatives that support the approved strategy.

5.3.4. Group Risk Management Function

Development and or review of the ERM framework and strategy across the Group; facilitating and monitoring the implementation of the ERM policies frameworks and strategies; analysing operating risk reports and compiling monthly, quarterly and annual risk reports for Group Risk Committee and the Group Executive Committee; and embedding the ERM culture within the Group.

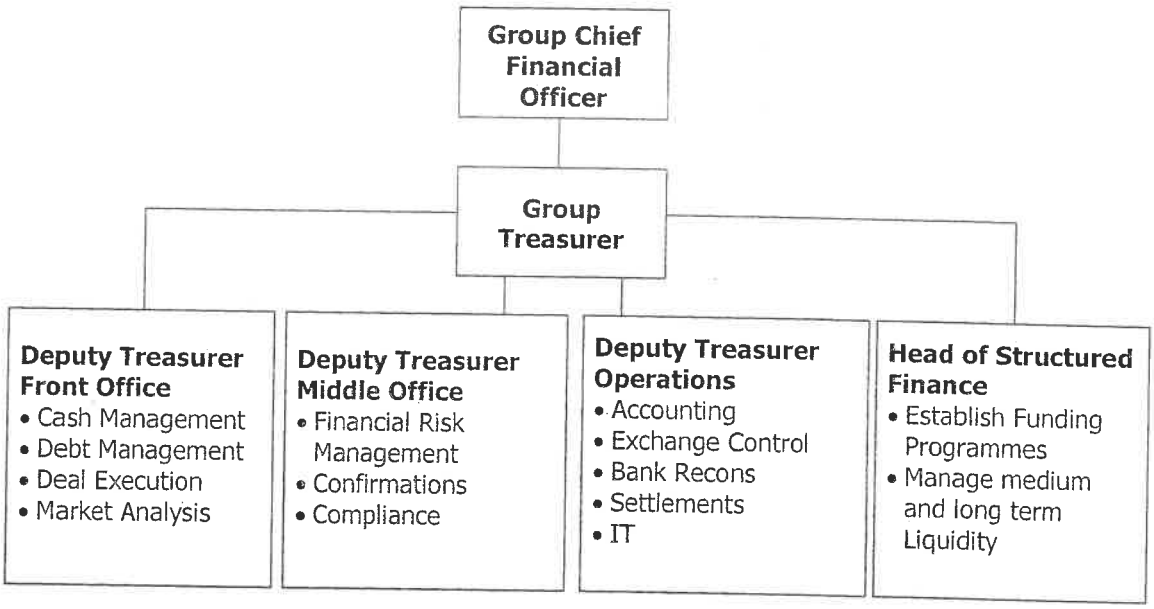
5.3.5. Group Chief Financial Officer (GCFO)

The Group Chief Financial Officer is responsible for the development and implementation of the financial strategy; the management of corporate finance; management of compliance with legislative requirements i.e. Companies Act, Public Finance Management Act and IFRS; The CFO contributes towards the content and finalisation of the financial statements and corporate plan; manages the strategic funding and capital investment process of the Group; manages audit and internal control processes; manages Corporate Governance and the Group's taxation position.

5.3.6. Reporting line of Group Treasury

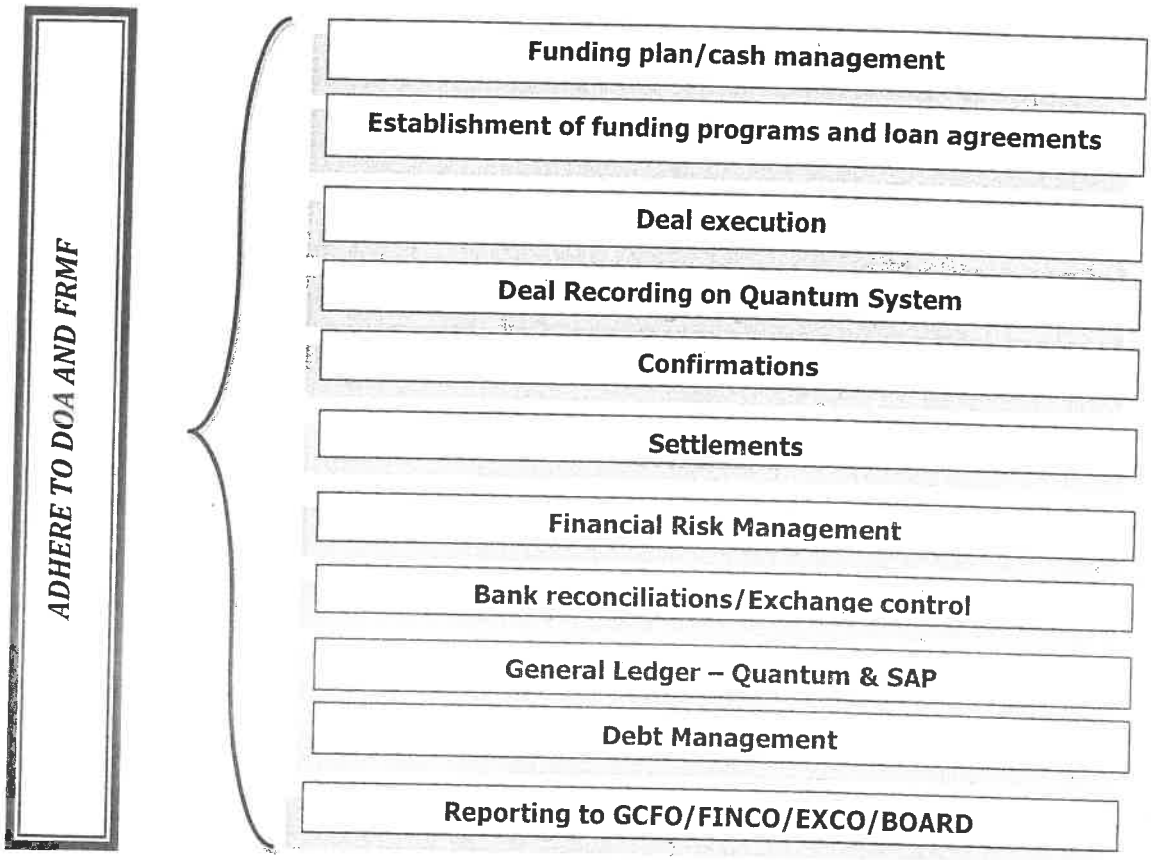
Group Treasury has a direct reporting line to the GCFO as per diagram below and the GCFO oversees all the activities of Treasury. Treasury reports the status of the Group's financial risks and all other reporting as required by the FRMF to FINCO, EXCO and the BOARD at scheduled meetings through the office of the GCFO in line with the reporting structure. Financial risks are escalated to RISKMANCO if they become material for the Group.

5.3.7. Structure and Functions of Group Treasury



5.3.8. Segregation of Duties

Segregation of duties within a Treasury environment is essential and all financial market transactions entered into should always be executed in this manner. The high level processes below provide guidance of the roles and activities in the different areas of responsibilities:



6. BEST PRACTICE IN RISK MANAGEMENT

As an SOC, Transnet must comply with the PFMA and the PCGPS. This framework was updated with the intention of promoting adherence to these by aligning the guidelines contained within this framework to the aforementioned.

6.1. Public Finance Management Act (PFMA)

Section 51 (1) a (i) of PFMA states that:" An accounting authority for public entity must ensure that the public entity has, and maintains effective, efficient and transparent systems of financial and risk management and internal control."

In addition the Treasury Regulations paragraph 27.2.2 further states" The accounting authority must ensure that a risk assessment is conducted regularly so as to identify emerging risks of the public entity. A risk management strategy must include a fraud prevention plan, must be used to direct internal audit effort and priority and to determine the skills required of managers and staff to improve controls and manage the risks. The strategy must be clearly communicated to all employees to ensure that the risk management strategy is incorporated into the language and culture of the public entity."

6.2. Protocol on Corporate Governance in Public Sector (PCGPS)

Item *5.2.18.1* of PCGPS: "Directors must ensure that the SOC has and maintains effective, efficient, and transparent systems of financial, risk management and internal control. Directors should therefore establish processes and practices within the SOC to manage all risks associated with the SOC's operations."

Item *5.2.18.2* of PCGPS: "Directors should keep the Executive Authority informed of risk management strategies by outlining them in corporate plans and progress reports, and other reports when necessary. In addition, and unless otherwise qualified because of circumstances applying to a particular SOC, corporate plans and progress reports should contain a statement from the Board that the Board has appropriate risk management policies and practices in place and that adequate systems and expertise are being applied to achieve compliance with those policies and procedures."

Item *5.2.18.3* of PCGPS: "The Government, as a shareholder, is sensitive to commercial risk. In some circumstances, it may therefore choose to set limits on the activities of particular SOC's: for example on liabilities, financial exposures, use of derivatives instruments, etc."

Item *5.2.18.4* of PCGPS: "Subject to the relevant provisions of PFMA, as a general rule, Government will not provide formal guarantees in respect of SOC liabilities. Accordingly, Directors should take this policy into account when making decisions that affect an SOC's operations and performance."

In addition to the above requirements, the Financial Risk Management Policy must be aligned to the country's laws and regulations and must follow best practice standards as set out in the following bodies and risk management standards;

- The King III Code and the Protocol on Corporate Governance;
- Public Finance Management Act of 1999, as amended;
- The Association of Corporate Treasurers of South Africa (ACTSA Charter of Best Practice);
- Treasury Regulations in terms of the PFMA; and
- All relevant laws and regulations of The Republic of South Africa and all the Countries in which Transnet do business.

6.2.1. King III Recommended Practices

- Item 4.4.1, – The Board's risk strategy should be executed by management by means of risk management systems and processes.
- Item 4.4.2 – Management is accountable for integrating risk in the day-to-day activities of the Company.
- Item 4.5.1 – The Board should ensure effective and ongoing risk assessments are performed.
- Item 4.5.2 – A systematic, documented, formal risk assessment should be conducted at least once a year.
- Item 4.5.3 – Risks should be prioritised and ranked to focus responses and interventions.
- Item 4.5.7 – The Board should ensure that key risks are quantified where practicable.
- Item 4.8.1 – The Board should ensure that effective and continual monitoring of risk management takes place.

7. RISK MANAGEMENT METHODOLOGY AND MEASUREMENT

7.1. Introduction

The overall financial risk exposure of the Group is defined as the potential exposure of the business to normal market conditions, over a specified period of time, and within a specified confidence interval, this exposure is known as either Market Value-at-Risk **(VaR)** or Cash flow at-Risk (**CFaR**) against the approved budgets or Income Statement volatility at risk **(ICSaR)**. Financial market risk tolerance levels are typically defined in terms of one or more of the following: Net cash flows or earnings expressed as a percentage of EBITDA

Transnet's individual financial risk tolerance levels are defined as a percentage of earnings (EBITDA) not greater than that which can threaten the achievement or maintenance of strategic financial ratios of the Group, but not less than that which the business planning and risk management practices can support.

Due to the unique nature of the Group's asset and liability portfolios, the huge importance of cash flow, liquidity, budgets and income statement volatility, the Board therefore approves the individual and collective financial risk exposure tolerances as reflected in paragraphs 7.2 and 0. The Boards' mandate defines risk tolerance relative to the latest budget or forecast, which are the maximum limits on the exposure of Transnet over a defined time horizon and within a certain confidence interval. It is the responsibility of management to ensure that the potential exposure (**CfaR, ICSaR and VaR**) of Transnet does not exceed the individual and or collective risk tolerances set by implementing risk management measures and mitigating strategies.

The Group is exposed to the following financial risks; interest rates, commodity prices (e.g. Brent crude oil), foreign exchange and income statement volatility. Different measurement tools are used to measure changes to these risks on all treasury transactions and these include limits and sensitivity scenarios against approved budget inclusive of stress testing. The measurements can either be operational or tactical. These risks are not necessarily correlated and their degree of impact also differs proportionally.

7.2. Operational and Tactical Risk Measures

These measures are used in the day-to-day analysis of financial risk exposures and determine the pricing of risk management strategies used for hedging. Treasury Middle Office produces a range of risk measures and reports that are appropriate to the requirements of Transnet. These measurements include the following for the respective risk exposures:

- Fair Value or Marked-to-Market of existing risk management instruments;
- Sensitivity Analysis;
- Stress Testing under extreme and volatile market conditions
- Duration;
- FX exposure hedged/unhedged; *and*

A range of tactical risk measures are used to generate scenarios that quantify and illustrate the effect of various market fluctuations on the range of underlying Transnet exposures and on Transnet's Operating Divisions as a whole. A range of risk scenarios are used as critical input into the financial risk management decision-making process.

7.2.1. Financial Risk Tolerance:

7.2.1.1. Interest Rate Risk

Sensitivity analysis is used to determine the impact of interest rate movements on approved external finance cost budget per financial year (existing liability portfolio plus new funding to be raised). Stress testing is included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative cash flow impact against the latest approved annual external finance cost budget (including capitalised borrowing cost) is more than **5%** (13/14 budget: R7 535m * 5% **= R375 m).** The limit includes the actual YTD performance as recorded in the General Ledger and should be updated when new budgets are approved.

7.2.1.2. Commodity Risk (fuel)

Sensitivity analysis is used to determine the negative impact of commodity (like Brent Crude oil) and exchange rate movements (including fuel levy income) on the approved fuel budget. Stress testing is included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative cash flow impact against the latest approved Fuel budget is more than **10%** (13/14 budget: R2 545 m * 10%= **R255 m).** This limit includes the actual YTD performance as recorded in the General Ledger and should be updated when new budgets are approved.

7.2.1.3. Value at Risk (FX)

The emphasis at Transnet is mainly on cash flow, liquidity and budget management and hence **VaR** ***will only be used on a limited basis and calculated on committed, unhedged FX risk exposures.***

The calculation of **VaR** is a risk management tool and will not necessarily have a direct visible impact on the bottom line of the Group's income statement. Corrective action should be taken if **VaR** is more than **0.5%** of the latest approved budgeted EBITDA (13/14 budget: R26 374m*0.5% = **R130m**). This should be updated when new budgets are approved.

7.2.1.4. Fair Value Analysis (ICSaR)

Sensitivity analysis is used to determine the impact on the net fair market values of all financial instruments. Stress testing to be included to show extreme market movements. Corrective action should be implemented if there is a high possibility that the negative impact on the fair value line of the income statement, is more than 4 % of latest approved budgeted EBITDA (13/14 budget: R26 374m*4% = **R1 050 m)**. This should include actual numbers recorded per financial year and should be updated when new budgets are approved. The major reasons could be ineffective hedges (hedge accounting).

7.3. Collective Financial Risk Management Tolerance

The Board approves the overall financial risk tolerance which is defined as **2.50% of the latest annual budgeted EBITDA**. The table below defines the calculation.

Parameter	Value
Underlying exposure	12-month Budgeted exposures
Confidence Interval	95%
Risk Horizon	90 days
Maximum Risk Tolerance (Collectively)	13/14 budget: R26 374m * 2.50% **= R660m**
Exposures included	**par7.2.1.1, par 7.2.1.2 and par 7.2.1.3**

The performance against the **Financial Risk Tolerance** limits as well as the **Collective Financial Risk Management Tolerance** limits must be reported to FINCO and Audit Committee at their scheduled meetings.

8. FINANCIAL RISK MANAGEMENT LANDSCAPE

8.1. Introduction

Transnet's ERM approach rests on three pillars, namely; the King III, COSO framework, and PFMA. The Board has entrusted the responsibility of robust risk management processes to the GCE.

Risk management, as defined in the ERM approach, focuses on operational risks, business/ commercial risks, financial/market risks as well as Asset and Liability management. The focus of this FRMF is on market risk (which includes credit risk) as described in detail below.

8.2. The Objective of the Policy

The objective of this policy is to provide clear guidelines to effective risk management by ensuring that:

- Risks are independently identified, assessed, quantified, mitigated and monitored regularly;
- Mitigating hedging strategies are developed and implemented;
- The effectiveness of hedging strategies are monitored monthly; and
- Risk exposures are performance measured and formally reported to appropriate authorities.

8.3. Credit Risk

Credit Risk is defined as the risk that a counterparty will fail to honour its financial obligations to the Transnet Group. Credit risk consists of the following types:

Credit risk arises in many of Transnet's business activities through the services rendered by the Operating Divisions to customers and Treasury's hedging and investments activities. The financial risk owing to credit extension could have a profound impact on earnings, capital reserves as well as profitability.

The management of credit risk is undertaken through the setting of Counterparty risk limits in terms of the policy, taking into consideration the relationship amongst all the risks to which Transnet is exposed to and Transnet's risk appetite.

8.3.1. Country Risk

The risk that a counterparty is unable to meet its foreign financial and or contractual obligations because the country is either unable to or unwilling to meet its financial obligations.

8.3.2. Settlement/Delivery Risk

Is the risk that a counterparty cannot deliver on its contractual commitment on the contracted maturity date. This includes settlement of cash, and or the delivery of securities (Notes).

8.3.3. Investment Risk

The risk of losing the nominal value plus accrued interest on an investment done with a counterparty in the event of default by that counterparty.

8.3.4. Price Risk

The risk that the price of a market security, investment or any financial instrument changes as a result of changes in the underlying economic market conditions like interest rates, exchange rates, credit risk, commodity prices, volatility etc before maturity date, and thereby forcing the underlying transaction to be closed-out at a market value loss (this includes bonds and derivative financial instruments) due to the inability of the counter party to honour the transaction.

8.4. Market Risks

Market risk consist of trading and investment risk, interest rate risk, liquidity risk, foreign exchange risk, commodity risk and to a limited extent, gap (mismatches in maturities and interest rates) risk.

8.4.1. Interest Rate Risk

Interest rate risk refers to the potential variability in Transnet's financial condition owing to changes in interest rate levels. The standard measure of interest rate risk includes the repricing of floating rate debt and interest rate shocks on liability portfolio to determine potential impact on the external finance cost budget.

8.4.2. Liquidity Risk

Liquidity risk is the risk that Transnet is not able to generate sufficient cash to honour its financial commitments. In essence liquidity risk is due to a weak balance sheet structure, which has no cushion of resources to provide cash to cope with unexpected events. Cash flow management and quick access to additional cash through committed bank facilities are therefore crucial to liquidity risk management. In Transnet it refers particularly to the risk of Transnet's inability to advance funds for capital expenditure, redeem and service loans in money and capital markets, finance operational costs and generate cash for unanticipated financial commitments.

Liquidity Risk Management Includes:

- Prudent asset and liability management;
- Setting up high target of accuracy on actual versus forecasted cash flows;
- Diversification of funding sources;
- Maintaining sufficient levels of funds in cash or near-cash investments; and
- Adequate committed bank facility lines.

8.4.3. Commodity Risk

Commodity risk refers to the potential variability in Transnet's financial conditions owing to the changes in commodity prices such as Brent crude oil, steel, iron ore, electricity and others used in the operations of Transnet. The strategic emphasis on commodity risk management is to protect budgeted levels at both capital expenditure and operational level.

9. Counterparty Risk Management Policy

9.1. Purpose of Policy

The purpose of the counterparty risk policy is:

- To mitigate counterparty risk exposures;
- To diversify counterparty risk exposures;
- To set limits for the different types of counterparty risk exposures; and
- To ensure that financial transactions are done with approved high credit quality counter parties.

9.2. Background and Terms of Reference

ACTSA best practice charter principle # 14 – Creditworthiness, states that "EXCO should be responsible for the evaluation of customer and counterparty credit worthiness and the setting of individual credit limits".

In Transnet, this requirement is achieved by:

9.3. Determining Limits for Rated Institutions

9.3.1. Selection of Counterparties through Credit Risk Analysis

A rated counterparty is defined as a counterparty that is rated by a reputable rating agency such as Moody's Investor Services, Standard & Poor's, Fitch Ratings, Global Credit Ratings or any other rating agency acceptable to Transnet. When selecting rated financial institutions for the allocation of investment and price risk limits for ***Treasury related financial instruments***, the following minimum criteria applies:

- Minimum net equity of **R5 billion**.
- Long term Investment Grade credit rating.

Exceptions to the above will be allowed to accommodate operational bank account balances in foreign jurisdictions (which is very limited in Transnet's case).

The following **second tier** limit structures are applied to diversify counterparty risk exposures.

- Limit the cash exposures to **40%** of overall cash available in respect of counterparties where the long term credit ratings are single A* ratings.
- Only invest cash with counterparties that have a **Short Term Investment Grade** credit rating (excluding bank account balances in foreign jurisdictions).
- No more than 33% of total cash available may be invested with a single counterparty within the approved limits. This excludes overnight operational bank balances as a one day grace period is allowed to enable Treasury to move funds. As a result of the unpredictability of daily cash balances, this will be monitored per investment category.

9.3.2. Establishment of Investment Limits per Institution

Transnet uses a credit risk scoring model to calculate the limits. The basic principles of the model are to calculate an overall credit score per counterparty by using a number of variables like long and short term credit ratings and financial ratios across the balance sheet and income statement.

The credit score is then applied to the net worth and adjusted by a factor (haircut), to calculate the overall limit per counterparty. The purpose of the haircut is to determine the limits required to accommodate cash on hand, also taking into account the impact of a pre-funding strategy as well as the Group's normal hedging and funding programmes.

Domestic counterparties are allocated a higher haircut than international counterparties due to the huge difference in balance sheet sizes. The haircut may be reduced for individual banks in instances where a new relationship is established or where there are clear indications that the bank have a limited credit risk appetite for Transnet or is only willing to transact in certain instrument types.

A maximum haircut of **18%** for local banks and **3%** for international banks should be applied. This will be reviewed during the annual update of the FRMF and may change due to a result of overall limit requirements.

Detail of the application of the credit risk scoring model and the haircut application will be recorded in a procedure manual for reference and audit purposes. Limits are established at Company level for both international and domestic counterparties.

Price risk limits in respect of derivative financial instruments for international banks may only be established if the international bank is a local authorised dealer unless specific approval has been obtained from the SARB. This is in line with SARB's rules on these transactions.

9.3.3. Establishment of Investment Limits per Investment Instrument

To manage and control investments per investment instrument, the following limits will be applicable per investment category.

Fixed limits are not feasible as the total amount of cash on hand cannot be controlled by Transnet Treasury. As a result of the unpredictability of daily cash balances, (ii) and (iii) below are calculated on the day when the investments are done and Traders will have a grace period of 10 business days to rectify positions, before a limit breach is deemed to have occurred.

Investment Category	Limit
(i) Call investments and operational bank balances.	A maximum of **100%** of overall cash available.
(ii) Fixed Deposits.	A maximum of **80%** of overall cash available.
(iii) Liquid Tradable Assets i.e. NCD's, BA's, Promissory notes etc.	A maximum of **10%** of overall cash available.
(iv) Money Market Funds in total	A maximum of **R8 billion**
(v) Money market funds (individual)	A maximum of **R3 billion** per single fund limited to **33%** of cash available or **10%** of the size of the fund.
(vi) Repo's on Funding Portfolio	**R3 billion**

9.3.4. Monitoring of Investments against Limits

All exposures are monitored against approved limits on a daily basis. The only exception is bank balances in foreign jurisdictions, which are only available on a monthly basis, and are monitored as such.

9.3.5. Re-Assessment of Counterparty Credit Risk Based on Credit Ratings

Counterparty credit risk is reviewed and assessed on a regular basis, and if any material financial deterioration is detected on any approved counterparty, like a credit down grade, the Treasury Middle Office assesses and scales down the limits (if necessary), to reduce any possible risk.

Any downscaling of limits needs to be reported to the Treasurer, GCFO and to FINCO as and when it occurs, but no later than one month (due to monthly reporting to Committees). Treasury should perform a formal analysis and review of counterparties at least twice a year or as necessary.

9.3.6. Assessment of Investment Instruments Based on Liquidity Requirements

All new investments and financial instruments must go through a testing and approval process before they can be utilised. Liquidity requirements need to be considered before entering into the transaction to ensure the availability of cash as and when required.

9.3.7. Determining Limits for Unrated Institutions

Transnet strives to apply best efforts to open bank accounts with rated counterparties in foreign jurisdictions.

Exceptions will only be allowed if rated counterparties are not available in the particular foreign jurisdiction and or if a rated bank is not located in close proximity to the operations of the Operating Division.

Minimum balances must be maintained for operational purposes and excess cash should be repatriated on a monthly basis. The only exception to this rule will be regulatory constraints and explicit approval for this arrangement must be obtained from the GCFO. No investments with unrated counterparties are allowed.

A formal risk credit risk assessment may not be possible in respect of unrated counterparties due to the lack or unavailability of audited financial information. All efforts should be made to obtain as much information as possible and to compare results amongst unrated counterparties for benchmarking purposes.

Counterparty risk limits are formulated by Treasury Middle Office and presented for approval in terms of the approved DOA. Where limit types are not included in the approved DOA, the Deputy Treasurer Operations, Middle Office and or Treasurer (Or other delegates formally mandated by the Group Treasurer) can approve all types of counterparties where limits are not necessary i.e. investors in bonds and commercial paper, lenders, suppliers of goods and services etc.

9.3.8. Determining limits for issuers of guarantees

Where credit risk arises due to guarantees issued by external parties (banks, financial institutions, insurance companies etc) as a risk mitigation in supplier agreements (advance payment guarantees (APG), performance bonds (PB), retention bonds (RB) etc, the following criteria will apply:

9.3.8.1. Issuers with limits for Treasury related financial transactions

Where counterparty limits have been approved for Treasury related financial transactions in accordance with DOA, the credit risk will be offset against the overall approved limit.

9.3.8.2. Issuers for non Treasury related financial transactions

When an Issuer requires a limit for non-Treasury related financial transactions, (i.e APG's, PB's RB's etc) only the credit rating requirement will apply. Issuers must have a long term investment grade rating as defined in the definitions.

- Limits will be calculated based on financial and credit rating information and
- Allocated limits will be reviewed annually or adjusted downwards, should adverse information become available.

9.4. Settlement Risk Limits

The settlement limits for approved counterparties should be set at **1.5 times** of the approved credit limits in line with authority as stipulated in the DOA.

Settlement limits will not apply to settlements relating to guarantees issued in relation to *"9.3.8 Determining limits for issuers of guarantees"* above.

9.5. Bond Issue and Bond Issuer Risk Limits for the Investment of surplus cash on repo portfolio.

Only bonds and bond issuers approved in terms of the DOA may be used as the underlying instrument/issuer when surplus cash is invested for short periods with JSE members.

9.6. Repo Limits for JSE Members

One annual limit in respect of all JSE members will be calculated for the repo portfolio as listed bonds and members of the exchange are protected by the JSE Guarantee Fund.

9.7. Repo Limits for JSE Clients (Price Risk)

Repo trades will not be allowed with JSE clients (Non – JSE members) due to the outsourcing of the market making function to the external market making panel. Repo transactions may only be done with JSE members.

9.8. Money Market Funds

Money market funds have been in existence for about thirteen years in South Africa and these funds create an opportunity for Transnet to earn a higher return relative to the other investment types, like call and fixed deposits. There are approximately R242 billion of assets managed by Money Market Funds in South Africa. Money Market Funds further diversify the risk of default as the assets of the funds are spread amongst a number of issuers, instruments, banks and or financial institutions.

Some money market funds are rated, whilst the assets and or issuers of the paper in others are rated. Treasury can invest in Money Market funds under the following approved criteria:

- The Money Market fund must be governed by the Financial Services Board (FSB).
- The Money Market fund must be regulated by the Collective Investment Scheme Control Act (CISCA).
- The fund must be in existence for at least three years.
- The fund must have a policy limit that prohibits investments of more than 30% with a single counter party.
- The fund's objective should be capital preservation.
- Either the Fund must have a **Long Term Investment Grade** credit rating or
- The assets of the Fund must be rated with a minimum **Short Term Investment Grade** rating or the Fund may only invest in assets where the issuers/banks/financial institutions, have a minimum **Long Term Investment Grade** credit rating. The Fund should have approved limits either per instrument, per counter party or per rating category.

9.9. Master Agreements

ISDA master agreements shall be concluded before any derivative financial instruments can be traded with an approved counter party. The approval of ISDA and ISMA master agreements, where applicable, should be done in line with the DOA and all efforts must be made to ensure standardisation across these legal agreements. ISDA covenants must be monitored at least on a quarterly basis to mitigate the risk of potential breaches.

9.10. Margining and Collateral

Transnet is not allowed to post any type of collateral and or margining as security with banks and or financial institutions in respect of any hedging transactions. This also prohibits Treasury to sign Credit Support Annex Agreements (CSA) with any of its counter parties that require such posting of collateral. The main reason is to ensure that cash is not utilised ineffectively during a prolonged period when Transnet is a net borrower of funds. Transnet must always strive to enter into hedging arrangements without any break clauses. Any ISMA agreements entered into with Repo counterparties should exclude any margining arrangements.

As a result of the implementation of Basle III, financial institutions may provide hedging and lending facilities to Transnet at a reduced cost should posting of collateral and the resultant signing of a CSA be considered. Any such consideration can only be approved by the GCFO after careful consideration of the benefits and risks involved, with specific reference to liquidity risk.

9.11. Breaching of Counterparty Limits

All counterparty limit breaches should be reported to the Treasurer and GCFO as and when they occur and monthly to FINCO and the Audit Committee. When the limit is breached, the Treasurer shall decide whether the position should be closed immediately or, be maintained for a limited period within the authority as outlined below.

LIMIT TYPE	TREASURER	GCFO	GCE
Investment Risk Limits	≤ 1 Week	≤ 1 Month	> 1 Month
Marginal Risk Limits	≤ 1 Week	≤ 1 Month	> 1 Month
Bond Issue and Issuer Limits	≤ 1 Week	> 1 Week	-
Settlement Risk Limits	<= 1 Day	> 1 Day	-
Investment limits per investment instrument	≤ = 1 Week	> 1 Week	-
2nd Tier limits	≤ = 1 Week	> 1 Week	-

9.12. Credit Risk Assessment of Debtors

The credit risk assessment of commercial debtors is done at Operating Division level and these limits are approved in terms of the DOA.

10. LIQUIDITY RISK MANAGEMENT POLICY

10.1. Objectives

The main objective of the liquidity risk management policy is to ensure adequate availability of funds in all currencies, to enable Transnet to meet all expected and unexpected financial commitments cost effectively through the achievement of the following:

- To manage the contractual maturity gap between assets and liabilities;
- To manage current and projected cash flows;
- To maintain an adequate level of cash holdings;
- To diversify funding sources and have funding programs available to reduce reliance on particular sources to support effective liquidity risk management;
- To spread the maturity of debt issues to reduce refinancing risk;
- To do pre-funding of major capital redemptions to mitigate liquidity risk; and
- Where needed, extend the debt portfolio to match the underlying assets.

10.2. Level of Liquidity

The appropriate level of liquidity requires a balancing of two conflicting objectives, namely maintaining an adequate level of liquidity holdings, while minimising financial risks, such as credit risk, interest rate risk, re- investment risk and cost of carry.

The role of committed credit lines in addition to surplus liquidity levels is also important. It is therefore critical to establish an appropriate mix of credit/investment alternatives to meet liquidity demands. Multiple use of credit facilities that can be used for overdraft, and/or term capital transfers provide this flexibility without incurring unnecessary credit line or commitment expenses. Transnet has banking credit facilities (committed and uncommitted) available with a number of banks.

10.3. Investment of Liquidity Funds

There are opportunity costs attached to the miscalculation of liquidity levels and thresholds, in particular those, which emanate as a consequence of deciding how and when to invest. There are basically five types of investment mechanisms normally found in money markets.

10.4. Liquidity Risk Thresholds

10.4.1. Threshold 1

Transnet is required to hold at any given time a daily amount of liquid assets, cash balances, investments, and available credit (bank) facilities (committed and uncommitted) in South Africa that is no less than **8 times** the twelve month average monthly operational expenses (excluding depreciation and amortisation). The Corporate Plan should be utilised for limit setting.

10.4.2. Threshold 2

Available/surplus funds can only be invested in capital market instruments under the following conditions;

- A requirement to invest ring fenced cash for longer periods in the capital markets, where the cash is dedicated for utilization on a specific project. Transnet's intention is to match the maturity of the capital market instrument with the requirements for cash to avoid capital loss.
- Surplus cash that is available for periods longer than three months can be invested in capital market instruments issued by Issuers with a long term investment grade credit rating by utilising approved instruments in paragraph 19.1 with the intention to maintain the investment until maturity to avoid any capital losses.
- The result of an investment condition as stipulated by a Regulator.

Where circumstances beyond Transnet's control, forces Transnet to liquidate the portfolio before its original maturity date, the GCFO's approval should be sought for any possible capital loss that may be incurred as a result of this premature liquidation. The purpose of investing in these instruments is to enhance return.

10.4.3. Threshold 3

Maximum tenor of money market investments not to exceed **365 days** to ensure that cash is not tied up for long periods of time and defeat liquidity risk management principles.

10.4.4. Threshold 4

Treasury will strive to maintain a cash liquidity buffer of approximately **R1 000 million** during the current phase of intensive capital investments. The buffer will fluctuate over month ends as a result of debtor receipts and creditor payments. The buffer should be included in all cash forecasts. A minimum of **R150 million** should be kept in accounts that are available for same day value to cater for unforeseen disbursements.

10.4.5. Threshold 5

Available (committed) short term facilities of **R 5 billion** during the capital expenditure phase. Committed facilities include cash on hand and short term investments that can be used for debt re-payments.

10.4.6. Threshold 6

All major capital redemptions of a single maturity which are more than **R2 billion** should be fully funded six weeks in advance to minimise liquidity risk.

10.5. Liquidity Crisis Process

Guideline Statements on Treasury Best Practice issued by National Treasury states under liquidity risk reporting, "In the event where a liquidity crisis becomes likely it is the duty of the Treasurer immediately to notify the Board officially of the situation".

In the Transnet context and in line with the reporting structure, the Group Treasurer will inform the Board through the office of the GCFO when a liquidity crisis becomes likely. Full disclosure should be done of the possible impact in reports to FINCO, EXCO and Board at scheduled meetings. The CFO will construct a task team with immediate effect to consider alternatives and recommend appropriate action to the Board. If the crisis is of a serious nature, the Board need to inform the Shareholder accordingly.

11. CASH MANAGEMENT

11.1. Background

Cash management activity is driven by the cash needs of underlying business.

The main activities being:

- Working capital; *and*
- Capital expenditure.

11.2. The Objective of the Cash Management Policy

- Maximise liquidity and control cash flows by ensuring that;
  - the operational cash requirements of the Group are adequately met;
  - short-term financing requirements are satisfied by means of approved short-term financing products;
- Maximize the value of funds while minimizing the cost of those funds;
- Ensure that unplanned cash surpluses or shortages are kept to a minimum; *and*
- Monitor and report on the overall cash flow of the Group.

To achieve the above objectives Treasury requires efficient short, medium and long-term cash forecasting and planning. This implies that Treasury must have direct interface with the Operating Divisions in order to understand the sources of cash generation and cash consumption and the underlying drivers of both. This data is then synthesised into a cash management strategy which is executed and performance-managed by Treasury. The integration of cash management strategy and liquidity management solutions remains a paramount objective.

11.3. Centralisation of Bank Balances

The aggregate of all transactions arising in RSA based bank accounts for the Group (the end of day balance) except petty cash accounts and benevolent accounts, are transferred (rolled up) daily to a Group account managed by Treasury.

The main characteristics therefore are that the cash resources and the cash requirements of the Group are managed on a central, pooled basis by Treasury. The balances are posted to the inter-group current accounts of the businesses, which are operated as an exact replica of an external bank account.

11.4. Cash Flow Forecasting

Cash flow forecasting is paramount to prudent and effective cash management. Forecasts are split into inflows and outflows. The forecasts are then consolidated at the Division's head office level and passed through to Treasury once a week for a rolling ninety (90) day forecast. These are further reviewed daily for any substantial movements/adjustments, which are communicated to Treasury to enable funding and investment decisions to be made by Treasury timeously.

Accurate cash forecasting is an essential tool to the cash management process, but reliability of the data is paramount for each of the processes.

A range of forecasts with different time horizons are required by Treasury to reflect different cash management decisions i.e., short-term, medium-term and long-term horizons.

11.4.1. Short Term Forecast

Short-term forecasts (3 months rolling) are used to support day-to-day decisions on cash management. A one day forecast is used to identify actual cash flows through the company's bank accounts to inform funding and investment decisions.

11.4.2. Medium Term Forecast

Medium term forecast is the twelve month rolling cash flow forecast (by month), used to plan major draw-downs and repayments of funding or investment of short/medium-term surpluses. This is used for the annual funding/borrowing plan.

Although the budgeting process information is used, the receipts and disbursement method is the basis of calculating the forecasts.

11.4.3. Long Term Forecast

This is a five year forecast per annum, which is used to manage overall funding requirements in line with the Corporate Plan. These forecasts are based on the corporate budgeting and planning system and are incorporated into the corporate plan projections submitted annually to the Shareholder. There is a close relationship between all these forecasts and the projected Income Statement and Balance Sheet.

11.4.4. Cash Flow Variances

Divisions compare their updated forecasts to actual on a monthly basis and any variances are explained, reported to FINCO and used to enhance the cash management processes. Targets of variances and accuracy levels that need to be achieved are recorded in the

Group's cash management policy number CM1/2009 of which the last version was approved by EXCO during April 2010.

In addition to the processes outlined above, the businesses are also expected to maintain constant daily dialogue with Treasury regarding expected changes to the timing of their cash flows.

12. INTEREST RATE RISK POLICY

12.1. Policy Objectives

The main objective of the Interest Rate Risk policy is to minimise the Group's external finance cost through the following:

- Manage the ratio of floating rate exposures versus fixed rate exposures;
- Reduce the WACD to ensure the gap to prevailing market rates is reduced;
- Take advantage of interest rate cycles;
- Support the business strategy in so far as interest rates are concerned;
- Minimize the negative impact of adverse interest rate movements on the Group's net income, cash flows and external finance cost within an acceptable risk profile;
- Minimize the market making cost on the repo facilities granted to the external market making panel under the DMTN programme;
- Manage the basis risk exposure where interest rate risk is netted between investments and borrowings; and
- Manage the duration of the debt portfolio (including derivatives) to try and achieve alignment with the duration of the average payback periods of the assets.

12.2. Interest Rate Risk Exposures

Interest rate risk exposures at Transnet are primarily the result of the Group's financing agreements entered into at either a fixed and or a floating rate that attracts an interest rate risk exposure and needs to be managed. Apart from the existing liabilities, all new funding requirements and or investments are exposed to interest rate risk and negative movements in interest rates can have a material impact on external finance charges. Furthermore movements in swap and or yield curves will have an impact on the fair values of all types of derivatives and loans/investments that are fair valued.

12.3. Investments

The surplus funds of the Group are invested in the short-term liquidity portfolio with prices mainly in a floating rate form and fixed for short periods of time (money market).

12.4. Fixed Versus Floating Interest Rate Composition

The correct interest rate mix is different for each company, industry, differing leverages, acquisitive versus stable entities and differing credit quality companies.

To enable Treasury to manage interest rate trends in both a rising and falling environment, the fixed portion of interest rates may be managed between **70% and 90%.** The floating interest rate portion can therefore vary between **10% and 30% (after hedging).** The calculation of the composition will include debt of all currencies translated into Rand. The rationale for setting these limits is the result of the long term nature of Transnet's assets. When reporting, Treasury will report on both pre and post hedged debt. The fix/float composition will be reviewed annually as part of this policy review.

12.5. Hedging of Interest Rate Risk

Both floating and fixed rate exposures carry an interest rate risk as fixed rates that are higher than prevailing markets rates create an opportunity loss and need to be managed.

Interest rate hedges entered into over long periods can create volatility in the income statement of the Group if not hedge accounted for. The preferred option will be to enter into a loan with the fix/floating characteristics as required. Interest rate risk hedges can be done at a later stage when markets or trends have changed. Where ever possible Treasury will incorporate interest rate hedging instruments as part of the original funding agreements. Input and review of the proposed loan and or hedging structure should be made by Accounting and the Hedge Accounting specialist to ensure alignment to accounting standards and avoid unacceptable volatility in the Group's financials.

The market conditions (interest rate cycles) play an important role in determining the timing of interest rate risk hedges. Yield curves shapes normally do not support the hedging of interest rate risks over very short periods and it is for this reason that relative long tenors are allowed. Interest rate risk hedges are approved in terms of the DOA.

Although no limits are set in respect of the duration of the overall funding portfolio, the duration should be calculated on a monthly basis and reported to FINCO since short versus longer durations react differently in a high versus low interest rate environment.

13. BREACHING OF LIMITS

Calculation of exposures is measured against exposure limits and breaches of limits are reported to the Treasurer and the GCFO as and when they occur and monthly or in the next meeting of FINCO and the Audit Committee. The breach of any interest rate limit may only be approved by the higher level of authority as outlined in the DOA.

14. MARKET MAKING

14.1. Objective of a Market Making Policy

The objective of the Market Making Policy is to:

- Guide the management of the variability of the spread between the Transnet curve and the Government benchmark curve.
- Improve overall liquidity of Transnet's notes under the DMTN programme.
- Monitor the activities of external market makers closely.
- Ensure limited risk is carried by Transnet as a result of repo - facilities that will be offered by Transnet to the external market makers and or JSE Members.

14.2. Background

External Market Makers were appointed during 2007 to do market making on bonds issued by Transnet under the DMTN programme, to improve the marketability, liquidity and tradability of Transnet bonds so as to optimise financing costs over the long term. The external market makers and or JSE members are used to facilitate the bond auction processes under the DMTN programme. The Dutch auction methodology is used for bond auctions where all bids allocated are cleared at the same spread/all in rate.

The outsourcing arrangement has reduced the risk for Transnet from a balance sheet perspective and this will continue until maturity of the bonds or until such time there is a clear indication that the spreads on bonds issued under DMTN programme has increased

only as a result of the inability of the Market Making Panel to assist Transnet in containing the spreads above Government benchmark.

Market Makers are remunerated on an auction participation and performance fee basis. Transnet is only required to make available short term repo facility (buy & sellbacks and sell & buy backs) on Transnet bonds issued under DMTN, with limited risk to Transnet.

14.3. Market Making in Transnet Bonds

14.3.1. Annual Loss on repo portfolio.

The maximum annual loss to accommodate repo trades with the external market making panel and or JSE members should not exceed **R2.5 million** per financial year. This includes the net result of all activities on the repo portfolio, inclusive of carry costs.

Transactional limits applicable on market making spot and repo transactions are defined in the DOA.

14.3.2. Procedure when Breaching of Limit Occurs

Any limit breaches on the repo portfolio should be reported to the Treasurer and GCFO as it happens and to FINCO and the Audit Committee on a monthly basis, or in the next meeting, whichever comes first.

The following approvals are applicable in respect of any repo limit breaches:

	Deputy Treasurer Front Office	Treasurer	GCFO
Amount	< 5%	< 20%	>20%
Tenor	< One week	< Two weeks	> Two weeks

14.3.3. Investments in Transnet Commercial Paper

Investments by Transnet in Transnet Commercial Paper are not allowed as it defeats the utilisation purpose of the funding instrument.

14.3.4. Commercial Paper Auctions

Commercial paper auctions under the DMTN programme are facilitated by the Treasury dealing team and are allocated on a best bid, ascending basis.

15. FOREIGN EXCHANGE (FX) RISK POLICY

15.1. Objectives of the Policy

The main objectives of the FX risk management policy are:

- To mitigate foreign currency risk exposures;
- To bring certainty about future Rand cash flows where FX is involved; and
- To insulate the Groups' income statement against exchange rate fluctuations.

15.2. Foreign Exchange Risk Management

The following principles should be applied within the Group when supplier agreements are concluded. These are critical to ensure that foreign currency risk exposures are minimised on the day of origin.

- Whenever possible foreign currency risk exposures should be eliminated by entering into **fixed RAND** contracts/funding agreements with both local and/or international based suppliers/lenders. Where an international and or local supplier/lender/arranger does the hedging, the pricing needs to be compared with Treasury's pricing to ensure that the hedge is reasonable and market related. The acceptance of pricing needs to be done in accordance with the DOA.
- Where the cost of the hedge by the international supplier/lender/arranger is deemed excessive, Transnet will accept the FX risk and hedge itself accordingly. This will ensure that Transnet has a fixed RAND liability. If foreign currency funding is used, the foreign exchange rate risk will be hedged to Rand as soon as the exposure is committed or the Treasurer can obtain approval from the GCFO if there is a need to delay hedging for a short period of time due to un-favourable market conditions.
- If locally registered suppliers are used where imported components are involved, invoices can only be issued in RAND as exchange control regulations prohibit local suppliers from invoicing Transnet in a foreign currency. BU's must request the local supplier to hedge the imported portion where ever practical, possible and or to fix the price in RAND for minimum periods as these indirect FX exposures cannot be hedged by Transnet due to SARB regulations. There will be some exceptions where small business enterprises do not have sufficient credit lines to accommodate FX hedging on their balance sheet and or if their cost of hedging is unacceptable to Transnet. For these exceptions, specific SARB approval needs to be obtained by the local supplier to allow them to issue FX invoices to Transnet, after which Transnet will hedge on it's own balance sheet.
- If locally registered incorporated/un-incorporated joint ventures (JV) are utilised, SARB's approval should be obtained by the JV for permission to issue invoices in a foreign currency. This approach should be followed if RAND contracting cannot be achieved.
- All contracts/funding agreements with a foreign currency component of more than **R50m** should be reviewed by Treasury, Group Finance and Group Tax during the establishment process and Operating Divisions should get the sign off from all the respective sections before agreements are concluded. Contracts with a foreign currency component of more than **R100m** should also get the sign off by the GCFO.
- Embedded derivatives in supplier/funding agreements must be identified, risk analysed and avoided before agreements are concluded, as this can add to volatility in the Group's financials. All embedded derivatives should be declared to Treasury and Group Financial Reporting on a monthly basis.

Foreign exchange risk should be managed on a net basis including operating and capital exposures (both income and expenditure), although the FX income for Transnet is minute. FX exposures are determined from budgeted FX Exposures, FX quarterly updates from Operating Divisions, and FX cash flows directly submitted by the Operating divisions to Treasury and or obtained by Treasury as a result of their involvement during the contracting process. The net FX position should be monitored on a monthly basis. Foreign currency risk exposures should be updated on at least a quarterly basis and or earlier if new/additional information is available from capital contracts. The accuracy of the foreign currency risk exposures is of critical importance when hedging strategies are designed.

The accounting and financial risk implications should be fully analysed before a hedging strategy is implemented. The purpose of hedging strategies should be to bring certainty of future Rand payments and receipts and to minimise volatility in the Groups' income statement. The correct application of hedge accounting on all major hedges is paramount as hedges can create material volatility in the Group's financials if not hedge accounted for. Hedging also enables Operating Divisions and Treasury to prepare more accurate cash flow budgets.

The foreign versus domestic currency funding decision (loans/leases) should be executed within the approved annual borrowing plan and the DOA.

Foreign exchange hedging should match specific cash flow requirements if there is relative certainty of payment dates. If cash flows are uncertain as a result of uncertain delivery schedules, hedging may be dealt in quarterly/ semi annual, and/ or in annual buckets and early take ups allowed to facilitate the actual payments. No pooling of hedging over various exposure types is allowed as it defeats the object of hedging specific foreign cash flows per project.

The decision to manage capital FX exposures (such as leases and loans on the Transnet balance sheet) should be combined with the business strategy and funding decisions to ensure that funding and FX risk management strategies are complimentary to the business strategy.

No speculative foreign exchange transactions are allowed and Treasury is the only approved participant on behalf of Transnet in the currency markets.

A foreign currency exposure will arise once an agreement/letter of acceptance and or purchase order has been concluded and signed by both parties and agreement on FX cash flows and delivery dates have been agreed upon.

The Operating Division is expected to submit approved FX cash flows to Treasury within 10 business days after the agreement/purchase order are signed to enable Treasury to arrange hedging within the approvals of DOA.

15.3. Foreign Exchange Hedging

15.3.1. Operational Exposures

All direct committed foreign currency operational expenses (Opex) should be hedged, subject to the limits below. The limits are based on **0.5%** of the latest annual Opex budgeted (excluding depreciation and amortisation) with a **minimum of R20 million**.

The cumulative committed un-hedged position in respect of Opex shall not exceed the following limits per Operating Division.

In cases where an Operating Division has submitted approved FX cash flows to Treasury with a request to hedge, the exposure will be considered hedged for reporting purposes. This is to not penalise operating divisions unfairly since hedge approvals can take time and might not have gone full circle before reporting at month end, especially where requests are submitted just before reporting date. All other un-hedged positions will however be reported to FINCO on a monthly basis.

The amounts below are based on the 2013/2014 budgets and will be updated once approved budgets for the new financial year become available.

Core Operating Division	Net Budgeted Operating Expenses (excluding depreciation and amortisation)	Committed Un-hedged Limit
Transnet Freight Rail	R20 616 m	R103 m
Transnet Engineering	R11 980 m	R60 m
Transnet Port Terminals	R5 991 m	R30 m
Transnet Corporate Centre	R3 457 m	R20 m
Transnet National Ports Authority	R3 537 m	R20 m
Transnet Capital Projects	R2 506 m	R20 m
Transnet Pipelines	R911 m	R20 m
Transnet Property	R531 m	R20 m

15.3.2. Capital Exposures

All direct committed foreign currency exposures in respect of capital projects should be hedged as soon as the exposure is committed, subject to the aggregate limits below. The cumulative committed un-hedged position in respect of capex should not exceed the following limits per Operating Division. The limits are based on **1%** of the annual budgeted capital expenditure programme, including capitalised borrowing costs with a minimum of **R25 million.**

In cases where an Operating Division has submitted approved FX cash flows to Treasury with a request to hedge, the exposure will be considered hedged for reporting purposes. This is to not penalise operating divisions unfairly since hedge approvals can take time and might not have gone full circle before reporting at month end, especially where requests are submitted just before reporting date. All other un-hedged positions will however be reported to FINCO on a monthly basis.

The amounts below are based on the 2013/2014 budgets and will be updated once approved budgets for the new financial year become available.

Core Operating Division	Budgeted Capex (excluding capitalised borrowing costs)	Committed Un-hedged Limit
Transnet Freight Rail	R19 019 m	R190 m
Transnet Pipelines	R3 268 m	R33 m
Transnet National Ports Authority	R2 554 m	R26 m
Transnet Port Terminals	R1 859 m	R25 m
Transnet Engineering	R954 m	R25 m
Transnet Corporate Centre	R625 m	R25 m
Transnet Property	R268 m	R25 m
Transnet Capital Projects	R30 m	R25 m

All foreign currency hedging and operational transactions will be executed in terms of the approvals in the DOA.

Monthly feedback should be given to FINCO on the status and performance of the hedges executed by Treasury against the underlying exposure. The cumulative un-hedged position should be reported to FINCO on a monthly basis.

The Operating Division which creates a foreign creditor on their balance sheet should take the responsibility for FX hedging arrangements through Transnet Treasury. This is also applicable in so far as inter group transactions are concerned.

15.3.3. Exchange Control

In the past foreign exchange hedging could only be implemented once a firm and ascertainable commitment was established as required by Exchange Control Regulations. A commitment, from an exchange control perspective, is established once a purchase order/supplier contract/letter of acceptance has been signed by both Transnet and the supplier. During the middle of 2010 the SARB granted permission to allow local companies/residents/corporates to actively manage currency hedging facilities, in line with international best practice. The SARB now allows the pre hedging of future commitments, the hedging of balance sheet translation risk, foreign investment risk and the restructuring of economically inefficient hedges with residual maturities shorter than six months. These changes can only be considered and implemented by Transnet Treasury once there is a high degree of certainty that the hedge accounting process will still be highly effective, the FX risk is not jeopardised and with the specific approval from the GCFO and in line with the DOA.

All foreign currency hedges may only be entered into with local authorised dealers unless specific approval has been obtained from the SARB to deviate from this ruling. Proof of documentation is now only required by the bank doing the cross-border pay away and not the bank that establishes the contract. Currency contracts that do not result in a physical pay away under existing exchange control rulings, or contracts that are cancelled, may only be settled locally in RAND.

Transnet Treasury is the only Business Unit within the Group that is allowed to action foreign currency payments.

All requests from Operating Divisions to the SARB to obtain certain approvals/exemptions should only be done by Treasury.

15.3.4. Procedure in Limit Breaches

All foreign currency limit breaches are to be approved by the higher level of authority as stipulated in the DOA and should be reported to the Treasurer and the GCFO on a daily basis as they happen as well as to FINCO and the Audit Committee.

16. FUNDING POLICY

16.1. Objectives

Transnet's funding strategy aims to ensure that the Group has sufficient liquidity to meet all its operational and capital investment funding requirements by raising its required funding ahead of demand cost-effectively from diverse funding sources.

16.2. ACTSA Charter of best Practice Principle No 16: Funding Strategies

The above principle states the following:" Alternative strategies to meet liquidity needs arising from either a loss of market liquidity or market access should be incorporated into the company's contingency planning process".

16.3. Transnet will execute its Borrowing Programme on the following broad Principles:

Government Guarantees- Transnet will raise its required funding on the strength of its own balance sheet without any Government Guarantees.

Matching Assets and Liabilities – Wherever possible matching the payback period of the asset (not the economic life) with the liability. The tenor of funding will generally be between 7 and 25 years depending on the asset being financed as well as the availability of credit lines and investor appetite for different yield curve maturities. Long term debt will be used for capital expenditure and short term debt for operational cash flow requirements.

Flexibility of Markets and Instruments - Movements in interest rates, characteristics of the different markets, the shape of the yield curves, all in cost achieved, swapping of foreign funding to RAND are factors that will be considered when deciding on the appropriate funding instrument. Treasury must ensure that the funding instruments used should enable them to achieve alignment with the Group's overall strategy as approved in the Corporate Plan. Treasury will take advantage of any window of opportunity offered by the interest rate environment and the yield curve.

Execution of Funding Plan - Transnet will execute the funding plan within the guidelines as stipulated in this FRMF of ensuring that all financial risks exposures are minimised. All loans or borrowings denominated in a foreign currency will be hedged to Rand. Preference will be to fund in Rand where possible.

Diversify the Investor Base – Treasury will endeavour to diversify its investor base through deal, non-deal road shows and market making (locally), not only locally but also abroad in markets and countries where Treasury is of the opinion that they can successfully issue debt instruments at cost effective rates.

Cost Effectiveness of Funds - Transnet's strategy of reducing the WACC by reducing the WACD will be the primary objective to utilising the most cost effective funding instrument.

Debt/Equity Ratio – Transnet will manage this ratio as agreed with Shareholder in shareholder's compact (Target < **47% for 13/14)** ***Cash Interest Cover*** – *Transnet will manage this ratio as agreed with Shareholder in shareholder's compact (Target >**3.3 times for 13/14).***

Extend Duration of Debt Portfolio - Funding strategy will include the extension of the duration of the debt portfolio due to the long term nature of the Group's assets and payback periods.

Building the Transnet Yield Curve – Treasury will continue building Transnet's yield curve at the lowest possible spread above the Government benchmark for fixed rate funding and the lowest possible spread above the floating rate benchmark for floating rate funding (JIBAR, JIBOR, EUROBOR etc) and smooth out the maturity profile along the curve to reduce re-financing risk.

Credit Rating - Maintain or improve Transnet's long term credit rating as this is imperative to ensure availability of credit lines and lower cost of funding. A non investment grade long term credit rating will have serious implications for Transnet and will trigger certain loan covenants.

Funding strategies - Will be affirmed on an annual basis through the Corporate Plan.

Reputational risk – To be considered when availability of credit lines are considered.

16.4. Funding Requirement

The size of the funding requirement is driven principally by five factors, namely; capital expenditure programme, loan redemptions, debt service, cash flows from operations, investment activities and an adequate cash buffer due to a pre-funding strategy.

16.5. Diversify Funding Sources

Transnet will seek to expand and diversify its funding sources through the funding initiatives as listed below.

- Bank credit lines.
- Commercial paper for short term funding under DMTN programme.
- Domestic capital markets for note issuance under the R55 billion DMTN programme in order to complete the Transnet yield curve: Tapping existing note issues which have not reached a self imposed capped limit (to manage re-financing risk) New bond issues to supplement existing issues.
- Long dated project specific bonds to fund designated projects.
- Tied/Untied ECA supported financing for imports.
- Development Finance Institutions (DFI's) and International Finance Institutions (IFI's)/ multi-lateral organisations to create further alternative funding base.
- Issuing bonds in other markets either as public or private placements such as the YEN, US$, Euro, Australian Dollar, Swiss Franc and Sukuk markets thereby ensuring further diversification of funding sources. The cost of possible funding to be raised will be compared with Rand funding.
- Index linked notes under the DMTN programme.
- Asset-backed finance and other related finance solutions.

- Exploring ways of working with customers and or interested parties to part fund certain of the capital investments.
- Offshore borrowing programs (Global Medium Term Note Programme (GMTN)).
- Bonds guaranteed by ECA's/DFI's.
- Domestic bank loans.
- Syndicated loan markets in both local and international markets.
- Innovative forms of project finance (including PPP's and others), to create additional capacity on the Transnet balance sheet.
- Working with customers and/or interested parties to part fund certain of the capital investments using private sector participation mechanisms.
- Re-payment and or re-financing and or re-structuring of existing old expensive debt and implementing more economically viable financing structures.
- Sharia compliant funding.
- Leasing as an alternative funding solution.
- Global infrastructure and sovereign wealth funds.

The approvals required for signing of loan documentation per funding category/instrument per financial year are defined in the DOA and the aggregate total may not exceed the total funding amount as approved by the Board through the annual Corporate Plan.

16.6. Pricing in Illiquid Markets

We markets are illiquid Treasury should stress test pricing of funding requirements to determine the subsequent impact on external finance costs per financial year.

16.7. Reporting

Monthly feedback should be given to Finco and EXCO on the portfolio duration, the amount of funding executed, spreads achieved and ultimate funding levels obtained as well as an overall WACD for the funding portfolio.

17. DEBT MANAGEMENT

17.1. Letters of Credit

Letters of credit (LC) in a Transnet context are normally requested by certain suppliers of goods and services to ensure payment is received as contractually agreed. Any LC in a foreign currency should be hedged by Treasury and not the issuer of the LC. LC's may only be issued by Treasury in line with the approvals as stipulated in the DOA.
The Issuer of the LC must at have **Long Term Investment Grade** credit rating. The issuance of an LC should not be promoted as it will increase cost for the Group, but is then acceptable if supplier is not willing to contract without an LC. All endeavours must be put in place to obtain an LC at the lowest possible cost for the Group.

17.2. Borrowing Powers and Guarantees

In terms of section 66 of the PFMA schedule 2 public entities may only borrow money and or issue guarantees through the accounting authority, which is the Transnet Board. The accounting authority may not delegate this without prior written approval from the Minister. Transnet did get written approval on 28 March 2001 (borrowing powers) and on 28 February 2002 (guarantees) from the Minister to enable the Board to sub delegate.

The limits applicable in respect of borrowing powers and the issuing of guarantees are defined in the DOA.

The Issuer of the Guarantee must have a **Long Term Investment Grade** credit rating.

17.3. Standard Loan Documentation

The loan documentation should be aligned with the funding strategy. Transnet Treasury negotiates for terms and conditions that support financial stability, risk reduction, flexibility and cost effectiveness of funding instruments. All funding agreements entered into by Treasury should get sign off from Group Legal, Tax, and all the respective areas within Treasury to ensure that financial risks are effectively analysed and mitigated.

17.4. Advance Payment Guarantees and Performance Bonds

Operating Divisions should approach Treasury to provide sign off and acceptance on the "Issuer" of Advance Payment Guarantees and Performance Bonds in supplier agreements to manage the counter party risk exposures. The Group should endeavour to always ensure that the issuers of these bonds have a "long term investment grade credit rating". Exceptions to the above may only be approved by the GCFO.

17.5. Relationships with Financial Institutions

Treasury's ability to successfully raise funding and hedging depends mainly on Transnet's credit rating and the strength of its relationships with investors and other stakeholders. It is therefore imperative to communicate Transnet's business and funding strategy to these institutions effectively and timeously. Road shows by Transnet Executives serve an important role in keeping the investor community/funders abreast of Transnet's strategic objectives. The relationship with financial institutions is important, and it should focus on institutions from which mutual benefit is to be achieved.

17.6. Financial Covenants

Monitoring of key financial ratios i.e. cash interest cover and gearing are important especially during the market demand strategy phase. Treasury need to monitor impact of financial covenants in loan agreements, funding and hedging programs at least on a quarterly basis to try and determine in advance the likelihood of breaching and the resultant cost implication thereof. The outcome of the analysis should be reported to FINCO and Group Audit Committee at least quarterly. Stress scenarios should be performed to cover different market events and when early redemption of debt is considered, when information is requested from Group and impact on covenants are assessed. The following ratios should be monitored:

- Maximum gearing of 50% and
- Minimum cash interest cover of 3 times.

17.7. Asset and Liability Management

Although Treasury will always endeavour to match liabilities with pay back periods of the assets as reflected above, the Treasury function will not incorporate full ALCO (Asset and Liability Committee) responsibilities where liability matching is done against assets, inclusive of re-pricing gap analysis, scenario analysis, stress testing and duration management.

17.8. Treasury Compliance

The formulation of the Compliance Risk Management Framework and Policy is the responsibility of Transnet Group Compliance. The Board approved Policy and Framework are adopted and applied at Group Treasury. A dedicated Compliance Officer is resident within Treasury who assists Treasury Management in complying with the laws/regulations/directives/rules/standards that are relevant to Treasury (The Treasury Universe).

17.9. Contractual Compliance

Contractual compliance in respect of supplier agreements is managed at Operating Divisional level.

17.10. Regulatory Compliance

The management and monitoring of regulatory compliance within the Group is managed by Group Economic Regulation.

17.11. Intergroup Financing

17.11.1. Objective

The objective of the Intergroup Financing policy is to provide guidelines and directives within which Treasury can establish inter group loans to Operating Divisions.

17.11.2. External Funding

The Operating Divisions of Transnet are not allowed to obtain direct funding from external sources except for operational leases. Treasury is the only Business Unit mandated and authorised to enter into external financing agreements.

17.11.3. Back to Back Intergroup Loans

To enable Treasury to recover the costs from the Operating Divisions, back-to-back loans between Treasury and the Operating Divisions are concluded. As Transnet Treasury is not a profit centre, no margins should be added by Treasury to ensure that the pricing remains cost effective. It is not practical to establish inter group loans on an occasional basis and the Operating Division can utilise their current account facility to fund operational expenses and small capital expenses on a daily basis. Short, medium and long term inter group loans can be established quarterly as more clarity will then be available on the cash flow stream of capital projects.

17.11.4. Approval of Intergroup Loans

Operational and capital budgets of all the Operating Divisions are approved by the Board on an annual basis and this approval enables Treasury to provide funding to the Operating Division in amounts equal to the approved budgets as the consolidated results of the budgets are incorporated into the annual borrowing plan. Increases in estimated total cost per project are approved in terms of the DOA.

The granting of interest bearing inter group loans can only be done in line with the approvals as defined in the DOA.

17.11.5. Operational Leases in Foreign Currency

Any operational leases that are not Rand denominated need specific approval from the GCFO before it can be concluded. This should only be allowed in exceptional cases where Rand denominated operational leases cannot be utilised as with over-border activities.

18. COMMODITY RISK POLICY (FUEL)

18.1. Objective of the Policy

The objective of this policy is to set specific risk management directives and guidelines within which Treasury should manage the Commodity (fuel) risk exposure of the Group and to create more certainty in terms of cash flows to allow the Operating Division to establish tariffs on sound principles and still be competitive.

18.2. Basis Risk

Basis risk is important when commodity fuel hedges are entered into. It can be defined as the relationship between the underlying products used in the hedges versus the actual commodity consumed by Transnet. The products underlying the hedging transactions could be ICE Gasoil or Brent crude oil, for example, whilst the basic fuel price (BFP) is based on Mediterranean and Arab Gulf based products.

Basis risk will always be part of a fuel hedging program and a tool available to mitigate basis risk is to ensure that the historic price correlation over a twelve-month period between the underlying products utilised in the hedges and the petroleum products consumed by Transnet has a historic correlation greater than **80%** at the outset of the hedge.

18.3. Margining and Collateral

The majority of commodity-hedging transactions are subject to daily/monthly margining agreements, which are governed by credit support annex (CSA's) to the main ISDA agreements. Transnet will not enter into any CSA's with counterparties as there should be counterparties available who are willing to enter into fuel hedging transactions without margining arrangements.

To ensure that no unnecessary pressure is put on the cash resources of the Group; fuel-hedging transactions may only be executed with approved counterparties who do not require margining agreements. This is to avoid the posting of any collateral and the tying up of cash for extended periods of time. Position will be reviewed on an annual basis.

18.4. Compliance and Exchange Control Regulations

The South African Reserve Bank only allows RAND based fuel hedges as Transnet is not a natural generator of foreign currency income. Fuel hedges in any foreign currency are not allowed. In addition to this the SARB does not allow the USD/RAND component of fuel to be hedged separately from the commodity component.

18.5. Hedging Program

RAND based fuel hedging products simultaneously hedge both the commodity and exchange rate risk of fuel exposures. Available hedging instruments only allow the hedging of the basic fuel price (BFP) as add-ons, such as taxes, levies and margins and these cannot be hedged. Although it varies from month to month, the basic fuel price constitutes around 60% of the overall price of diesel and petrol, and it is this portion that is exposed to movements in oil prices and the USD/ZAR exchange rate.

The ultimate product chosen for a specific strategy will depend on pricing, best mitigation of the risk exposure and after consideration of the accounting and tax treatment. For effective hedging the following are imperative:

- No speculative transactions may be entered into and transactions can only be used for hedging purposes.
- The liquidity of the financial instrument and the underlying commodity must be high with transparent and accessible pricing.
- Only vanilla type of instruments is allowed and no exotic instruments like extendibility of structures in terms of volumes and tenor by choice of the counterparty and double-up functionality are allowed.
- No physical exchange of the commodity is allowed and all hedges must be cash settled.
- The tenor of fuel hedges may not exceed eighteen months on a rolling basis.
- The hedges may not exceed **75%** of annual budgeted consumption to allow for variability in actual consumption.
- The natural hedge in the form of the energy levy that is incorporated into certain customer agreements at TFR will be used to mitigate part of the fuel risk exposures and this should be considered when hedging strategies are developed to ensure that both the hedges and the energy levy do not exceed the **75%**.
- The hedging programme's main emphasis is to ensure that the risk limits as contained in paragraph 7.2.1.2 are not exceeded per financial year.

18.6. Hedging Instruments

The type of instruments utilised in the hedging programme will determine the level of possible volatility in the Group's income statement due to monthly fair value movements. The utilisation of swaps and zero cost structures will add to volatility in the financials as a result of movements in currencies, oil prices and volatilities.

Buying Call options limit the volatility to the premium paid over the life of the option, but depending on market conditions, may be expensive to utilise. Volatility in the financials can be experienced over reporting periods if hedge accounting is not applied or fully effective.

It should be noted that an offsetting value would be achieved through the actual purchase of the physical fuel by the Operating Divisions. This will be recorded as part of operating expenditure.

The application of hedge accounting on fuel hedging structures will be considered for implementation after adoption of IFRS9 due to the complex nature of commodity driven hedging requirements as contained in IAS39.

FINCO will be informed on a monthly basis of the fair value movements and the subsequent impact on the income statement to enable them to monitor this impact and the overall performance of the hedges.

The hedging of commodity risk (fuelmust be done in accordance with the limits stipulated in the DOA.

18.7. Transfer Pricing and Transactional Requirements

Hedging transactions entered into on behalf of the Operating Division will be recorded in the Treasury system under the dedicated Operating Divisional entities.

Treasury is the only authorised participant in the financial markets to enter into fuel hedging transactions with external counterparties. Sufficient monthly information on fuel hedges will be provided to the respective Operating Divisions to facilitate proper disclosure in general ledger.

18.8. System Requirements

Commodity transactions need specialised systems to calculate the correct fair market values on a daily/weekly/monthly basis and as such this can only be done by Treasury. The Treasury operational system can price vanilla commodity transactions. In practice where Treasury is not capable of using its systems to price accurately, it is common practise to outsource such services and Transnet will explore using the services of a reputable bank/financial institution to provide such services to it, should it be necessary.

19. NEW FINANCIAL INSTRUMENTS

Treasury can only transact in instruments listed in this FRMF. This list is reviewed from time to time. The Treasurer can motivate the use of new financial instruments that are not included under par 18.1 to the Group CFO for approval and inclusion in the FRMF. Any new instrument that was not utilised by Treasury before in the production environment, needs to go through a formal and detailed system testing process.

The testing process should at least include the following; Instrument description, deal execution, confirmation, financial risks, operational risks, cash flows, accounting, hedge accounting (if applicable), legal (including confirmation and master agreements), taxation, controls, systems, settlements, limit structures, and pricing.

An official test pack should be prepared, providing evidence that all the disciplines within Treasury have tested the detailed impact of the new financial instrument in their area of responsibility. The test pack should be structured in such a way that it follows the normal transactional flow with full segregation of duties through the Front Office, Middle Office, Operations, Hedge Accounting and finally Group Tax.

The Treasury information system should be able to accurately price all the financial instruments in paragraph 0 below. If any new financial instrument is considered for approval and the pricing cannot be accurately determined by the Group Treasury system, a detailed workaround of the processes to be followed, should be included in the test pack.

All the Deputy Treasurers, the Head of Structured Finance and the Group Treasurer should sign off the test pack before the instrument can be utilised in the production environment.

19.1. Approved Financial Instruments

The following financial instruments can be utilised for funding, hedging, investments and or market making purposes (depending on portfolio type)

- Commodity (fuel) swaps (Asian style option, averaged daily and settled monthly/quarterly) in ZAR;
- Commodity (fuel) options in ZAR;
- Commodity (fuel) collar structures in ZAR;
- Commodity (fuel) call spread options in ZAR;
- Commodity (fuel) put spread options in ZAR;
- Bonds in Rand and or a foreign Currency (Domestic or International);
- Transnet commercial paper;
- Interest rate options, including bond options;
- Repurchase agreements (buy and sellback, sell and buy back and repo's);
- Index linked bonds;
- Term loans in foreign currency and Rand;
- Banking facilities i.e. overdrafts;
- Operational bank balances;
- Structured finance transactions;
- Financial Leases;
- Operational leases;
- All instruments included under the DMTN programme;
- All instruments included under the ECA umbrella facility;
- All instruments included under the GMTN programme;
- Letters of credit;
- Bonds/notes issued by Government and major banks in South Africa.
- Commercial paper/notes issued by Government and major banks in SA.
- Treasury bills of the SA Government;
- Bonds/notes issued by State Owned Companies in SA;
- Commercial paper/notes issued by State Owned Companies in SA.
- Negotiable certificates of deposits issued by banks if an approved counter party for investment purposes;
- Call and term deposits;
- Interest rate swaps;
- Rand overnight deposit swaps;
- Interest rate options, caps and collars;
- Forward rate agreements;
- Foreign currency spot transactions;
- Foreign currency forward transactions;
- Participation foreign currency forward transactions;
- Cross currency interest rate swaps;
- Foreign currency options and collars;
- Foreign currency deposits; and
- Foreign currency operational bank accounts.

It can be seen from the list above that the intention is always to utilise vanilla type financial instruments. "Naked" short (written) option positions are not allowed on any instrument type, unless the notional amount is offset with a long option position within a hedging structure as approved by the GCFO.

20. HEDGING AND ACCOUNTING IMPLICATIONS

20.1. Background

Transnet is required to report in ZAR under IFRS accounting standards. Certain costs (fuel, operational and capital expenditure, leases and loans) are directly or indirectly foreign currency denominated. Transnet is therefore exposed to the balance sheet and income statement effects of exchange rate, interest rate and commodity price movements for items denominated in foreign currency. The following accounting statements apply to financial instruments:

IAS 39 - Financial Instruments: Recognition and Measurement

IAS 21 - The Effects of Changes in Foreign Exchange Rates

IAS 32 - Financial Instruments: Presentation

IFRS 7 - Financial Instruments: Disclosures

20.2. Objective of the Policy

The objective is to show the economic effect of hedging activities, whilst complying with IFRS. A further objective is to minimise income statement volatility. To this end, the use of hedge accounting is required on all large capital projects which expose the company to significant currency risk over extended periods of time.

20.3. Hedge Accounting

Transnet hedges its risk exposures by using financial derivatives. In terms of IAS39, derivatives used for hedging are marked to market, and changes in market value are recognised in profit or loss. Hedge accounting enables Transnet to reduce income statement volatility caused by changes in the fair value of derivatives that are used for hedging.

Transnet's accounting policy allows for both fair value and cash flow hedge accounting. Hedge Accounting is only permitted if all the conditions prescribed in IAS 39 for Hedge Accounting have been complied with. Furthermore, hedge accounting must be approved by the General Manager Group Finance, who approves on behalf of the Transnet Hedge Accounting Committee, (a sub-committee of the Finance Committee). The Hedge Accounting Committee will determine the threshold that will be utilised for the enforcement of hedge accounting on individual projects.

20.4. Fair Value Hedge Accounting

Fair value hedges are hedges of an exposure to changes in the fair value of a recognised asset or liability or an unrecognised firm commitment attributable to a particular risk that could affect profit or loss. The application of hedge accounting results in both the exposure(s) being hedged and the hedging instrument(s) being recognised on the balance sheet at fair value with changes in the their fair value recognised in profit or loss. If the hedge is perfectly effective, the net effect in the income statement should be nil. Deviations from 100% effectiveness (i.e. hedge ineffectiveness) are automatically recognised in the income statement on a monthly basis as long as the effectiveness stays within the 80% to 125% range. Hedge accounting is discontinued prospectively when the hedge effectiveness moves outside the 80% to 125% range. One exception to this rule is the law of small numbers where the ineffectiveness results from small and immaterial amounts being used in the hedge effectiveness calculation for a certain period which is provided for in the hedge documentation.

20.5. Cash Flow Hedge Accounting

Cash flow hedges are hedges of an exposure to variability in cash flows attributable to a particular risk associated with a recognised asset or liability or a highly probable forecast transaction that could affect profit or loss. To the extent that the hedge is effective in terms of IAS 39, the change in the fair value of the derivative is booked to Equity, thus reducing Income Statement volatility. For hedges of forecast transactions to acquire capital assets, the amount recognised in equity is subsequently included in the initial cost of the asset on the invoice date. For hedges of recognised financial assets or liabilities (e.g. foreign currency denominated loans) the amount recognised in equity is reclassified to the income statement in the same period that the asset or liability affects profit or loss. Deviations from the 100% effectives are recognised in the income statement on a monthly basis as long as the effectiveness stays within the 80% to 125% range. Hedge accounting is discontinued prospectively when the hedge effectiveness moves outside the 80% to 125% range. One exception to this rule is the law of small numbers as explained under fair value hedges above.

20.6. Hedge Accounting Criteria

The following criteria are applied by Treasury:

- The hedged risk must be an exposure to changes in fair value or variations in cash flows attributable to a particular financial risk and that could affect profit or loss.
- At inception, the hedge relationship is formally designated and documented in accordance with Transnet's risk management objectives and strategy for undertaking the hedge.
- The hedge is expected to be highly effective in achieving offsetting changes in fair values or cash flows attributable to the hedged risk.
- For cash flow hedges, the forecast transaction that is subject to the hedge must be highly probable and must present an exposure to variations in cash flows that could ultimately affect profit or loss.
- Hedge effectiveness can be reliably measurable.
- The hedge must remain highly effective during the whole period of the hedge.

20.7. Hedge Accounting Documentation

Formal hedge documentation is required at inception of the hedge and must include the following:

- Identification of the hedging instrument and the hedged item or transaction.
- The nature of the risk being hedged.
- The risk management objective and strategy for undertaking the hedge.
- How effectives will be assessed and at what intervals.

20.7.1. Assessment of Hedge Effectiveness

Prospective Assessment - must be done at inception and throughout the life of the hedge. It must be highly effective in offsetting changes in fair value or cash flows. Testing methods to be used include dollar offset (including the hypothetical derivative method and ratio analysis) critical terms match, regression analysis, risk-reduction test, etc. The hedging results must be within the range of **80% to 125%.**

Retrospective Assessment - must be done at each reporting date and throughout the life of the hedge. Testing methods to be used include the dollar offset method, regression analysis etc. The hedging results must be within the **80% to 125%** range.

20.8. Hedge Accounting and Hedge Documentation

To qualify for hedge accounting designation, the hedged item should create an exposure to risk that ultimately affects profit or loss.

The following can be designated as hedged items:

- A single or group of recognised assets or liabilities.
- Unrecognised firm commitments or highly probable forecast transactions.
- A portion of the cash flows or fair value of a financial asset or liability.
- Net investment in foreign operations.

Net positions cannot be designated as hedged items.

The following **hedge able risks** are normally found in Transnet associated with financial assets/liabilities:

- Interest rate risk;
- Foreign currency risk;
- Commodity risk; or
- Credit risk.

The following **hedge able risks** are normally found in Transnet associated with non-financial assets/liabilities:

- Entity wide risk
- Foreign currency risk component

The following can be designated as hedging instruments:

- All derivative financial instruments with third parties.
- Non derivatives for a hedge of foreign currency risk i.e. receivables, debtors etc.
- Combination of the above two except for net written options.

A portion of the hedging instrument can be used in the designation but a hedging instrument cannot be designated for only a portion of its life.

20.9. The Role of Treasury and Group Finance

Treasury must record both the hedging instrument and the hedged item on the Treasury Management system, maintain them on a regular basis, ensure correctness of data, adhere to all the conditions of this FRMF and provide the Operating Divisions with all the required information on a monthly basis to enable them to properly account for the value of the assets/liabilities, including the fair values of the hedging instrument (derivative). Group Finance should provide the fair values of the hedged item as well as the amounts on the journal entries that need to be passed by the Operating Divisions.

20.10. Valuation of Financial Instruments

ACTSA Charter of Best Practice Principle No 11: Valuation

"All positions should be independently valued at fair value using approved policies and procedures at least daily/weekly"

Guideline Statements on Treasury Best Practice issued by National Treasury – Formally documented and approved policies and procedures should be used for the revaluation of positions. Valuations should be based on an appropriate bid or offer level

obtained from a recognised provider of market data. This should be in compliance with internationally accepted accounting standards. Prices and rates used for revaluation should be taken from independent sources. Where in-house prices are used, independent review procedures should be in place, including independent models".

21. TAX RISK POLICY

- The tax consequences of the deal must be evaluated and quantified before any financing or hedging deal is concluded.
- Group Tax must sign off on the deal before any financing transaction is concluded.
- Transnet will not enter into any structures that have a high probability of breaching the provisions of sections 80A and 103 of the Income Tax Act, no 58 of 1962 or any equivalent legislation that may be promulgated in the future.
- Transnet will not accept any tax risk being transferred from the counterparty to Transnet.
- Transnet will not accept any risk of a structure being queried by SARS and this risk will be for the account of the counterparty.
- The risk of future changes in tax laws making a structure less attractive than what it initially was is for the account of the counterparty or Transnet must have a cost-effective exit strategy.
- Tax implications must be taken into account in the budgeting process.
- Financial and Performance reporting must be done pre-tax and post-tax.
- Proposed funding strategies must be analysed, and the results must be tabled pre-tax and post tax.
- The funding plan should be formulated pre-tax and post-tax.
- Transnet will not provide security or accept liability in respect of foreign tax jurisdictions.
- Transnet will not provide or accept so-called evergreen security or liability.

22. FINANCIAL RISK MANAGEMENT PERFORMANCE AND EVALUATION

In adopting a Financial Risk Management policy framework and setting limits structures surrounding the effect of changes in counterparty risks and market rates which have an effect on net income, Transnet has a dual objective. Firstly, to optimize performance relative to its long-term financial goals including net income in the expected rate environment. Secondly, to contain variance in net income, ROA and ROE to a level acceptable to its Board and one that will ensure a continuing acceptable return to its shareholder.

23. PERSONAL ACCOUNT TRADING POLICY

23.1. Purpose

This policy is designed to regulate and control the trade in financial instruments by Transnet employees in particular those employees who are employed in the Treasury Department as they can access financial market information that would give them an undue advantage over other financial market participants.

23.2. Objectives

Transnet recognises that in executing its trading business it cannot totally forbid it's employees from engaging in "personal account" trading. Transnet also recognises that a balance must be maintained between Transnet's rights as an employer and the employee's rights to manage their personal investments in a manner they deem fit. Transnet further recognises that if "personal account" trading is permitted, certain internal control procedures must be put in place and that the Board of Directors through the Executive Management and

Treasury Management must accept responsibility for the establishment of the systems and controls to avoid:

- Conflict of interest;
- Prejudice towards clients; and
- Prejudice towards Transnet SOC Ltd.

The primary objectives of this policy are

- To provide guidance to Treasury Employees on how personal account trading is to
- be conducted.
- To promote transparency, integrity, honesty, and objectivity of judgement and
- avoid conflict of interest.
- To ensure that no financial prejudice will be suffered by Transnet when a Treasury
- Employee engages in "personal account" trading.
- To ensure that no financial prejudice will be suffered by any of the clients of
- Transnet when an affected employee conducts "personal account" trading.
- To avoid personal account trading that prevents an employee from discharging his
- or her employment obligations as expected of him or her by Transnet SOC Ltd.

23.3. Scope

This policy applies to all Transnet Treasury employees.

23.4. Definitions

"Front Running" means trading for one's own account where the employee has insider knowledge of sizeable orders and uses this information to trade to his or her personal advantage.

"Insider Information" means specific or precise information, which has not been made public and which;

- is learned or obtained as an insider and
- if it were made public would likely to have a material effect on the price or value of any security listed on a regulated market.

"Insider" means a person who has inside information through;

- being a director, employee or shareholder of an issuer of securities listed on a regulated market to which the inside information relates, or
- having access to such information by virtue of employment, office or profession.

"Regulator" means the Johannesburg Securities Exchange.

23.5. Principles

No Transnet Treasury employee shall;

- For his or her account or for an account in which such employee has a beneficial interest, trade in any Transnet bonds and or any financial instruments that are issued by Transnet.
- For his or her own account or for an account in which such employee has a beneficial interest, trade in any bonds and or any financial instruments issued by other state owned companies;
- Trade in any financial instrument whatsoever without having signed and acknowledged to be bound by the conditions of this policy;
- Engage in "front running";
- Engage in any "insider trading"; *or*

- Use Transnet SOC Ltd's equipment and resources excessively to conduct personal account trading.

Treasury employees may trade in equities for their own personal account subject to the conditions of paragraphs 23.2.1 and 23.5 and need not disclose these trades to the Compliance Manager.

All "personal account" trades by Treasury employees **s**hall be reported to the "Compliance Manager" within 10 business days after execution of the trade.

All "personal account" trades by Treasury employees shall be reported by the Compliance Officer;

- Monthly in the Treasury Management Report to the Group Chief Financial Officer and the Transnet Executive Committee.
- Bi- Annually to the Transnet Board of Directors.

All Treasury employees who engage in personal account trading shall disclose the information required in terms of the Personal Account Trading Template which is Annexure "A" hereto to the Compliance Officer.

This policy is acknowledged by every Treasury employee to amend each and every Treasury employee's contract of employment as if specifically incorporated therein.

23.6. Personal Account Trading Register

- The Treasury Compliance Manager must ensure that a personal account trading register is maintained.
- The personal account trading register shall be kept for a minimum of five years after the conclusion of each trade.

23.7. Contravention Of The Policy

Non compliance with this policy is misconduct and any non compliance will be subject to a disciplinary process.

Non compliance with this policy shall be deemed to be a contravention of an employees' contract of employment.

24. REVIEW OF POLICIES

Financial risk management policies should be reviewed annually and recommended through FINCO and EXCO for ultimate approval by the Transnet Board of Directors.

25. CONCLUSIONS

Transnet recognizes that no policy can anticipate all the conditions, situations and opportunities that may arise in the normal course of operations. Management therefore is expected to exercise prudent judgement in the implementation of this policy. All deviations from the guidelines established by this policy will be reported to FINCO, RISCO, EXCO and the Board on a regular basis.

Annexure 'A"

Personal Account Trading Report – template.

Type of Security:

Type of Transaction:

Nominal Value: R

Unit Price or Yield:

Transaction Date and Time:

Settlement Date:

Settlement Value: R

Repo: Settlement Date (Leg 2):

Repo: Price or Yield (Leg 2):

Repo Rate:

Agent:

Name of Employee:

Employee Number:

Signature of Employee:

Date Reported:

REPORT 2(A) – PART E – EXHIBIT 4

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;

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.

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

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%.

- 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.

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

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.

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.

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

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

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.

- 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.

- 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.

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

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

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

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				

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.

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

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.

REPORT 2(A) – PART E – EXHIBIT 5

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

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.

TRANSNET-REF-BUNDLE-06217

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

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)	%	≥ 95
	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 counseling		700
	Counseling workshops		31,000
	Teenage girls education		3,600
	Health, diabetic, cancer screening		36,000
	Community volunteer training		720
	Prescriptions		38 125

TRANSNET-REF-BUNDLE-06222

ANNEXURE C: SOCIAL IMPACT (Continued)

Other Social Development

Educator Development			R12.3m
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%	
	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

TRANSNET-REF-BUNDLE-06223

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.

TRANSNET-REF-BUNDLE-06225

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%

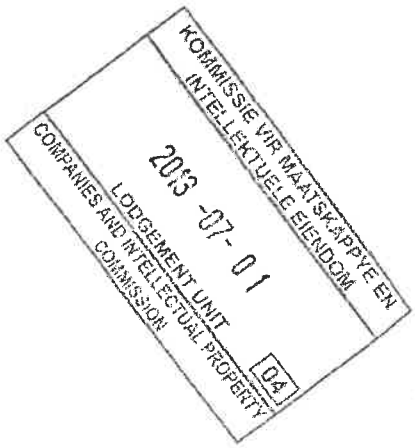
Reporting Standards applied

Sustainability Report 2013	Global Reporting Initiative Guidelines. United Nations Global Compact Principles
Integrated Report 2013	King III, Companies Act, International Integrated Reporting Council framework

REPORT 2(A) – PART E – EXHIBIT 6

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.

REPORT 2(A) – PART E – EXHIBIT 7

TRANSNET

DECLARATION OF INTEREST AND RELATED PARTY DISCLOSURES

POLICY FOR DIRECTORS

Policy Reference Number	TG/GCS 2/4P
Version Number	1
Effective Date	1 July 2012
Review Date	1 March 2014
Compiled by	Group Company Secretariat
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)						

Recommended by Policy Owner and Policy Sponsor:

TRANSNET-REF-BUNDLE-06292

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	Nonkululeko Mabandla	Group Executive: Group Legal Services		29 June 2012	Nonkululeko.mabandla@transnet.net	011 308 2345

Final Approval

Name of approving authority: Transnet Board of Directors

Date Approved: 12 June 2012

TRANSNET-REF-BUNDLE-06293

Summary of Version Control

Version Number	Effective Date	Summary of Changes
1	*1 July 2012*	*New Policy for Directors*

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1. INTRODUCTION

1.1 Transnet is committed to ensuring effective governance and risk management throughout the organisation.

1.2. This policy, which must be read in addition to the Transnet Code of Ethics and Anti-Fraud Policy, provides a governance framework to regulate declarations by Directors of conflicts of interest which Directors have and/or which parties related to Directors have.

2. POLICY STATEMENT

2.1. Transnet is committed to complying with the relevant requirements of the Companies Act No.71 of 2008 (the "**Companies Act**") and principles of good corporate governance.

2.2. This policy should be read together with the relevant legislation applicable to Transnet from time to time, and the Transnet policy documents, and in particular, the legislation and the policy documents more fully set out in paragraph 9. In the case of a conflict, the legislation will always prevail.

3. PURPOSE OF THE POLICY

The purpose of the policy is to:

3.1. create awareness as to what constitutes a conflict of interest;

3.2. provide guidance in a non-exhaustive manner on:

3.2.1. the duties of Directors to avoid a conflict of interest and the disclosure of directorships held in other companies;

3.2.2. the duties of Directors to disclose a conflict of interest (that Directors have actual knowledge of, or reasonably ought to have knowledge of, or in respect of which the Directors reasonably ought to have investigated or taken measures which would have provided the Directors with the actual knowledge of), in accordance with legislation and Transnet's policies; and

3.3. provide guidelines to all Directors as to how to disclose and manage conflicts of interests.

4. APPLICATION

This policy applies to every Director of Transnet, every alternate Director of Transnet, any person occupying the position of a Director or alternate Director by whatever name designated.

5. DEFINITIONS

In this policy the following terms shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings, namely:

5.1. "**Director**": means a member of the board of Transnet or an alternate Director of Transnet and includes any person occupying the position of a Director or alternate Director, by whatever name designated.

5.2. "**Conflict of interest**": is described in paragraph 6 and includes, *inter alia*, a situation in which:

5.2.1. a Director[1] has a Personal Financial Interest;

5.2.2. a Director has private interests or personal considerations or has an Affiliation or a Relationship which affects, or may affect, or may be perceived to affect a Director's judgement in acting in the best interests of Transnet, or could corrupt the Director's motivations for acting in a particular manner, or which could result in, or be perceived as Favouritism or Nepotism;

[1] *this applies to all directors, alternate directors, prescribed officers and persons who are members of a committee of the Board of Transnet.*

5.2.3. a Director uses his/her position, or privileges, or information obtained while acting in the capacity as a Director for:

5.2.3.1. private gain, or advancement, or any other advantage; or

5.2.3.2. the expectation of private gain, or advancement, or any other advantage;

5.2.3.3. accruing to the Director or any member of his family, or friends or business associates.

5.3. "**Affiliation**": means Involvement with a vendor, service provider, or competitor of Transnet on the part of the Director; a person related or inter-related to the Director or the Director's friends or business associates; including serving as a shareholder[2], board member, employee, consultant or advisor to the aforementioned entities.

5.4. "**Nepotism**": means the appointment, employment, promotion or advancement of a related or inter-related person in a position, or the advocacy of such actions by any Director. where that Director is able to influence, directly or indirectly, the decisions relating to these specified actions.

5.5. "**Favouritism**": means an inclination in attitude or behaviour to show preferential treatment towards a certain person, group or entity.

5.6. "**Involvement**": means a business, social or family connection which may contribute to any undue influence in favour of the third party.

5.7. "**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[3]

5.8. "**Material**": when used as an adjective means significant in the circumstances of a particular matter, to a degree that:

5.8.1. is of consequence in determining the matter; or

5.8.2. might reasonably affect a person's judgment or decision-making in the matter; or

5.8.3. could influence the economic decisions taken in a matter.

5.9. "**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 Director may benefit in any way from the transaction (including any indirect benefit to a related person).

Related and Inter-Related person(s) and Control:

5.10. "**Related**": when used in respect of two persons, means persons who are connected to one another in any manner contemplated below:

5.10.1. an individual is related to another individual if they:

5.10.1.1. are married, or live together in a relationship similar to a marriage; or

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[2] *note that this 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.*

[3] *note that a personal financial interest in terms of the Companies Act 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.*

5.10.1.2. are separated by no more than one degree of natural or adopted consanguinity or affinity;

5.10.2. an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with paragraph 5.12 below, and

5.10.3. a juristic person is related to another juristic person if:

5.10.3.1. either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with paragraph 5.12 below;

5.10.3.2. either is a subsidiary of the other; or

5.10.3.3. a person directly or indirectly Controls each of them, or the business of each of them, as determined in accordance with paragraph 5.12 below.

5.11. "**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 paragraph 5.10 above, and one of them is related to the third in any such manner, and so forth in an unbroken series.

5.12. "**Control**": for the purpose of paragraphs 5.10.2 and 5.10.3 above, a person controls a juristic person, or its business, if:

5.12.1. in the case of a company:

5.12.1.1. that company is a subsidiary of that first person, as determined in accordance with the Companies Act; or

5.12.1.2. that first person together with any related or inter-related person, is:

5.12.1.2.1. 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 (e.g. Director and a person related to him, together hold more than 50 % of the voting shares in company Y); or

5.12.1.2.2. 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 (e.g. Director is able to appoint Directors to the board of company Y, and those Directors appointed by him can exercise more than 50% of the votes at a board meeting);

5.12.2. 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;

5.12.3. 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

5.12.4. 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 paragraphs 5.12.1, 5.12.2 or 5.12.3.

5.13. "**Relationship**": includes the connection subsisting between any two or more persons who are related or inter-related.

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5.14. "**A Related Party Transaction**": is a transfer of resources, services or obligations between related persons, regardless of whether a price is charged.

5.15. "**Significant influence**": is the power to participate in the financial and operating policy decisions of an entity, but does not necessarily amount to Control.

6. DUTY TO AVOID AND TO DISCLOSE A CONFLICT OF INTEREST

6.1. Directors have a duty to avoid a conflict of interest in terms of *inter alia* the common law, the Public Finance Management Act No.1 of 1999 ("**PFMA**"), the Companies Act and the King Report on Governance for South Africa, and the King Code of Governance Principles, 2009 ("**King III**"). A summary of key principles relating to a Director's responsibility to avoid and to disclose a conflict of interest have been set out below, in a non-exhaustive manner, as a guide to Directors.

6.2. One of the most important fiduciary duties of Directors under the common law is the duty to avoid a conflict of interest[4]. Directors have a duty to observe the utmost good faith towards Transnet, and in discharging that duty they are required to exercise independent judgment and to take decisions according to the best interests of Transnet. Any Director who is appointed to the Board of Transnet as the representative of a party with a substantial interest in Transnet should recognise the potential for conflict. That Director must understand that the duty to act in the best interests of Transnet remains paramount.[5] Certain conflicts of interest are fundamental and should be avoided.[6]

6.3. In this regard, Directors have a duty *inter alia* to:

6.3.1 to act with fidelity, honesty, integrity, independence of mind and in the best interests of Transnet, and to exercise the powers and perform the functions of Directors in good faith;[7]

6.3.2. account for secret profits;

6.3.3. not misappropriate corporate opportunities;

6.3.4. not improperly compete with Transnet;[8]

6.3.5. not to use their position of Director, or privileges, or any information obtained while acting in the capacity of a Director[9]:

6.3.5.1. to gain an advantage for themselves, or for another person, other than Transnet or a wholly-owned subsidiary of Transnet, (this test does not require that the Director gains a material or a financial advantage, any advantage will bring the Director within the realm of this provision); or

---

[4] FHI Cassim et al *Contemporary Company Law*, Juta, 2011 page 486

[5] *Paragraph 24 of King III*

[6] *Paragraph 25 of King III*

[7] *see section 76 of the Companies Act. Note that section 76 applies not only to all directors (including alternate directors) but also to prescribed officers and to any person who is a member of a committee of the Board of Transnet, or of the audit committee of Transnet. In terms of section 50 of the PFMA this also applies to all members of the controlling body / "accounting authority" of Transnet as defined in the PFMA. If the board of Transnet is not the "controlling body" of Transnet, then this paragraph applies to the extent that the Director is a member of the controlling body / "accounting authority" of Transnet. See also paragraph 15 of King III*

[8] PM Meskin et al (eds) *Henochsberg on the Companies Act*. (Lexis Nexus Butterworths), page 470.

[9] *see section 76 of the Companies Act. Note that section 76 applies not only to all directors (including alternate directors) but also to prescribed officers and to any person who is a member of a committee of the Board of Transnet, or of the audit committee of Transnet. See also section 50 of the PFMA.*

6.3.5.2. to knowingly cause harm to Transnet or a subsidiary of Transnet and, must communicate to the Board of Transnet[10] at the earliest practicable opportunity any information that comes to the Director's attention;

6.3.6. disclose:

6.3.6.1. conflicts of interest (whether real or perceived) in good time together with full details to the Board of Transnet and such conflicts should then be appropriately managed;[11]

6.3.6.2. any interest in a contract with Transnet;

6.3.6.3. any direct or indirect personal or private business interest that they, or any spouse, partner or close family member may have in any matter before the Board of Transnet and, subject always to paragraph 6.5, must withdraw from the proceedings when that matter is being considered unless the Board of Transnet decides that the direct or indirect interest is trivial or irrelevant[12] and the Director is not required to withdraw in accordance with paragraph 6.5; and

6.3.6.4. any Personal Financial Interest in respect of a matter to be considered at a meeting of the Board of Transnet, and/or any matter in respect of which a Director knows[13] that a Related person has a Personal Financial Interest, in the manner set out in paragraph 6.5

6.4 In terms of section 75 of the Companies Act, a Director[14] may disclose any Personal Financial Interest in advance, by submitting a Declaration of Interests Form to the Board of Transnet, setting out the nature and extent of that interest, to be used generally until changed or withdrawn by further written notice from that Director.

6.5. If a Director of Transnet, has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board of Transnet, or knows that a Related person has a Personal Financial Interest in the matter, the Director[15]:

6.5.1. must disclose the interest and its general nature before the matter is considered at the meeting;

6.5.2. must disclose to the meeting any material information relating to the matter, and known to the Director;

6.5.3. may disclose any observations or pertinent insights relating to the matter if requested to do so by the other Directors;

6.5.4. if present at the meeting, must recuse himself/herself from the meeting immediately after making any disclosure contemplated in paragraphs 6.5.2 or 6.5.3;

---

10 *unless the exclusions set out in section 76(2) (b) (i) to (ii) of the Companies Act apply.*

11 *Paragraph 25 of King III*

12 *This applies to all members of the controlling body / "accounting authority" of Transnet as defined in the PFMA. If the board of Transnet is not the "controlling body" of Transnet, then this paragraph applies to the extent that the Director is a member of the controlling body / "accounting authority" of Transnet. See section 50 of the PFMA.*

13 *"knows" includes actual knowledge of the matter, or matters which the Director reasonably ought to have knowledge of, or in respect of which the Director reasonably ought to have investigated or taken measures which would have provided the Director with the actual knowledge of that matter.*

14 *note that section 75 applies not only to all directors (including alternate directors) but also to prescribed officers and to any person who is a member of a committee of the Board of Transnet.*

15 *save if the exclusions set out in section 75(2) of the Companies Act apply.*

6.5.5. must not take part in the consideration of the matter, except to the extent contemplated in paragraphs 6.5.2 and 6.5.3;

6.5.6. while absent from the meeting in terms of this paragraph:

6.5.7. is to be regarded as being present at the meeting for the purpose of determining whether sufficient Directors are present to constitute the meeting; and

6.5.8. is not to be regarded as being present at the meeting for the purpose of determining whether a resolution has sufficient support to be adopted; and

6.5.9. must not execute any document on behalf of Transnet in relation to the matter unless specifically requested or directed to do so by the Board of Transnet.

6.6. In terms of section 76(4)(a)(ii) of the Companies Act, a Director will have satisfied his/ her obligations to act in the best interests of the company (among other things) if (i) the Director had no Personal Financial Interest in the subject matter of the decision, and had no reasonable basis to know[16] that any Related person had a Personal Financial Interest in the matter or (ii) the Director complied with the requirements of section 75 of the Companies Act with respect to any interest.

6.7. The onus is on the individual Directors to determine whether they are free from apparent or actual conflicts.[16]

6.8. Transnet Policy

In addition to the above, a Director must:

6.8.1 declare an interest[17] in any business entity (whether as a shareholder, member, Director, adviser or in any other capacity) that:

6.8.1.1. have significant contracts with Transnet. In this regard, "significant contracts" means contracts which account for at least 10% (ten percent) of such business entity's consolidated gross revenue in any one financial year; or

6.8.1.2. is a competitor of Transnet; or

6.8.1.3. is party to an acquisition of Transnet and/or its subsidiaries, its assets or businesses, or any part thereof;

6.8.1.4. is party to a joint venture or other business venture with Transnet or any of its subsidiaries;

6.8.1.5. tenders for advisory or other professional services related to the transactions referred to in paragraphs 6.8.1.3 and 6.8.1.4 above;

6.8.1.6. is party to any transaction that needs to be approved at Board level or by any of the committees of the Board of Transnet;

---

16 *see paragraph 86 of King III*

17 *note that this 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.*

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6.8.2. disclose:

6.8.2.1. any direct or indirect interest in contracts or proposed contracts, which have been or will be entered into by Transnet and must set out full particulars of that interest;

6.8.2.2. any interest acquired in a contract, whether by the Director or a person related to him, after it has been entered into by Transnet and must set out full particulars of that interest; and

6.8.2.3. all Conflicts of Interests in accordance with this policy.

6.8.3. The Board of Transnet will be entitled, at any time, to determine that a particular interest of any Director or by a person related or inter-related to him constitutes a Conflict of Interest, and to recommend an appropriate way to manage such conflict, even if such a transaction falls outside the transactions set out above.

7. DECLARATION OF A CONFLICT OF INTEREST

7.1. **Declaration of interest in contracts**

7.1.1. **Applicable to:** All Directors who have an interest, either directly or indirectly, or know that a related person has an interest in:

7.1.1.1. any new or existing contract with an entity external to Transnet which may conduct or does conduct business with Transnet;

7.1.1.2. acquiring Transnet and/or its subsidiaries' its assets or businesses, or any part thereof;

7.1.1.3. any joint venture or other business venture with Transnet or any of its subsidiaries;

7.1.1.4. 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".

7.1.2. **To be completed:** Annually by Directors and as and when a Contractual Interest is identified.

7.1.3. **To be submitted:** to the Group Company Secretary.

7.1.4. **The relevant forms for completion:** Annexure "A".

7.2. **Annual declarations/Related Party disclosures**

7.2.1. **Applicable to:** All Directors.

7.2.2. **To be completed:** Annually and as and when a Conflict of Interest arises, and/or when directorship or financial interests of Directors change within the financial year, and/or when directorship or financial interests of persons Related to Directors change within the financial year.

7.2.3. **To be submitted:** to the Group Company Secretary.

Even if there are no conflicts of interest the prescribed Annexure must be completed i.e. a Nil Declaration.

7.2.4. **The relevant forms for completion:** Annexure "B".

7.3. **Declaration of interest at meetings**

7.3.1. **Applicable to:** All members of/attendees at Key Meetings and all Directors who have a Personal Financial Interest[18] or know[19] that a Related person has a Personal Financial Interest in respect of a matter to be considered at a meeting of the Board of Transnet.

7.3.2. If a Director has a Conflict of Interest in respect of a matter to be considered at a meeting, or knows[19] that a Related person[20] has a Personal Financial Interest in the matter, the Director must comply with the procedures more fully set out in paragraph 6.5 above. Such a Director must not execute any document on behalf of Transnet in relation to the matter unless specifically requested or directed to do so by the Board.

7.3.3. **To be completed:** At each meeting.

7.3.4. **To be submitted:** to the applicable Committee Secretary.

7.3.5. **The relevant forms for completion:** Annexure "C"

8. ROLES AND RESPONSIBILITIES

8.1. The Board is responsible and accountable for the implementation of this policy

8.2. The Group Company Secretary is responsible for ensuring that the declarations referred to in this policy are distributed and received timeously.

8.3. It is the responsibility of each Director to declare their interest as referred to in this policy, as and when it arises, by requesting (to the extent that they have not received) the relevant form and submitting the form to the Group Company Secretary.

9. RELATED INFORMATION

The policy must be read in conjunction with the following related internal and external documents:

9.1. **Internal Documents:**

9.1.1. Transnet Code of Ethics.

9.1.2. Transnet Gifts Policy.

9.1.3. Transnet Anti-Fraud Policy.

---

[18] *this is applicable to all directors (including alternate directors) and to prescribed officers and to any person who is a member of a committee of the Board of Transnet.*

[19] *"knows" includes actual knowledge of the matter, or matters which the Director reasonably ought to have knowledge of, or in respect of which the Director reasonably ought to have investigated or taken measures which would have provided the Director with the actual knowledge of that matter.*

[20] *a Related person includes a second company of which a Director or a Related person is also a director, or a close corporation of which the Director or a Related person is a member.*

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9.1.4. Transnet Procurement Procedures Manual.

9.1.5. Supplier Code of Conduct.

9.2. **External Documents:**

9.2.1. The Companies Act No.71 of 2008.

9.2.2. The Public Finance Management Act No.1 of 1999 (PFMA).

9.2.3. The King Report on Governance for South Africa, and the King Code of Governance Principles, 2009 (King III).

9.2.4. International Accounting Standards 24 Related Party Disclosures.

10. SPONSOR/OWNER OF POLICY AND APPROVAL

10.1. **Policy sponsor:** Group Executive: Legal Services

10.2. **Policy owner:** Group Company Secretary

10.3. **Approved by:** Transnet Board of Directors

10.4. Contact Person:

Position: Group Company Secretary

Contact Details: Telephone: +2711 308-2424

Email: Ayanda.ceba@transnet.net

11. EXCLUSIONS

There are no exclusions to this policy.

12. CONTRAVENTION OF THE POLICY

12.1. Non-compliance with this policy and the procedures is considered to be a breach of this policy. It may also be considered a contravention of the common law; the PFMA; and/or the Companies Act.

12.2. All suspected incidents of contraventions of this policy should be reported to Transnet Tip-offs Anonymous Hotline, Chairman of the Board or the Chairman of the Audit Committee for investigation.

Annexure A

DECLARATION OF INTERESTS IN CONTRACTS

Surname		Residential Address	
First Names			
Nationality			
Identity Number		Business Address	
Date of Birth			
		Postal Address	

1. Please identify all existing or potential contracts or Related Party Transactions[21], in so far as they relate or may relate to Transnet, in which you may have a direct/indirect interest, or where you may have significant participation or involvement.

Name of contract/ transaction	Details	Name of related person	Registered address	Registration Number	Nature of interest/ participation

[21] *Include by way of example, any entities which have entered into a contract with Transnet or which may conduct, or does conduct business with Transnet, or any entity which intends acquiring Transnet and/or its subsidiaries, its assets or businesses, or any part thereof, or any entity that has entered into a joint venture or other business venture with Transnet or any of its subsidiaries, or any entity which tenders for the supply of goods or services to Transnet (including any advisory or other professional services related to the transactions referred to above)*

2. Please identify all existing or potential contracts or Related Party Transactions[22], in so far as they relate or may relate to Transnet, in which a party related[23] or inter-related to you may have a direct/indirect interest, or where a party related or inter-related to you may have significant participation or involvement.

Name of contract/ transaction	Details	Name of related person	Registered address	Registration Number	Details of Relation to you and nature of interest/ participation

3. I confirm that I have read the Transnet declaration of interest and related party disclosures policy for Directors and in particular, paragraphs 6 and 7 of the policy and I confirm that I have made full and proper disclosure of all interests which I have or which a person related to me has in respect of any contracts relating to Transnet.

Signature _____

Date _____

[22] *include by way of example, any entities which have entered into a contract with Transnet or which may conduct, or does conduct business with Transnet, or any entity which intends acquiring Transnet and/or its subsidiaries, its assets or businesses, or any part thereof, or any entity that has entered into a joint venture or other business venture with Transnet or any of its subsidiaries, or any entity which tenders for the supply of goods or services to Transnet (including any advisory or other professional services related to the transactions referred to above).*

[23] *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.

Annexure B

TRANSNET SOC Ltd

ANNUAL DECLARATION OF INTERESTS

Surname		Residential Address	
First Names			
Nationality			
Identity Number		Business Address	
Date of Birth			
		Postal Address	

1. Directorships and other interests (Please indicate all companies of which you are a Director, close corporations of which you are a member, partnerships, trusts, sole proprietorships and other entities in which you have an interest and include all entities that are Controlled[24]/ Significantly Influenced by you, and list all entities in which you have a shareholding[25] or similar interest and indicate with an asterisk those interests which constitute a Conflict of Interests.)

Name of entity	Registered address	Registration number	Nature of Interest	Date of Appointment or Acquisition of Interest	% held
(e.g. X Y Z (Pty) Limited)	*(e.g. Transnet SOC Ltd, 47th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg)*	*(e.g. 1995/000961/07)*	*(e.g. Director/Shareholder)*	*(e.g.13 July 1999)*	*(e.g. NIL)*

Signature _____ Date _____

[24] *note that control means "Control" as defined in the Companies Act and includes joint control.*

[25] *note that this 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.*

TRANSNET SOC Ltd

RELATED PARTY DISCLOSURES

2. Interests[26] of persons related to you and in respect of which a Conflict of Interest exists or a potential Conflict of Interest may arise.

Full names and surname of persons related to you[27] / full names and details of juristic persons related to you and in respect of which a Conflict of Interest exists or a potential Conflict of Interest may arise	Entity where financial interest is held and details of financial interest	Nature of conflict of interest
a) Spouse/Domestic partner		
1.		
b) Children (Own, or those of spouse/domestic partner)		
1.		
2.		
3.		
4.		
c) Related Persons		
1.		
2.		
3.		
4.		
5.		
6.		
d) Juristic Persons Related to you		
1.		
2.		
3.		
4.		

[26] *note that this 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.*

[27] *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

3. Do you know if a person related[28] to you has a direct material interest of a financial, monetary or economic nature, or to which a monetary value may be attributed that may be of consequence in determining any matter to be decided by Transnet, or which might reasonably affect your judgment or decision-making in the matter? If yes, please provide full details.

Full details of persons related to you	Full details of nature of financial interest

4. Please confirm that you have read the Transnet declaration of interest and related party disclosures policy for Directors and in particular, paragraphs 6 and 7 of the policy, and set out below any conflicts of interest which you are required to disclose (and which you have not already disclosed in the paragraphs above).

I confirm that I have read the Transnet Declaration of Interest and Related Party Disclosures Policy for Directors and in particular, paragraphs 6 and 7 of the policy.	
Details of further conflicts, e.g. do you have an interest in a competitor of Transnet.	
I confirm that I have made full and proper disclosure of all conflicts of interests.	

Signature _____ Date _____

28.

(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, e.g. by being able to exercise a majority of the voting rights, whether pursuant to an agreement or otherwise, or in respect of a company, by having 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. Further, a director is also related to a second company of which that director or a related person is also a director, or a close corporation of which that director or related person is a member.*

TRANSNET SOC Ltd

RELATED PARTY DISCLOSURES

Declaration by Director

I _____

(Full names and surname printed)

Declare that the aforesaid information is to the best of my knowledge true, and, that I fully understand the contents of this declaration. I also undertake that I will immediately notify the Group Company Secretary should it come to my attention that any information provided above may not be true, accurate or complete.

_____

SIGNATURE OF DIRECTOR

DATE : _____

PLACE : _____

TRANSNET SOC LTD

DECLARATION OF INTERESTS AND REGISTER OF DIRECTORS

Certification by a Transnet SOC Ltd representative - Group Company Secretary

I certify that the deponent has acknowledged that she/he knows and understands the contents of this declaration.

_____

(Signed: For and on behalf of Transnet SOC Ltd) by Group Company Secretary)

Full first names and surname:

_____

(Block letters)

Designation

_____

Date _____ Place _____

Annexure C

DECLARATION OF INTEREST (MEETINGS)

Reference: Pack for the _____ meeting number _____ to be held on _____ 20___

I, the undersigned,_____ declare that:

(a) I am not in any way, whether directly or indirectly, save in my capacity as a Director of Transnet/representative of_____, interested in any contract or proposed contract, which has been or is to be entered into by the Company, and which is to be discussed at the abovementioned meeting;

OR

I disclose that I have the following direct/indirect interest[29] in the matter which is to be discussed at the abovementioned meeting (*please set out the nature and the extent of the interest and any material information relating to the matter and/or any pertinent insights*)

_____

_____

_____

_____

_____

(b) I am not in any way, whether directly or indirectly, save in my capacity as a Director of Transnet/representative of_____, interested in any other matter which is to be discussed at the abovementioned meeting;

OR

I disclose that I have a Conflict of Interest as more fully set out below:

_____

_____

_____

_____

_____;

[29] *'interest' includes any direct or indirect personal or private business interest (see section 50 of the PFMA) and any Personal Financial Interest, i.e. a direct material interest of a financial, monetary or economic nature, or to which a monetary value may be attributed (see section 75 of the Companies Act).*

(c) I do not have any relationship, whether of a family, business, social or other nature, with any person who has any interest, whether direct or indirect, in any contract or other matter to be discussed at the abovementioned meeting;

OR

I disclose that I am aware that the following person related[30] to me has the following direct/indirect interest[31] which is to be discussed at the abovementioned meeting (*please set out the nature and the extent of the interest and any material information relating to the matter and/or any pertinent insights*)

_____

_____

_____

(d) Should I at any stage during or after the abovementioned meeting become aware of the existence of an interest or relationship of the nature described above, I will immediately disclose such interest or relationship to Transnet; and

(e) If I have a conflict of interest in respect of a matter to be considered at this meeting, or know[32] that a related person has a Personal Financial Interest in the matter, I will, in addition to my disclosure set out in paragraph (a) to (c), disclose the full details of such interest and any material information relating to the matter known to me, and will provide any observations or pertinent insights relating to the matter if requested to do so by the other Directors, before the matter is considered at the meeting and immediately recuse myself from the meeting.

SIGNED AT _____ ON THE _____ DAY OF _____ 20____

_____

COMMITTEE MEMBER/ATTENDEE

_____

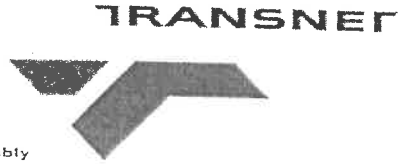
30

(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, e.g. by being able to exercise a majority of the voting rights, whether pursuant to an agreement or otherwise, or in respect of a company, by having 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. Further, a director is also related to a second company of which that director or a related person is also a director, or a close corporation of which that director or related person is a member.

31 *"interest" includes any direct or indirect personal or private business interest (see section 50 of the PFMA) and any Personal Financial Interest, i.e. a direct material interest of a financial, monetary or economic nature, or to which a monetary value may be attributed (see section 75 of the Companies Act).*

32 *"know" includes actual knowledge of the matter, or matters which the Director reasonably ought to have knowledge of, or in respect of which the Director reasonably ought to have investigated or taken measures which would have provided the Director with the actual knowledge of that matter*

REPORT 2(A) – PART E – EXHIBIT 8



INTEGRATED SUPPLY CHAIN MANAGEMENT

TRANSNET PROCUREMENT PROCEDURES MANUAL [PPM]

Incorporating Procedures for General Procurement & Construction Procurement

Version 2
October 2013

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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Procedures Manual re-written to align to revised Supply Chain Policy and the Preferential Procurement Policy Framework Act. Procedures relating to construction procurement incorporated into the PPM	01 October 2013	2

This document has been reviewed by the relevant governance structures and approved by the Board Acquisitions & Disposals Committee.

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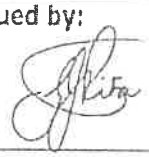

Garry Pita
Group Chief Supply Chain Officer
Date: 11/9/13

SECTION A:

BACKGROUND AND CONTEXT

Chapter 1: Introduction

Chapter 2: Definitions, Abbreviations and Acronyms

Chapter 3: Scope and Exclusions

Chapter 4: Applicable Legislation and Policies

Chapter 5: Code of Ethics

Chapter 6: Delegation of Authority for Procurement Processes

Procurement planning

Go to Market

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

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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**"), the New Development Plan ("**NDP**") and the Industrial Policy Action Plan ("**IPAP**") emphasise the role that State Owned Companies ("**SOCs**") should play as key agents in a developmental state to accelerate national development by leveraging their procurement spend to ensure that key goals such as job creation, poverty alleviation, skills transfer and empowerment are achieved. As one of the major State Owned Companies, Transnet has a pivotal role to play in ensuring that Government's economic development policy goals are met.

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

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

1.2.2 Fairness and Transparency:

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

1.2.3 Social Equity:

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

1.2.4 Value for money:

- competitiveness; and
- cost effectiveness.

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1.2.5 Due regard must be given to the importance of:

a) the promotion of Interdivisional Procurement as well as the moving of excess stock between Divisions; and

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

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

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

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

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

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

1.3 iSCM CONTROL OBJECTIVES

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

- To ensure only goods and services required by the organisation are acquired;
- To ensure that demand is appropriately defined and supply is structured/executed in accordance with the needs of the business;
- Tenders enable efficient/economical procurement from appropriate vendors considering legislative requirements;
- To ensure that policies and procedures exist for the Contract Management process and are standardised across Transnet;
- To employ and retain adequately skilled and sufficient contract management resources;
- To ensure that contract management is planned adequately and efficiently to enable Transnet to achieve its business objectives;
- To ensure that all goods and services are properly and efficiently delivered against the agreed standards and targets set out in the contract / SLA;
- To effectively and efficiently manage and maintain all supplier relationships;
- To ensure that all contracts are adequately retained and maintained on SAP or filed manually;
- To ensure that all contracts have been properly approved, finalised and archived.

- To ensure integrity of master data which will enable efficient, effective and economical procurement decision making;
- To ensure that there is appropriate source of supply to meet demand requirements timeously and that accurate and timeous payments are made to correct suppliers;
- Inventory is re-ordered promptly, at an appropriate level, to ensure availability when required. Material items are appropriately defined and set-up with correct specification. Inventory is appropriately safeguarded and secure; and
- To ensure fairness and diligence in the conduct and accounting of all scrap business practices that are adopted and is supported by duly documented, approved and accessible policies and procedures.

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

CHAPTER 2 : DEFINITIONS, ABBREVIATIONS AND ACRONYMS

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

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

TERM	DEFINITION, ABBREVIATION OR ACRONYM
	form of business) external to Transnet.
Entity	Used in the Transnet context to describe an internal Transnet Operating Division, Specialist Unit, Transnet business or the various Group Functions comprising the Corporate Centre
Fronting	A deliberate circumvention or attempted circumvention of the BBBEE Act and the Codes. Fronting commonly involves reliance on data or claims of compliance based on misrepresentations of facts, whether made by the party claiming compliance or by any other person
Fruitless and Wasteful Expenditure	Expenditure that was made in vain and could have been avoided had reasonable care been taken. The paying of exorbitant prices which are not market related is also regarded as fruitless and wasteful expenditure
Goods	Any physical object or objects which has value, whether raw or processed, movable or immovable
Group	All Operating Divisions, Specialist Units, Businesses as well as the various different Group Functions comprising the Corporate Centre
Group Chief Executive [GCE]	The person in the Corporate Centre appointed as the Transnet Group Chief Executive, duly appointed by the Minister of Public Enterprises, or the person acting in his/her stead, at any given time, in terms of a proper mandate
Group Chief Financial Officer [GCFO]	The Group Chief Financial Officer in the Group Corporate Head Office, who reports directly to the GCE, or the person acting in his/her stead, at any given time, in terms of a proper mandate
Group Chief Supply Chain Officer [GCSCO]	The General Manager who heads up the integrated Supply Chain Management function in the Corporate Head Office, or the person acting in his/her stead, at any given time, in terms of a proper mandate
High Value Tender Process [HVTP]	A process that is used in the procurement of high value goods/services. This process includes a number of gateway reviews during key steps of the tender process, in order to ensure that any flaws in the process are detected timeously
IC^3 Supplier Development Matrix	A framework utilised to categorise SD opportunities on a matrix based on their value, extent of industrial leverage and strategic importance to Transnet. The matrix is adapted from the DPE Supplier Classification Matrix focused on **I**ncreased **C**ompetitiveness, **C**apability and **C**apacity
Imported content	That portion of the Bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry
Incoterms	(ICC Incoterms 2010) means, in relation to international trade (sale and purchase of Goods), the globally accepted purchase terms for Goods, used to indicate the costs to be incurred by the seller and the buyer and the point at which the risk of the Goods passes from the seller to the buyer See Appendix C for detailed definitions of all Incoterms
Integrated Supply Chain Management [iSCM]	The Integrated Supply Chain Management function as a whole including all Operating Divisions and Centres of Excellence

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TERM	DEFINITION, ABBREVIATION OR ACRONYM
Irregular Expenditure	Expenditure incurred in contravention of, or that is not in accordance with a requirement of any applicable legislation, including the PFMA
Letter of Award	Is issued when a Bidder is selected as the Successful Bidder. The letter of award informs the Successful Bidder unequivocally that he/she was awarded the business
Letter of Intent (LOI)	Is issued when a Bidder is selected as the Preferred Bidder. The LOI informs the Preferred Bidder of Transnet's intention to negotiate and conclude a contract with it
Local Content (LC)	The portion of the Bid price or quotation which is not included in the Imported Content, provided that local manufacture does take place
Manager	Means any employee in Transnet, by whatever designation he/she is known, who has been delegated certain specific powers in terms of a proper Delegation of Authority
Material Amendment	An amendment which increases the scope, cost or risk of a contract by more than 10% of the original contract value
Market Demand Strategy (MDS)	The Transnet strategy to invest in capital infrastructure in order to meet market demands for increased efficiency and effectiveness in delivery of Transnet's services
Non-Disclosure Agreement [NDA]	A confidentiality agreement between two or more parties
Open Bid	A public request to do business which has been properly advertised and to which any member of the public can submit a Bid
Operating Division [OD]	An operating division of Transnet, namely TFR, TPT, TNPA, TPL and TRE
Parcelling	When the full scope of work is known at a point in time and business is deliberately split into smaller portions to keep the transaction value within one's own Delegation of Authority, or to keep it below the threshold of an AC or a person with higher Delegation of Authority
Parent Company Guarantee	A guarantee by a parent company of a supplier's performance under its contract with a buyer, where the supplier is a subsidiary of the parent company.
Performance Bonds (PBs)	A performance bond from a bank guarantees performance under a contract from commencement to completion. The bank issuing the performance bond undertakes to pay a specified sum of money to the buyer if the supplier does not fulfil its contractual obligations.
Post Tender Negotiation [PTN]	Negotiations between Transnet and one or more shortlisted Bidders after the Bids have been evaluated, but before the business has been awarded
Preferred Bidder	Means a Bidder that has been identified through an evaluation process as the Bidder with whom Transnet intends to conclude a contract subject to the successful completion of contract negotiations
Prequalification Criteria	These are criteria that have to be met for a Bid to be deemed as responsive, e.g. registration with a specific professional body, specific accreditation, etc
Qualifying Small Enterprise [QSE]	An enterprise with a turnover between R5m and R35m, as defined by the DTI's Codes of Good Practice

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TERM	DEFINITION, ABBREVIATION OR ACRONYM
Quality (Functionality)	means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder
Rental or Lease	The use of Goods and/or moveable assets for a period and for consideration (compensation)
Request for Information [RFI]	An invitation to a broad base of potential suppliers to provide written information about their capabilities to meet a stated Transnet need. An RFI is primarily used in instances where Transnet is not clear about the precise specifications and/or scope of work required to meet its needs for specified Goods or Services. The information received through an RFI process is typically used to pre-qualify suppliers for consideration before an RFP for the Goods/Services is issued
Request for Quotation [RFQ]	Request for Quotation is used for transactions <R2m. However, CEOs may at their discretion lower the quotation limit
Request for Proposal [RFP]	Request for Proposal is used on the open Bid process i.e. for transactions > R2 million. However, CEOs may at their discretion lower the minimum threshold for open Bids
Request for ... [RFX]	A generic term which can be used interchangeably with either RFI, RFQ or RFP
Service	The provision of labour or work, including knowledge-based expertise, carried out by hand, or with the assistance of equipment and plant
SOC	State Owned Company
Supplier Development (SD)	Improving the socio-economic environment as required by the NGP by creating competitive local suppliers via Enterprise Development, the Competitive Supplier Development Programme and other initiatives such as Preferential Procurement. This results in a reduction in capital leakage and creates a supply base that can be competitive to market its Goods on the international market leading to increased exports.
Successful Bidder	Means a Bidder that has been identified as the Bidder to which business has been awarded
Tender Evaluation and Recommendation Report [TEAR]	A report that must be submitted by the evaluation team to the AC setting out an overview of the bid evaluation process, evaluation methodology, reasons for elimination of Bidders, a recommendation for the award of the tender as well as all supporting evaluation scorecards
Transnet Acquisition Council [TAC]	Acquisition Council catering for Corporate Head Office procurement and Centre-led transversal procurement
Transnet Capital Projects [TCP]	Transnet Capital Projects - a Specialist Unit of Transnet
Transnet Engineering [TE]	Transnet Engineering - an Operating Division of Transnet
Transnet Freight Rail [TFR]	Transnet Freight Rail - an Operating Division of Transnet

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TERM	DEFINITION, ABBREVIATION OR ACRONYM
Transnet National Ports Authority [TNPA]	Transnet National Ports Authority - an Operating Division of Transnet
Transnet Pipelines [TPL]	Transnet Pipelines - an Operating Division of Transnet
Transnet Port Terminals [TPT]	Transnet Port Terminals - an Operating Division of Transnet
Transnet Properties(TP)	Transnet Properties – a Specialist Unit of Transnet
Transnet Corporate Centre [TCC]	The Head Office of Transnet SOC Ltd
Transnet SOC Ltd	Transnet SOC Ltd, Registration No. 1990/000900/30 incorporated in terms of the Companies Act 71 of 2008, as amended which includes all Operating Divisions, Specialist Units and/or subsidiaries
Unsolicited Bid	A unilateral request from a person or enterprise to do business with Transnet without Bids or quotations having been invited by Transnet
Working day	Any day other than a Saturday, Sunday or public holiday
Year	Any defined period of 12 (twelve) consecutive months
"Z" Clause	Refers to any additional clauses/special conditions mentioned in the Contract Data, Part 1 of the NEC3 Suite of Contracts

Notes:

- Words capitalised in the document have been defined in this Chapter.
- The terms "bid" and "bidder" in the context of this Procurement Procedures Manual are synonymous with the terms "tender" and "tenderer" respectively.

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CHAPTER 3 : SCOPE AND EXCLUSIONS

The PPM is applicable to all acquisitions across the Transnet Group regardless of the value of the transaction, save for the exclusions mentioned in Table 1 below. The PPM has been aligned to the Construction Industry Development Board (**"CIDB"**) Act and Standard for Uniformity in Construction Procurement (Standard for Uniformity) and applies to all construction procurement across Transnet as indicated in paragraph 3.4. below.

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

3.1 PROCUREMENT PROCEDURES

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

3.2 COMPLIANCE WITH THE PPM

Subject to paragraph 3.5 below, all procurement within Transnet must be conducted by supply chain officials within Transnet in accordance with the PPM.

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

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

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

3.3 PURCHASING PROCEDURES

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

3.3.1 Ferrous and non-ferrous scrap

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

3.4 CONSTRUCTION PROCUREMENT PROCEDURES

This PPM has been aligned to the Construction Industry Development Board ("CIDB") Act and Standard for Uniformity and applies to all construction-related acquisitions across Transnet. In relation to construction procurement, to the extent that there is any conflict between the PPM and legislation related to construction procurement, the legislation shall prevail.

Where different procedures apply to general procurement and construction procurement, the CIDB logo will appear next to the procedures relating to construction procurement only

Other formal procedural manuals, directives, circulars or practice notes relating to Construction Procurement may be issued from time to time and these should be read in conjunction with this Manual.

At the start of every Chapter following this Chapter there will be an indication regarding the applicability of the Chapter to construction procurement.

3.5 PPM EXCLUSIONS

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

TABLE 1

• Individuals (temporary staff), including contract workers employed by Transnet Human Resources. (However, the appointment of a recruitment agency, Consultant, consultancy firm or a firm providing a Service to Transnet must follow the **PPM**)
• Petty cash purchases, subject to such instructions as issued from time to time
• Inspection Services in connection with the procurement / sale of Goods / assets
• Media advertising (excluding campaigns involving professional advertising agencies)
• Income generating transactions (i.e. where Transnet's infrastructure, etc. is utilised to provide a Service; including instances where cross-divisional support is engaged for strategic or other reasons. However, procurement relating to such income-generating contracts must follow the PPM - see Chapter 9 *(Contract Options)*
• Water and electricity which is supplied to Transnet, including the provision of Services, as well as the relocation of such Services as a result of Transnet's activities (e.g. the relocation of power lines or water mains due to the construction of a new railway line)
• Rates and taxes and other levies raised by local authorities or provincial administrations, both of which are excluded from these procedures, by virtue of the fact that they can only be obtained from the particular local authority, but which are for purposes of good corporate governance, paid by means of blanket orders, or other approved methods
• Purchase of Goods at auctions
• Sale of Goods at auctions but excluding the appointment of auctioneers
• Letting and hiring of dwellings, and acquisition and alienation of houses or acquisition of land for houses in terms of prescribed housing policy
• Letting and hiring, and acquisition and disposal of all immovable assets. Refer to the Transnet Group Delegation of Authority, available on the Transnet Intranet.
• Sponsorships and donations, which are strictly governed by Delegated Powers

• Disposal of non-core businesses by the Transnet Restructuring Department. Such disposals are on the strict proviso that any employee of the Transnet Restructuring Department, a Transnet Board member or a senior Manager (or higher) in the Transnet Group or any of its divisions will be disqualified from the Bidding process for the said non-core businesses for a period of 18 months from the date of his/her exit from Transnet
• The disposal of all movable assets, e.g. the disposal of redundant PC equipment, cell phones, office equipment and furniture must be properly controlled in terms of the individual policies/procedures governing such disposals. These policies and procedures are available on the iSCM Transnet Intranet.
• The provision of degree or diploma certificates by tertiary institutions, attendance of training courses, seminars and conferences which are required on a once-off basis and are under R2 million in value, provided that such transactions are approved by the person with the required DoA. Such quotes must be sourced and processed by the end user department requiring the training.
• Any such exclusions which a Transnet Division may apply for through iSCM and which have been duly approved by the Transnet Group Chief Executive ("**GCE**") or the Transnet Group Chief Financial Officer ("**GCFO**") in accordance with guidelines which may be issued from time to time.

3.6 APPLICATION

This version of the PPM applies to all new procurement processes which have been initiated on or after the commencement date of this document. Procurement processes initiated prior to the commencement date must be dealt with in accordance with the rules that were applicable at the time [i.e. the October 2012 version of the PPM in relation to general procurement and the Transnet Capital Projects ("TCP") Construction Procurement Policy, Processes, Procedures and Methods Manual (the Construction Manual), Revision 1 in relation to construction procurement].

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CHAPTER 4 : APPLICABLE LEGISLATION AND POLICIES

4.1 CONSTRUCTION-RELATED LEGISLATION

In terms of legislation, Construction procurement must be in compliance with the requirements of the Construction Industry Development Board Act (CIDB Act), 38 of 2000 including the CIDB Regulations and Standard for Uniformity, as amended. With regard to Transnet's policies on Preferential Procurement and Supplier Development, these must be pursued in construction procurement but only to the extent allowed by the CIDB legislation. Construction Procurement methods to support Supplier Development are covered in the methods for evaluation.

4.2 GENERAL LEGISLATION

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

TABLE 2

LEGISLATION AND GOVERNMENT POLICY
• The Administrative Adjudication of Road Traffic Offences Act, 46 of 1998
• The Arbitration Act, 42 of 1965
• The Broad-Based Black Economic Empowerment Act, 53 of 2003 as amended, including the Department of Trade & Industry's Codes of Good Practice
• The Companies Act, 71 of 2008 as amended
• The Competition Act, 89 of 1998 as amended
• The Competitive Supplier Development Programme (CSDP)
• The Constitution of the Republic of South Africa Act, 108 of 1996
• The Construction Industry Development Board Act (CIDB Act), 38 of 2000 including the CIDB Regulations and Standard for Uniformity, as amended
• The Conventional Penalties Act, 15 of 1962
• The Copyright Act, 98 of 1978
• The Currency and Exchange Act, 9 of 1933
• The Designs Act, 195 of 1993
• The Electronic Communications and Transaction Act, 25 of 2002
• The Framework for the Operationalisation of Government's Procurement Policies in State Owned Enterprises (dated 31 July 2001)
• The Income Tax Act, 58 of 1962
• The Industrial Policy Action Plan II
• The King III Report on Corporate Governance
• The Local Procurement Accord

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LEGISLATION AND GOVERNMENT POLICY
• The National Development Plan (NDP)
• The National Ports Act, 12 of 2005
• The National Railway Safety Regulator Act, 16 of 2002
• The New Growth Path (NGP)
• The Occupational Health and Safety Act, 85 of 1993
• The Patents Act, 57 of 1978
• The Preferential Procurement Policy Framework Act (PPPFA), 5 of 2000 as amended, Regulations of 2011 - effective 7 December 2012
• The Prevention and Combating of Corrupt Activities Act, 12 of 2004 as amended
• The Promotion of Access to Information Act (PAIA), 2 of 2000 as amended
• The Promotion of Administrative Justice Act, 3 of 2000
• Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000
• The Public Finance Management Act (PFMA), 1 of 1999 as amended (Transnet is not bound by the Supply Chain regulations issued in terms of this Act)
• The Promotion of Administrative Justice Act (PAJA), 3 of 2000 as amended
• The Second-Hand Goods Act, 6 of 2009
• The Standards Act, 8 of 2008
• The Trade Marks Act, 194 of 1993
• The Value Added Tax Act, 89 of 1991

4.3 POLICIES

4.3.1 General Overview of Transnet Policies

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

TABLE 3

TRANSNET POLICIES AND PROCEDURES	LOCATION
• Transnet Code of Ethics	Company Secretary Intranet portal
• Cell phone Policy	ICT Intranet Portal
• Contract Management Policy	Policies Intranet Portal
• Counterparty Risk Management Policy	Finance Intranet Portal
• PC Disposal Policy	ICT Intranet Portal
• Declaration of Interest and Related Party Disclosure Policy	Company Secretary Intranet portal
• Delegation of Authority Framework	Company Secretary Intranet portal
• Group Compliance Policy	Group Compliance

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TRANSNET POLICIES AND PROCEDURES	LOCATION
	Intranet Portal
• Gifts Policy	Company Secretary Intranet portal
• Supply Chain Policy	iSCM Intranet portal
• Procure to Pay Procedures(P2P)	iSCM Intranet portal
• High Value Tender Process	iSCM Intranet portal
• Records Management Policy	Company Secretary Intranet portal
• Reverse Logistics Procedure	iSCM Intranet portal
• Scrap Policy	iSCM Intranet portal
• Supplier Development Plan	iSCM Intranet portal
• Transnet Broad-Based Black Economic Empowerment Policy	Group Compliance Intranet portal

4.3.2 Preferential Procurement

a) Strategic Intent

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

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

- allocating either 10 or 20 preference points in accordance with the PPPFA based on the B-BBEE status of an enterprise in terms of its valid B-BBEE scorecard;
- requesting an enterprise to commit to **improving or sustaining its B-BBEE performance** over the contract period in the following areas: ownership, management control, employment equity, preferential procurement and enterprise development (This will be referred to as a B-BBEE Improvement Plan);
- encouraging bidders to form Joint Ventures (JVs) with black owned entities, alternatively to sub contract a minimum percentage of the contract to black owned companies;
- stipulating that an Enterprise will not be awarded points for its B-BBEE status level if it has indicated in its Bid response that it intends sub-contracting more than 25% of the value of the contract to any other Enterprise that does not qualify for at least the points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the sub-contract;
- stipulating that an Enterprise who has been awarded a contract may not sub-contract more than 25% of the value of the contract to any other Enterprise that does not have an equal or higher BBBEE status level than the Enterprise concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the sub-contract;

- stipulating that an Enterprise awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- Requiring winning bidders to take steps to ensure:
  - management and daily operational involvement by Black professionals and managers as prescribed in the different sector charters;
  - skills transfer and training; and
  - employment creation and employment equity.

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

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

b) Scope and applicability

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

(ii) The approach shall apply to and impact on all levels (Rand value) and types of Bids. It will also apply to the acquisition or granting of any right for and on behalf of Transnet. The objective is to design innovative ways to promote Black Economic Empowerment. This will be dealt with in terms of the legislation and policies applicable to that area of Transnet's operation.

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

c) Objectives

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

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

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

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

d) Preferential procurement targets and reporting

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

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

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

4.3.3 Supplier Development – Strategic Intent

a) Background

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

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

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

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

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

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

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

b) Applicability

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

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

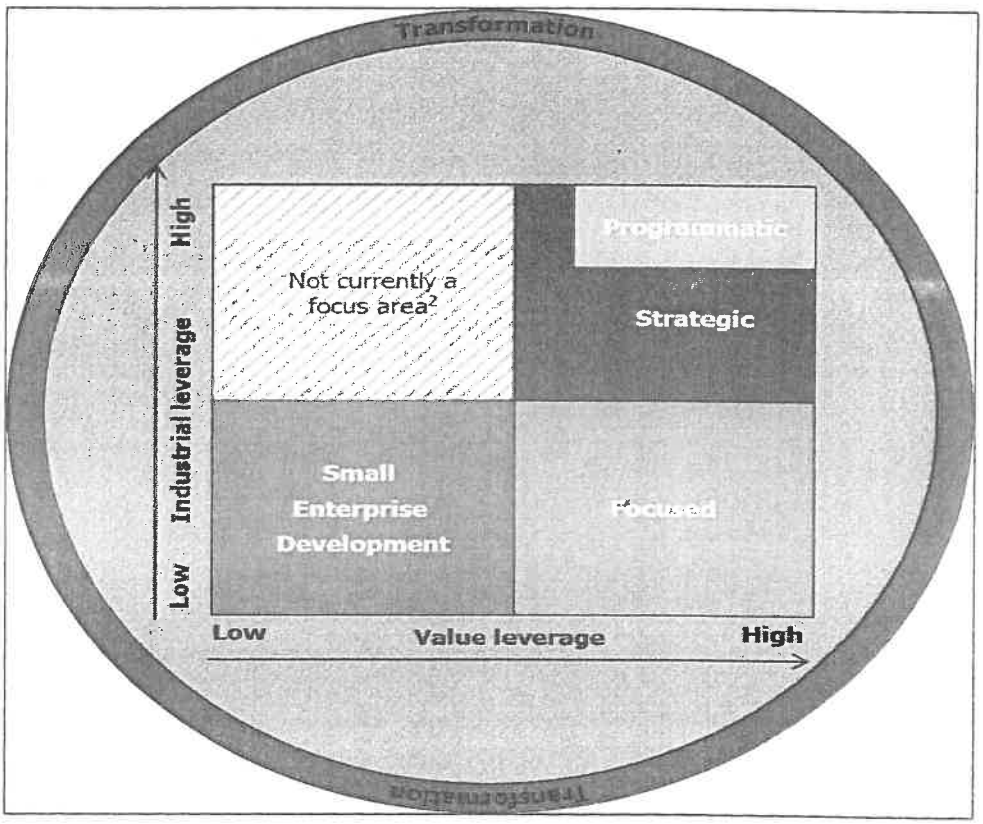

Figure [1] – IC³ SD Classification Matrix

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

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

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

4.3.4 Enterprise Development - Strategic Intent

a) Background

Enterprise Development (ED) is an element of the B-BBEE scorecard aimed at supporting government socio-economic initiatives and has a strong link with procurement. ED is achieved by leveraging government procurement and other government projects e.g. state owned companies procurement programs.

Enterprise development is defined as a program of developing Small and Medium enterprises, called beneficiaries, by investing time, money, and capital in order to contribute to the development, sustainability, financial independence, and operational independence of those beneficiaries. Enterprise Development Contributions consist of initiatives in favour of a beneficiary by a measured entity in these forms i.e. Monetary: money; Non-Monetary: time and capital; recoverable and non-recoverable.

There are two categories of beneficiaries i.e.

- Category A: Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or black woman owned.

- Category B: Any other entities that are 50% black owned or black woman owned, or 25% black owned or black woman owned with a B-BBEE Status of between Level One and Level Six.

When implementing Enterprise Development Transnet will achieve the following objectives:

- Enable or accelerate the development of a beneficiary;
- Achieve beneficiary sustainability;
- Achieve beneficiary financial independence; and
- Achieve beneficiary operational independence.

Transnet's ED approach will address both financial and non-financial ED initiatives which provide ED beneficiaries with, inter alia, support as listed below:

- Mentorship support
  - Business Development
  - Tendering skills support
  - Technical support
  - Business compliance
- Capacity Building
  - Building and finance (Shorter payment terms)
  - On site mentoring
  - Learnership through Transnet School of Academy

b) **Applicability**

Unless a particular Enterprise Development initiative involves the procurement of goods or services, Enterprise Development initiatives fall outside the ambit of the PPM.

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CHAPTER 5 : CODE OF ETHICS

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This Chapter is applicable in totality to construction procurement and general procurement activities. Please refer to paragraph 5.4. regarding the difference between bidders' prior involvement in general procurement and construction procurement.

5.1 SUPPLY CHAIN CODE OF ETHICS

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

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

5.1.2 All Transnet employees should uphold the following key values:

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

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

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

5.1.5 Former employees of Transnet shall not be restricted from doing business with Transnet unless they have been restricted from doing so in terms of paragraph 5.1.6 below. Due diligence should be exercised by evaluation teams to determine whether any undue influence/unfair advantage could have been possible between any Transnet employees and the former employee. This should be brought to the AC's attention, and should be stated clearly in submissions to the AC or to the delegated Manager for transactions falling below the AC's jurisdiction.

5.1.6 Former employees of Transnet who were dismissed following disciplinary action or who had resigned to circumvent disciplinary action following charges relating to dishonesty (e.g. bribery, corruption, theft, etc.) shall be formally excluded from future business dealings with Transnet. They will be blacklisted for a specific period and their names shall appear on Transnet's List of Excluded Bidders (see Chapter 23 on *Blacklisting*).

5.2 CONFIDENTIAL INFORMATION AND TRADE SECRETS

5.2.1 Employees have access to information related to Transnet's business strategies and contractual relationships with third parties. This information must be regarded as trade secrets. It includes intellectual property, know-how, processes, techniques, technical detail, methods of operating, cost and source of material, pricing and purchasing policies, systems design and development information. It also includes the contractual and financial arrangements between Transnet and its customers and suppliers. In this regard, all employees have a duty of trust and confidence and a duty to act at all times in the best interests of Transnet. The disclosure of trade secrets or any other confidential information could cause serious damage to Transnet, and possibly claims of damages for breach of contract against Transnet.

5.2.2 No employee may discuss or disclose prices which have been quoted or charged to Transnet.

5.2.3 No employee may disclose information which would, or could be perceived to place a Bidder in a better position than its competitors, or which would put Transnet at a disadvantage against Bidders or suppliers.

5.2.4 Where it is necessary to disclose confidential information to potential suppliers in order to solicit Bids, Non-Disclosure Agreements ("NDAs") must form part of the bid documentation. The NDAs must be signed by all Bidders.

5.3 INTELLECTUAL PROPERTY RIGHTS OF SUPPLIERS/TRANSNET

5.3.1 Transnet will acknowledge and respect suppliers' intellectual property (IP) rights. Transnet will also seek to promote fair competition.

5.3.2 It is recommended that in cases where the IP of suppliers is at stake, Transnet should hold clarification sessions with potential Bidders in order to clarify the position regarding IP rights. Furthermore, before concluding a contract, Transnet should ensure that all issues of IP are properly addressed in the contract and that both parties understand the nature of the agreement.

5.3.3 Depending on the merits of each case, one of the following approaches will be followed and must be stipulated upfront in the Request for Proposal ("RFP") document:-

a) Transnet may choose to pay the supplier outright for its IP in the Goods and purchase the Goods with its IP. In such instances, the supplier relinquishes its rights to the IP and Transnet acquires all rights to the Goods. This applies to all specifications, drawings and/or prototypes. Transnet will disclose this at RFP stage and all aspects pertaining to IP will be negotiated and captured in the contract between the parties. Transnet shall have the right to procure its

future requirements via an Open Bid process and the original designer/developer will be free to participate.

b) Transnet may choose to share the IP with the supplier where Goods were jointly developed by Transnet and the supplier. In this scenario, Transnet shares the IP and the royalties emanating from the development of the Goods. This must be clearly set out in the contract between the parties.

c) Where an existing patented article is required by Transnet, it is preferable that Transnet issue an Open Bid stating that the patented item or "anything similar" is required. Alternatively, Transnet may choose to confine the tender to the manufacturer concerned. In this instance the supplier remains the owner of the IP in respect of the article.

5.4 BIDDERS' PRIOR INVOLVEMENT IN PROCUREMENT

As a general rule, service providers or contractors that were involved in the preparation of a scope of work or in prior stages of a particular procurement project shall be precluded from submitting bid offers for that procurement project. This is due to the unfair advantage they may gain as a result of prior knowledge of the project. This rule applies unless there are grounds for confinement as indicated in paragraph 15.1.2 of the PPM. It does not apply to a 2-stage RFX process.

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South African National Standard (SANS) 294:2004 on Construction Procurement Processes, Methods and Procedures, paragraph 6.1.1 (which is incorporated in the best practice guidelines published by the CIDB and the Standard for Uniformity in Construction Procurement) states that as a general rule, agents and contractors that are commissioned to prepare a scope of work for a particular procurement shall be precluded from submitting tender offers for that procurement. The Note to this paragraph, however, states the following: "*Agents and contractors who prepare the scope of work for engineering and construction works contracts where the design and build contracting strategy is adopted, may submit tender offers to perform such work*".

Contractors who prepare a procurement document or part thereof for engineering and construction works contracts may submit a bid for work associated with such documents provided that:

a) Transet states in the tender data that such a contractor is a potential bidder;

b) all the information which was made available to, and the advice provided by, that contractor which is relevant to the tender, will equally be made available to all potential bidders upon request, if not already included in the scope of work;

c) the relevant CPO is satisfied that the bid document is objective and unbiased having regard to the role and recommendations of that contractor; and

d) the contractor has signed a declaration of interest.

5.5 GIFTS AND GRATUITIES

5.5.1 All business decisions and transactions must be made with uncompromised integrity, honesty and objective judgment. Transnet does recognise that in executing its business and applying industry norms, employees may be required to

accept or give gifts as a token of appreciation. The Transnet Gifts Policy regulates and controls the acceptance and giving of gifts.

5.5.2 The acceptance and giving of gifts exceeding the value (currently R750.00) stipulated in the Transnet Gifts Policy, as amended from time to time is prohibited.

5.5.3 The occasional exchange of gifts not exceeding this value may be accepted, provided that such gifts are not specifically intended to influence any procurement or sales decisions and are:

a) Declared to the employee's immediate Manager; and

b) Recorded in a Declaration of Gifts Register.

5.5.4 Under no circumstances should gifts be accepted from prospective suppliers, regardless of value, during any bid evaluation period including a period of 12 months after such bid has been awarded. This may be perceived as undue and improper influence over the bid process.

5.5.5 Gratuities, bribes or kickbacks of any kind must never be solicited, accepted or offered, either directly or indirectly. This includes money, loans, equity, special privileges, personal favours, benefits or Services. Such favours will be considered bribery. This is unlawful and the appropriate criminal / civil action will be enforced. If a supplier or employee offers or accepts such "favours" or bribes, it must immediately be reported to the Manager in charge of the function for appropriate action. In accordance with the ordinary principles of delictual liability, Transnet is entitled to recover all damages suffered as a result of the employee's corrupt or negligent conduct from that employee. Any person who has offered a bribe to a Transnet employee may also face criminal or civil action and/or exclusion from future Transnet business.

5.5.6 Employees are not permitted to accept gifts or buy Goods or Services at artificially low prices, not available to the public. Employees are also not allowed to accept personal favours and hospitality which might be deemed by others, to impinge upon the employee's sound business judgment.

5.5.7 Overseas visits on invitation by and at the expense of prospective suppliers will under no circumstances be permitted. Should an overseas visit be deemed necessary for the purposes of evaluating the supplier, this should be for Transnet's own account. All overseas visits have to be fully motivated in terms of the normal procedures for overseas visits. If current suppliers offer to pay for Transnet employees to travel to their offices or plants overseas, these requests need to be properly motivated and approved by the GCE or the relevant divisional CEO or Group Executive.

5.5.8 The following business courtesies are allowed, provided that the cost per instance does not exceed the amount as stipulated in the Gifts Policy:

a) entertainment;

b) advertising material of small intrinsic value such as pens, paper-knives (letter opener), diaries, calendars, etc.

5.5.9 A monetary limit will not be placed on the following:

a) business meals; and

b) hospitality packages to sports, arts and culture events held in the Republic of South Africa, with the objective of enhancing business relationships. Gifts received while on overseas business trips and from foreign delegates, which exceed the limit set in the Transnet Gifts Policy, should be accepted, entered into the gifts register and submitted to the Group Company Secretariat for disposal in terms of the Gifts Policy.

5.5.10 In addition to the procedure for accepting gifts set out in the Gifts Policy, Supply Chain staff may only accept gifts after approval from their Manager. Supply Chain staff must declare all gifts irrespective of value. Supply Chain Managers must keep a proper gift register of all gifts and hospitality offered to their employees by

suppliers and contractors, and vice versa. Unauthorised gifts that have not been accepted (e.g. exceeding the abovementioned limit) should also be entered into the gift register with an indication that they have been returned to the supplier or surrendered to Transnet or any other appropriate action that may have been taken.

5.5.11 All Supply Chain gift registers must be submitted to the relevant AC Chairperson for review on a quarterly basis. A Gift Register Template is attached to the Transnet Gifts Policy and must be used at all times to ensure that all relevant information and signatures of approval are captured.

5.6 DECLARATION OF INTEREST

5.6.1 In terms of the Companies Act 71 of 2008, directors or officers of a company have a duty to disclose their interests in contracts.

5.6.2 For the purposes of the Transnet Declaration of Interest and Related Party Disclosure Policy the requirement to disclose interests in contracts is extended to include all employees.

5.6.3 The Transnet Declaration of Interest and Related Party Disclosure Policy defines a conflict of interest to include inter alia, a situation in which:

- "An Employee has a personal financial interest;
- An employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his/her judgment in acting in the best interests of Transnet, or could corrupt the employee's motivation for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism;
- An employee uses his/her position, or privileges or information obtained while acting in the capacity as an employee for:
  - Private gain or advancement; or
  - The expectation of private gain, or advancement, or any other advantage accruing to the employee or any member of his/her family, or friends or business associates."

5.6.4 The Transnet Declaration of Interest and Related Party Disclosure Policy places a duty on all employees who have an interest, either directly or indirectly, in any new or existing contracts with an entity external to Transnet which may conduct, or does conduct business with Transnet, to declare such interest.

5.6.5 A direct interest in a bid includes the following:

a) Where the employee or Transnet Board member is a shareholder, member or director of -
   (i) a bidding enterprise;
   (ii) the holding company of a bidding enterprise; or
   (iii) a subsidiary of a bidding enterprise.

b) Where the employee or Transnet Board member is related (as defined in the Declaration of Interest and Related Party Disclosures Policy) to a person who is a shareholder, member or director of -
   (i) a bidding enterprise;
   (ii) the holding company of a bidding enterprise; or
   (iii) a subsidiary of a bidding enterprise.

5.6.6 Declaration of a direct interest will result in automatic recusal of an employee.

5.6.7 An indirect interest may include, but is not limited to:

a) being involved with the drafting of the specification or bid documents;

b) being involved with issuing / advertising of the bid; or

c) being involved in the evaluation, and subsequently being involved in the adjudication of the bid (applicable to members and/or alternates serving on the relevant AC).

5.6.8 Any indirect interest of an employee in a bid or offer must be declared and the Manager concerned will determine whether the employee should recuse him/herself. The reasons for this decision must be officially recorded and kept on file.

5.6.9 Bid documents must always contain a clause for prospective Bidders to declare any possible direct family or business relationship with a Transnet employee. Direct family or business relationships includes husband/wife, children (own and step), parents and grandparents (own and in-law), brothers and sisters (own, step and in-laws) and business associates.

5.6.10 Although business with Enterprises that have relationships with Transnet employees in terms of 5.6.9 above is not prohibited, it is imperative that it be properly declared and explicitly pointed out in the submission to the AC. This will allow the AC to consider all relevant facts and decide whether such involvement by a Transnet employee could be regarded as fair or whether other prospective Bidders will be prejudiced or may be perceived to have been prejudiced thereby. Bidders failing to declare such relationship(s) will be disqualified from the bid process. Contracts concluded without adherence to this rule, will be terminated and disciplinary action will be taken against the relevant Transnet employee(s). The company or companies involved will be placed on Transnet's List of Excluded Bidders.

5.6.11 All Transnet employees / board members involved in procurement activities are under a duty to declare their interests as soon as they become aware that they have a direct or indirect interest in a particular matter. If any doubt arises as to whether an interest should be declared or not, the employee concerned shall seek guidance from the office of the Company Secretary. The following must be noted with regard to the duty to declare interests:

a) in terms of the "Declaration of Interest and Related Party Disclosures Policy" all employees are required to submit an annual declaration of interest. These declarations are kept by the Group Company Secretary for employees at Group. Depending on the specific OD, declarations are kept by the OD Company Secretary, Compliance officer or the Legal department in respect of OD employees;

b) in addition to annual declarations, all employees involved in procurement should make a quarterly declaration of interest which must be kept by the relevant Manager;

c) all employees involved in the evaluation, Post Tender Negotiation ("PTN") or adjudication of Bids must sign a declaration of interest certificate indicating whether or not they have an interest in the matter at hand. This declaration must be placed on the relevant bid file; and

d) employees involved in procurement activities other than evaluation, post tender negotiation, or adjudication (such as buyers) will only be required to declare an interest if they in fact have an interest in a particular matter. Should such an employee not make any declaration in a particular matter, he/she will be deemed not to have an interest in the matter. If it is later discovered that an employee did have an interest which he/she failed to declare, such

employee will be found to have failed to comply with the duty to declare conflicts of interests.

e) A proper register of Declarations of Interest should also be kept by Managers responsible for departments involved in purchasing and disposal functions as well as by the Secretariats of the relevant ACs.

5.7 FRAUD AND CORRUPTION

5.7.1 Transnet insists on honesty, integrity and acting beyond reproach at all times and will not tolerate any form of improper influencing, bribery, corruption, fraud or any other unethical conduct on the part of Bidders / Transnet employees.

5.7.2 If Transnet's GCFO (or a duly authorised person) has determined that a Bidder / contractor / supplier has or has caused to be promised, offered or given to any Transnet employee, any bribe, commission, or any unauthorized gift, loan, advantage or other consideration, Transnet shall be entitled to revoke the bid / contract by following the process that governs the Exclusion of Bidders. Upon approval by the GCFO or duly authorized delegate, Transnet will be entitled to place any Bidder / contractor / supplier who has contravened the provisions of Transnet's business ethics on its List of Excluded Bidders. Furthermore, in terms of section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2001, Transnet will refer all matters of suspected corruption to the South African Police Services (SAPS) for further investigation.

5.7.3 Transnet reserves the right to exclude a Bidder from further business and/or to cancel all existing contracts, should a Bidder/supplier be found to have acted in bad faith or engaged in misconduct towards Transnet. Furthermore, no part of a contract may be subcontracted to an Excluded Bidder.

5.7.4 Bid documents should always contain a clause indicating that any suspected fraud, corruption or other unethical activities should be reported to Transnet Tip-offs Anonymous at any of the following addresses and contact numbers. Confidentiality is guaranteed at all times.

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

5.8 SANCTION

Non-compliance with the Code of Ethics is considered to be misconduct and employees may be subject to disciplinary procedures that could lead to dismissal as well as criminal and/or civil action.

CHAPTER 6 : DELEGATION OF AUTHORITY FOR PROCUREMENT PROCESSES

cidb

This Chapter is applicable in totality to construction procurement and general procurement activities.

6.1. HOW DELEGATION OF AUTHORITY WORKS

Figure 2 below explains how authority is delegated from the Minister of Public Enterprise to the various structures and persons within Transnet via a series of sub-delegations:

How Delegation of Authority works within the context of Procurement

Step 1	The Transnet Board acquires it Delegation of Authority from its appointment as the accounting authority of Transnet by the Minister of Public Enterprises in terms section 49 of the PFMA
Step 2	The Transnet Board sub-delegates certain powers to: 1) The BADC 2) The Group Chief Executive (GCE)
Step 3	The GCE sub-delegates certain powers to: 1) The Group CFO 2) The CEOs of ODs and Specialist Units 3) Group EXCO members
Step 4	The CEO sub-delegates certain powers to his/her CPO
Step 5	The CPO sub-delegates certain powers to his/her Executive/Senior Managers in Procurement
Step 6	Executive / Senior Managers sub-delegate certain powers to Category Managers
Step 7	Category Managers sub-delegate certain powers to Commodity Managers
Step 8	Commodity Managers sub-delegate certain powers to Senior Buyers and buyers etc.

Figure [2] – Delegation of Authority

6.2. DELEGATION OF AUTHORITY FRAMEWORK

The Transnet Delegation of Authority (DoA) Framework sets out the powers delegated to certain officials (e.g. GCE, GCFO, OD CEO, etc) to perform specified tasks in relation to various areas of operation (e.g. finance, treasury, procurement, etc). The following powers, depicted in Table 4 below, are derived from the Transnet Delegation of Authority Framework effective 1 June 2013. **However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.**

TABLE 4

APPROVAL AUTHORITY	PROCUREMENT DELEGATION					
	Approval to approach the market			Management's intervention to address non-compliance with procurement policies & procedures	Enter into & signing of contracts & award of business (including scrap sales)	Procurement process (governance structure) approval
	Open tenders	Confined tenders	Consultants			
Transnet Board	>R 2 000m	>R 1000m	>R300m	>R 1000m	>R 2 000m	>R 2 000m
BADC	≤R 2 000m	≤R 1000m	≤R300m	≤R 1000m	≤R2 000m	≤R2 000m
Group EXCO	Nil	Nil	≤R200m	Nil	Nil	Nil
GCE	≤R1 000m	≤R250m	≤R200m	≤R50m	≤R1 000m	Nil
GCFO	≤R750 m	Nil	≤R50m	Nil	≤R750m	Nil
GCSCO	≤R525 m	Nil	Nil	Nil	≤R525m	Nil
OD CE (including TCP)	≤R450 m	Nil	≤R25m (per annum)	Nil	≤R450m	Nil
OD/SU Main AC	Nil	Nil	Nil	Nil	Nil	≤R450m
CEO/ HOD (budget owner) of Specialist Unit, excl. TCP	≤R75 m	Nil	Nil	Nil	≤R5m subject to the contract period not exceeding 5 Years	Nil
Group Exco Members (Specialist Units, excl.TCP)	Nil	Nil	≤R10m	Nil	≤R30m	Nil

6.3. POWERS VESTED IN TRANSNET OFFICIALS

It is important to bear in mind that not all powers vested in Transnet officials are contained in the DoA Framework. In the procurement context, certain powers are also vested in officials in terms of this PPM whilst other powers are inherent to the job function e.g. the day to day running of the procurement function. Figure 3 below explains the powers vested in Transnet officials in terms of the DoA Framework, the PPM and their job function, respectively:

Delegatee	From Whom	Delegation in terms of Transnet DoA Framework	Powers acquired in terms of the PPM	Delegation in terms of a "general blanket" delegation
GCE	Transnet Board	•Approve Confinements ≤R250m •Consultants ≤R200m •Condonations ≤ R50m •Going to market on open tender & sign contracts ≤ R1 000m	Final arbiter for appeals on blacklisting	Responsible for the day-to-day running of Transnet
GCFO	GCE	•Consultants ≤R50m •Going to market on open tender & sign contracts ≤ R750m	Approve decision to blacklist	N/A to procurement
OD CEOs	GCE	•Approve consultants ≤ R25m p.a •Going to market on open tenders & sign contracts ≤ R450m	Approve OD Approved Lists Appoint AC & Chair/ members Mediate disagreements between AC and line/procurement, etc.	Responsible for the day-to-day running of the operating division
CPO	OD CEO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CEO	Delegate powers to CFSTs, CFET & PTN teams, empower procurement to utilise quotation system & emergency purchases and initiate blacklisting proceedings	Responsible for the day-to-day running of the OD procurement function
Procurement	OD CPO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CPO	Facilitate CFSTs, CFET & PTN teams Utilise quotation system and emergency purchases, issue open tenders and initiate blacklisting cases	Responsible for the day-to-day procurement tasks and functions

Figure [3] – Types of Delegated Authorities

6.4. DOA SUMMARY

Figures 4 to 10 below collectively represent a summary of the Delegations of Authority required for various procurement approval processes and thresholds effective 1 June 2013. However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.

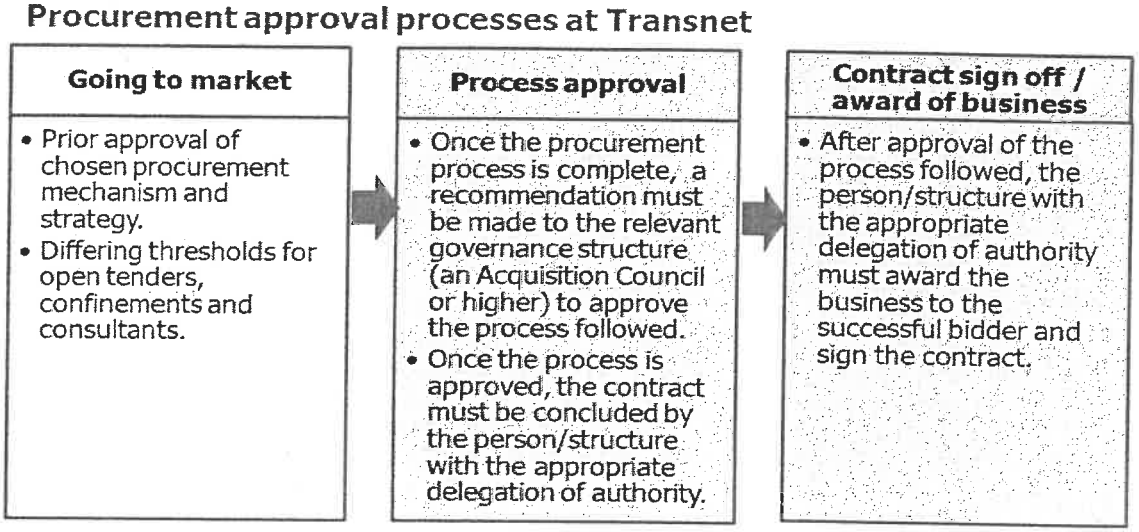
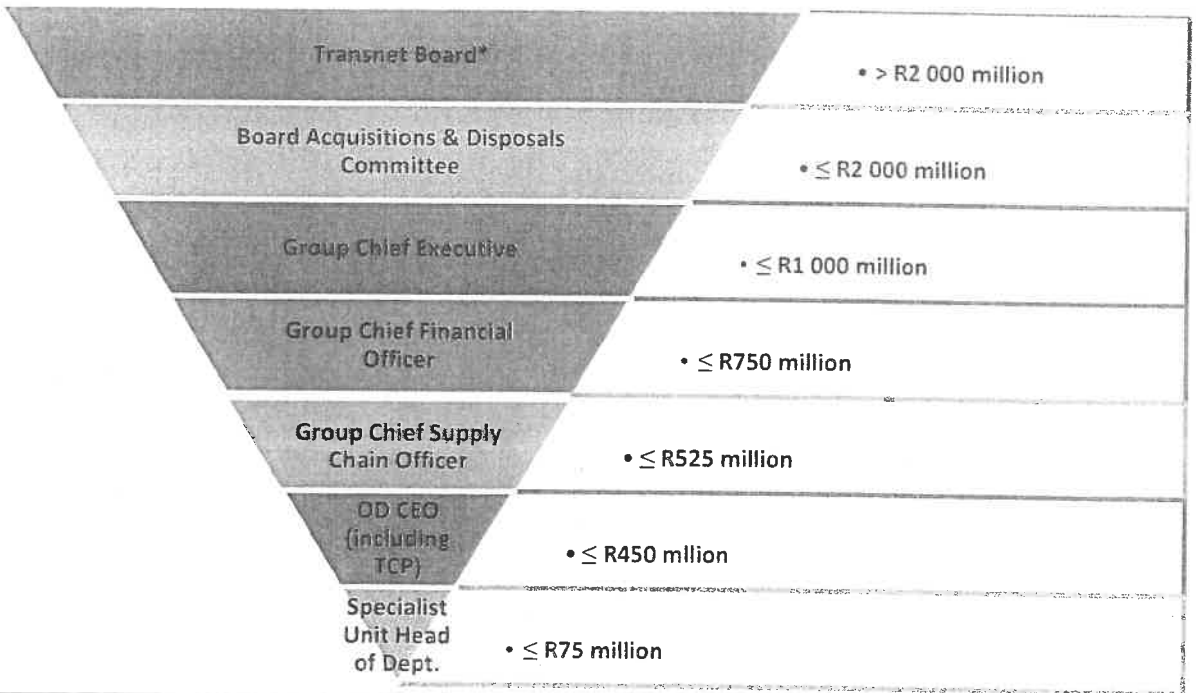


Figure [4] – Procurement approval processes

The thresholds applicable to the various approval steps are depicted in the diagrams below.

(a) Approval to approach the market for open tenders

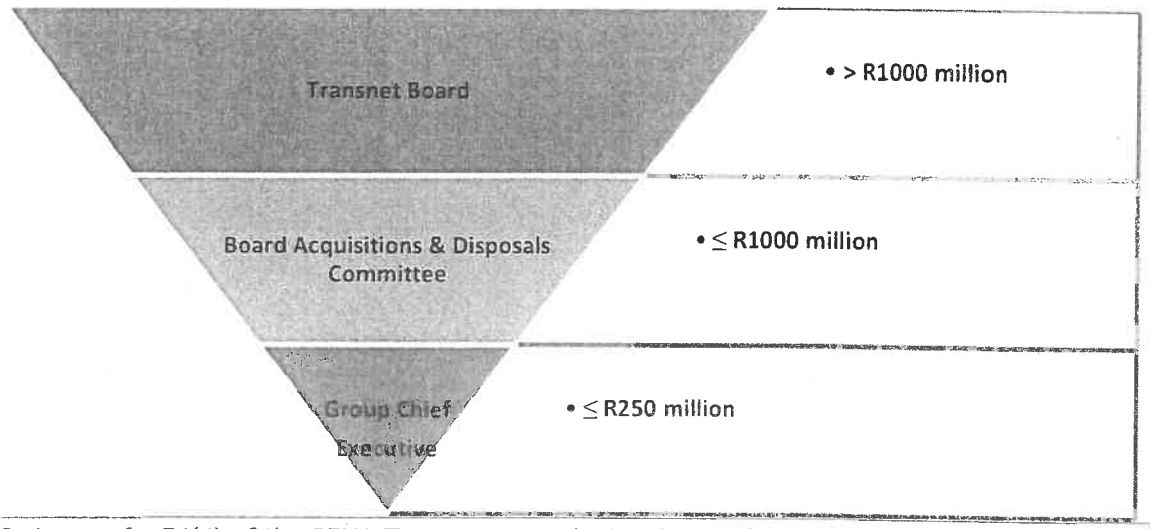
Approving the approach to market strategy involves approving the sourcing strategy as well as the critical aspects of what will be contained in the bid document i.e. the evaluation methodology and at a high level, the evaluation criteria and weightings.



*In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [5] – Approval to approach the market for open tenders

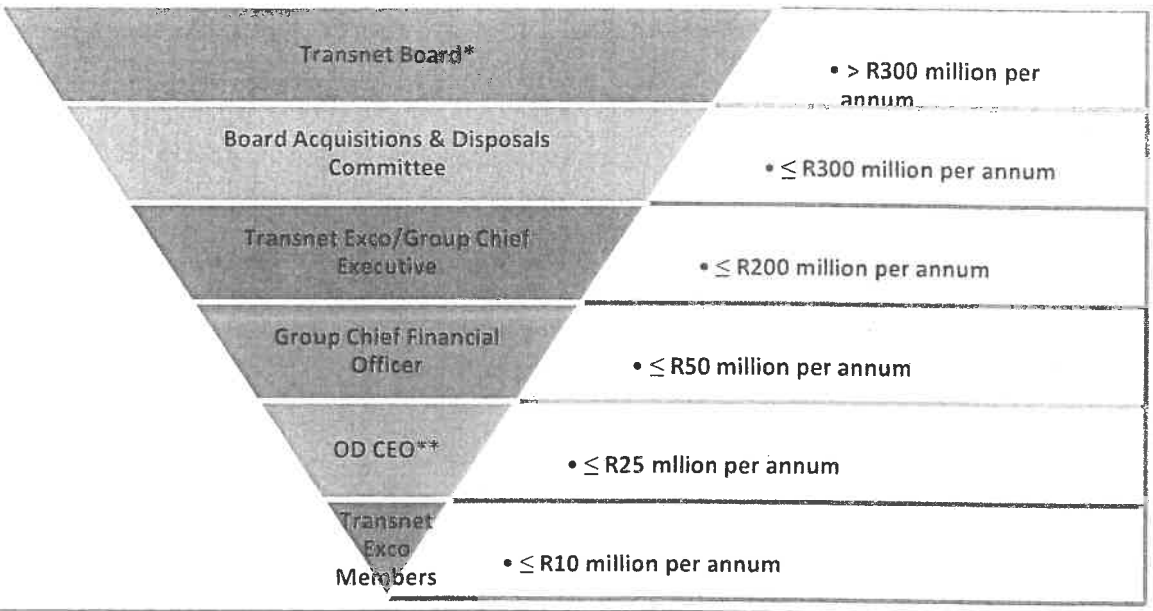
(b) Approval to approach the market for confined tenders



In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [6] – Approval to approach the market for confined tenders

(c) Appointment of consultants



**NB: Approval limits are cumulative per annum
*In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

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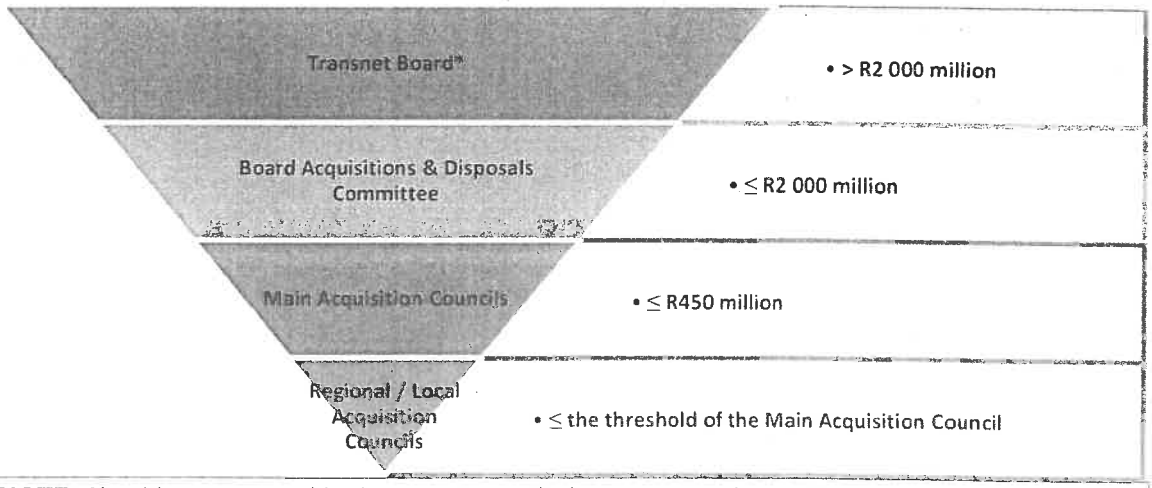
Figure [7] – Appointment of consultants

(d) Procurement Process Approval

Procurement process approval involves a validation of the entire procurement process followed before contract sign off can take place. Approval of the procurement process involves scrutiny of the fairness, transparency, legality and general commerciality of the tender award.

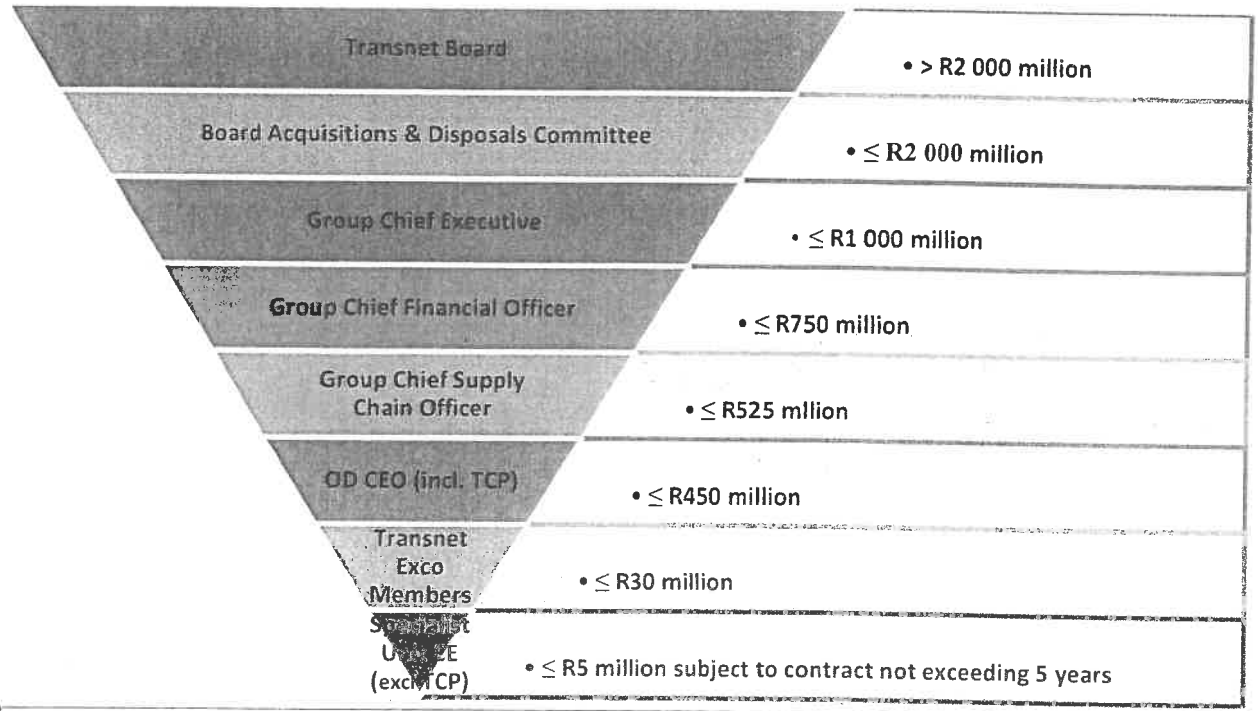


NOTE: Should any approval body not agree with the recommendation, the matter must be referred back to the recommending officer(s) for reconsideration or remotivation
Recommendations: The RAC, main AC and the BADC will support the recommendation for transactions above their thresholds. Local/Regional AC normally only consider transactions <R2m but OD CEOs may at their discretion increase these thresholds.
* In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion of the value of Transnet's asset base as per the 2013/2014 version of the Shareholder's compact) before proceeding with the acquisition

Figure [8] – Thresholds for governance structure approval of process

(e) Enter into and signing of contracts/agreements and award of business

Contract sign off approval involves the final award of business based on a Procurement Process Approval. This approval carries with it the power to sign and enter into contracts on behalf of Transnet for procurement transactions.



In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [9] – Thresholds for contract sign off / award of business

(i) **Contracts greater than R500 million**

Prior to entering into a high value (greater than R500m) / highly complex contract (especially for Transnet's top 60% value opex items as dealt with by Transnet iSCM Strategic Sourcing commodity teams), any authorised official must first liaise with a multi-disciplinary team of experts at Transnet Corporate Office, who should each sign off on the following parts of any agreement/contract or other binding document:

- Group Legal Services - entire document
- Transnet GCFO to sign-off after sign-off from the finance departments (Group Finance/Reporting, Financial Planning, Tax and Treasury).
- Contracts less than R450m within the OD's limit of authority, require a similar process as set out above to be followed by the relevant OD.

(ii) **International Contracts/Agreements (all contracts)**

Approval to enter into an agreement/contract or other binding document involving foreign currency (FX) exposure (including international agreements) may not be sub-delegated lower than to the Chief Procurement Officer (CPO) of an OD. Approval of the divisional CFO is required to enter into the contracts that may result in foreign currency exposure.

The duly authorised official must obtain prior written approval in respect of foreign exchange agreements above R50m from Group Legal, Group Treasury, Group Tax and Group Reporting, both where the contract will be concluded in foreign currency and especially in such cases where foreign contracts will be concluded in South African Rand, as this may expose Transnet to, *inter alia*, an embedded derivative. All FX agreements above R100m must apart from the above also obtain written approval from the GCFO.

(f) Management's intervention to address non-compliance with procurement policies and procedures (Condonations)

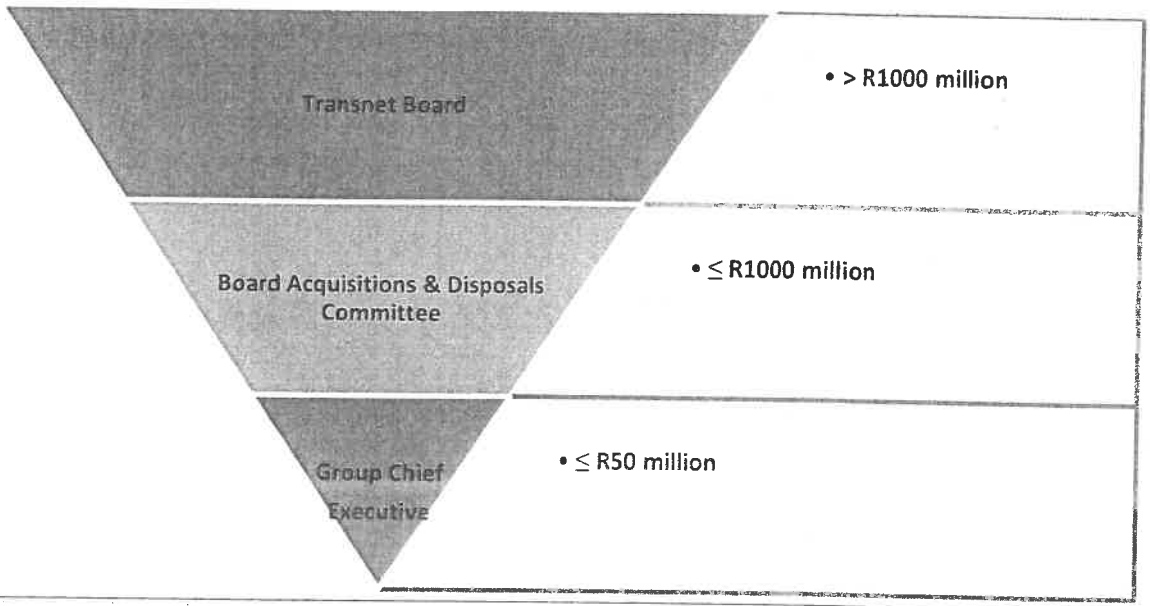


Figure [10] – Management's intervention to address non-compliance with procurement policies & procedures

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Background and Context

SECTION B: PROCUREMENT PLANNING

Chapter 7: Demand Planning & Demand Management

Chapter 8: Internal Procurement / Interdivisional Support

Chapter 9: Contract Options

Chapter 10: Preferential Procurement Approach

Chapter 11: Local Content

Chapter 12: Supplier Development Approach

Chapter 13: Determining Evaluation Criteria

Chapter 14: Main Procurement Mechanisms

Chapter 15: Special Cases

Go to Market

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

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TYPICAL PROCUREMENT CYCLE

Figure 11 below depicts a typical procurement cycle. Comprehensive guidance on each of these steps is dealt with in the Chapters that follow:

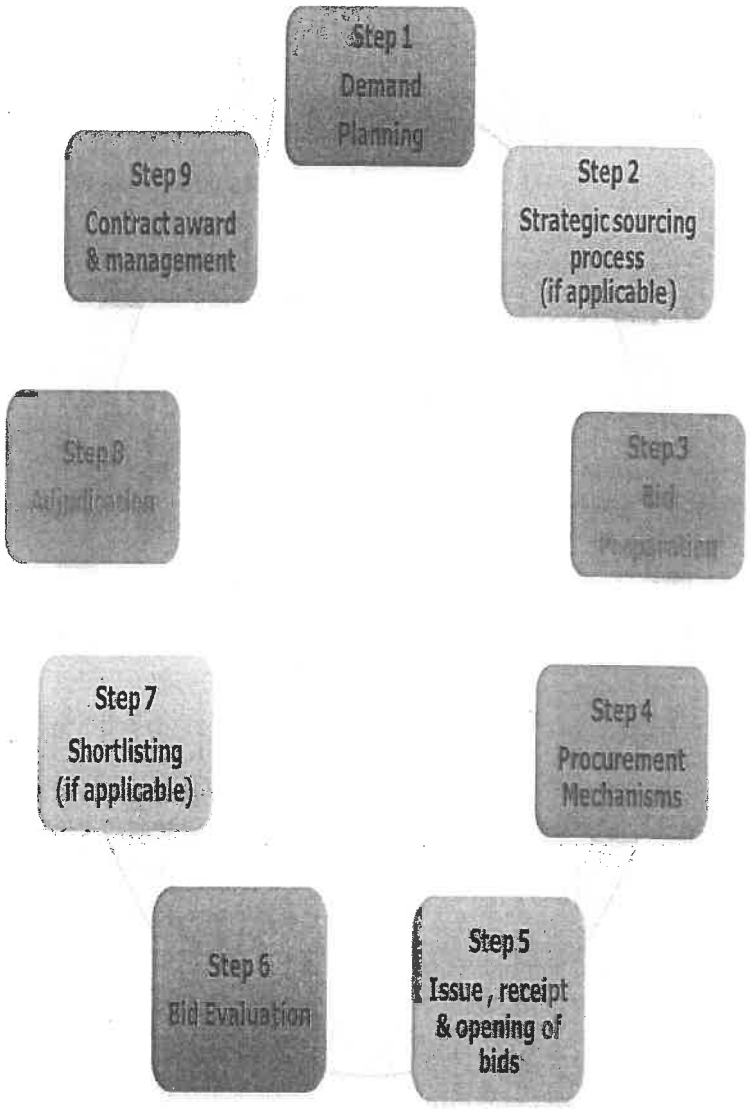

Figure [11] – The Procurement Cycle

CHAPTER 7 : DEMAND PLANNING & DEMAND MANAGEMENT

This Chapter is equally applicable in construction procurement and general procurement activities. For all construction projects a procurement package plan (PPP) is required. A procurement package plan is a collection of procurement events from a project. This package plan requires approval prior to commencement of a go to market strategy.

7.1. PREFACE

7.1.1. Demand is a business requirement for Goods/Services raised by the business/OD and received by the procurement department for further processing, such as sourcing and payment. There are 2 areas of demand i.e. demand planning and demand management.

7.1.2. Demand Planning is the first step in the procurement process, where:

7.1.2.1. the business needs are assessed in order to ensure that the required Goods/Services are procured so as to meet the business requirements of Transnet;

7.1.2.2. specifications are precisely determined;

7.1.2.3. requirements are linked to budget; and

7.1.2.4. the supplying industry has been analysed and constraints identified and assessed.

7.1.3. Demand planning is a medium term and cross functional planning process supported by a series of meetings that promote alignment, decision making and coordinated action towards achievement of financial budgets and organizational strategy.

7.1.4. Demand management is about understanding the factors that drive demand for Goods/Services and about using this knowledge to identify and implement new and innovative ways to eliminate, reduce or serve demand more efficiently and to support robust demand planning – and in so doing optimise value and quality by enabling suppliers to have a forward looking view of requirements expected of them and adequately plan production and by enabling the procurement department to adequately prepare itself and work more efficiently and effectively. Demand management therefore involves the reviewing, monitoring and improving of demand.

7.1.5. Demand review is a strategic decision process ensuring that all stakeholders are fully aware and agree to the Goods/Services that are to be procured, why it is to be procured, how it is to be procured, and the cost.

7.1.6. Demand monitoring is a tactical process ensuring that only the required quantity and Quality of Goods/Services are sourced from the right suppliers.

7.1.7. Demand improvement is a strategic and a tactical process ensuring that the quality of demand improves continuously as the demand management

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process matures, with initiatives such as reducing the demand and rationalising the Goods/Service portfolio.

7.1.8. Therefore, the purpose of demand planning and management is to ensure that the resources required to fulfil the requirements identified in Transnet's Corporate Plan are delivered at the correct price, time and place and that the delivered quantity and quality will satisfy those requirements.

7.1.9. The intention of demand planning is to:

7.1.9.1. to have a clear view of the demand requirements for major strategic commodities;

7.1.9.2. to ensure that end-users and the procurement department are brought closer together in order to enhance efficiency and achieve value for money; and

7.1.9.3. to foster an improved working relationship of openness between Transnet and its suppliers and/or service providers.

7.2. DEMAND LEVERS

A demand consists of various demand levers that are managed by the demand planning and management process. These levers are:

TABLE 5

SOURCE	The origin of the demand such as the initiating department or OD
REASON	The motivation for the demand such as why these Goods/Services need to be sourced
QUANTITY	Review the number/scope of the Goods/Services required
SPECIFICATION	Opportunity to simplify/standardise specifications
TIMEFRAME	Reduce demand frequency
COST	The indicative cost of the Goods/Services that need to be sourced
PREFERRED SUPPLIER	The preferred supplier (if any) for the requested Goods/Services Other potential suppliers who could also be in a position to supply the same Goods/Services

7.3. ROLE OF PROCUREMENT IN MANAGING DEMAND

Procurement needs to manage the demand for Goods/Services by:

- analysing demand levers and sourcing data that will enable a more accurate view/prediction of demand;;
- identifying opportunities for improvement of the entire demand management function;
- short-listing and prioritising improvement initiatives;
- developing and implementing an action plan for identified initiatives;
- monitoring the progress of improvement of the initiatives; and
- conducting regular assessment of the effectiveness and relevance of improvement initiatives.

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7.4. DEMAND PROCESS

Figure 12 below gives an outline of the main steps in the demand management process.

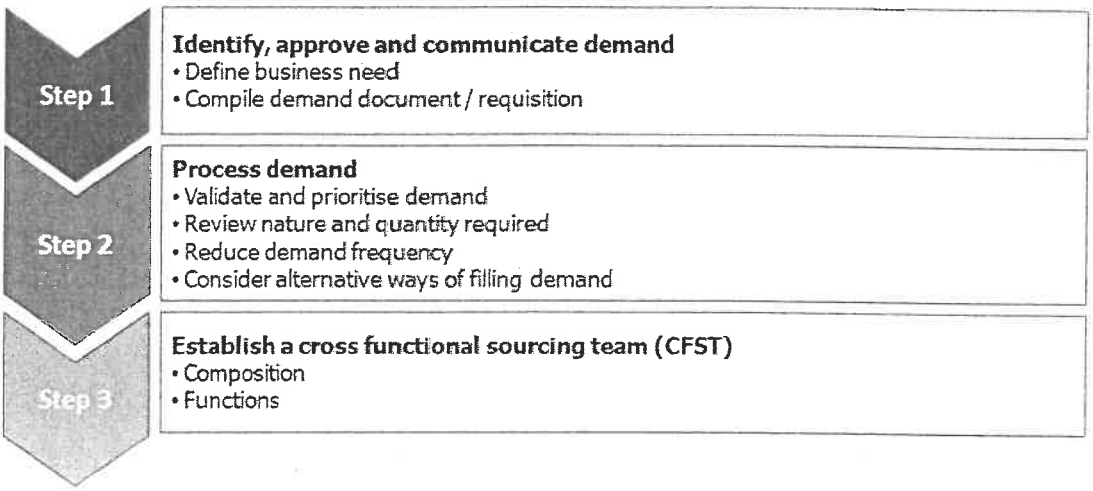
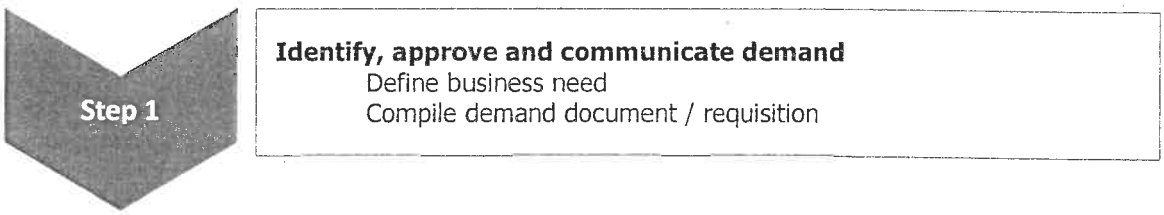


Figure [12] – Demand Steps

For sourcing events falling within the threshold for High Value Tenders, refer to the "High Value Tender Process (HVTP)" available on the iSCM Transnet Intranet.

OPERATIONS (end users) are responsible for completing

STEP 1



7.4.1. STEP 1 : Identify, approve and communicate demand

a) Definition of business need

The end users in the business (operations) need to follow the steps outlined below, in order to ensure that there is a clearly defined need in the business:-

(i) conduct a needs analysis to establish requirements relating to the business, taking into account all required capital acquisitions, planned maintenance, and other operational needs – this will be informed by both future requirements (based upon Transnet's Corporate Plan); as well as market demand forecasts (based upon Transnet's current client base demand and/or commitments made by Transnet's sales department);

(ii) establish and consolidate the reasons for the need;

(iii) ratify the need irrespective of whether it is a CAPEX or OPEX acquisition and apply for and obtain budget approval; and

(iv) draw up an annual procurement plan.

b) Compilation of demand document (per transaction)

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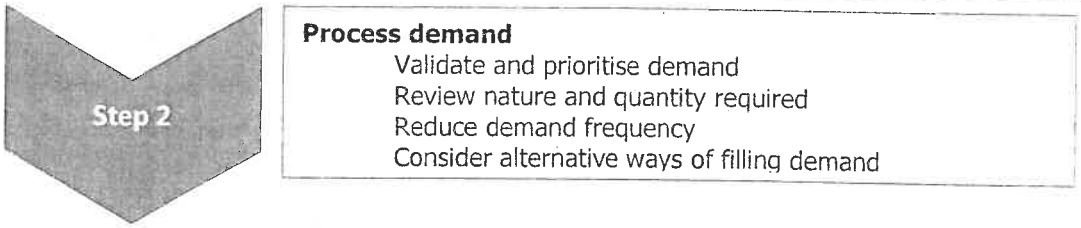
The end users in the business (operations) are responsible to provide procurement with a detailed demand requisition. This should provide a clear description of the function, required specifications, drawings, and where applicable it should:-

(i) indicate the quantities required;
(ii) indicate the frequencies required;
(iii) indicate the quality required;
(iv) indicate the unit of measure;
(v) indicate packaging, if applicable;
(vi) attach the relevant specification/drawing, where applicable;
(vii) provide previous price or estimated costs and budgetary requirements;
(viii) indicate the expected delivery date(s) and delivery address(es);
(ix) indicate any logistical and/or storage requirements;
(x) any material obsolescence risks; and
(xi) suggest potential source/s of supply and a brief analysis of the supplier industry landscape, if available.

The demand document should first be approved at an operational level. Once that is completed, it should be submitted to procurement. Operations should submit this document timeously, and allow sufficient time to acquire the Goods/Services, given lead times and governance processes.

PROCUREMENT is responsible for completing STEP 2 and STEP 3



7.4.2. STEP 2 : Processing Demand

a) Validate and prioritise demand

Procurement shall establish the following:

(i) Is the demand document/requisition duly approved by operations?
(ii) Is this a critical demand? ("Critical" is defined as having an impact on the Service provided by Transnet or the profit made by Transnet).
(iii) What would be the impact on operations if the procurement did not occur?

b) Review nature and quantity required

Procurement shall establish and review the following:

(i) Establish whether this is a requirement for Goods or a Service?
(ii) If Goods are required, whether the demand will be on-going or once-off?
(iii) If Goods are required, determine how many types of items and quantity of each item are required in total by operations at present

time and going forward? What are the options (if any) for reducing volume?

(iv) If a Service is required, determine for what length of time the Service is required? (Indicate length of Transnet's previous use (if any) of the specific Service). Could this be reduced or extended?

(v) Determine the estimated value of the sourcing event (if not provided by operations) to establish which sourcing process must be followed:

- if below R2 million, or lower threshold set by the OD CEO for Open Bids, use the quotation system (see Chapter 14);
- if over R2 million use an "open RFX", approach (see Chapter 14); and
- if within the threshold for High Value Tenders, use the High Value Tender process (see iSCM Transnet Intranet portal).

c) **Reduce demand frequency**

Procurement shall establish and review the following:-

(i) If the Goods to be purchased will require additional purchases going forward, is it reasonable for an "as- and-when call off" contract to be established? State reasons either for or against an "as-and-when call off" contract.

(ii) If a Service is required, what is the length of the anticipated contract? Explain rationale for this time period.

d) **Consider alternative ways of fulfilling demand**

Procurement shall establish and review the following whether:-

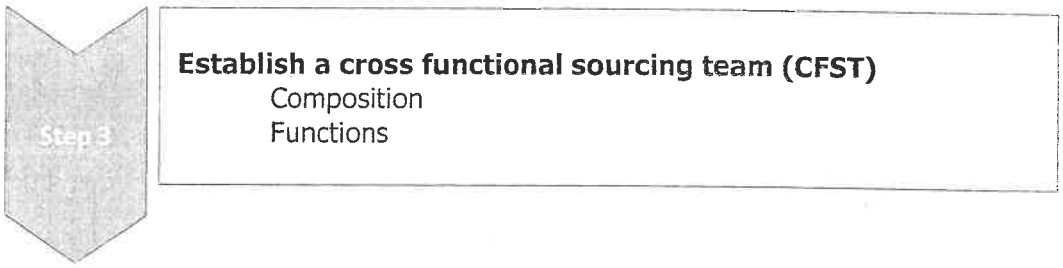
(i) the required Goods can be re-engineered or reclaimed from existing assets or Goods;

(ii) any other OD can manufacture the required Goods or provide the required Service;

(iii) the Goods are currently available in another OD with spare capacity;

(iv) this is a stock item; or

(v) this item is available on a current contract– even if it is potentially at another OD.



7.4.3. STEP 3 : Establish a Cross Functional Sourcing Team ("CFST") in the case of acquisitions greater than R5 million or where the quality criteria must be determined

a) **Rationale for the formation of a CFST**

Demand management shall be a cross-functional exercise with a view to ensuring that end users, procurement and all stakeholders are brought together in order to enhance efficiency and achieve value.

b) **Composition of the CFST**

Procurement shall establish a CFST, consisting of at least the following roles: Procurement, operations (end users/technical), SD (including B-BBEE) and risk/compliance. Other possible representatives are finance, treasury, maintenance, logistics/warehousing, disposal and legal or governance.

In instances where the sourcing event is uncomplicated and the risk to Transnet is low, the CFST can be comprised of only procurement and Quality (technical) representatives.

Procurement must ensure that the CFST consists of the relevant expertise; and that the size of the team is not of such a nature that it cannot function effectively. Nonetheless, in all instances, procurement and operations must reach agreement on the composition of the CFST.

In order for the CFST to be effective, consistent attendance by the same members is required for continuity.

c) **Functions of the CFST**

(i) Determining specifications:-

"Specification" is the terminology used to describe the requirement for goods.

If Goods are being sourced, consider whether there is any opportunity to purchase standard "off-the-shelf" Goods.

If there are technical specifications:-

- these must be compiled with a view to promoting the broadest possible competition, whilst still assuring that critical elements of performance or other requirements are achieved;
- ascertain whether similar (albeit not identical) Goods are currently in use elsewhere in Transnet, which could enable standardisation;
- interrogate the specification, i.e. determine whether it is possible to provide a functional/performance-based specification rather than a detailed specification;
- determine whether the specification has been over-engineered; and
- verify that the specification is not biased in favour of a particular brand or type of Goods.
- If a functional specification is the chosen option, the following must be observed and described in detail:
- functions and characteristics;
- desired performance and/or result parameters, based on both inputs and outputs;
- method statement templates on how outputs will be reached; and
- inclusion of relevant KPIs.

If a detailed specification will be issued, ensure that the latest specification is used, and that the quality standards (e.g. SANS, ISO) are included where applicable. In addition, ensure that the drawings are up to date and that detailed descriptions of manufacturing processes, workmanship and/or materials are indicated.

The following must be observed and indicated in the RFX in respect of functional as well as detailed specifications:

- the location(s) of required provision;
- details of qualifications required where appropriate;
- details of the conditions in which the Goods must operate;
- environmental and safety features;
- packaging, marking and labelling requirements;
- inspection or testing requirements;
- documentation required, i.e. manuals, user guides, licenses, test certificates, etc.;
- size/dimensions;
- integration with other Goods/Services;
- security requirements;
- health, safety, electrical, environmental requirements;
- training requirements, if applicable;
- timing considerations; and
- interfaces with other systems.

(ii) Determining Terms of Reference

"Terms of Reference" (ToR) is the terminology used to describe the requirement for services.

The following must be observed and indicated in respect of the ToR:

- project title;
- background;
- objective of the project
- expected outcomes/deliverables;
- competency and expertise requirements;
- timeframes;
- reporting requirements;
- whether a site inspection or information session are required with date, time and venue stated;
- available documentation; and
- minimum requirements.

(iii) Reduce portfolio or range complexity:

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- Options for rationalisation of the range of Goods/Services must be considered.
- Implications for users if choice options are reduced must be considered.

(iv) Identify and mitigate risks:

- All risks to Transnet associated with the demand must be identified and addressed in the eventual RFX;
- It should be ascertained whether suitable skills are available within procurement to address the demand and its management process.

(v) Establish the evaluation methodology to be employed – See Chapter 13 on Determining bid Evaluation Criteria.

(vi) Establish evaluation criteria and weightings – See Chapter 13 on Determining Evaluation Criteria. Clear evaluation criteria must be established, as bids may only be evaluated according to the criteria stipulated in the bid documents.

(vii) Oversee preparation and sign off of the bid documentation – See Chapter 16 on Bid Preparation.

(viii) Determine who should serve on the evaluation committee – See Chapter 18 on Evaluation.

(ix) Handover the sourcing event to procurement

7.5. CHECKLIST FOR DEMAND PLANNING & MANAGEMENT

The following checklist could be used as a template to identify the progress with respect to the Demand Management process:

TABLE 6

Demand Planning & Management Focus	Responsible
Is there a business case and approval of the demand?	Business
Has the demand been identified in the annual Procurement Plan? (The Procurement plan forms the basis of demand management)	Business & Procurement
Is there a budget allocated for this demand?	Business
Is there an approval as per the associated DoA?	Business
Have the options of fulfilling the demand (such as existing contracts and critical items) been assessed?	Business & Procurement
What is the outcome of reviewing the quantity required (i.e. are the Goods/Services required on an on-going or once-off basis)?	Procurement
Has the possibility of reducing the demand frequency, such as further purchasing or call-off, been assessed?	Business & Procurement
Have the options of alternate ways of fulfilling this demand, such as whether other Transnet ODs could manufacture these Goods, been assessed?	Procurement
Have the options of re-use been assessed? (e.g. re-engineered	Business & Procurement

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Demand Planning & Management Focus	Responsible
Goods from existing Goods or whether the Goods are available from other Transnet ODs) Have the 3 Rs (Reduce-Reuse-Recycle) been considered?	
Has the possibility of standardising the Goods and its specifications, such as off-the-shelf and customised, been assessed?	Business
Has the opportunity of reducing the Goods portfolio, such costing and risk implications associated with it, been identified?	Procurement
Have the strategic risks associated with this demand, such as strategic nature of this demand been identified?	Business
Has internal availability been assessed, i.e. • Can the needed Goods be re-engineered / reclaimed from existing assets/Goods? • Can any OD of Transnet manufacture the required Goods or provide the required Service? • Are these Goods currently available in another OD with spare capacity? • Is this a stock item? • Is this item available on a current contract?	Business & Procurement Business & Procurement Business & Procurement Business & Procurement Business & Procurement
Was the CFST properly constituted?	Procurement
Have the risks associated with the CFST working on this demand, such as capacity and capability not available within the Transnet been identified?	Procurement
Does the CFST represent all the necessary disciplines for identifying the risks associated with the event?	Procurement
Did the CFST members sign confidentiality agreements and declarations of interest?	CFST
Did the CFST properly interrogate the specification?	CFST
Were all risks identified and included in the RFX?	CFST
Has it been considered whether this should be a transversal event in the interests of Transnet as a whole?	CFST
Has an 'As-and When' contract option been investigated, in order to cater for future demand?	CFST
Was the appropriate evaluation method chosen?	CFST
Were thresholds set for SD and Quality/Functionality?	CFST
Were proper evaluation criteria set for: • SD • Functionality • Preference • Price / TCO?	CFST
Were appropriate weightings allocated to each criterion?	CFST

7.6. SOURCING STRATEGY

Once a CFST has been established, the next step is to determine the sourcing strategy. The methodology for determining a sourcing strategy is depicted in the figure below. Please refer to the Strategic Sourcing Standard Operating Procedures (SOP) which provides detailed guidance on the strategic sourcing process. The SOP can be downloaded from the iSCM Transnet Intranet.

METHODOLOGY FOR DEVELOPING A SOURCING STRATEGY

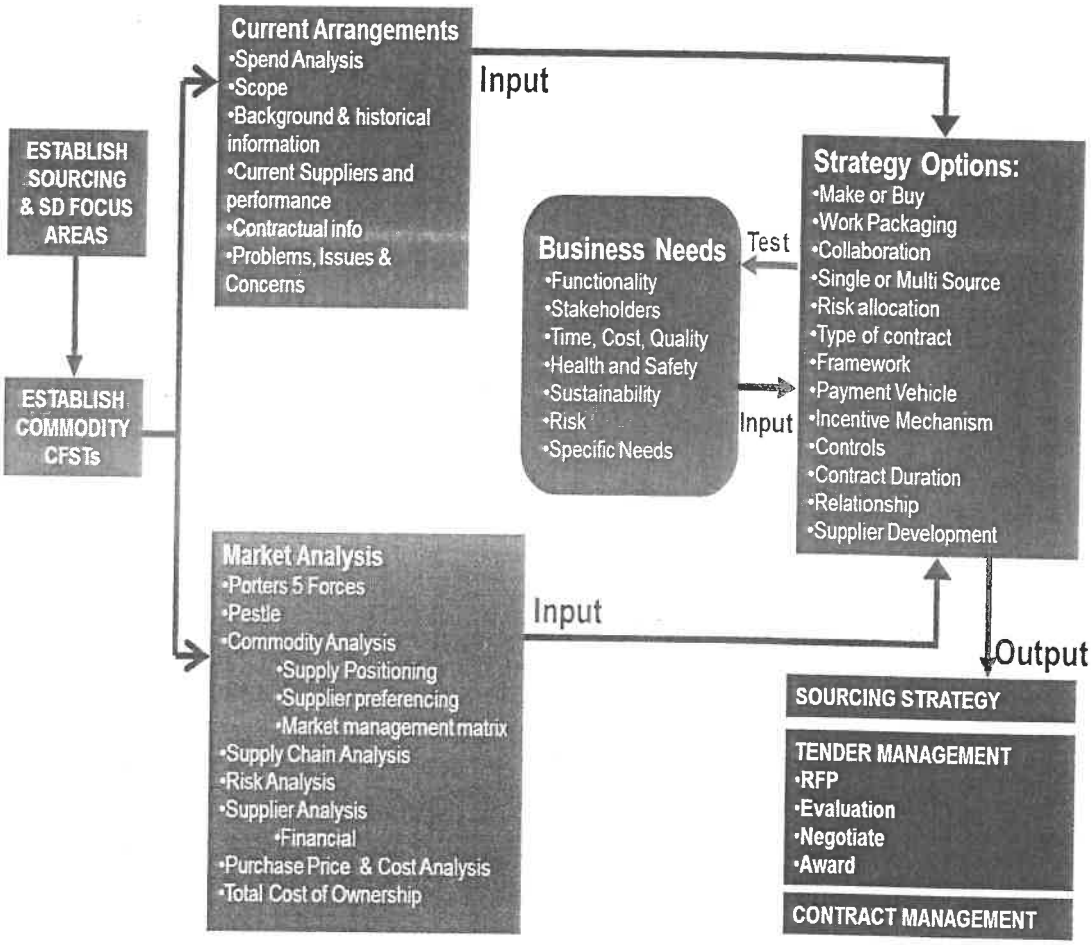

Figure [13] – Methodology for developing a sourcing strategy

CHAPTER 8 : INTERNAL PROCUREMENT/INTERDIVISIONAL SUPPORT

This Chapter is equally applicable in construction procurement and general procurement activities.

8.1 INTERDIVISIONAL RELATIONSHIPS

Transnet Entities are required to develop trust and a sound interdivisional working relationship with one another in the interest of Transnet. To achieve this, such entities **must** be afforded the right of first refusal in the procurement of Goods and Services.

8.2 STRATEGIC SPECIALIST UNITS

The following Specialist Units have been identified as strategically important to the Transnet Group:

TABLE 7

Division / Specialist Unit	Goods and/or Services Provided
Transnet Engineering ("**TE**", a specialist core Division)	TE is responsible for: • heavy engineering including locomotive, wagon and coach repairs, upgrades and maintenance • component manufacture, locomotive manufacture and assembly • port equipment, and is being positioned for maintenance and repairs thereof
Transnet Capital Projects ("**TCP**")	TCP is responsible for: • multi-disciplinary design Services • project management and construction management Services Construction projects >R300 million **must** be carried out by TCP. In the case of construction related projects <R300 million, the following rules apply: • The project may be carried out by the OD itself if the OD has the necessary in-house resources according to the requirements of the NEC3 suite of contracts and the CIDB Standard for Uniformity in Construction Procurement; and • If the OD decides not to run the project itself, TCP must be given the first right of refusal before the external market can be approached
Transnet Fuel Solutions (TFS, previously known as HSA)	TFS is responsible for: • Transnet-wide fuel acquisition, distribution and management
Transnet Freight Rail ("**TFR**") School of Rail	TFR School of Rail is responsible for: • training tailored exclusively for core businesses, e.g.

Division / Specialist Unit	Goods and/or Services Provided
	School of Rail, train drivers, train control officers, • software training in general, etc.
Transnet National Ports Authority ("**TNPA**") School of Ports	TNPA School of Ports is responsible for: • Facilitation of knowledge transfer as the provider of marine training programmes in South Africa • Planning to position itself as Africa's training leader in Marine Operations, Port Management and Port Engineering.
Transnet Property (TP)	TP is responsible for: • Property management • Facilities management • Property development • Property valuations • Property surveying

8.3 ABILITY OF TRANSNET ODS TO PERFORM

Before considering which procurement mechanism would be most appropriate, it is important that the end-user and procurement department consider whether another Transnet OD is able to provide the required Goods or Services.

8.4 COMPULSORY UTILISATION OF SPECIALIST UNITS

The Specialist Units mentioned above must be utilised by other Transnet Entities for required Goods and Services falling within their scope. The external market may not be approached for Goods and Services falling within the strategic Specialist Units' or Division's core-competency areas. This would also include specialist services that are required which may be performed by a particular internal functional area e.g. Group Treasury and Group Tax. The only exception to this rule is if the Specialised Unit indicates in writing that they do not have the ability or capacity to provide the required Goods or Services.

8.5 INTERDIVISIONAL SUPPORT

Internal contracts (Memoranda of Understanding) between ODs and Specialist Units are dealt with in the terms of the Delegation of Authority Framework. Such contracts do not require AC approval. However, any external contracts which may be required by the internal Specialist Unit are subject to these procedures and require AC approval.

8.6 MEMORANDA OF UNDERSTANDING

The business relationship between Transnet Divisions and Specialist Units must be governed by an overarching Memorandum of Understanding (MOU) between the parties. The MOU must be signed by the CEs of the relevant ODs or Specialist Units and Service Level Agreements should be signed where appropriate.

8.7 DISPUTES

Any disputes must be resolved in terms of the agreed MOU. If the OD CEs are unable to resolve the dispute, the matter must be escalated to the GCE who shall make a final decision on the matter.

8.8 SERVICE LEVEL AGREEMENT

ODs will need to enter into a project-specific agreement (SLA) in relation to each individual project. This agreement will set out in details the rights, duties and obligations of each OD in that specific project. Contracts between divisions such as SLAs and project specific agreements may be entered into between OD CEs in terms of paragraph 5.5.4 of the DoA Framework.

8.9 INTERDIVISIONAL PRICING

Transnet entities undertaking work on behalf of other entities should reciprocate by pricing and carrying out their Services in a way that promotes and develops a culture of interdivisional support. The pricing must be based on appropriate market analysis to benchmark fair and reasonable prices. Should there be a dispute regarding pricing, the matter is to be escalated to the CEs of the relevant Divisions for resolution. Should the CEs not reach consensus, the matter must be escalated to the GCE who shall make a final decision on the matter.

8.10 NON-CORE BUSINESSES

Non-core businesses which have already exited Transnet, such as Freightdynamics and Autopax (Pty) Ltd will enjoy no interdivisional support.

8.11 AC INVOLVEMENT

Interdivisional transactions between Transnet Entities and Specialist Units fall outside the scope of the AC. However, in any case where the external market is approached, normal procurement procedures must be followed, and if relevant, the AC must approve the transaction.

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CHAPTER 9 : CONTRACT OPTIONS

This Chapter applies to both general procurement and construction procurement. Table 9 below provides a summary of the types of contracts available for construction-related procurement.

9.1 CHOICE OF CONTRACT

This chapter contains a list of contractual choices and options available. The following factors, amongst others, will assist in determining the appropriate type of contract:

- the duration of the contract;
- the type of Goods, Services or Works to be acquired;
- the frequency of demand; and
- the availability of the Goods or Services.

Table 8 below outlines the various contract options for general procurement and provides a guideline as to when those options may best be utilised. Table 9 provides a summary of the types of contracts available for construction-related procurement.

TABLE 8

Ref	Contract Options	Description	Characteristics	Best Suited For
1	"As and When" contracts	Short or medium-term contracts entered into for a fixed period against which call-offs are made as and when required by the customer	• Shorter contract periods (1-2 Years) • Estimated quantities • Specific period/volume/value ceiling or a combination.	• Continuous but unpredictacle and irregular demand for Goods/Services • Volumes cannot be accurately determined upfront • Demand cannot be anticipated • Generally off-the-shelf items
2	Fixed quantity contracts	Contracts entered into for once-off purchases	• Demand is known • Once-off purchase • Once-off or staggered delivery	• Planned programmes
3	Long-term contracts	Contracts entered into for a fixed period typically for five-Years or more	• Long term demand signal • Emphasis on SD • Suppliers' recoupment of investment is long-term • Restricts other market players for a period of time	• Purchase of high value Goods/Services • Goods/Services of strategic importance • Goods with long lead time

Ref	Contract Options	Description	Characteristics	Best Suited For
4	Transversal contracts	A contract that services more than one internal consumer (an internal shared service arrangement) entered into for a fixed period. A transversal contract may be entered into for the benefit of the entire Group, a particular OD and/or just a region. Below is a list of the types of Transversal contract options:	• Emanates from a formal strategic sourcing event • Fixed-contract period Optimising economies of scale through consolidation of demand/purchasing power	
		• Group-wide Transversal contracts		Consolidation of Goods / Services used Group wide
		• Transversal between ODs/Corporate		Consolidation of Goods / Services used between ODs
		• OD-wide Transversal contracts		Consolidation of Goods / Services used within an OD
		• Regional Transversal contracts		Consolidation of Goods / Services used within a region by one or more than one OD
5	Lease/Rental contracts for movable assets	Lease contract for the use of moveable assets entered into for a fixed period	• Specified/unspecified period • Agreed Rental • Option of renewal	• Goods/Services where it would be more economically viable to lease than to purchase
6	Inter-Divisional Memoranda of Understanding (MOUs)	A 'contract' to govern the service performance agreed between ODs	• Not a formal contract • It governs the internal relationship between the ODs	• Governing the performance as agreed between the ODs
7	Income-generating (revenue) contracts	Although excluded from the PPM, associated procurements fall within the ambit of the PPM (See paragraph 15.6)	• Listed as a process excluded from PPM • Associated procurement must follow the PPM	• As per OD requirements

**Any of the above-mentioned contract options can originate from any of the defined general procurement mechanisms and/or special mechanisms for procurement.*

TABLE 9 TYPES OF CONTRACTS FOR CONSTRUCTION PROCUREMENT

Table 9 below provides a summary of the types of contracts available for construction-related procurement.

Contract Option	Best suited for
Engineering and Construction Contract (ECC)	Is used for the appointment of a Contractor for Engineering and Construction work, including any level of design responsibility.
Professional Services Contract (PSC)	Is used for the appointment of a Consultant to provide professional services.
Term Service Contract (TSC)	This contract should be used for the appointment of a Service Provider for a fixed term to manage and provide a service.
Supply Contract (SC)	This contract should be used for local and international procurement of high-value goods and related services including design.
Engineering and Construction Short Contract (ECSC)	This contract is an alternative to the ECC and is for use with contracts which do not require sophisticated management techniques, comprise straightforward work and impose only low risks
Supply Short Contract (SSC)	This contract should be used for local and international procurement of goods under a single order or on a batch order basis and is for use with contracts which do not require sophisticated management techniques, and impose only low risks on both the Purchaser and the Supplier.
Framework Contract	This contract should be used for the appointment of one or more Suppliers to carry out Construction work or to provide design and advisory services on an "as instructed" basis over a set term.
Adjudicator's Contract	This contract should be used for the appointment of an Adjudicator to decide disputes under the NEC3 family of contracts. It may also be used for the appointment of an Adjudicator under other forms of contract.

**Any of the above-mentioned contract options can originate from any of the CIDB procurement mechanisms. These contract options are available for use for construction procurement and any procurement associated with the construction industry e.g. Professional services related to construction projects.*

9.2 CONTRACTS FOR A PERIOD LONGER THAN TWO YEARS

Contracts for a period longer than two Years require prior AC approval. However, if the RFP provides for a number of bid options including a period of up to two Years and more than two Years, prior AC approval is not required. (Also see paragraph 21.8). Irrespective of which of the two options above is followed, the award of the business has to be approved by the relevant AC in the normal manner.

9.3 STANDARD TRANSNET TERMS AND CONDITIONS OF CONTRACT

Standard templates must be used unless there are cogent reasons why such standard agreements cannot be used in a particular instance. Refer to the Standardised Transnet Templates available on the iSCM Transnet Intranet, including but not limited to:

- Standard Terms and Conditions of Contract
- Master Agreements

Any additions or deletions from the above-mentioned templates must be contained in a Special Conditions Schedule. (Also see paragraph 21.6.2)

9.4 CONSOLIDATION OF CONTRACTS

Refer to paragraph 15.5 for the process to be followed when there is an opportunity to consolidate two or more existing contracts in the best interest of Transnet rather than engaging the market anew.

9.5 CHOICE OF SALES/PURCHASE TERMS FOR IMPORTED GOODS (INCOTERMS)

The Incoterms rules or International Commercial terms are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) widely used in international commercial transactions. A series of three-letter trade terms related to common sales practices, the Incoterms rules are intended primarily to clearly communicate the responsibilities, costs and risks associated with the transportation and delivery of Goods. The Incoterms rules are accepted by governments, legal authorities and practitioners worldwide for the interpretation of most commonly used terms in international trade. They are intended to reduce or remove uncertainties arising from different interpretation of the rules in different countries. First published in 1936, the Incoterms rules have been periodically updated, with the eighth version (Incoterms 2010) having been published and made effective on January 1, 2011. "**Incoterms**" is a registered trademark of the ICC[1].

Refer to Appendix C for a detailed explanation of all Incoterms.

[1] *Source: Wikipedia*

CHAPTER 10 : PREFERENTIAL PROCUREMENT APPROACH AND DESIRED OUTCOMES

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This Chapter applies to both general procurement and construction procurement. This is dealt with in more detail in paragraphs 10.3.2 of this Chapter.

10.1 TARGETS

In accordance with its vision of being a significant agent of empowerment within the South African society, Transnet has adopted the following plan to achieve its B-BBEE targets. These targets are more ambitious than those prescribed in the DTI Code of Good Practice:

TABLE 10

Sub Element	DTI Generic Targets	Transnet Target 2013/2014
B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	70%	90%
B-BBEE procurement spend from QSEs or from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend.	10%	17.5%
B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: • Suppliers who are more than 50% Black-owned (3 out of 5 points); and	Consolidated target of 15% for both	17.5%
• Suppliers who are more than 30% Black women-owned (2 out of 5 points)		8%

10.2 MECHANISMS

Transnet must apply the provisions of the PPPFA regulations in determining its preferential procurement framework.

Transnet conducts an assessment of bidders' B-BBEE performance based on the following:

- bidders' past B-BBEE performance based on the B-BBEE scorecard as required in terms of the PPPFA.

10.3 MEASUREMENT OF B-BBEE STATUS

10.3.1 Measurement as per scorecard

Bid documents must specifically state that all Suppliers will be measured in accordance with the DTI Generic Scorecard provided for in the Codes of Good Practice or the applicable Sector Code.

Transnet prefers doing business with enterprises that share its values, and are prepared to contribute to meaningful B-BBEE initiatives (e.g. subcontracting, JV's etc.) as part of their Bid responses. Transnet will accordingly allow a preference to companies who provide a B-BBEE Verification Certificate.

Transnet requires prospective Bidders to have themselves verified by any verification agency accredited by the South African National Accreditation System ("SANAS") or Registered Auditors approved by the Independent Regulatory Board of Auditors ("IRBA") in accordance with the approval granted by the Department of Trade and Industry. Please refer to Appendix G regarding determining the validity of B-BBEE cerificates. Enterprises will be rated by verification agencies/registered auditors based on the following:

TABLE 11

Type of Enterprise	Annual Turnover	Number of Elements Scored on the B-BBEE Generic Scorecard
Large	In excess of R35 million	All 7 elements
Qualifying Small Enterprise (QSE)	Between R5 million and R35 million	Any 4 elements (equal weighting of 25% each)
Exempted Micro Enterprise (EME)	R5 million or less	Deemed to be 100% compliant. Automatic Level 4 rating irrespective of race of ownership

a) Exempted Micro Enterprises (EMEs) are defined by the Codes as companies with an annual total turnover of R5 million or less. EMEs enjoy a deemed BBBEE recognition of a Level 4 contributor. EMEs which are more than 50% Black owned are promoted to a Level 3 contributor.

b) Sufficient evidence of qualification as an EME is an auditor's certificate (auditors need not meet the prerequisite for Independent Regulatory Board of Auditors ("IRBA") approval to provide B-BBEE assurance services for the purpose of conducting verification and issuing EME B-BBEE certificates), a certificate issued by an accounting officer as contemplated in the Closed Corporations Act 69 of 1984, or a certificate issued by a Verification Agency accredited by SANAS. The certificate issued by an auditor or accounting officer to an EME may be in the form of a letter.

10.3.2 Construction industry B-BBEE requirements

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Construction Sector Codes Targets thresholds differ from the general codes, The table below illustrates the construction sector thresholds for EMEs, QSEs and Large Enterprises:

TABLE 12

Type of Enterprise	Annual Turnover Contractor	Annual Turnover Built Environment Professional (BEP)	Number of Elements Scored on the B-BBEE Generic Scorecard
Large	In excess of R35 million	Larger than R11.5 million	All 7 elements
Qualifying Small Enterprise (QSE)	Between R5 million and R35 million	Larger than R1,5 million and equal to or less than R11,5 million	Any 4 elements (equal weighting of 25% each)
Exempted Micro Enterprise (EME)	R5 million or less	R1.5 million rand or less	Deemed to be 100% compliant. Automatic Level 4 rating irrespective of race of ownership

10.3.3 In addition to the above, Bidders who wish to enter into a Joint Venture or sub-contract portions of the contract to B-BBEE companies, must state in their bids the percentage of the total contract value that will be allocated to such B-BBEE companies should they be successful in being awarded any business. A rating certificate in respect of such B-BBEE JV-partners and / or sub-contractor/s, as well as a breakdown of the distribution of the aforementioned percentage must also be furnished. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.

10.3.4 Public entities and tertiary institutions must also submit B-BBEE Status Level Verification Certificates together with their bids.

10.3.5 Verification certificates are only valid for one Year from the date of issue. Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims. A B-BBEE certificate will be regarded as valid provided that the closing date of the bid falls within the expiry date of the certificate.

If the RFP specifically requires the bidder to provide a valid B-BBEE certificate, it will be incumbent upon the bidder to do so, failing which the non compliant bidder/s will score zero for B-BBEE. However, if Transnet officials are aware of the fact that Transnet is currently in possession of a valid B-BBEE certificate from the bidder that was obtained for the purpose of establishing the database of possible suppliers for price quotations or that was submitted together with another bid, it is not necessary to obtain a new B-BBEE Status Level Verification Certificate each time a bid is submitted from the specific bidder, provided that the B-BBEE certificate remains valid at the closing date and time of the bid.

10.3.6 In terms of the PPPFA regulations, based on the overall performance of a supplier in terms of its B-BBEE verification, it receives a B-BBEE status and a point out of 10 or 20 is awarded therefor depending on the value of the transaction. This is in accordance with the preference point systems stipulated in the PPPFA regulations. The 80/20 preference point system is applicable to bids up to R1 million in value (all applicable taxes included). The 90/10 preference point system is applicable to bids above R1 million in value (all applicable taxes included). In terms of the PPPFA, the estimated costs and the appropriate preference point system (i.e. 80/20 or 90/10) must be determined upfront prior to advertising a bid and must be stipulated in the invitation to bid. It is important to note that the thresholds for petty cash, the quotation system and open bid process is not affected by the thresholds mentioned above.

10.3.7 Points must be awarded to bidders based on their B-BBEE status as indicated in Figure [14] below:

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BEE Status	Qualification	Recognition level	Twenty Preference Points based on scorecard for transactions below R1 million	Ten Preference Points based on scorecard for transactions above R1 million
Level **One** Contributor	≥100 points on the Generic Scorecard	135%	20	10
Level **Two** Contributor	≥85 but <100 points on the Generic Scorecard	125%	18	9
Level **Three** Contributor	≥75 but <85 on the Generic Scorecard	110%	16	8
Level **Four** Contributor	≥65 but <75 on the Generic Scorecard	100%	12	5
Level **Five** Contributor	≥55 but <65 on the Generic Scorecard	80%	8	4
Level **Six** Contributor	≥45 but <55 on the Generic Scorecard	60%	6	3
Level **Seven** Contributor	≥40 but <45 on the Generic Scorecard	50%	4	2
Level **Eight** Contributor	≥30 but <40 on the Generic Scorecard	10%	2	1
Non-Compliant Contributor	<30 on the Generic Scorecard	0%	0	0

Figure [14] – B-BBEE Scorecard

10.3.8 B-BBEE points must be claimed by Bidders utilising the B-BBEE Preference Points Claim Form. This Claim Form must be listed as a returnable document. Please refer to the iSCM Intranet Portal for a copy of the B-BBEE Preference Points Claim Form.

10.3.9 Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for BBBEE but should not be disqualified from the bidding process. They will score zero (0) points out of 10 or 20 for B-BBEE.

10.4 B-BBEE IMPROVEMENT PLAN

10.4.1 Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Transnet may request that prospective bidders submit a B-BBEE Improvement Plan with their bid submission. Bidders will be requested to indicate the extent to which their ownership, management control, employment equity, preferential procurement, skills development and enterprise development will be maintained or improved over the contract period. The B-BBEE Improvement Plan

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will not be requested as a mandatory or essential returnable document but as an additional document. The B-BBEE Improvement Plan will not be evaluated and bidders will not be disqualified for failure to submit the Plan.

10.4.2 Should the preferred bidder/s submit a B-BBEE Improvement Plan, the final details of the Improvement Plan will be negotiated at contract negotiation phase. Even if an Improvement Plan is not requested at the bid stage or the preferred bidder does not submit a Plan at bid stage, preferred bidders may be requested to submit a B-BBEE improvement plan at contract negotiation stage, where appropriate. In instances where the Improvement plan has been negotiated and agreed upon, the contract concluded with the successful bidder will incorporate its B-BBEE improvement commitments as a material term of the contract.

10.4.3 In addition, the contract with the Successful Bidder must contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the preference targets in the contract. Please refer to paragraph 22.3.9 regarding penalties.

10.4.4 Furthermore, failure to achieve the Improvement Plan targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract. Milestones in terms of achievement of Improvement Plan targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.

10.4.5 Monitoring and evaluation will be conducted by the SD department as a standard requirement to ensure tracking and successful delivery of the commitments. Refer to the iSCM Intranet portal for the template for a B-BBEE Improvement Plan.

CHAPTER 11 : LOCAL CONTENT

cidb

Should construction procurement include a minimum local content threshold, either in terms of the designation of a sector or in non designated sectors, the requirements of this Chapter and any Instruction Notes issued by National Treasury must be adhered to.

11.1 INTRODUCTION

11.1.1 Increased Local Production and Content ("LC") forms an integral component of Transnet's Supply Chain Strategy. This is aligned to Government's vision as articulated in IPAP 2 and the NGP as well as Transnet's Supply Chain Policy. Transnet Entities are therefore required to actively promote local content and production in their bidding processes.

11.2 DESIGNATED SECTORS

11.2.1 The PPPFA Regulations, 2011 which came into effect on 7 December 2011, prescribe how Local Production and Content is to be measured in public sector Bids. In accordance with Regulation 9(1), when issuing bids involving "designated sectors" Transnet must advertise such bids with a specific Bid condition that only locally produced goods, services or works which meet a **stipulated minimum threshold** for Local Production and Content will be considered.

11.2.2 Designated sectors are those sectors which have been designated by the Department of Trade and Industry ("DTI") for Local Production and Content. National Treasury has issued Instruction Notes in terms of how to implement the designation of the sectors for Local Content. The Instruction Notes issued by National Treasury on designated sectors must always be strictly adhered to when tenders related to designated sectors are issued. The following table indicates the designated sectors and minimum threshold for local content as determined by the Department of Trade and Industry and National Treasury:

TABLE 13

Sector	Minimum threshold for local content
Buses (Bus Body)	**70% – 80%**
Textile, Clothing, Leather and Footwear	**100%**
Steel Power Pylons & substations	**100%**
Canned / Processed Vegetables	**80%**
Furniture Products	
Office Furniture	**85%**
School Furniture	**100%**
Base and mattress	**90%**
Rail Rolling Stock	
Diesel locomotives	**55%**
Electric locomotives	**60%**
Electric Multiple Units (EMUs)	**65%**
Wagons	**80%**
Set Top Boxes (STB)	**30%**
Electrical and Telecom Cable Products	**90%**
Solar Water Heater Components	**70%**

11.2.3 Further to the overall designations mentioned in the table above, please refer to the Instruction Notes issued by NT as certain sectors have designated sub-sectors/components in addition to the overall thresholds.

11.2.4 Please refer to National Treasury's website for an up-to-date list of designated sectors on: http://www.treasury.gov.za/divisions/sf/sc/PracticeNotes/default.aspx.

11.3 NON DESIGNATED SECTORS

11.3.1 Organs of state are allowed to impose similar conditions for local content when issuing tenders in sectors that have not been designated by DTI, but this must be done in accordance with specific directives issued by National Treasury. National Treasury is still in the process of finalizing such directives. Please note that until such time as the directives are issued, bid documents should not include a minimum threshold for local content in respect of non-designated sectors. Paragraphs 11.3.2 and 11.3.3 will apply once National Treasury issues such directives.

11.3.2 When issuing bids in sectors that have not been specifically designated for Local Production and Content ("non designated sectors"), Transnet will actively promote Local Production and Content where possible. Therefore, before approaching the

market, Transnet Entities are required to conduct proper market analysis to determine on a case by case basis whether opportunities for Local Production and Content exist. Where opportunities do exist, this must be reflected in the procurement strategy. Furthermore, in accordance with Regulation 9(3), the RFP must reflect the minimum threshold for LC that must be met by bidders to qualify for further consideration. Bidders who fail to achieve the set minimum thresholds will be disqualified from the bidding process.

11.3.3 In this regard Transnet must consciously look for ways to incorporate local content in its tenders, where appropriate, particularly where the tender falls within one of the sectors clusters identified in IPAP II. These sector clusters are as follows in terms of the IPAP 2012/2013 – 2014/2015:

a) Cluster 1 Qualitatively New Areas of Focus

- Metal fabrication, capital and transport equipment sectors;
- Oil and gas sectors;
- 'Green' and energy saving industries;
- Agro-processing linked to food pricing and security; and
- Boatbuilding.

b) Cluster 2 Scaled up and Broadened Interventions in Existing IPAP Sectors

- Automotive products and components;
- Plastics, pharmaceuticals and chemicals;
- Biofuels;
- Forestry, paper, pulp and furniture;
- Strengthening of links between cultural industries and tourism; and
- Business processing.

c) Cluster 3 Sectors with Potential for Long Term Advanced Capabilities

- Nuclear;
- Advanced Materials; and
- Aerospace.

11.4 DEFINITION OF LC

11.4.1 Local Content is defined as that portion of the Bid price which is not included in the Imported Content, provided that local manufacture actually does take place. Local Production and Content is therefore determined as a percentage of the Bid price. For example, if the stipulated minimum threshold for Local Production and Content is 60%, this means that 60% of the Bid price must be spent on Local Production and Content (i.e. everything that is not included in Imported Content.) "Imported Content" has a specific meaning in the regulations: It means "*that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry.*"

11.5 EVALUATION OF LC

11.5.1 The calculation of LC can therefore be expressed in the following simple formula:

Bid price-value of Imported Content (cost of components, parts & materials)
= value of Local Production & Content

The value of the Local Content must be reflected as a percentage of the bid price to determine whether it meets the stipulated minimum threshold.

11.5.2 National Treasury requires that the value of Local Production and Content be calculated according to the following formula:

$$LC = \left(1 - \frac{x}{y}\right) \times 100$$

Where

x imported content

y bid price excluding VAT

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank at 12:00p.m on the date, one week (7 calendar days) prior to the closing date of the Bid.

11.6 LC VS SD

It is important to note that LC does not form part of SD evaluation and must be evaluated as the first threshold in the evaluation process. The evaluation of LC must not overlap or be duplicated in the evaluation of "local capability and capacity building" which forms part of the SD evaluation. LC is purely concerned with the percentage of the bid price that will be spent locally. "Local capability and capacity building" on the other hand also takes non monetary measurements into account, such as the number of local suppliers to be utilised, etc.

11.7 NATIONAL TREASURY LC REQUIREMENTS

It is a requirement of National Treasury that the Declaration Certificate for Local Content (SBD 6.2) form part of the RFP, whenever a minimum threshold for LC is required. In such instances, SBD 6.2 must be listed as a compulsory returnable document. Please refer to the iSCM Intranet portal for a full suite of RFX templates to be used for bids involving Local Content and Production including a copy of SBD 6.2.

Note: LC will always be the first threshold – i.e. LC will always be evaluated as a first step, to determine whether bids comply with the minimum stipulated threshold for that particular designated sector or non designated sector where Transnet intends to set a minimum threshold for LC. Bidders that do not meet the set minimum threshold for LC must be rejected at this stage.

CHAPTER 12 : DETERMINING SD APPROACH AND DESIRED SD OUTCOMES

cidb

This Chapter is applicable to both general procurement and construction procurement.

SD (including CSDP and/or B-BBEE) should form an integral part of the procurement strategy in every procurement transaction. The nature and extent of the SD opportunities will depend on the nature of the transaction.

Increased Competitiveness, Capability and Capacity (IC^3) matrix:

Transnet's SD approach is to leverage the MDS infrastructure programme to foster economic growth and promote transformation

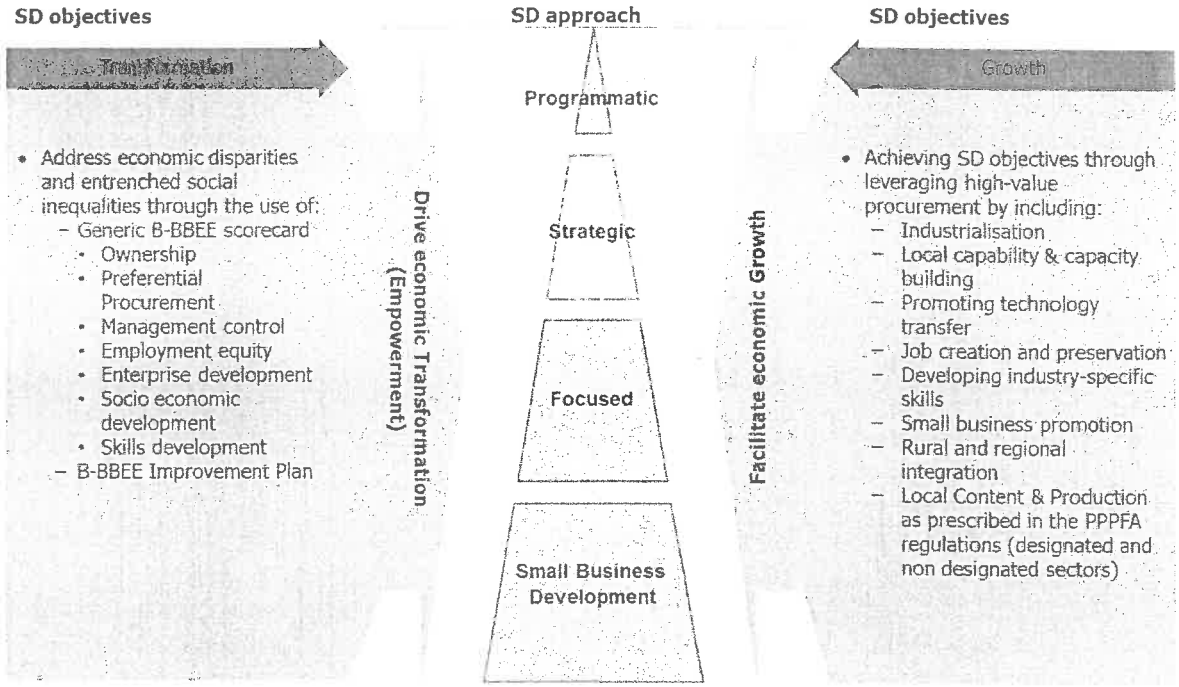


Figure [15] – SD Approach

The Figure referred to above, categorises SD opportunities based on their value, extent of industrial leverage and strategic importance to Transnet.

12.1 SD CATEGORIES

All transactions involving SD should be evaluated against the IC^3 Supplier Development Matrix. The IC^3 Supplier Development Classification Matrix assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet. Once opportunities are identified it will be possible to identify the tools that should be implemented to maximise the full SD potential from these opportunities.

The categories of SD identified in the Matrix are as follows:

12.1.1 Programmatic

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet's balance sheet. They are identified either in IPAP II or through Transnet as a strategic fleet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructural development and industrialisation are attained through joint support and in some cases public spending.

Investment is focused in plant, technology and skills in both intermediate and advanced capabilities to develop competitive advantage. An example is the Transnet locomotives fleet.

12.1.2 Strategic

Strategic initiatives follow a 3 to 5 Year planning horizon, involving investment in technology and/or skills in intermediate capabilities to achieve local capability and capacity building. This ensures that multinational corporations, original equipment manufacturers (OEMs) and service providers develop a certain percentage of their Goods locally. Strategic initiatives can therefore be used to achieve local capability and capacity building objectives by increasing the competitiveness, capability and efficiency of local suppliers. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require government support to develop local capability.

12.1.3 Focused

Focused initiatives include all medium to high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium term contracts that can be leveraged to encourage supplier and product development. The focus on investment in technology or skills enhances existing local industrial capability and/or the ability to supply strategic Services. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local suppliers. It furthers the objectives of empowerment, transformation, regional development and rural upliftment.

12.1.4 Small Enterprise Development

Small Enterprise Development transactions are typically of low value and have no industrial leverage as it is characterised by low complexity Goods and high competition. These initiatives concentrate on increasing the capability of small local suppliers and are targeted toward previously disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of financial and non-financial Services that help entrepreneurs to start new businesses and to grow existing ones.

12.2 CATEGORISATION OF TRANSACTIONS INTO THE RIGHT SD QUANDRANT

Transnet has designed a focused four-step process for identifying high value generating SD opportunities (see *Figure [16]* below). The process takes Transnet's CAPEX and OPEX spend and then filters specific commodities by value to identify significant spend items. Significant spend items are likely to have the most leverage for SD opportunities. The industrial leverage analysis provides a view on the risk and the complexity of the commodity to understand the risk to the supplier and to Transnet. The process needs to be conducted in its entirety in order to determine the true nature of the opportunity as there are various elements which impact on the categorisation of opportunities. Each transaction must be analysed on a "case

by case" basis, taking cognisance of the nature and complexity that is involved in that particular SD activity.

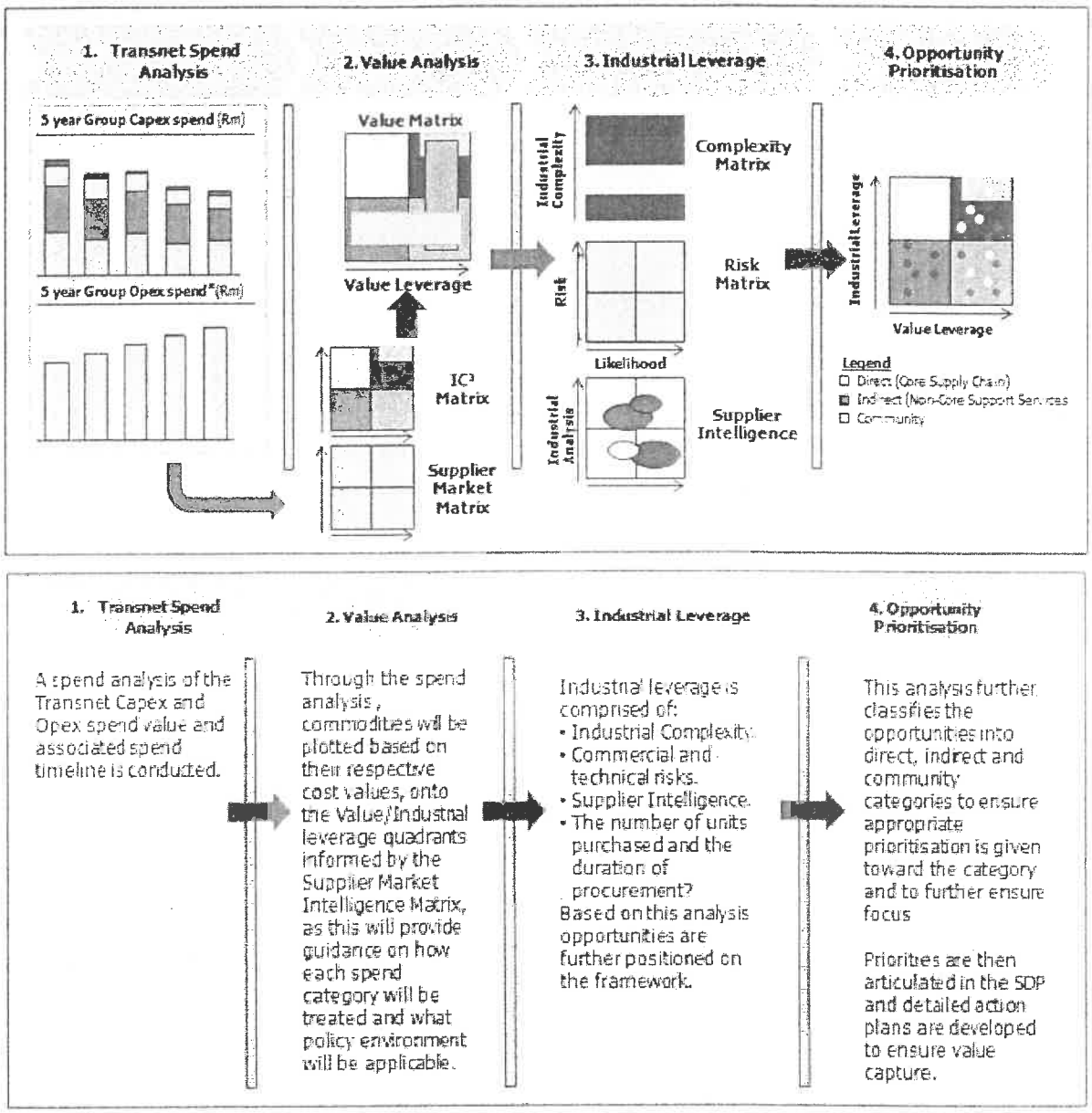


Figure [16] – 4 Step Process

This process is briefly described above, but a detailed description can be obtained in the Transnet Supplier Development Plan.

12.3 SUPPLIER DEVELOPMENT (SD) MECHANISMS

If a specific commodity has been earmarked as a SD commodity, SD should be included either as a threshold or prequalification criteria or both if it is justified that further value will be extracted using a combination of these two mechanisms. A rigid "one size fits all" approach cannot be implemented as each procurement transaction will need to be evaluated on its own merits based on the nature of the transaction with specific focus areas. The assistance and guidance of the SD COE must always be sought when developing SD criteria.

Depending on the supplier market and what is feasible and achievable on a specific bid, SD criteria will differ on a case by case basis. For example, in one case local manufacture, local assembly, industrialisation may be feasible, whilst in another the focus may fall on skills transfer, job creation/preservation and skills development (*Figure [17]* below).

The IC³ framework developed by the DPE was adopted to assist in the prioritisation of SD opportunities and includes transformation

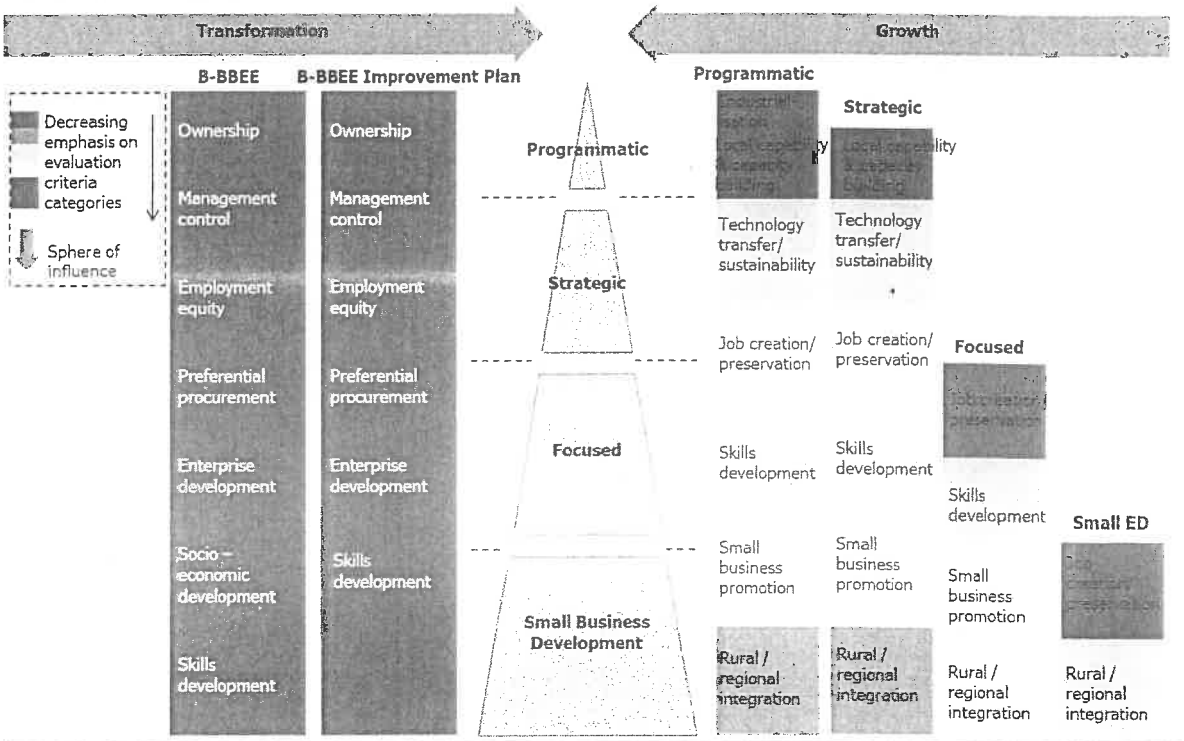


Figure [17] – SD Criteria

The table below serves as a guideline to determine the opportunities for SD and transformation based on the value of a particular transaction and the duration of the contract:

TABLE 14

Transaction value and contract duration	SD	B-BBEE Improvement Plan	BBBEE certificate
▪ **R0 – R1 million** ▪ Contract **duration more than** one (1) year	**Applicable through the B-BBEE scorecard**	**Applicable**	**Applicable**

▪ Greater than R1million – but less than R2million ▪ Contract **duration (Once-off and less than one year)**	**Applicable through the B-BBEE scorecard**	**Not Applicable**	**Applicable**
▪ Greater than R2 million ▪ Contract **duration more than** one (1) year	**Applicable as per paragraphs 12.3.1, 12.3.2 and 12.3.3 below**	**Applicable**	**Applicable**

The SD criteria that were developed during the planning phase, should be broken down into specific measurable components and incorporated in the bid documents. This is shown in the table below:

TABLE 15

SD criteria	Measurable areas	Further explanation
Industrialisation	• Value of investment in plant • Reduction in import leakage • Potential increase in export content	• Quantification of the monetary value invested in machinery, equipment, buildings • A percentage indication of the increase in locally supplied Goods and therefore the resultant decrease in imports as a result of the contract • The % increase in exports that will result from increased industrial capability developed in relation to the award of the contract
Capability & capacity building	• % Local parts • Value of local parts in relation to the bill of materials • Value spent on local suppliers • Number of local suppliers in the supply chain of the Bidder	• Planned use of local parts as a percentage of the total contracted items • Planned monetary value of the parts utilised in the bill of materials (as a percentage of the total spend) • Planned percentage monetary value spend on procurement of Goods and Services procured from SA suppliers • Number of South African suppliers that are to be utilised in the fulfilment of the contract
Technology transfer and sustainability	• Technology transfer including: o Methods of manufacturing o Introduction of new technologies o IP transfer (no.	• 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

SD criteria	Measurable areas	Further explanation
	and value)	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 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) • Number of apprentices (specify industry) • Investment in schools in specific sectors (e.g. engineering)	• No. of individuals within the company (in South Africa) that the supplier plans to train over the contract period; training undertaken in the previous Year will not be taken into account as past employee training appears in the skills development pillar of the BBBEE scorecard; criteria broken down as for industry training above • No. of individuals that the supplier plans to train in the industry over the contract period; training undertaken in the previous Year will be taken into account to make allowance for suppliers who have just completed a training drive within the industry • What percentage of training for 1 and 2 above complies with local and/or international skills accreditation • Total planned monetary value spend (as a % of contract value) on skills development/training for the contract period within the industry; money spent in the previous Year will be included in Year 1 to make allowance for suppliers who have just completed a training drive within the industry • The number of higher education bursaries/scholarships provided in the previous Year and planned for the duration of the contract • The number of apprentices that the company plans to enlist during the course of the contract • The monetary value that the supplier is prepared to invest in the development and running of schools to increase technical skills development
Small business promotion	• % of planned procurement from QSEs • % of planned procurement from EMEs • % of planned procurement from start-ups • Non-financial support provided to small business • Joint ED initiatives with Transnet	• Refers to the planned procurement from small business as a % of the total planned procurement spend • Suppliers will be given a point for each non-financial ED support that they are planning to give to small business e.g. Professional support; employee time allocated to assisting small business • Suppliers will be given a point for each financial ED support initiative that they are planning to undertake during the contract period e.g. Shorter payment terms; interest free loans • The number of ED initiatives that the supplier

SD criteria	Measurable areas	Further explanation
		will jointly run with Transnet: • That are aligned to Transnet's objectives • That are financial or non-financial in nature
Local Economic Development (Rural/Regional Development)	• Number of local employees • Value spent on local business • Proximity of business to operations • Number of rural businesses to be developed • CSI spend	• Number of people to be employed from within the town / city of operation • Monetary value to be spent on business within the town / city of operation • The locality of the bidder's business in relation to operations. Preference is given to regional (provincial) locality • The monetary value of CSI to be spent on rural community development projects

12.3.1 SD as a threshold

The use of SD as a threshold involves scoring bidders against pre-determined criteria (e.g. job creation, job preservation, skills transfer, small business promotion, rural development and localisation) stipulated in the RFX. The threshold which bidders are required to meet must also be clearly communicated in the RFX document e.g. an overall SD score of 60%. SD will be utilised as a threshold only where market analysis on SD opportunities justifies it. Bidders failing to achieve the set threshold will be excluded from the bid process, whilst bidders who meet this requirement will be evaluated in terms of the PPPFA methodology. It is important to note that different SD thresholds may be set for Large Enterprises on the one hand and QSEs / EMEs on the other provided that there is an underlying justification for the differentiation. For example Large Enterprises may be required to meet a 60% threshold for SD while EMEs and QSEs may only be expected to meet a 40% threshold. It is reasonable to expect Large Enterprises to do more to promote SD as opposed to QSEs and EMEs, many of whom are themselves in need of development and upliftment.

12.3.2 SD as a prequalification criterion

SD will be incorporated as a prequalification criterion when the market analysis indicates that it is not viable to include SD as a threshold. Where SD is used as a prequalification criterion, bidders will not be scored for SD but will instead be requested to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than a certain stipulated percentage of the contract value e.g. bidders may be asked to provide an undertaking that no less than 20% of contract value will be spent on SD initiatives. The percentage stipulated must be informed by market analysis in order to ensure that it is not set at an unreasonably low or high level. Bidders failing to provide this undertaking will be excluded from the bid process, whilst bidders who meet this requirement will be evaluated in terms of the PPPFA methodology. In addition, Bidders may be required to provide a minimum commitment in relation to specific SD criteria e.g. job creation or skills development. It is important to note that different pre-qualification criteria may be set for Large Enterprises (LEs), QSEs and EMEs provided that there is an underlying justification for the differentiation.

12.3.3 Threshold versus prequalification criterion

It is advisable that where possible, SD be incorporated as a threshold rather than a pre-qualification criterion. This is because the setting of a threshold will involve a detailed assessment of the bidders' SD commitments whereas a set prequalification criterion will be assessed simply based on whether the bidders agree to the stipulated percentage SD

commitment required. It is therefore critical that the SD department be involved at the pre-procurement / demand stage so that a proper market analysis can be conducted and maximum SD value derived from a particular procurement process. As indicated in paragraph 12.3 above, it is also possible to utilise a combination of a threshold as well as prequalification criteria if it is justified that further value will be extracted as a result thereof.

Irrespective of whether SD is to be included in a bid as a threshold or a prequalification criterion, bidders must be requested to complete an SD plan and value summary as part of their bid submission. The SD Plan represents additional detail in relation to the SD Plan providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to deliver during the term of the contract.

SD must not be incorporated as part of weighted evaluation criteria. In terms of the PPPFA, bids must be evaluated on the basis of Price and Preference only. SD must only be used as a prequalification criterion, a threshold or both.

12.4 INCORPORATING SD AS A MATERIAL TERM OF THE CONTRACT

During contract negotiations, SD may be further negotiated with the preferred bidder/s. Specific milestones, timelines and targets will be recorded to ensure that the SD Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.

The contract concluded with the successful bidder will incorporate the final SD plan as a material term of the contract. The contract must also contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the SD targets in the contract. It is important to note that such penalties must be reasonable and not out of proportion to the prejudice suffered. In terms of the Conventional Penalties Act 15 of 1962, a court may reduce a penalty if it is unreasonable, disproportionate and inequitable. Different penalties may be imposed on LEs as opposed to QSEs and EMEs for failure to achieve SD initiatives. For example, a penalty of 10% of undelivered SD value be imposed on LEs, 5% on QSEs and 2.5% on EMEs. Please refer to paragraph 22.3.9 for more information on when penalties may be imposed.

Furthermore, failure to achieve SD targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract with the successful bidder or implement other remedial measures. Milestones in terms of achievement of SD targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.

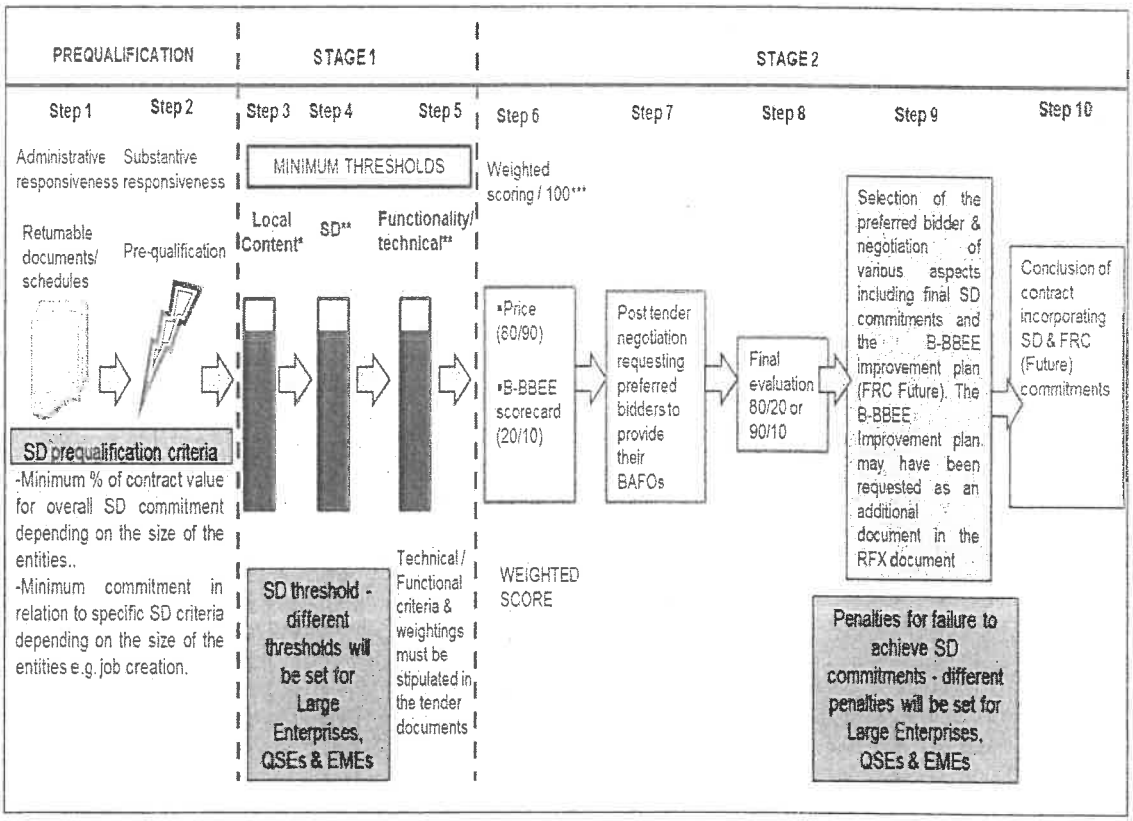
Monitoring and evaluation will be conducted by the SD department as a standard requirement to ensure tracking and successful delivery of the commitments.

CHAPTER 13 : DETERMINING BID EVALUATION CRITERIA

The CIDB prescribes 4 standard evaluation methods for construction procurement. In the Transnet context, historically Method 2 and 4 were utilised. However, Method 4 is not aligned to the requirements of the PPPFA. As a result, only Method 2 of the CIDB methods is to be utilised until further notice. CIDB Method 2 is dealt with in detail in paragraph 13.6 below.

13.1 TRANSNET'S EVALUATION METHODOLOGY

Transnet's evaluation methodology is aligned to the prescripts of the Preferential Procurement Regulations, 2011. It is also designed to achieve Transnet's SD objectives. The methodology follows a two-stage evauation process where minimum thresholds are set for Local Content (where applicable – designated sectors), SD and Quality/Functionality. Only those bidders that meet (or exceed) the relevant minimum thresholds, advance to the next evaluation phase (step 6 in diagram below, where Price/TCO, and B-BBEE scorecard are scored using either the 80/20 or 90/10 preference point system depending on the value of the transaction. Figure 18 below depicts the evaluation methodology:



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

** Indicative threshold , not prescribed (if applicable)

*** Point system dependent on value of transaction

Figure [18]: Transnet's evaluation methodology

13.2 STAGES OF THE EVALUATION METHODOLOGY

13.2.1 Prequalification

Bidders are required to meet the requirements of the administrative responsiveness and substantive responsiveness tests in order to be considered further. Administrative responsiveness will be tested based on returnable documents submitted and signatures on the Bid documents. Substantive responsiveness will be tested against whether a Bid conforms to all the terms, conditions, scope and/or specifications of the bid documents without material deviation or qualification. This will include an assessment of whether all pre-qualification eligibility criteria set, either Functionality or SD related, have been met.

13.2.2 Stage 1

A minimum threshold must be set for Local content, SD and Quality/Functionality (where applicable). These are separate thresholds, and the Bidder must meet the minimum criteria for all of these in order to proceed to stage two.

13.2.3 Stage 2

The bidders who meet the minimum threshold for Local content, SD and/or Quality (Stage 1) will then be evaluated against each other using only price and B-BBEE scorecard based on the applicable preference point system. In terms of the preference point system, proposals will be evaluated on price which will be allocated 80 or 90 points and preference which will be allocated 20 or 10 points, dependent on the value of the Goods. The 80/20 preference point system applies where the acquisition of the Goods, Services or Works will be less than R1 000 000.00. The 90/10 preference point system applies where the acquisition of the Goods will exceed R1 000 000.00.

13.3 CHOOSING APPROPRIATE EVALUATION CRITERIA

13.3.1 General principles

Evaluation criteria must be:

- **Unambiguous.** The bid documents must provide a complete explanation of the scope of work as well as the criteria and sub-criteria that will be used in the evaluation of bids. Care should be taken to ensure that the RFP does not contain any contradictory clauses. Where drawings are included as part of the RFP, such drawings must be completely aligned to the written description of the Goods or Services required.
- **Rational and justifiable.** Evaluation criteria must be rationally linked to the projected procurement outcomes.
- **Quantifiable.** If a criterion cannot be measured, it should not be included as an evaluation criterion.
- **Predetermined.** Evaluation criteria must be stated upfront in the RFP document. No evaluation criteria should be used in the evaluation process that were not stipulated in the RFP document.
- **Objective.** Evaluation criteria should not be written with a specific product in mind, but should rather describe functional (as opposed to product specific) characteristics.

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13.3.2 Functional criteria

Should functionality be included in a bid as a threshold, the bid documents must clearly state the minimum score to be achieved if bidders are to be further evaluated on price and preference. Only those bidders who achieve the minimum threshold for functionality must be further evaluated for price and preference. Functionality may only be included as a threshold but not as an evaluation criterion.

Please note that not all bids have to include functionality as a threshold. Bids involving low value and low technical requirements (e.g. bottled water) do not have to include functionality and should be decided on the basis of price and preference only.

Functional/Quality criteria must be determined taking into account the needs and expectations of the end user with regard to functional outcomes of Goods or Service, i.e. conformance to stated requirements. It is important to note that only necessary quality/technical criteria must be included as evaluation criteria. Quality evaluation criteria must not be drafted in an exclusionary manner e.g. requesting 10 years experience in an industry when actually 5 years experience would suffice. In developing Quality criteria, it is necessary to consider how these items are to be measured, verified and evaluated in Bid submissions.

a) Quality criteria may include criteria such as[2]:-
   - (i) technical merit;
   - (ii) aesthetic and functional characteristics;
   - (iii) safety characteristics;
   - (iv) environmental characteristics (including green economy, energy conservation and climate control);
   - (v) quality control practices;
   - (vi) reliability;
   - (vii) durability;
   - (viii) method statement (including organization, logistics and support resources) relevant to the scope of work;
   - (ix) qualifications and demonstrated experience of key staff in relation to the scope of work;
   - (x) demonstrated experience of the Bidder with regard to specific aspects of the project/comparable projects;
   - (xi) running costs;
   - (xii) after sales Service and technical assistance;
   - (xiii) delivery date;
   - (xiv) delivery period or period of completion;
   - (xv) inspection or testing requirements;
   - (xvi) integration with other Goods / Services; and
   - (xvii) training requirements.

b) Additional Quality considerations in construction procurement is as follows:

[2] *This section on quality is largely based on clause 4.3 of the CIDB Standard For Uniformity in Construction Procurement*

cidb

Quality criteria shall not include:

(i) social considerations, such as the composition of workforces in terms of race, gender;
(ii) or disability; or
(iii) matters relating to the basic capability or capacity of the tendering entity to execute the contract.

c) Where Functionality/Quality is of critical importance, at least 2 persons of the CFST who are conversant with the technical aspects of the bid shall set the evaluation criteria and weightings. These persons shall also determine the prompts or qualitative indicators for judgment, with fixed scores assigned to each prompt. Quality must be scored in terms of such prompts for judgment, individually and then averaged, subject to moderation.

d) It should also be determined whether a due diligence exercise, interviews, site visits and presentations should form part of the scoring, and if so, the relative weights assigned to each of these must be determined. These aspects must be clearly dealt with in the RFP. It is important to note that due diligence, interviews, site visits and presentations should only form part of the scoring if there are aspects of the bid that cannot be evaluated based on the responses to the RFP document or if the due diligence, interviews, site visits and/or presentations are required to validate the responses to the RFP document. If interviews, presentations or site visits are required in order to assess Quality, this should be stated in the RFP. The specific purpose and outcomes of the interviews, presentations or site visits and the associated scoring should also be included. It is permissible to set two separate thresholds for functionality in this regard i.e. one threshold for the desktop assessment and another for the interview, site visit or presentation.

e) The evaluation of bids shall be based only on the information contained in Bid submissions, and where relevant from a due diligence exercise, interviews, presentations and site visits.

13.3.3 Price criteria

a) Price will be evaluated strictly in terms of the prescripts of the PPPFA. When dealing with more complex bids, the evaluation of price must involve an evaluation of the Total Cost of Ownership (TCO). In such cases, Bidders must be requested to provide all information relevant to the evaluation of TCO. It is recommended that Bidders be provided with a comprehensive pricing schedule to ensure that they all follow a standardised approach with pricing. This will facilitate uniformity in the evaluation of price. The evaluation of TCO includes, but is not limited to, factors such as:

- Installation costs;
- Warranties;
- Service and maintenance costs;
- Operating supplies;
- Storage costs;
- Commercial discounts;
- Incoterms;
- Price adjustment conditions; and

- Exchange rate fluctuations.

b) When calculating prices, only discounts which have been made unconditionally must be taken into account during evaluation. However, where a discount is made conditionally, such discount must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

13.3.4 Preference criteria

All Bids should be evaluated against the applicable preference point system as prescribed in the Preferential Procurement Regulations, 2011. The preference criteria, as set out in Chapter 10, should be included in the bid document.

13.3.5 Supplier development (SD) criteria

If a specific commodity has been earmarked as a SD commodity, then SD should be included in the bid either as a threshold or prequalification criteria or a combination of these 2 mechanisms. The SD criteria, as developed in Chapter 12, should be included in the bid document.

13.3.6 Evaluation of counter party risk

Depending on the type of Goods/Services being procured, it may be important that the counter party risk of Bidders be assessed based on one or all of the following:

- their audited financial statements;
- key financial ratios. For example: Current Ratio, Turnover/Contract Value, Interest cover, Gearing and financial performance of bidder relative to peers;
- perform media searches of bidders to identify any key risks that have not been disclosed in bid submissions. For example: Poor financial results which impacts the going concern of the customer / supplier;
- review analyst reports and gauge overall market sentiment of bidders;
- review geographical, political and economic risks based on the location of the bidder;
- review the bidders business continuity plans; and or
- Perform a review of the security / collateral by reviewing parent company guarantees and/or performance bonds (if applicable).

Depending on the importance of the financial stability of the successful Bidder/s, financial stability may either be included as a pre-qualification criterion or a due diligence exercise may be performed on the preferred bidders at the end of the evaluation process prior to recommendation. It is important to note that the evaluation of financial stability will not feature in every bid, particularly those which seek to advance Start-up and emerging enterprises. Financial stability may also be evaluated at the discretion of the AC in terms of paragraph 20.3.

13.4 DETERMINING THE PREQUALIFICATION CRITERIA & THRESHOLDS

13.4.1 Prequalification criteria

Prequalification criteria may be set in respect of Functionality, SD and financial stability. Such criteria must be determined with circumspection as bidders may not be considered further should they fail to meet any of the set prequalification criteria. Furthermore, prequalification criteria must not be set in an exclusionary manner and must prescribe the

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minimum requirements that Transnet requires particularly with regard to Functionality and financial stability.

13.4.2 Thresholds

While the Local Content threshold in designated sectors is prescribed, the determination of thresholds for Functionality and SD must be considered on a case by case basis as each procurement event will differ. It is important that these thresholds be determined upfront and included in the RFX document. Once included in the RFX document one cannot deviate from that and the evaluation has to be done strictly in accordance with what was stated in the RFX document.

Ideally, the thresholds set must be based on Transnet's minimum requirements i.e. the minimum Transnet requires in order to satisfy its needs/objectives. It, however, sometimes transpires that despite this exercise, all the responses received do not meet the set threshold/s. Transnet may decide that if no Bidders pass the SD and/or Functionality threshold, it will reserve the right to lower the threshold by a certain pre-determined percentage. The decision to utilise such a disclaimer must be carefully considered. The disclaimer must be clearly specified in the RFP, provided it is in Transnet's best interests to do so and there is concurrence between the end user and Procurement. In addition, with regard to the SD threshold, concurrence is also required from the SD Department. The use of this disclaimer is designed to mitigate the risk of a bid requiring cancellation even though there was an adequate response from the market.

The weighting of the Functionality/Quality threshold as a whole, as well as the sub-requirements within this threshold, need to be carefully determined to ensure that the end product/service is optimal and fit for purpose.

Similarly, as indicated in Chapter 12, the setting of the SD threshold must be based on market analysis of the SD opportunities in a particular sector.

13.5 WHEN TO DETERMINE THE EVALUATION METHODOLOGY

All of the above should be carefully considered by the CFST and included in the sourcing strategy, the RFX and RFX sign-off template prior to issuing the RFX to the market, as neither the evaluation criteria, nor the weightings may be changed during the evaluation phase.

13.6 CIDB EVALUATION METHODOLOGY

cidb

13.6.1 The CIDB register of contractors shall be applied in all construction works contracts. The manner in which the CIDB register of contractors is to be applied is established in the CIDB Regulations which are issued in terms of the CIDB Act and the CIDB Standard for Uniformity in Construction Procurement.

Determining the correct CIDB grading:

- Step 1: Identify preferably one, but not more than two class(es) of construction works that best describes the works to be performed.
- Step 2: Estimate the tender value including value added tax and identify the tender value range designation within which this value falls. Where the estimated value is not more than 20 percent above the lower limit of a tender value range, base the contractor grading designation on the tender value range immediately below the tender value range within which the estimate falls.

- NOTE: Invitations to tenderers should indicate as accurately as possible the registration requirements and not be misleading; hence the requirement in the regulations to base the estimate on the lower designation in borderline circumstances.
- In certain cases, where the contract for construction works takes place over several years (term contract), the contractor grading designation may be based on the annual estimated value of the contract.
- Step 3: Determine the approximate contractor grading designation and, where applicable, the alternative designation, based on the class(es) of construction works selected in Step 1 and the tender value range identified in Step 2. Where the employer has a targeted development programme in place that provides the necessary support to enable the contractor to successfully execute the contract, contractors who are registered as potentially emerging contractors in one designation lower than required, may also be permitted to submit tender offers.
- Step 4: State the requirements for contractor grading designation in the Tender Data in the form of eligibility criteria in using the wording prescribed in the Standard for Uniformity in Construction Procurement.

13.6.2 Pre-qualification criteria may be used as eligibility criterion in the bid. The framing of quality criteria as eligibility criteria is a simple, yet effective, means of ensuring that only those bidders who are likely to deliver the required quality submit bids and compete for the award of a contract.

Example 1: An engineering and construction works contract may contain the following eligibility criteria:

Where the works required involves the removal and disposal of asbestos cement sheeting, the eligibility criteria should state that the contractor must be a Registered Asbestos Contractor with the Department of Labour.

Example 2: A professional service contract may contain the following eligibility criteria:

The eligibility criteria for bidders are that they complete the Competent Persons Declaration and have in their full time employ a person satisfying the relevant requirements for a competent person for the required service.

13.6.3 As indicated above, only CIDB Method 2 is to be utilised within Transnet until further notice. Method 2 is explained in more detail below:

CIDB Method 2: Financial offer and preferences

Firstly, Quality/Technical is to be evaluated as a prequalification criterion.

a) Reduce each responsive tender offer to a comparative offer. A comparative offer is defined under F.1.3.3 of the CIDB Standard Conditions of Tender as contained in Annex F of the Standard for Uniformity in Construction Procurement.

b) Score bid evaluation points for financial offer.

c) Confirm that tenderers are eligible for the preferences claimed and if so, score bid evaluation points for preferencing

d) Calculate total bid evaluation points.

e) Rank bid offers from the highest number of bid evaluation points to the lowest.

f) Recommend bidder with the highest number of bid evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

CHAPTER 14 : MAIN PROCUREMENT MECHANISMS

cidb

This Chapter applies to both general and construction procurement. Additional CIDB procurement mechanisms are detailed in paragraph 14.8 below.

14.1 FACTORS TO CONSIDER WHEN SELECTING THE APPROPRIATE PROCUREMENT MECHANISM

Sourcing/procurement strategies are closely linked to the strategic importance and value of the Goods/Services. The first step is to classify Goods/Services on a risk/value matrix. In order to determine the importance of Goods/Services to Transnet as well as the appropriate procurement mechanism to be used, the commodity should be plotted on the four quadrant matrix below:

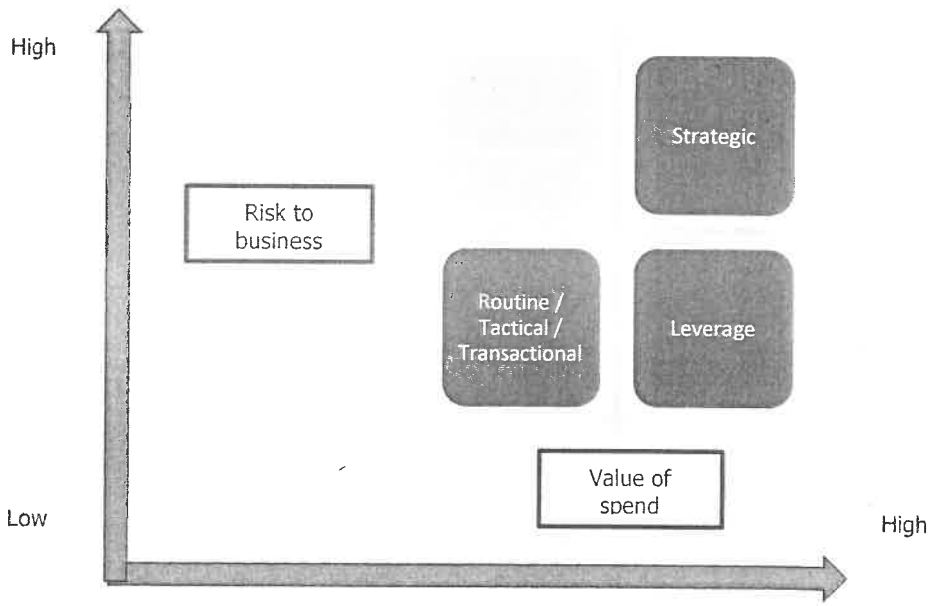
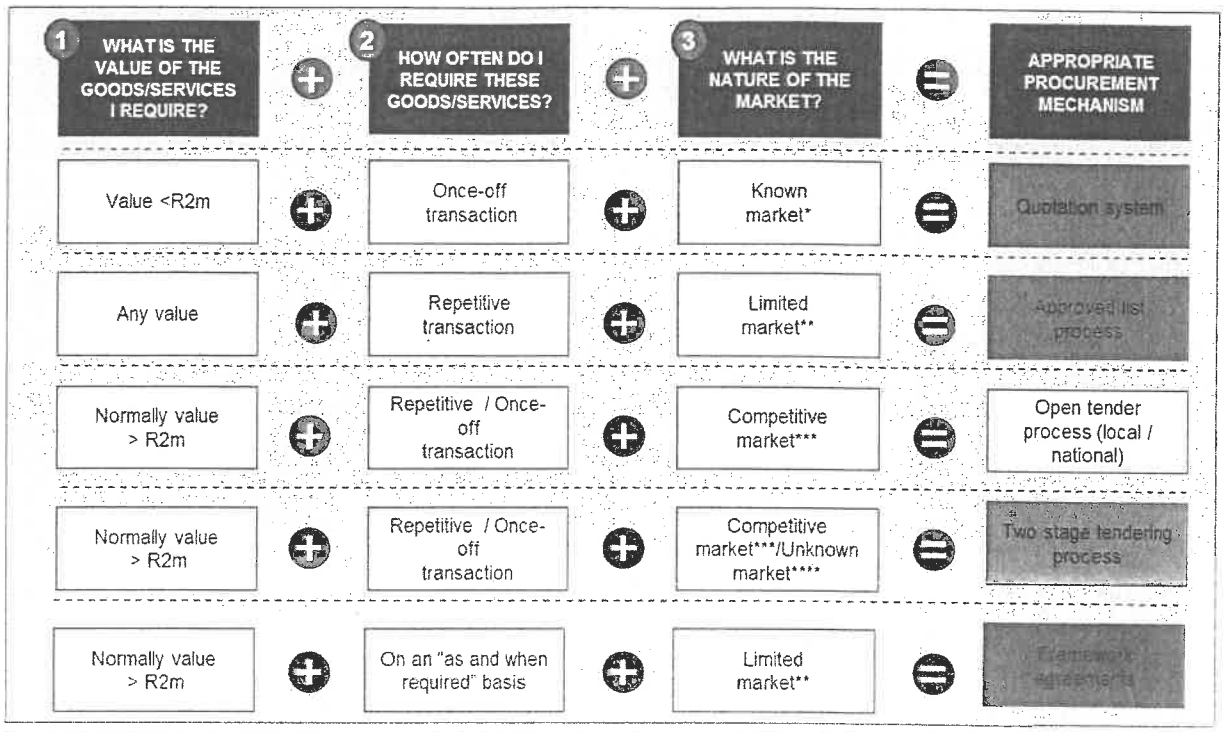


Figure [19] – Risk / Value Matrix

The following guidelines will assist in determining the correct procurement mechanism to use depending on where in the matrix particular the Goods/Services are placed:

TABLE 16

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
Routine/ Tactical Transactional	• Low risk; low spend • Non-critical items • Many suppliers in the market • Objective is to minimise spending significant time and effort on obtaining these Goods / Services through 'as	• Open Bid • Quotation system (only when non repetitive and under R2 million)	• "As and when" contract for short and medium term • Transversal contract



* Known market - suppliers are listed on the vendor database
** Limited market - only a restricted number of suppliers exist eg. Original Equipment Manufacturers, limited suppliers or a sole supplier
*** Competitive market - many suppliers exist in the market
**** Unknown market - there is no clear specification of requirements and/or the availability of the goods/services is unknown

Figure [20] – Procurement Mechanisms

14.2 PROHIBITED PRACTICES

14.2.1 As a general rule, the quotation / bidding system must not be used merely to obtain market related prices for budget or benchmarking purposes.

14.2.2 In cases where it is absolutely necessary to obtain test bids for budget purposes only, the request to the market must clearly and unambiguously state that the request for a quote is for budget purposes only and that no business will be awarded against this invitation. Care should, however, be exercised that such budget pricing exercise is not abused merely to give certain contenders advance notification of a new project in the pipeline. It would be advisable to rather obtain test quotes from more than one, or even better, all the known suppliers so as not to run the risk of being perceived to have given only one contender advance notification.

14.2.3 When the full scope of work is known at a point in time, requirements may not be deliberately split into parts or items of lesser value in order to keep the transaction value within a particular Delegation of Authority level or to keep it below the threshold of an AC or a person with higher Delegation of Authority. This is considered to be Parcelling and will be regarded in a serious light as it amounts to non compliance with procurement procedures.

14.2.4 Specifications should be functional and fit for purpose, rather than brand- or product-specific. Specifications must not include any exclusionary terms. Compiling a specification around one supplier's product is unfair and not allowed. Where it is necessary to specify a particular brand or product, the RFX document must request the particular brand/product "or similar".

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Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
	and when' contracts		
Leverage	• Low risk; high spend • Non-critical items • Many suppliers in the market • Objective is to leverage economies of scale	• Open Bid	• Transversal contract • "As and when" contract for short and medium term
Bottleneck/ Development	• High risk; low spend • Limited suppliers • These are items that Transnet must have but which are difficult to obtain • Critical items • Includes specialised equipment, instrumentation or software from proprietary suppliers • Objective is to secure supply	• Two stage bidding system • Approved list • Confinement • Framework Agreement	• "As and when" contract for medium term • Fixed quantity
Strategic	• High risk; high spend • These are items that are critical to Transnet's business	• Open Bid • Two stage bidding system • Approved list • Confinement • Framework Agreement	• Medium to long term contract • Transversal contract

Depending on the circumstances of each requirement for the procurement of Goods or Services, any one of the following main procurement mechanisms or procurement paths may be utilised:

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14.3 THE QUOTATION SYSTEM - REQUEST FOR QUOTATION ("RFQ") / CIDB QUOTATION PROCEDURE

- Only used for transactions below R2 million in value
- The Goods or Services must be required on a non-repetitive basis
- The market should be known
- A minimum of three quotes must be obtained, where possible

14.3.1 Definition

The quotation system is a procurement system used for transactions below R2 million that are required on a non-repetitive basis.

14.3.2 When to use the quotation system

b) The quotation system is intended for non-frequent purchases of fairly low value. It should not be used on a continual / repetitive basis for the same commodity i.e. instances where the same commodity is purchased (sometimes even from the same supplier), but on different purchase orders/requisitions. This will be regarded as Parcelling.

c) The quotation system is best suited in the following circumstances where:

(i) transactions are valued at less than R2 million;

(ii) the purchase is not required on a repetitive basis. Where the same purchase is regularly made, consider a fixed term as-and-when-required contract. If market prices of the commodity are volatile and it is impossible to obtain firm prices for a specific period (even with price review mechanisms included), consider a short term as-and-when-required contract. Such a contract may be concluded following either an open tender process or a quotation process;

(iii) the value of the transaction would make it impossible, impractical or economically unviable to call for Open Bids; or

(iv) there are opportunities to develop suppliers in order to achieve transformational objectives. This mechanism is considered to be the best avenue to facilitate entry to the market for emerging small B-BBEE companies.

14.3.3 Advantages and disadvantages of the quotation system

Advantages	Disadvantages
Quick turn-around times in the case of non-repetitive purchases	• This procurement mechanism is not the most cost-effective as the benefit of volume discount is lost • Turnaround time is longer when using the quotation system as opposed to an 'as and when' contract, in the case of repetitive purchases • Risk of limiting competition to only certain service providers

14.3.4 The authority to obtain quotes

CEOs may at their own discretion decide to allocate different levels of authority to different Managers in terms of their Delegation of Authority. The CEO [and ultimately the Chief Procurement Officer (**"CPO"**)] will delegate specific powers to specific Managers in the procurement function to invite quotations up to a certain value and secondly for the award of the business resulting from the quotation system.

Furthermore, the CEO of a Division may at his/her own discretion and within the Transnet DoA framework, introduce OD specific control mechanisms for these "low" value transactions (e.g. Petty Cash policies, etc).

Depending on the value of transactions falling within the quotation system, appropriate control measures must be implemented from low value quotes to high value quotes:

TABLE 17

Transaction value	Mechanism for obtaining quote	No. of quotes
Less than R5 000.00	Fax/email quotes	1
R5 000.00 – R50 000.00	Fax/email quotes	2
Greater than R50 000.00 – R250 000.00	Fax/email quotes	3
Greater than R250 000.00 – R1000 000.00	Short form RFQ request (receipt of bids at the tender box)	3 or more
Greater than R1000 000.00 – R2 000 000.00	Formal RFQ process (receipt of bids at the tender box)	3 or more

14.3.5 Number of quotes to be requested

a) As a general rule, a minimum of three quotations should be requested. However, a buyer may request more than three quotes if necessary.

b) Where it is impossible to request three quotes e.g. patented articles, OEM spares etc., one or two quotes will suffice. However, a submission must be prepared with the reasons for not being able to request at least three quotations. This must be approved by the CPO or his/her delegate, depending on the value of the transaction and the delegated authority of the procurement

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official. Since OEM spares and components will in all probability be required on a regular basis, consideration should be given to either the framing of an Approved List, or the conclusion of an "As-and-when required" term contract.

c) It is important to note that once a request for quotations has been made to prospective Bidders, a buyer cannot subsequently request further quotes if only some Bidders approached have responded to the request by the closing date. This rule applies even where a Bidder has responded to the RFQ with a "no quote".

14.3.6 Transnet Vendor Portal

a) An automated Transnet wide Vendor Portal (TVP) has been created for all potential suppliers wishing to do business with Transnet to register and update their company profiles. The web address is https://vendorportal.transnet.net.

b) Potential suppliers should provide full details of the Goods/Services on offer, their tax clearance certificate, their BBBEE level, including % Black ownership and area of operation. Suppliers will be classified accordingly on the TVP.

c) Buyers who wish to obtain quotations must proceed to search the TVP and/or the OD's own vendor database for potential Bidders.

d) The TVP should ultimately have the functionality to invite quotes from potential suppliers on a rotational system to ensure an equitable spread of opportunities among all potential suppliers.

14.3.7 Process

a) As indicated above, the buyer will request quotes from at least 3 or more potential Bidders on the TVP where possible.

b) For relatively low value, simple Goods/Services, the RFQ should ideally be open for 3 to 4 Working Days in order to afford Bidders a reasonable opportunity to respond. For higher value, more complex Goods/Services, the RFQ should be open for a minimum of seven Working Days.

c) The bids must be received in a controlled environment, e.g. a dedicated email address, dedicated fax number or a tender box.

d) As a general rule, quotations are to be evaluated on the basis of price and B-BBEE. Where there are opportunities to include SD either as a threshold or prequalification criterion or a combination of both, SD should also be included in the bid. In the event that technical evaluation is also necessary, the technical evaluation criteria must be pre-determined and included in the RFQ document. The highest scoring Bidder is to be selected as the Successful Bidder unless there is objective criteria justify the award to another bidder.

e) In instances where quotes are invited from potential new bidders, the prices quoted should, where possible, be benchmarked against previous prices paid, to ensure that Transnet obtains optimal value for money, whilst achieving its social obligation.

f) As indicated in paragraph 14.3.6 (d) above, quotations should be invited from potential bidders on the TVP on a rotational basis so as to ensure an equitable spread of opportunity among all potential suppliers.

g) Please refer to paragraph 17.2.1 (d) regarding matters that were anticipated to fall below the AC's threshold but when quotes are received they are over R2 million in value. Furthermore, please refer to paragraph 22.5.7 (a) regarding contract amendments in this regard.

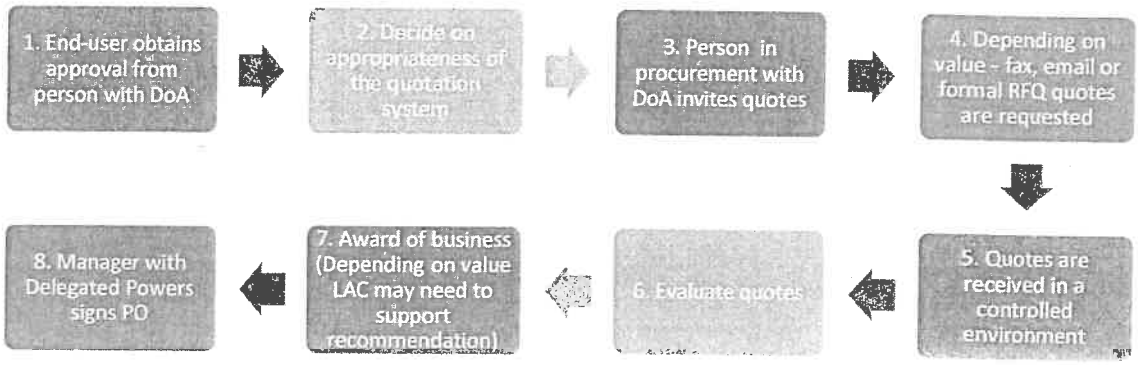

Figure [21] – Quotation Process

14.4 THE OPEN BID PROCESS (RFP)/CIDB OPEN PROCEDURE

- Generally used for transactions greater than R2 million in value
- There must be a competitive market and a clear detailed specification available to which many prospective Bidders are able to respond
- Bids may be advertised in local, national and / or international media as well as the Transnet website depending on the market
- Note that for construction procurement, the advertisement must, in addition be placed on the CIDB web site using the CIDB's i-Tender@cidb service at least 10 working days before the closing date for tenders and at least 5 working days before any compulsory site meeting.

14.4.1 Definition

The Open Bid Process (RFP) is a competitive process where the general public is approached with an invitation to bid that is published in the media. All interested parties are granted an equal opportunity to bid for Transnet's business. Once the bid has closed, the winning Bid is selected by means of a transparent evaluation, recommendation and adjudication process.

14.4.2 When to use the open bid process

The Open Bid system is the procurement/disposal mechanism best suited to the following circumstances:

a) the monetary value of the purchases is in excess of R2 million;

b) even if the bid value is less than R2 million, an Open Bid should be issued if the market is not known or the Goods or Services are required on a repetitive basis;

c) the market is competitive (i.e. many potential suppliers are able to provide the required Goods/Services);

d) there are clear and unambiguous specifications to ensure that all potential suppliers bid for the same product;

e) there is enough time available;

f) the value of the transaction must warrant the cost, time and effort taken to use an Open Bid process; and

g) in cases where Transnet's needs / specifications etc. are still too vague to issue a formal bid, the two-stage Bid system (RFI) should be followed.

14.4.3 Advantages and disadvantages of the open bid process

Advantages	Disadvantages
The Open Bid system is regarded as the procurement mechanism which best ensures open and fair competition.	The Open Bid process is time consuming. In order to ensure that Goods / Services are delivered to the business when they are needed, the need for the Goods / Services needs to be anticipated well in advance. Requires significant resources (cost, time, etc.)

14.4.4 Process

a) Before any bid document may be issued to the market, the person with the necessary delegated authority must provide written authority to approach the market. This must include approval of the evaluation methodology, evaluation criteria and the availability of funds. The evaluation team is also to be decided on at this point.

b) The bid document should be compiled according to the guidelines set out in Chapter 16 *(Bid Preparation)*.

c) Bids may be advertised in local, national and / or international media as well as the Transnet internet website depending on the market and value of the bid. Note that for construction procurement, the advertisement must, in addition be placed on the CIDB web site using the CIDB's i-Tender@cidb service at least 10 working days before the closing date for tenders and at least 5 working days before any compulsory site meeting.

d) Bids should be kept open for a reasonable period. Refer to paragraph 16.3 for more detail.

e) Bids are to be finalised as soon as possible after the closing date of the bid.

See process below to be followed in the case of an Open Bid process

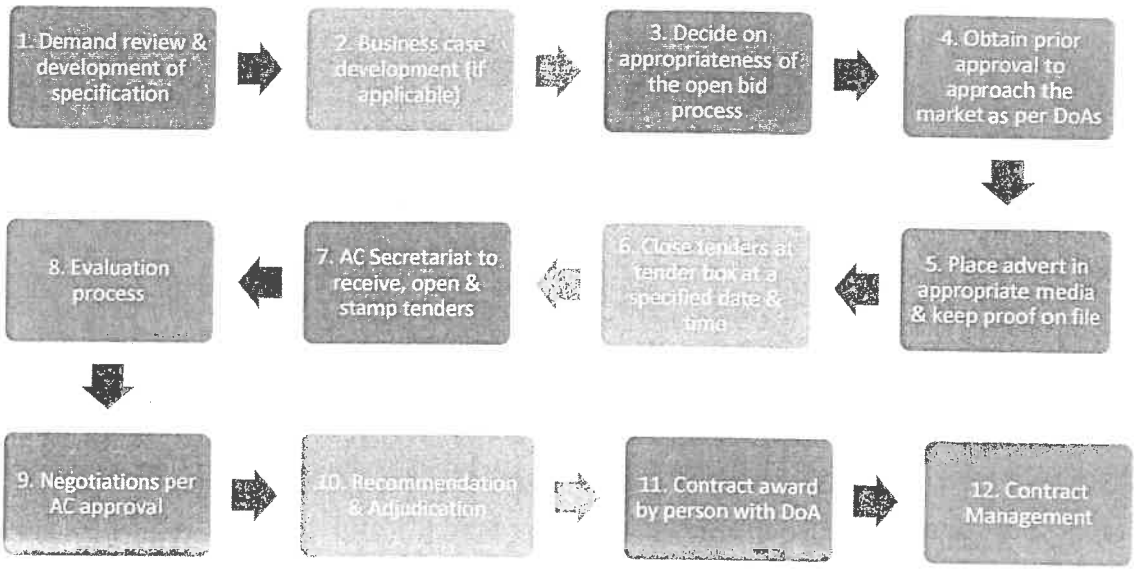

Figure [22] – Open Bid Process

14.5 APPROVED LIST PURCHASES

14.5.1 Definition

An approved list is essentially a "standing authority to confine" and may be framed and utilised either where:

- Goods or Services are required according to unique specifications, on a continual ("as and when required") basis and from a limited number of suppliers; or
- In a competitive market there is a need to prequalify suppliers, as well as to limit the need to continuously evaluate large numbers of bids.

14.5.2 General principles

a) In order to qualify for inclusion on any approved list a supplier must be able to supply Goods or Services of the quantity and quality required. Furthermore, if so required, the supplier must have submitted samples or delivered Goods which have satisfactorily passed Transnet's quality tests.

b) Approved supplier status cannot be acquired merely by being on a Division's Vendor Master or on a B-BBEE Manager's List of EMEs or QSEs for specific Goods or Services. Approved supplier status can only be obtained after following the process stipulated below.

c) Specifications must be drawn up to promote fair competition.

d) ODs and Specialist Units must attempt as far as possible to procure off-the-shelf Goods as opposed to drawing up their own specifications.

e) An Open Bid may not be issued for Goods/Services appearing on an approved list unless it is in the best interests of Transnet.

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;

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; or

d) Competitive market where there is a need to prequalify suppliers, as well as to limit the need to continuously evaluate large numbers of bids

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) **Evergreen Approved Lists**

(i) This type of approved list is to be used for situations as described in paragraph 14.5.3a) - c).

(ii) Evergreen Approved Lists 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.

(iii) 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.

(iv) This type of approved list may be framed by following one of the two procurement processes outlined below:

- After public Advertisement of the intention to frame an approved list in a notice requesting all prospective suppliers to formally apply.
- By framing an initial approved list of suppliers based on previous experience and/or tests carried out. The list will nevertheless be advertised publicly thereafter to invite new entrants to the market.

(v) 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.

(vi) 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 CPO/GCSCO 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 CPO/GCSCO approval must be obtained.

(vii) 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.

(viii) Although the evergreen 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 CPO/GCSCO approval must be obtained and the list must be updated accordingly.

(ix) 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.

(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.

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(xi) It is important to note that the names on the evergreen approved list will remain on the list unless their names are removed for one or other reason.

b) **Fixed Period Approved Lists**

Fixed Period 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) "Fixed period 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 evergreen 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 CPO/GCSCO.

(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 the OD CPO 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.

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 CPO. Should the person/Enterprise not be satisfied with an OD CPO'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) The manner in which the approved list will operate must be stipulated upfront in the RFX to frame the list. In this regard bidders must be made aware as to which criteria will be evaluated to frame the list and whether further evaluation will take place when the list is utilised. If the approved list (whether evergreen or fixed period) is framed on the basis of a technical evaluation only then when the list is utilised all bidders should be invited to submit bids as bidders will then evaluated on price and preference. Where the framing of the approved list involves a complete evaluation including an evaluation of price and preference, business should be awarded on a rotational basis. This is in order to ensure fairness and an equal distribution of business to those on the list. The next business requirements must be awarded to the supplier with the lowest spend on the list. As indicated these options are available for both types of approved lists. However, it is recommended that for fixed period approved lists a complete evaluation is conducted when framing the list. The decision on the manner in which to frame and utilise the approved list must be decided on a case by case basis and approved by the OD CPO in the case of ODs and the GCSCO in respect of TCC.

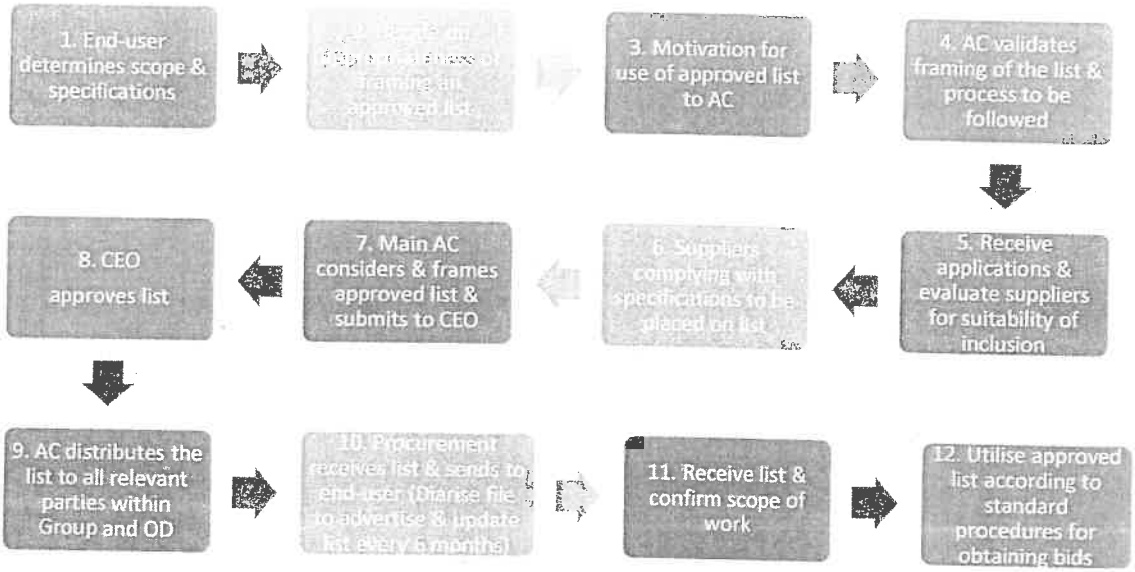


Figure [23] – Process to frame Approved List

14.5.8 Removal of names from the approved list

a) The name of an Enterprise may be removed from an approved list at any time if the Enterprise:

b) has been convicted of any offence under any law relating to wages, hours of work or other conditions of employment;

c) fails or ceases to comply with the requirements of such approved list;

d) continues to perform unsatisfactorily after having been informed accordingly when measured on any of the following criteria: timeliness, Quality, price escalation and service;

e) sub-contracts the whole or any portion of a contract for the supply of Goods or Services in respect of an approved list to an Enterprise or person whose name does not appear on that list;

f) otherwise acts in a manner which, in the opinion of Transnet, is construed to nullify the object of framing an approved list;

g) has ceased to carry on business under the name on the approved list and has not informed Transnet of this change;

h) has been dealt with in terms of Transnet's List of Excluded Bidders;

i) has shown little interest over a reasonable period to submit quotations when invited to do so; or

j) has not been awarded any business over a reasonable period due to non-competitive prices;

Before a name is removed from an approved list, the Enterprise concerned shall be notified in writing of the intention to remove it from the list including reasons. The Enterprise shall be afforded the opportunity to make representations as to why its name should not be removed from the list.

14.6 TWO-STAGE BIDDING SYSTEM (RFI/RFP PROCESS))/CIDB PROPOSAL PROCEDURE USING THE TWO-STAGE SYSTEM

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 Transnet would like to obtain information from prospective bidders regarding the SD opportunities in a particular market in order to determine its go to market strategy;

c) 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

d) 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 (c) above Transnet may draw up a functional specification in the RFP based on the responses received to a Request for Information ("**RFI**") taking into account its specific needs. It is critical that the specification not be drafted around a particular supplier's response to the RFI. Intellectual property issues must be taken into account prior to proceeding to stage two of the process.

14.6.2 When to use the two-stage bidding process

a) This mechanism is used in assessing the availability of Goods/Services where there is no clear specification of requirements or where the suitability of service providers must first be determined prior to the undertaking of any development work.

b) The use of this mechanism is appropriate where there are various possible means of meeting the need.

c) The RFI process is ideally suited to projects involving research, development, studies or experiments. In such instances it is not in the best interests of either Transnet or the prospective Bidders to develop a detailed plan when it has not yet been determined as to whether implementation is feasible.

d) The RFI process can be utilised to determine the availability of Goods and different suppliers' specifications in order for Transnet to draft its own specifications in such a way that accommodates as many potential suppliers as possible that are able to provide a product of acceptable quality.

e) To obtain Expressions of Interest (EOI) from the market before stage 2 of the two-stage bidding process is embarked upon.

14.6.3 Advantages & disadvantages of the two-stage bidding process

Advantages	Disadvantages
• Allows Transnet to obtain an indication of what is available in the market before approaching the market with a firm invitation to bid. • Allows Transnet to draft a clear specification when it approached the market	• The two stage bidding process is a time consuming process • There is a risk of possible infringement of IP

14.6.4 Process

A two stage bidding process involves the following steps:

a) **Stage 1 (RFI stage):**

(i) Prospective Bidders are invited to submit their proposals via an open RFI after approval to approach the market has been obtained.

(ii) The evaluation criteria in the first stage may include criteria such as technical, Quality, contractual terms, conditions of supply and the professional and technical competence of the suppliers. Transnet may wish to request rough costing estimates during this first stage. However, price would typically not be requested at this stage.

(iii) The RFI must clearly indicate Transnet's intention during the second stage of the process: i.e. whether:

- suppliers will be subjected to pre-qualification criteria and be short listed in order to proceed to the second stage;
- Transnet will issue an Open Bid based on the responses and specifications received in the first stage; or
- Transnet will approach one or a shortlist of Bidders based on the responses and specifications received in the first stage.

(iv) The RFIs received must be evaluated in terms of pre-determined criteria which have been made available to all contenders in the RFI.

(v) A recommendation is made to the AC or relevant authority regarding the outcome of the first stage, and the eligibility of the bidders to participate in the second stage.

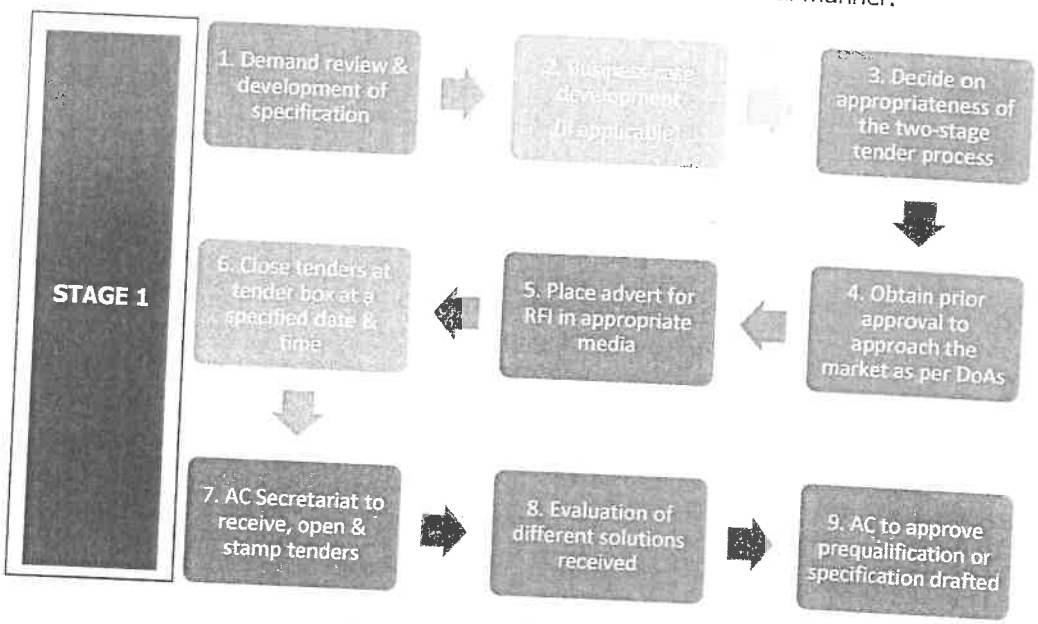
(vi) AC agreement with the recommendation effectively authorises the second stage of the process.

b) **Stage 2 (RFP stage)**

(i) Depending on the option exercised in stage 1, Transnet may either issue an Open Bid or limit the second stage to only one or a shortlist of Bidders, as approved by the AC.

(ii) Bidders are invited to bid in the normal manner.

(iii) The bids are evaluated and awarded in the normal manner.



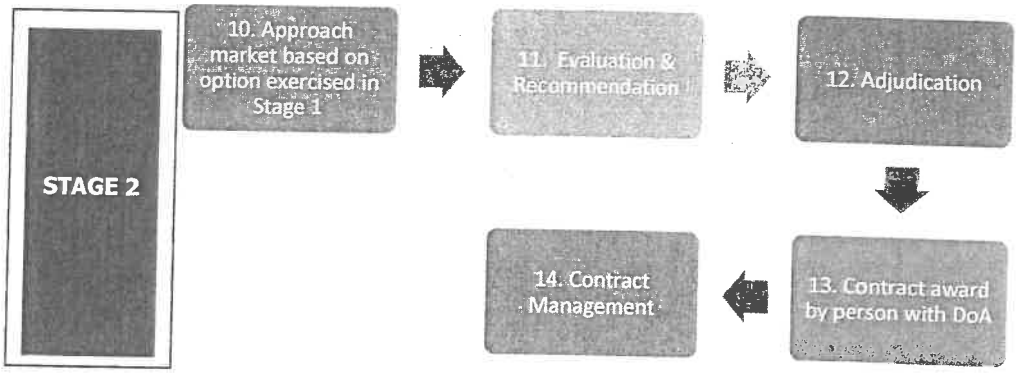


Figure [24] – Two stage bidding process

14.7 FRAMEWORK AGREEMENTS

14.7.1 What is a framework agreement?

The market may be approached using any one of Transnet's procurement mechanisms with the object of concluding framework agreements with one or more bidders for Goods, Services or Works required on an "as and when required" basis. The purpose of a framework agreement is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. This is one of the main distinguishing factors between an approved list and a framework agreement. The framework agreement establishes a contractual relationship upfront whereas there is no contractual relationship between Transnet and a supplier on the approved list until such time as the list must be utilised.

14.7.2 How to enter into framework agreements

Framework agreements, subject to prior approval from the Acquisition Council, may be entered into:

a) inviting tender offers to enter into a suitable contract for the term, using stringent eligibility and evaluation criteria to ensure that contracts are entered into with only those contractors who have the capability and capacity to provide the required services; and

b) entering into a limited number of contracts based on the projected demand and geographic location for such services.

The cumulative value of all the framework agreements to be entered into will inform the delegation of authority approvals required. Approval of amendments to such framework agreements will however be dealt with per individual contract.

14.7.3 How to utilise framework agreements

Where a particular scope of work falls within an existing framework agreement, it must be drawn-off from that framework. A rotational system shall be utilised in order to balance spend across suppliers on that framework and ensure an equitable opportunity for all. Where a rotational system is not utilised then all suppliers on a particular

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framework are to be approached to tender/price on all requirements/task orders issued against that framework.

14.7.4 Guidelines For Concluding Framework Agreements

a) The scope of work of a framework agreement needs to identify the extent and location of the work covered by the contract. Instructing suppliers to perform work outside of the scope of work of a framework agreement is not permitted.

b) The contract period for Framework Agreements should not exceed 3 years. Any work commenced before the end of the term of a framework contract may continue until the end date provided in the batch / task / package order.

c) Prior to issuing a bid, the number of suppliers/consultants/contractors required per panel must be ascertained and stated in the bid documents. Where possible the numbers should be broken down into sub-categories (see below). It is recommended that a maximum number of 5 suppliers be selected.

d) Frameworks must be separated into more categories/panels to allow smaller suppliers to compete e.g. Framework Agreements for Civil Engineering Services may consist of the following Panels (Consultants/Built Environment Professionals):

- Panel A - Targeting Large Enterprises
- Panel B - Targeting Qualifying Small Enterprises
- Panel C - Targeting Exempted Micro Enterprises

Note: Turnover values must be in accordance with B-BBEE values or the Built Environment Professionals for all construction related projects. Quality and eligibility criteria for Panel B and C needs to specifically accommodate QSEs and EMEs to allow these suppliers to effectively compete for these tenders.

14.7.5 Selection after award of framework contract where the rates are the same with all suppliers

In order to ensure fairness and an equal share of the spend, where possible a rotational system must be used. The next task order must be awarded to the supplier with the lowest spend.

14.7.6 Selection after award of framework contract where the rates varies among the suppliers/contractors/consultants

When the need to draw-off the framework contract arises an RFQ must be issued to all suppliers on the list. Where quality or any other criteria has already been agreed upon on the main framework only pricing and possibly B-BBEE status needs to be obtained. Where quality checks and other contract related information has not been ascertained then a full RFQ with tender data etc. must be issued as per the DOA framework.

14.8 ADDITIONAL MECHANISMS FOR CONSTRUCTION PROCUREMENT

cidb

For construction procurement the following additional negotiation methods are utilised. Minutes of such negotiations and the reasons for pursuing such procedures shall be kept for record and audit purposes.

14.8.1 Negotiated Procedure for Construction Procurement

This procedure is utilised when a bid offer is solicited from a single bidder only. This applies to those transactions below and above R2 million in value. Please see paragraph 15.1 of the PPM on Confinements in this regard.

14.8.2 Competitive Negotiation Procedure

This procurement procedure reduces the number of bidders competing for the contract through a series of negotiations until the remaining bidders are invited to submit final offers. Bidders shall be informed of the competitive negotiation process and notified of the evaluation criteria and associated weightings in the RFX. The evaluation criteria associated with each successive round of negotiations shall not be varied.

This procedure should only be used where :

a) There are a number of options or ways of satisfying procurement needs
b) The technical character of the works warrants the use of competitive negotiations
c) The purpose is stated in the bid document
d) It is not feasible to formulate detailed specifications
e) If the contract is research, experiment, study or development related
f) All bids received in a competitive selection procedure are non-responsive and the calling for fresh bids is likely to result in a similar outcome (only allowed if the bid document specifically provides for this)
g) Interactions with bidders are essential to refine aspects of the proposed approach to the scope of work in order to arrive at a best value outcome or most advantageous offer.

This method shall be applied as follows:

a) Negotiations take place through one or more rounds of competitive negotiations conducted with responsive and qualified bidders.
b) At each round of competitive negotiations, responsive and qualified bidders are evaluated on the chosen bid evaluation method
c) Bidders are eliminated based on their rankings or bid evaluation scores until remaining bidders are invited to submit final offers.
d) Negotiations are based on equal treatment and confidentiality.
e) Negotiations must not restrict or distort competition or have a discriminatory effect. Dialogue with bidders close when a solution or solutions capable of meeting the organisation's needs are identified. Bidders are informed and invited to submit "best and final offers". Only the weighting attached to each category or subcategory of evaluation criteria can be changed for each round of competitive negotiations. The evaluation criteria cannot be varied.

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

cidb

In the context of construction procurement, a "Confinement" to one Bidder is referred to as a negotiation procedure.

15.1.1 Definition

A Confinement is a mechanism where permission is sought from the person with the appropriate Delegation of Authority to "**confine**" enquiries for required Goods/Services to one or a limited number of Bidders.

A Confinement is a departure from the norm of an open, competitive bidding process and as such must be treated with great circumspection. The misuse of confinements has the potential to entrench monopolies and as such is at odds with the imperatives of the New Growth Path. The NGP seeks to encourage open competition and the introduction of new entrants into the market, particularly those from previously disadvantaged communities.

It is important to note that confinements only apply to transactions over R2m. These rules therefore do not apply to transactions falling below R2m. The quotation system applies to such transactions regardless of the number of quotations the buyer is able to obtain.

15.1.2 Grounds

Confinements will only be considered under the following circumstances:

a) where a genuine unforeseeable urgency has arisen. Such urgency should not be attributable to a lack of proper planning. In such cases appropriate action must be taken against the individual(s) responsible for the bad planning.

b) the Goods/Services are only obtainable from one/limited number of suppliers. For instance, patented/proprietary Goods or OEM spares and components. Operating divisions are however required to provide evidence that there are no new entrants to the market who could also be approached;

c) for reasons of standardisation or compatibility with existing Goods and Services. A case must be made that deviation from existing standardized Goods or Services will cause major operational disruption. If not, confinements based on "standardisation" will not be considered; or

d) when the Goods or Services being procured are highly specialized and largely identical to those previously executed by that supplier and it is not in the interest of the public or the organization to solicit other offers, as it would result in wasted money and/or time for Transnet. When this particular ground

is intended to be used as a ground for Confinement, it is important to note that all pre-requisites must be satisfied: The Goods or Services must be highly specialised, almost identical to previous work done and approaching the market again would result in wasted money and time.

15.1.3 Types of confinements

Depending on the circumstances one of the following two Confinement routes will be applicable:-

a) The normal Confinement route:
- prior authority to confine must be obtained from the person with the relevant delegation;
- bids will close at the relevant AC (relevant AC to be indicated in the submission for approval); and
- the relevant AC will consider the award of business.

b) Confine and award which is only to be used in cases where there is a sole supplier and/or cases of extreme urgency:
- prior authority to confine and award must be obtained;
- the submission to the person with Delegated Powers must fully motivate the reason for the urgency and provide an indicative / benchmark price;
- bids will close at the relevant AC (relevant AC to be indicated in the submission for approval);
- the business will be awarded by the person with the delegation to the relevant Bidder provided that the final price is within the benchmark as initially approved by the person with the delegation to approve the Confinement; and
- the AC must be informed after award.

15.1.4 Delegation of authority

a) Depending on the value of the transaction, only the GCE, BADC and the Transnet Board have the authority to authorise a Confinement.

b) The relevant monetary thresholds for authorising confinements in terms of the DoA Framework effective 1 June 2013 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.

c) In instances where a confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority.

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.

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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.

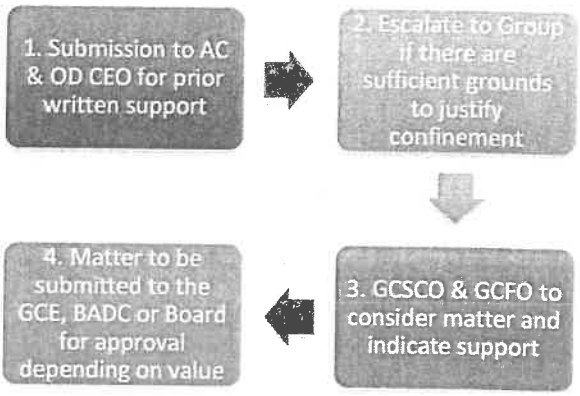

Figure [25] – The Confinement process

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.

d) Please refer to paragraph 22.5.7 for the general principles relating to contract amendments.

15.2 EMERGENCY PROCUREMENT PROCEDURE

The emergency procurement 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.

   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 the emergency procedure). Please see attached Appendix D for the Matrix for Approval of Emergency Procedures.

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

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the requestor in the form of an email, SMS or even verbally. If by SMS or verbally, this must be confirmed in writing or by e-mail afterwards.

c) Procurement will invite a Bid(s) from a supplier(s) best able to deal with the emergency immediately. Alternatively, if the emergency occurs after office hours or it is not possible to contact procurement, the end user, after having received the required approval as per sub-paragraph (a) above, may invite the Bid/s directly from suppliers and/or issue instructions to commence the work.

d) Retrospective authority must be obtained as soon as possible thereafter.

15.2.3 Retrospective authority for the emergency procedure

a) Thereafter the AC or higher in terms of the Procurement Process Approval Delegations must be approached for retrospective authority for the emergency provided the transaction is within the AC's threshold. The AC must consider the motivation and provide retrospective authority if the emergency is validated. The AC is required to be vigilant with regard to exercising this power as the emergency procurement procedure must be adequately justified. The AC must furthermore consider any amendments to emergency transactions with circumspection.

b) Retrospective authority must be sought using the standard template.

c) The concept of retrospective authority applies only in the context of emergencies and does not apply to the condonation process.

d) 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. However, if the use of the emergency procedure was not justified, it will equate to non compliance with procurement processes and condonation would have to be sought.

15.3 HIGH VALUE TENDER PROCESS (HVTP)

- The High Value Tender Process (HVTP) subjects all transactions falling within the High Value Tender threshold to independent scrutiny and validation of all commercial, contractual, process and governance aspects of the Bid process.
- The process enables Supply Chain to detect any shortcomings at key gateways in the Bid process and to make appropriate corrections before any award of business is made.

15.3.1 Principles

a) The HVTP applies to all transactions falling within the High Value Tender threshold. The HVTP offers an opportunity for peer review, guidance, advice and the sharing of good practice and experience. The HVTP subjects all high value bids to independent scrutiny and validation of all commercial, contractual, process and governance aspects of the bid process.

b) The process enables Supply Chain to detect any shortcomings at key gateways and to make appropriate corrections. This further reduces Transnet's risk on larger value acquisitions as any inefficiencies are addressed before any award of business is made.

The gateways that are reviewable in the process are as follows:

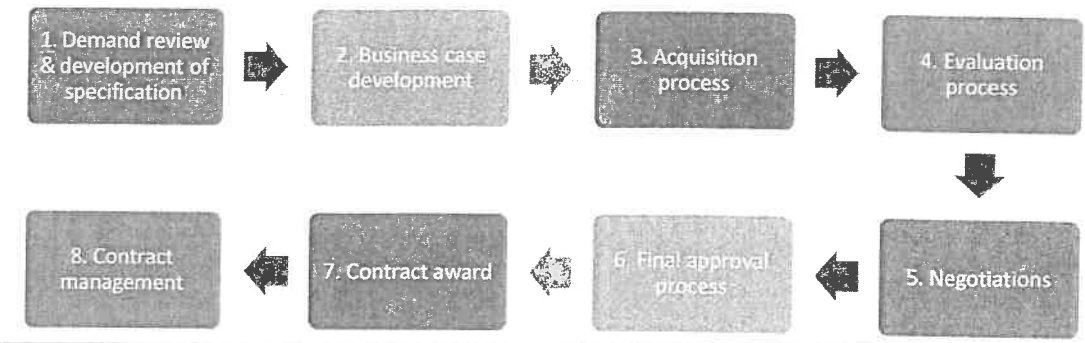

Figure [26] – The HVT process

15.3.2 The HVT Process

The following steps must be followed for any transactions falling within the High Value Tender threshold:

Entities must contact and involve the HVT team from the outset of the bidding process i.e. at the demand review stage;

The HVT team must attend to all procurement processes and advise Entities during each phase of the process as follows:

- Review the demand and business cases.
- Review the RFX document for accuracy and correctness before going to market.
- Assess the adequacy of the procurement proposed mechanism used i.e. RFP/RFI/Confinement and determine if governance is being followed by ensuring that the approval process has been complied with.
- Ensure that in all high value bids, a CFST contains at least Technical, Financial, Operational and Legal Support.
- Advise on the scoring methodology and governance issues related to the evaluation process.
- Advise the teams during the evaluation process on all bids;
- Advise and support teams during the moderation process of scores on all bids;
- Review AC documents for accuracy and correctness.
- Advise teams during the negotiation process and also determine if governance processes have been followed.
- Advise teams during the contracting process and also determine if governance processes have been followed.
- During each gateway review the HVT team will raise questions and/or concerns. The teams may not continue with the process until all the HVT team's concerns have been addressed.
- The HVT team must report significant process breaches to Transnet management. Firstly at Entity level, and if still not satisfied with the outcome / corrective action, such matters must be reported to the OD CPO before being escalated to the 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.

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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[3]

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:

[3] *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*

a) relates to known institutional requirements which can, within reasonable and practicable limits, be acquired by conventional competitive bidding methods;

b) relates to goods or services which are generally available; or

c) does not comply substantially with the requirements of paragraph 15.4.3 above.

15.4.5 **Rejection of unsolicited bids**

Should Transnet decide to reject an Unsolicited Bid, the following steps must be followed:

a) The Bidder must be notified of the decision;

b) All documents received in the Unsolicited Bid must be returned to the Bidder; and

c) Transnet must ensure that it does not make use of any intellectual property or data that was contained in the Unsolicited Bid.

15.4.6 **Process for consideration of unsolicited bids**

a) The Unsolicited Bid must be considered by an evaluation team. The minutes of the evaluation meeting must be recorded.

b) The evaluation team should investigate and verify whether there are no other suppliers in the market.

c) In the event that the evaluation team has resolved to procure the Goods or Services, depending on the contract value, the Confinement or quotation process must be followed and thereafter a recommendation made to the AC, Manager or person with the relevant authority to approve the award.

d) All copies of Unsolicited Bids, records of discussions, records of deliberations and copies of correspondence relating to it, will be kept by the procurement official who led the process, and the AC secretary for record purposes.

15.4.7 **Information to accompany the recommendation for award of the unsolicited Bid**

The following information must be contained in the recommendation:

a) A detailed description of the goods or services;

b) A detailed description of benefits Transnet is to derive from the envisaged acquisition;

c) The costs associated with the acquisition of the service or product;

d) The validity period of the Unsolicited Bid;

e) Proof of certification that the Bid was submitted by the person who holds the intellectual property rights in the goods or service; and

f) Certification by the evaluation team that there are no other suppliers who can provide the goods or services.

15.5 CONTRACT CONSOLIDATION

Contract consolidation may represent optimal value for Transnet in the following circumstances:

- where more than one Entity have existing contracts for the same Goods / Service with the same or different suppliers with significant price variations and differing contract terms; or

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- where one or more Transnet Entity become aware that another Entity has already concluded a contract for the Goods /Services required by it and wish to utilise the existing contract ('piggybacking').

15.5.1 Principles

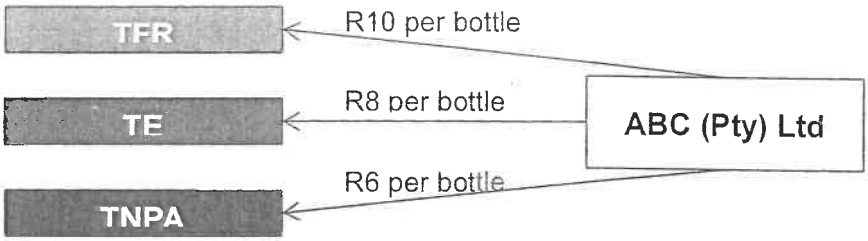
Consolidation of existing contracts is potentially problematic from a governance and operational perspective. For this reason, Transnet must endeavour to approach the market with a consolidated demand signal clearly outlined in a single RFP, rather than having each Entity approach the market in a piecemeal fashion and thereafter seeking to consolidate a number of different contracts. Therefore, when an Entity identifies the need to acquire goods/services that are common to more than one entity, it is imperative that they first ascertain whether it is feasible and advantageous to approach the market with the consolidated requirements of all Entities that require the goods / services.

Transnet can gain significantly from consolidating its demand. Due to economies of scale, it will be in a better position to negotiate price and contractual advantages. In addition, it will lessen the administrative burden on Transnet to manage a multiplicity of contracts.

15.5.2 Triggers for consolidation

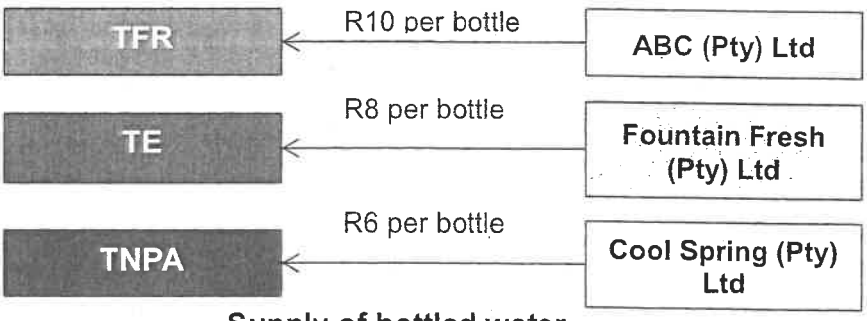
One of the following circumstances should trigger the need for consolidation of existing contracts:

a) The same commodities or categories of commodities are being purchased by more than one entity from the same supplier but with differing prices and contract terms. For example:



Supply of bottled water

b) The same commodities or categories of commodities are being purchased by more than one entity from different suppliers with differing prices and contract terms. For example:



Supply of bottled water

c) The same commodities are being purchased by one OD from the same or different suppliers, with significant price variations. For example:

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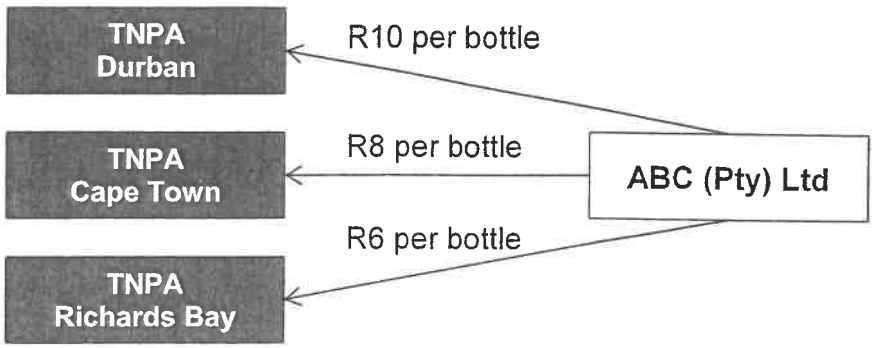

Supply of bottled water

15.5.3 Factors to consider when consolidating

The following factors need to be considered when consolidating existing contracts:

a) The probable increase in volumes required from the preferred suppliers (expressed in %) if contracts were to be consolidated;

b) Whether the existing contracts allow volume changes, and what the contract terms and conditions regarding volume changes are;

c) Price differentials between various contracts;

d) Other key contractual differences (e.g. specifications, delivery, payments, volume discounts etc.);

e) Whether the contracts allow for cancellation 'without cause';

f) The expiry dates of the various contracts;

g) The cost of termination (penalty for breach); and

h) Current contract management and monitoring.

The merits of each case should be evaluated based on the factors above in order to determine the feasibility of consolidation. Once the feasibility of contract consolidation has been determined, a decision will be made on whether to renegotiate one of the existing contracts or issue a new bid.

The cost of termination of existing contracts must be calculated and then weighed against potential benefits of consolidation in terms of cost and Quality. It is important to note that existing contract periods must be adhered to where financially viable. Paying high penalties due to the cancellation of existing contracts should be avoided as far as possible.

Where it is clear that there is no financial benefit for Transnet to renegotiate the existing contracts then the process to be followed would be to issue a new bid for the consolidated spend, when the existing contract(s) terminate.

15.5.4 Deciding on which contract to consolidate

Once a decision has been made to consolidate, the next issue is to determine which contract is the most favourable for consolidation. In arriving at this decision, the following factors must be considered:

a) Identify the contract that entails the biggest spend or usage;

b) The OD and/or region contributing the largest volume;

c) Whether one supplier can meet all Transnet's requirements;

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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.

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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.

Background and Context

Procurement planning

SECTION C:

GO TO MARKET

Chapter 16: Bid Preparation

Chapter 17: Bid Administration

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

CHAPTER 16 : BID PREPARATION

cidb

Construction procurement documents for engineering and construction works contract, supply contracts that involve the purchase of construction materials and equipment, services relating to any aspect of construction including professional services, disposals of surplus materials and equipment and disposals in the form of demolitions shall be formatted and compiled in accordance with the CIDB Standard for Uniformity in Construction Procurement. These requirements are addressed in the standard construction procurement templates and NEC3 templates available on the Transnet Intranet and these must be utilised for all construction procurement.

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 Bid 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, where applicable [4], 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. These criteria must be minimum requirements in terms of technical, SD or financial stability.

c) **Thresholds**

(i) Indicate that there are thresholds that have to be met before a Bidder can be considered for further evaluation in the following order: Local Content/Production threshold if applicable, SD threshold and Functionality (Quality) threshold.

[4] 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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(ii) State what these thresholds are, as well as the minimum score that has to be met to pass the threshold.

(iii) Ideally, the thresholds set must be based on Transnet's minimum requirements i.e. the minimum Transnet requires in order to satisfy its needs/objectives. It, however, sometimes transpires that despite this exercise, all the responses received do not meet the set threshold/s. The RFP may also state that if no Bidders pass the SD and/or Functionality threshold Transnet reserves the right to lower the threshold by a certain pre-determined percentage. The decision to utilise such a disclaimer must be carefully considered. The disclaimer must be clearly specified in the RFP, provided it is in Transnet's best interests to do so and there is concurrence between the end user and Procurement. In addition, with regard to the SD threshold, concurrence is also required from the SD Department. The use of this disclaimer is designed to mitigate the risk of a bid requiring cancellation even though there was an adequate response from the market.

(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.

(v) Functionality threshold:

Transnet must indicate in the invitation to submit a bid if that bid will be evaluated on functionality. The evaluation criteria for measuring functionality must be objective. When evaluating bids on functionality, the following must be clearly specified in the invitation to submit a bid:

- evaluation criteria for measuring functionality;
- weight of each criterion;
- applicable values that will be utilised when scoring each criterion; and
- minimum qualifying score/threshold for functionality.

No bid must be regarded as an acceptable bid if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.

Specifications should be functional and fit for purpose, rather than brand- or product-specific. Specifications must not include any exclusionary terms. Compiling a specification around one supplier's product is unfair and not allowed. Where it is necessary to specify a particular brand or product, the RFX document must request the particular brand/product "or similar".

(vi) Supplier development threshold:

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

16.2.2 **STAGE 2**

(vii) **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
- Lead times

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.

(viii) **Preference (B-BBEE)**

The applicable preference point system must be stated in the bid document. In terms of the preference point system, proposals will be evaluated on price which will be allocated 80 or 90 points and preference which will be allocated 20 or 10 points, dependent on the value of the Goods. The 80/20 preference point system applies where the acquisition of the Goods, Services or Works will be less than R1 000 000.00 (all applicable taxes included). The 90/10 preference point system applies where the acquisition of the Goods will exceed R1 000 000.00 (all applicable taxes included).

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 must be afforded 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.

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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.

It is important to note that for the purposes of adjudication, bids are required to remain valid only until the matter is considered by the AC provided that the AC approves the process. Should the AC not approve the matter, the validity period must be timeously extended.

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) Standard terms and conditions of contract and the General Bid Conditions.

l) Transnet's Integrity Pact.

m) Requirements of the CIDB in the case of a bid relating to construction, upgrading or refurbishment of buildings and infrastructure.

n) Any criteria required by other applicable legislation.

o) 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.

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p) 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.

q) 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.

r) Whether the process may involve post tender negotiations.

s) Anticipated date(s) for starting delivery and/or completion of delivery of the Goods/Services.

t) Conditions regarding shipping, if applicable.

u) Currency and the manner in which the proposal price is to be formulated or expressed.

v) 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.

w) Terms of payment.

x) 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.

y) 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.

z) Bid documentation must state that Transnet shall not be obliged to accept the lowest, any bid or an alternative bid.

aa) Bid documentation must stipulate that disputes regarding the bidding process must be settled by the Procurement Ombudsman.

bb) A space on each page where the Bidder must append his signature plus name of company and company stamp.

cc) A certificate of acquaintance with the RFP documents, as well as a certificate of attendance for a compulsory site inspection/tender briefing session (if applicable).

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:

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a) modify the RFP's Goods/Services or other terms and conditions and request respondents to re-bid on any changes;

b) reject any proposal which does not conform to the detailed instructions and specifications;

c) disqualify proposals submitted after the stated submission deadline;

d) not necessarily accept the lowest priced proposal;

e) reject all proposals, if it so decides;

f) award a contract in connection with the RFP at any time after the RFP's closing date;

g) award only a portion of the proposed goods/services which are reflected in the scope of the RFP;

h) split the award of the contract between more than one supplier; or

i) make no award of a contract.

Bidders who submit Bids subject to certain qualifications which are in conflict with certain bid conditions must be advised to withdraw such qualification, failing which the Bid may be disqualified.

16.5.4 Transnet's standard terms and conditions of contract

When issuing any RFP, Transnet's standard terms and conditions must be used. Please note that a standard contract template has been prepared for Market Demand Strategy related projects. This template is available on the Transnet Intranet. 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.

16.5.5 NEC3 conditions of contract and CIDB Standard for Uniformity

cidb

When issuing any RFP for construction procurement, the NEC3 conditions of contract must be used. Please note that a standard contract template/standard construction procurement templates has been prepared for Construction related projects. For any additional terms and conditions, Group Legal must be approached via the OD/SU Legal Department.

Should the need arise for additional clauses in terms of the NEC3 Z clauses, these must be carefully drafted and approved by the Group/OD Legal Department.

16.6 SIGN-OFF OF BID DOCUMENTATION AND GO-TO-MARKET STRATEGY

Once the bid documentation has been compiled, the bid document together with the media advert 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.

CHAPTER 17 : BID ADMINISTRATION
(issue, receipt, opening of bids and communication)

cidb

This Chapter applies to both general procurement and construction procurement.

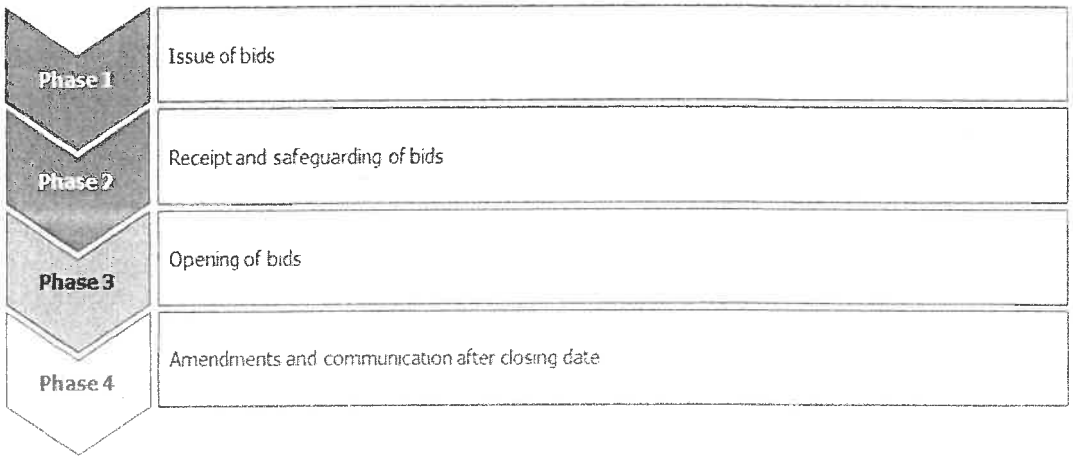
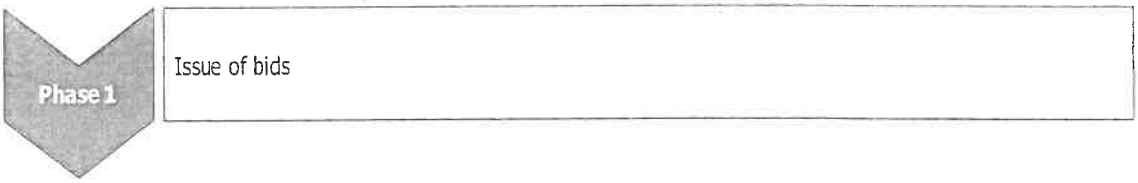


Figure [27] – Four phases of bid administration



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, e.g. the AC Secretary. 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

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- a short description of the requirement must be added after the unique number, e.g. "CONSTRUCTION OF NEW ELECTRIC SUB-STATION AT THE CONTAINER TERMINAL AT PIER NO 2, PORT OF SALDANHA".

17.1.2 All notices and adverts to be issued in the name of Transnet SOC Ltd

All documentation relating to bids shall be issued in the name of Transnet SOC Ltd and shall be published (advertised) in the Republic of South Africa,(nationally and/or regionally), and abroad if necessary. The name of the relevant OD requiring the service shall be clearly indicated, e.g. Transnet Freight Rail, a Division of Transnet SOC Ltd (Reg. No. 1990/000900/30). The rationale for issuing notices in the name of Transnet is that every legal document must reflect the registered company name i.e. the legal persona of the company which will be contracted with.

17.1.3 Important information to be included in notices and Advertisements

The format of the Advertisement is prescribed by Group Communications guidelines. This format has been adapted for Supply Chain purposes and must be used for all Advertisements. The advertisement template can be obtained on the iSCM Intranet Portal.

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)
- the closing date for collection of bid documents (in this regard adequate time must be given to bidders to collect the 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 Issuing of open bids

Where appropriate open bids, particularly for transversals and national bids) must be made available at every OD site across the country. A central electronic Issue Register must be maintained on a Shared Portal as per paragraph 17.1.7.

17.1.5 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.

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Should the Manager decide to charge for the bid document, the following bid document fees structure must be used to determine a fee for bid documents:

TABLE 18

Value of bid	Bid fee (guideline)
<R5 million	no charge
R5million to <R20 million	R200
R20million to <R50 million	R500
R50million to <R100 million	R750
>R100 million	R1000 or higher (discretion of CPO) but not exceeding R5 000.

b) Consideration should also be given to issuing RFPs in digital format on CDs at no charge. Should it be decided that a bid fee be charged for the CD, this fee must not exceed R100.

c) 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.

d) 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).

e) 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.

f) In the event of the bid being cancelled the fee must be refunded. Please refer to paragraphs 20.6.7 and 20.6.8 in this regard.

17.1.6 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. the Transnet internet site, 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) In order to facilitate accessability to Transnet tenders, the following guidelines should be followed regarding advertising:

- Transversal bids should be advertised in national media as well as regional media where it is intended that the business will be split regionally;
- National bids should be advertised in all national media as well as all major regional media where it is intended that the business will be split regionally;
- Regional bids should be advertised regionally only;

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c) 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.

d) 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.

cidb

d) Advertisements for bidders to submit offers in respect of engineering and construction works contracts, shall be placed on the CIDB website using the i-Tender@cidb service at least 10 working days before the closing date for submissions and at least 5 working days before any compulsory site meeting.

17.1.7 **RFX Issue Register**

The following important information pertaining to <u>all</u> bid documents issued must be entered into the RFX Issue Register, which is compiled by the RFX Issuing Office:

- RFX number and description;
- receipt number and date of purchase if a bid document fee was charged;
- document number e.g. 'Document 3' sold to 'Potential Bidder x';
- name and contact particulars of person who collected documents;
- bidder's (company) name; and
- closing date.

A record must be kept of all the names, contact particulars of the persons or enterprises to which bid documents have been issued, as well as the document number sold to the potential Bidder. This is necessary in case there is a clarification or amendment, and all Bidders need to be informed.

17.1.8 **Queries from bidders / amendments before the closing date**

Employees/persons listed in bid notices as contact persons must be available to answer requests for clarification from the prospective Bidders. This is because a Bidder may only communicate with the person listed on the bid document on any matter regarding his Bid prior to the closing date of the bid. Ideally, this person should be the tender administrator.

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.

cidb

Bidders may seek clarification in writing at least 5 working days before the closing time stated in the bid and all bidders who purchased bid documents must be notified accordingly.

respondents, prices paid on previous contracts, number of bid documents issued to date, etc.

17.1.9 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.

c) 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.

cidb

A bid may not be re-issued covering substantially the same scope of work within a period of six months unless only one bid was received and such tender was returned unopened The CIDB must be informed via the i-Tender system of any non-awards or cancellation of tenders after approval from the respective delegation of authority has been obtained.

Addendas may be issued to each bidder during the period from the date that the bid documents were made available until 3 days before the bid closing time.

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

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the briefing session. The minutes must be forwarded to all Bidders who attended the meeting so as to ensure that the same information is provided to all Bidders. This would enable the Bidders to take the minutes into account in preparing their Bids.

c) Bidders are obliged to attend scheduled compulsory briefing sessions, as failure to do so will result in disqualification of the Bids. The bid notices must clearly indicate this. Discretion must therefore be exercised in deciding whether or not a compulsory site inspection or briefing session is absolutely necessary.

d) If a compulsory briefing session is not considered absolutely essential, consideration could be given to having a non-compulsory briefing session. In such instances, attendance at such a meeting would be on a voluntary basis. The RFX documents must clearly state this. The RFX should also state that Transnet will not be held responsible if any Bidder who did not attend the non-compulsory session subsequently feels disadvantaged as a result thereof.

e) Latecomers to any briefing session should be allowed to attend. However, no information should be repeated for the benefit of latecomers. They must be advised that the information should 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 (e.g. website);
- issue bid documents;
- enable payment for bid documents where applicable; and/or
- receipt of Bids.

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;

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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.

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 16.5.1v) in Chapter 16 on *Bid Preparation*.

17.2.1 Bids are to be 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) As a general rule, such bids should not be cancelled and re-issued. Furthermore, condonation is not required. However, when the matter serves at the AC, the AC will consider whether the price was reasonably anticipated to fall below the AC jurisdiction. If it is apparent that this was not the case, the AC may recommend

that the matter be non awarded. This rule must be applied taking into account the rules relating to cancellation of bids as indicated in paragraphs 20.6.7 and 20.6.8.

e) Bids that were anticipated to fall within the AC threshold, and which therefore closed at the AC, but were subsequently found to fall below the AC threshold, must be dealt with by the relevant Manager. The matter must be reported to the AC for information.

f) Where some Bids fall below the AC jurisdiction and some are within the AC jurisdiction, the lowest priced responsive bid will determine where the matter must be dealt with.

g) The tender box must be fitted with two locks, and the keys 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.

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e) On the closing date and time, the Bids must be opened and stamped. A register of the quotes requested and received must also be kept. No additional quotes are to be requested or considered after the closing date and time.

17.2.4 Late Bids

a) Transnet will not accept any late Bids. A Bid is late if it is not placed in the relevant Tender Box, ETB 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 in cases where:-

- 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;
- 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.
- It was an RFI process and 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.

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Opening of bids

17.3 PHASE 3: OPENING OF BIDS

17.3.1 Time and manner of opening of bids

a) Bids shall be opened promptly after the deadline for the receipt of Bids, or as soon as possible thereafter.

b) Bids shall be opened by a duly authorised senior employee in the presence of at least one other employee. The persons must declare their interest. In the event of a conflict of interest they must recuse themselves from the opening of the Bids. In addition, the persons opening the Bid documents must not be involved in the issuing, evaluation or adjudication of that bid as they are perceived to have an indirect interest in the bid.

c) There should be a check to verify that Bidders had paid bid fees, where applicable. If bid fees had not been paid, the Bid must be endorsed accordingly, and an explanation obtained from the Bidder by the AC Secretary. If no reasonable explanation can be provided by the Bidder, the Bid must be disqualified. A record of this decision must be kept by the Secretary.

17.3.2 Stamping of Bids

a) An employee shall date stamp/punch 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

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that invited the Bids. The name, contact details and signature of the person collecting the Bid documents must be obtained and the duplicate list with the signature will be kept by the bid opening office, either on the appropriate file or in a register as part of the record.

Phase 4 Amendments and communication after closing date

17.4 PHASE 4: AMENDMENTS AND COMMUNICATION AFTER CLOSING DATE

17.4.1 Amendments after the closing date

Transnet is entitled to amend any bid condition, validity period, specification or plan **after** the closing date of a bid. However, all parties who obtained bid documents and submitted valid Bids must be advised thereof in writing by fax or e-mail and be given the opportunity of bidding on the amended basis by an extended closing date and time. Proof of such written communication must be kept for record purposes. Bidders who did not submit valid Bids (e.g. submitted their Bids late, or who did not attend the compulsory briefing session/site inspection) cannot participate in the extended invitation. Authority for such communication must be obtained and is dealt with in paragraph 17.4.3.d) below.

In the event of a material amendment to the specification or scope of work, to which other new Bidders could possibly respond, the RFX must be cancelled and a revised RFX must be advertised. This would give all other potential Bidders the opportunity to respond. This can only be done after approval had been obtained from both the person who signed off the RFX document (refer paragraph 16.6 above), and the relevant AC. The cancellation must be advertised in the same media where the initial advert was placed. If the cancellation and reissue happen simultaneously, they may be advertised together where the re-issue makes reference to the cancellation. In such instances it will not be necessary to obtain AC approval for a non-award as this will delay the matter unnecessarily at this critical stage. However, full details of this 'intervention' must be disclosed to the AC when the final award of business recommendation is made. Also refer to paragraph 17.1.8(c) in this regard.

17.4.2 Extension of validity periods

If a bid cannot be evaluated and awarded within the stated validity period, a motivated request for an extension of the validity period should be made to the appropriate AC Chairperson (or his/her delegate) 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. Should there be a need for a further extension to the validity period, this must be approved by the appropriate AC as a whole. The AC must be provided with all the information relating to the previous extension including the reasons therefore as well as the reasons for the second extension. With regard to matters that fall below the AC threshold, a manager with the delegation of authority will consider and approve any request for extension of the validity period. Authority to communicate the extension of a validity period must be obtained from the AC Chairperson or the Manager with the delegation of authority for matters below the AC threshold.

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.

Requests for the extension of validity period must be submitted at least 10 Working days before the expiry of the validity period.

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.

It is important to note that for the purposes of adjudication, bids are required to remain valid only until the matter is considered by the AC provided that the AC approves the process. Should the AC not approve the matter, the validity period must be 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 for matters below the AC's threshold, 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;

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(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, specification, etc. after the closing date;

(viii) Clarifying any other commercial aspect;

(ix) Carrying out site inspections of the bidder's premises;

(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; and

(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.

Background and Context

Procurement planning

Go to Market

SECTION D:

EVALUATION AND ADJUDICATION

Chapter 18: Evaluation and Recommendation

Chapter 19: Post Tender Negotiations (PTN)

Chapter 20: Adjudication

Contract Management

Functions of Governance Structures

Appendices

CHAPTER 18 : EVALUATION AND RECOMMENDATION

cidb

This Chapter applies to both general procurement and construction procurement. Please refer to paragraph 18.6 for the rules relating to construction procurement.

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.

Step 1 — Test for administrative responsiveness
- Procurement conducts test for administrative responsiveness
- Highlights non-responsive bids for consideration and ratification by evaluation committee

Step 2 — Preparation for evaluation
- Constitute a cross functional evaluation committee (CFET)
- Sign Declaration of interest / Confidentiality agreements
- Set ground rules for evaluation committee

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

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)
- 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

Step 5 — Final evaluation
- Eliminate bidders who did not make all the relevant thresholds
- Populate the relevant automated scorecard based on the evaluation methodology
- Determine final ranking of bidders

Step 6 — Recommendation
- Prepare TEAR report containing recommendation to the AC or person with delegated authority
- Record proper minutes of all the proceedings

Figure [28] – 6 Steps for Bid Evaluation

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Test for administrative responsiveness

Procurement conducts test for administrative responsiveness
Highlights non-responsive bids for consideration and ratification by evaluation committee

18.1 TEST FOR ADMINISTRATIVE RESPONSIVENESS

18.1.1 Test for responsiveness based on returnable documents submitted and signatures on the Bid documents:

a) Check the Bid document to see whether all returnable documents called for in the bid documents and which are required for evaluation purposes and/or incorporation into the contract have been received.

b) The RFP must clearly identify those material returnable documents which must be submitted upfront with the bid submission. Such documents would include those critical documents that will be utilised to evaluate bidders e.g. the the Bidders' pricing schedule and technical submission. Although the B-BBEE certificate is used to evaluate bids, it will not be requested as a mandatory returnable document as in terms of the PPPFA disqualification is not allowed for failure to submit a B-BBEE certificate. Bidders will simply score zero for preference should they fail to submit their B-BBEE certificates by the closing date and time of the bid. If any such mandatory returnable documents are not provided upfront, the bid must be regarded as non-responsive e.g. the pricing schedule, etc.

c) Certain other returnable documents, although essential, may not result in automatic elimination if not provided upfront e.g. a tax clearance certificate. 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 (i.e. additional documents) are those that may be requested but which are not material or essential to the bid e.g. a completed B-BBEE Improvement Plan. 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 [29] below):

Returnable Document Comparative Schedule (add fields for all returnable RFX Number									
Bidder	Correctly Recorded by AC Secretary	Tax Clearance Certificate	VAT Registration Certificate	PSIRA Certificate	Due date for responses after grace period	Docs received by due date	Returnabl Document outstandin after dat	Bid responsive	Remarks
A	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicat outstandin document	Yes / No	
B	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicat outstandin document	Yes / No	
C	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicat outstandin document	Yes / No	
D	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicat outstandin document	Yes / No	
E	Yes / No	Yes / No	Yes / No	Yes / No	Date	Yes / No	Indicat outstandin document	Yes / No	

Figure [29] – Schedule to record Bid compliance

Preparation for evaluation

Constitute an cross functional evaluation committee (CFET)
Sign Declaration of interest / Confidentiality agreements
Set ground rules for evaluation committee

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 and/or value 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).

cidb

In terms of paragraph 4.3.5 of the CIDB SFU Where quality is evaluated, at least three persons who are fully conversant with the technical aspects of the procurement shall undertake such evaluation.
Paragraph F.3.11.1 of the Standard Conditions of Tender (Annex F) indicates that an evaluation panel of not less than three persons must be appointed.

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 5.6 above) for further information on Declaration of Interest.

b) Information relating to the evaluation of Bids shall not be disclosed to suppliers or to any other person not officially involved in the evaluation or adjudication process. A confidentiality agreement must therefore be signed by all members at the start of every meeting of the evaluation committee.

18.2.3 Setting the ground rules for evaluation and rules of conduct

At the onset of the initial meeting, the Chairperson of the evaluation committee must indicate to the members that the following scoring methodology is to be used:

a) Confirm the evaluation methodology that 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 a due diligence exercise, 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;

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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; and

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.

d) Minutes must be kept of all decisions and important deliberations taken at each meeting of the evaluation team.

e) Document security must be maintained at all times.

18.2.5 Evaluation criteria

Bids may only be evaluated in accordance with the criteria specified in the bid documentation (such as specific returnable documents, pricing, quality, commercial, SD, preference, financial stability, etc.).

a) In cases where an evaluation criterion was unclear and it resulted in divergent and incomparable responses being received from the Bidders, the criterion should be clarified and sent to all Bidders. They will then be required to resubmit Bids only in respect of such amended criterion/criteria.

b) In cases where a critical factor was not included in the evaluation criteria, an addendum to the RFP should be issued and sent to all Bidders to provide information pertaining to the additional criteria. The CPO must approve the inclusion of the additional criteria as well as the amendment to the RFP.

c) However, if the required clarity in respect of a) above or the introduction of new criteria in respect of b) above, introduces a substantive change to the RFP then, in the interest of fairness, an amended RFP should be issued by issuing a new tender to the market.

Test for substantive responsiveness

Evaluation committee confirms results of initial administrative test for responsiveness conducted by procurement and conducts test for substantive responsiveness

18.3 TEST FOR SUBSTANTIVE RESPONSIVENESS

The evaluation committee is required to confirm the result of the administrative test for responsiveness undertaken by Procurement.

A Bid is substantively responsive if it conforms to all the terms, conditions, scope and/or specifications of the bid documents without material deviation or qualification. A Bid is regarded as substantively responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bid documents. Any such deviations must be quantified as far as possible. These deviations must be considered during the evaluation and comparison of Bids.

Before evaluating the Bids, members of the evaluation team are required to:

18.3.1 Verify the names of the entities appearing on the bid documents against the correspondence (copy of the bid register) received from the AC Secretariat (i.e. check that only those Bids received through the AC Secretariat, are being considered);

18.3.2 Check that all the pages of the respective Bids had been date-stamped by the AC 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 AC 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 AC 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;

18.3.6 Any deviation from the above must be brought to the attention of the AC Secretariat. A memo explaining such deviation must be compiled by the AC Secretariat 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; and

18.3.7 Confirm the results of the initial test for administrative responsiveness conducted by Procurement.

18.3.8 Reject Bids that do not pass the test for substantive responsiveness.

A Bid is considered substantively non responsive if it:

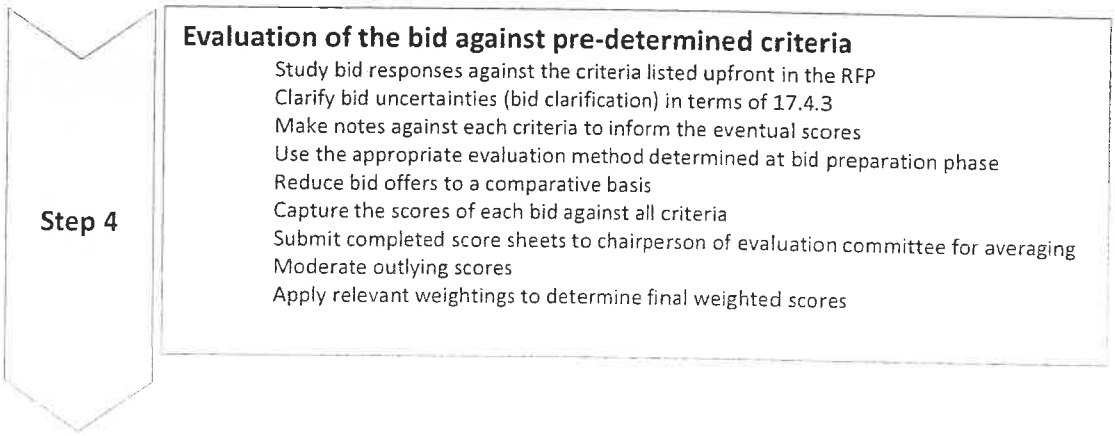
(i) does not contain pricing or response to any other crucial aspect stated in the RFP document;

(ii) does not meet minimum pre-qualification criteria;

(iii) materially departs from the scope, or specification of the Goods/Services requested; and

(iv) would affect the competitive position of other Bidders presenting responsive Bids, if it were to be rectified.

Non-responsive Bids must be rejected and Bidders shall not be allowed to modify their Bids once they have been rejected as non-responsive. Exclusion of a Bid as non-responsive must be defensible based upon objective and justifiable grounds.



18.4 EVALUATE THE BID AGAINST PRE-DETERMINED CRITERIA

Evaluate the Bid against pre-determined criteria using comparative schedules or score-sheets as follows:

18.4.1 Ensure that the evaluation process is strictly aligned with the evaluation methodology outlined in the bid documents (see Chapter 13 – Determining Evaluation Criteria). If certain Bidders have not met the thresholds for Stage 1, no further scoring in respect of those Bidders takes place in Stage 2.

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.**

a) **Local Content Threshold**

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/Production (LC) will always be evaluated as a first step, to determine whether such Bid complies with the stipulated minimum threshold for that particular designated sector. Bidders that do not meet the stipulated minimum threshold for LC do not progress any further and are rejected at this stage. 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 Threshold**

(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 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 [30]* below is an example of the sheet used for such observations).

Sheet 1	Working scoresheet
RFP Number	(Insert RFP Number)
Name of evaluation committee member	(Insert name of evaluation committee member

CRITERIA (Supplier Development	BIDDER NO.1		BIDDER NO.2		BIDDER NO.2	
	Score	COMMENTS	Score	COMMENTS	Score	COMMENTS
Value of investment in plant	Do not complete score at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria	Do not complete at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria	Do not complete at this stage	Evaluate entire bid before progressing to next bid Make comments on the bidder's response to various evaluation criteria
Reduction in import leakage						
Potential increase in export content						
Number company employees to be trained						
Number of downstream supply chain individuals to be trained						
Certified training						
Rand value on training to be spent in the industry						
% of planned procurement from QSEs						

Figure [30] – Score-sheet 1

(ii) Scoring

The next step is to allocate scores on Score-sheet 1 above. This is done by scoring one evaluation criterion at a time for all Bidders. E.g. compare and score the responses to 'Value of investment in plant' for all Bidders before moving on to the next criterion.

All scores must preferably be out of 10 (i.e. the 1 to 10 scale, although a 1 to 5 scale can also be used if specific objective measuring criteria has been set).

Finally, each member's individual scores in respect of each bidder must be carried over from Sheet 1 and inserted on score sheet 2 – see below.

Sheet 2	Final member scoresheet			
RFP Number	(Insert RFP Number)			
Name of evaluation committee member	(Insert name of evaluation committee member			
CRITERIA (Supplier Development)	**BIDDER NO. 1**	**BIDDER NO 2**	**BIDDER NO. 3**	**BIDDER NO. 4**
	Score	Score	Score	Score
Value of investment in plant	5	7	5	7
Reduction in import leakage	4	6	5	6
Potential increase in export content	5	6	4	6
Number company employees to be trained	5	8	5	8
Number of downstream supply chain individuals to be trained	4	5	4	7
Certified training	5	6	3	8
Rand value on training to be spent in the industry	4	7	5	7
% of planned procurement from QSEs	5	6	4	6
Total	37	51	35	55

Figure [31] – 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 [32]*) below. These scores should be regarded as provisional and subject to moderation.

In the event of significant variances in individual scores, the scores must be moderated at the discretion of the Chairperson of the evaluation committee. An outlying score/s should as a general guideline be determined where there is a point differential of more than 4 points on the 10 point scale as compared to the other scores. The outlying scorer (Nivan, in the example of Sheet 3 below) must be asked to motivate his/her score(s). If the score can be rationally explained, the score can remain unchanged. Other scorers should be afforded the opportunity to reconsider their scores, in light of the explanation provided by the outlier. If the outlier cannot rationally explain his/her score, he/she must be asked to reconsider the score. If the outlier refuses to reconsider the score, the chairperson of the evaluation committee may approach the AC Chairperson for a ruling on whether the outlier should be replaced with a different scorer or not.

The process followed with moderation of scores must be recorded in the minutes of the evaluation committee. Any changes to a score sheet due to the moderation must be countersigned by both the scorer and the Chairperson. This should also be cross-referenced with the relevant minute/resolution.

(iv) Weighting scores

The following provides an explanation on how weighted scores are arrived at. However, there is an automated score sheet available on the iSCM Transnet Intranet, where the weighted scores are automatically calculated based on the raw scores.

Step 1

The Chairperson calculates the average scores per criterion per Bidder (after moderation). This is done by dividing the sum by the number of evaluators to arrive at an average score for each particular criterion per Bidder.

Sheet 3	Combined score sheet									
RFP Number	(Insert RFP Number)									
CRITERIA (Supplier Development)	Bidder No. 1 Evaluation Member Scores					Bidder No. 2 Evaluation Member Scores				
	Nomhle	Thulani	Bill	Nivan	Average	Nomhle	Thulani	Bill	Nivan	Average
Value of investment in plant	4	5	3	8	5	6	7	7	1	5.25
Reduction in import leakage	3	4	4	8	4.75	5	6	5	1	4.25
Potential increase in export content	4	5	3	9	5.25	5	6	6	2	4.75
Number company employees to be trained	4	5	4	8	5.25	5	8	5	4	5.5
Number of downstream supply chain individuals to be trained	5	4	5	7	5.25	6	5	7	3	5.25
Certified training	4	5	4	8	5.25	5	6	6	2	4.75
Rand value on training to be spent in the industry	3	4	4	7	4.5	5	7	6	2	5
% of planned procurement from QSEs	4	5	3	8	5	6	6	5	1	4.5
Total	31	37	30	63	40.25	43	51	47	16	39.25

Figure [32] – 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 [33] 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 [33] – Score-sheet 4

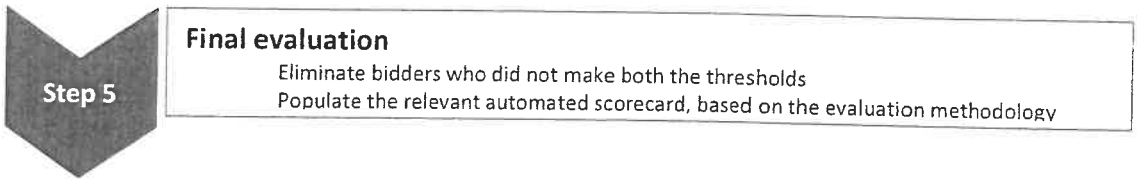
The total weighted score above represents the scoring of each Bidder in respect of the SD threshold.

Points must be rounded off to the nearest 2 decimal places.

c) **Quality / functionality Threshold**

For the purpose of evaluation, Quality is considered to comprise all the criteria set out in the RFP, except price (or TCO), SD, financial stability and preference (B-BBEE).

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.



18.5 FINAL EVALUATION

The final evaluation will involve the following depending on what was stated in the RFX document (Refer to paragraph 0).

18.5.1 **Stage 1** (Refer paragraph 13.2.2 above)

All Bids which have failed to achieve the minimum qualifying threshold for LC (where applicable), SD or Quality must be rejected. All Bids which attain or exceed the minimum qualifying threshold for quality are regarded as *'equally technically compliant'* irrespective of the margin by which they exceed the threshold.

All Bids that have achieved or exceeded the minimum qualification thresholds for firstly, LC (if applicable), SD and Quality/Functionality proceed to Phase 2. They must now be evaluated further in terms Preference and Price.

18.5.2 **Stage 2** (Refer paragraph 13.2.3 above)

Only the Bidders who had met the predetermined thresholds for firstly LC (if applicable) and both SD and Quality progress to this stage.

(v) 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. In addition, Transnet has an obligation to clarify unreasonably low or high prices with bidders. If a bidder is unable to justify their price, Transnet may declare their bid non-responsive.

Next, select and utilise the automated scorecard based on the applicable preference point system i.e. 80/20 or 90/10 depending on the value of the transaction.

In accordance with the PPPFA Regulations, the following formulae have been built into the automated score sheet to calculate the score for price:

80 / 20 Point System (for transactions not exceeding R1 million)	**90 / 10 Point System** (for transactions in excess of R1 million)

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$Ps = 80\left(1 - \frac{Pt - Pmin}{Pmin}\right)$	$Ps = 90\left(1 - \frac{Pt - Pmin}{Pmin}\right)$
Where: Ps = Points scored for comparative price of tender or offer under consideration Pt = Comparative price of bid under consideration Pmin = Comparative price of lowest acceptable bid	

Points must be rounded off to the nearest 2 decimal places.

It is important to note that bidders whose prices are more than double the lowest price will obtain a negative score for price.

A bidder's score for price must be added to its score for Preference / B-BBEE scorecard as calculated in terms of paragraph 10.3.7 above.

Pricing Offer

All Bid pricing offers must be reduced to a common base in a comparative schedule in order to facilitate a fair comparative analysis. In order to facilitate a fair comparison between Bids, it is necessary to distinguish between the bid price and comparative price as the Bid price may not include certain factors impacting on cost. As stated in Chapter 16 above on Bid Preparation, it is necessary to provide all Bidders with a uniform pricing schedule to ensure all Bidders include not only the base price, but all other factors that may influence total cost of ownership (TCO). If a comprehensive pricing schedule is provided by all Bidders, it will ensure that prices received are already on a common basis. Failing this, Bidders must be asked to re-submit prices in accordance with a clear pricing schedule. Alternatively, prices must be reduced to a comparative schedule as follows:

- Whether the cost of transport has been factored into the Bid price.
- Incoterm-related costs, i.e. all other transit-related costs in respect of Goods supplied from abroad, must be added to the Bid price. These include: inspection costs, freight and insurance (from the place where the Goods have been offered to the destination where it shall be delivered), landing charges, customs duties, import duties, wharfage, etc.
- Unconditional discounts must be subtracted from the Bid price, where applicable.
- Other considerations which affect a non-fixed Bid price such as price adjustment factors, currency, etc. that affect the prices over the full period or part of the contract period.
- Time value of money where cash flow implications differ, e.g. when upfront or staggered payments are required rather than a lump sum payment at the end of the contract.
- Differences in Quality which can be expressed in monetary value, e.g. if one bidder's brake blocks guarantees a 20% more useful lifespan than another bidder's.
- Any other incidental costs which may arise from the acceptance of an offer.

Any modification to the bidder's original Bid price due to the process of reaching comparative pricing must be validated with the Bidder him/herself.

Arithmetical errors, i.e. obvious arithmetical errors, must be pointed out to the Bidder (with permission from the AC Secretary) and corrected figures utilised for comparative purposes.

The comparative schedule should reflect the comparison of prices under the following headings (delete where not applicable):

- Tendered prices
- Arithmetical corrections
- Comparative prices
- Projected prices
- TCO adjustments
- Total comparative price

(vi) Score for Preference

Preference is scored according to the B-BBEE scorecard in the final evaluation stage.

EXAMPLE 1 (Automated score sheet)

PURCHASE OF GOODS/SERVICES (Lowest Price) (90/10 system)

NB: Please ensure that only all unshaded fields are populated. All the shaded fields will be populated automatically

If Supplier Development (SD) or Technical / Functionality is included as a minimum qualifying score, those bids that fail to meet the set threshold/s must be disqualified. Only those bids which meet the respective thresholds will be evaluated further on price and preference.

SD threshold	40%

Name of Bidder	Bidder's score	
BIDDER A	65%	QUALIFIED
BIDDER B	48%	QUALIFIED
BIDDER C	63%	QUALIFIED
BIDDER D	51%	QUALIFIED
BIDDER E	55%	QUALIFIED
BIDDER F	42%	QUALIFIED
BIDDER G	38%	DISQUALIFIED
BIDDER H	35%	DISQUALIFIED
BIDDER I	20%	DISQUALIFIED

Techical threshold	60%

Name of Bidder	Bidder's score	
BIDDER A	60%	QUALIFIED
BIDDER B	71%	QUALIFIED
BIDDER C	90%	QUALIFIED
BIDDER D	95%	QUALIFIED
BIDDER E	64%	QUALIFIED
BIDDER F	100%	QUALIFIED
BIDDER G	48%	DISQUALIFIED
BIDDER H	55%	DISQUALIFIED
BIDDER I	37%	DISQUALIFIED

Formula for Price: $PS = 90\left(1 - \frac{Pt - Pmin}{Pmin}\right)$

Where:
Ps = The score for the bid under consideration
Pt = Comparative Price for bid under consideration
Pm = The comparative price of the lowest priced bid passing the functionality test (i.e technically acceptable)
NOTE: Negative values will result in the formula above where P > 2 x Pm.

BASIS FOR COMPARATIVE OFFER

PRICE:	90%
PREFERENCE:	10%

Name of Tenderer : Ranked lowest to highest	Financial Offer (P)	Comparative Offer (Pm)	Points for Financial Offer (Formula*)	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 price and BBBEE	% Premium payable	Premium payable in Rands
TENDERER G	NON-RESPONSIVE								
TENDERER H	NON-RESPONSIVE								
TENDERER I	NON-RESPONSIVE								
TENDERER A	R 3 700 000	R 3 700 000	90.00	Level 9	0	90.00	3	0	R 0
TENDERER B	R 4 000 000	R 3 700 000	82.70	Level 3	8	90.70	1	8	R 300 000
TENDERER C	R 4 090 000	R 3 700 000	80.51	Level 1	10	90.51	2	11	R 390 000
TENDERER D	R 5 500 000	R 3 700 000	46.22	Level 1	10	56.22	4	49	R 1 800 000
TENDERER E	R 6 400 000	R 3 700 000	24.32	Level 4	5	29.32	5	73	R 2 700 000
TENDERER F	R 7 100 000	R 3 700 000	7.30	Level 1	10	17.30	6	92	R 3 400 000

Figure [34] – Example of the automated scorecard

From *Figure [34]* 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.

18.6 TENDER EVALUATION FOR CONSTRUCTION PROCUREMENT

General

The following are steps for the evaluation of Bid offers. Bid offers must be evaluated in accordance with the parameters stated in the RFX.

Communications with bidders should as a general rule only take place for the purpose of clarification and not for negotiation, except where the negotiations form an integral part of the procurement procedure.

Step 1 Determine whether or not bid offers are complete

1) Compare bid submission against the List of Returnable Documents contained in the bid document and identify schedules and component documents that have not been returned or are incomplete.
2) Request bidders to furnish incomplete bid documents (only where the competitive position is not affected), within a reasonable period of time.
3) Record what is incomplete in each bid submission.

Step 2 Determine whether or not bid offers are responsive

1) Determine, on opening and before detailed evaluation, whether each bid offer properly received:
   - meets the requirements of the Conditions of Tender,
   - has been properly and fully completed and signed, and
   - is responsive to the other requirements of the bid documents.

2) A responsive bid is one that conforms to all the terms, conditions, and specifications of the bid documents without material deviation or qualification. A material deviation or qualification is one which would detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work, change the Employer's or the bidder's risks and responsibilities under the contract, or affect the competitive position of other bidders presenting responsive bidders, if it were to be rectified. Reject a non-responsive bid offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.
   Confirm compliance with all the requirements of the Standard Conditions of Tender, viz:
   - Confirm if eligibility criteria are complied with.
   - Clarification meeting - confirm that bidder attended any compulsory site / clarification meetings.
   - Pricing the tender offer - confirm that bidder has observed pricing instructions.
   - Alterations to documents - confirm that alteration, if any, comply with instructions.
   - Alternative bid offers - confirm, where alternative bids have been submitted, that conditions attached to alternative bid offers have been met.
   - Submitting a bid offer -confirm that the bid offer covers the scope of work contained in the procurement document

3) Declare bid offers non-responsive should the bid:
   - fail to comply with the bid requirements;
   - fail to provide additional information that is requested by the due date;
   - not be fully completed to the extent that the bid can be evaluated;
   - contain material deviations or qualifications; or
   - not be signed
4) Record reasons for declaring a tender to be non-responsive.

Step 3: Evaluate quality as a threhold

Scoring quality	Score each of the criteria and subcriteria for quality in accordance with the provisions of the Tender Data. Calculate the total number of evaluation points for quality using the following formula: *NQ = W2 x SO / MS*

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	where: *SO* is the score for quality allocated to the submission under consideration; MS is the maximum possible score for quality in respect of a submission; and *W2* is the maximum possible number of evaluation points awarded for the quality as stated in the tender data

1) Score quality for each of the categories stated in the Tender Data, calculate total score for quality and record.
2) Eliminate bids that do not score the minimum qualifying score for quality stated in the Tender Data.

Step 4: Evaluate bid submissions

Step 4.1 Reduce bids to comparative offers

Comparative Offer means the bidder's financial offer after the factors of non-firm prices, all unconditional discounts and any other tendered parameters that will affect the value of the financial offer have been taken into consideration.

A discount which is dependent on Transnet adhering to the contractual obligations, e.g. to pay on time, must be regarded as an unconditional discount.

Arithmetical errors

- Check responsive bids for discrepancies between amounts in words and amounts in figures. Where there is a discrepancy between the amounts in figures and the amount in words, the amount in words shall govern.
- Check the highest ranked bid with the highest number of evaluation points after the evaluation of bids
  - the gross misplacement of the decimal point in any unit rate;
  - omissions made in completing the pricing schedule or bills of quantities; or
  - arithmetic errors in:
    - line item totals resulting from the product of a unit rate and a quantity in bills of quantities or schedules of prices; or
    - the summation of the prices.
- Notify the bidder of all errors or omissions that are identified in the bid offer and invite the bidder to either confirm the bid offer as tendered or accept the corrected total of prices.
- Where the bidder elects to confirm the bid offer as tendered, correct the errors as follows:
  - If bills of quantities or pricing schedules apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
  - Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the bidder's addition of prices, the total of the prices shall govern and the bidder will be asked to revise selected item prices (and their rates if bills of quantities apply) to achieve the tendered total of the prices.

1) Review financial offer and correct discrepancies between totals and calculations / summations in accordance with the provisions of the Tender Data.
2) Identify parameters included in the Returnable Documents that have a bearing on the financial offer eg life cycle costs, contract period, requirement for price escalation etc and quantify their impact on the financial offer.

3) Reduce all bids to a common base i.e to comparative offers.

Do not include preferences at this stage.

Step 4.2 Determine the reasonableness of bid offers

Judge the reasonableness of financial offers and reject all bids with unrealistic financial offers. It is important that the offer receiving the highest number of points for price is realistically priced. Unrealistic financial offers (i.e., where it is not economically possible to execute the contract at that price) distort the scoring of price. In cases where a bidder has tendered a favourable unrealistic financial offer, the evaluator should ascertain as to whether or not there is a valid reason for the bid price being unrealistic. This may necessitate that the bidder be interviewed. If there is no valid reason, the bid must be eliminated from further consideration.

Step 4.3 Review Claim for Preferences

- Confirm that bidders are eligible for the preferences claimed in accordance with the provisions of the tender data and reject all claims for preferences where bidders are not eligible for such preferences.
- Confirm that bidders are eligible for the preferences claimed in the Preference Schedule / the reasonableness of any tendered contract participation goal.
- whether or not the enterprise in question satisfies the definition provided for a Targeted Enterprise.

Step 4.4 Award points for financial offer

Scoring financial offers

Score the financial offers of remaining responsive tender offers using the following formula:

NFO = W1 x A

Where:

NFO is the number of tender evaluation points awarded for the financial offer.

W1 is the maximum possible number of tender evaluation points awarded for the financial offer as stated in the RFX

A is a number calculated using the formula and option as stated in the RFX

Formula	Comparison aimed at achieving	Option 1	Option 2
1	Highest price or discount	$A = (1 + (\frac{P - Pm}{Pm})$	A= P/Pm
2	Lowest price or percentage commission/fee	$A = (1 - (\frac{P - Pm}{Pm})$	A= Pm/P

where:

Pm is the comparative offer of the most favourable tender offer.

P is the comparative offer of tender offer under consideration

Method	Formula for financial offer
2 Financial offer and preferences	Highest price or discount: $W1 \times A = (1 + (\frac{P - Pm}{Pm})$

	Lowest price or percentage commission/ fee $W1 \times A = (1 - (\frac{P - Pm}{Pm})$ Where W1 is equal to 80 or 90 Pm is the comparative offer of the most favourable tender offer. P is the comparative offer of tender offer under consideration.

Score the financial offer of all responsive bids received to two decimal points using the appropriate formulae.

1) Bids may only be evaluated in accordance with the evaluation criteria stipulated in the RFX.
2) The involvement of women and black persons in contracts should not be evaluated in the form of quality criteria in public contracts. This must be addressed in the preferencing points in accordance with the PPPFA.
3) Any eligibility criteria introduced into the Tender Data should generally be based on the demonstration of the following, as necessary:
   - professional and technical qualifications;
   - professional and technical competence;
   - financial resources;
   - equipment and other physical facilities;
   - managerial capacity, reliability, experience; and
   - reputation.

4) Quality should only be introduced into the evaluation of bids where it is required to achieve policy objectives in terms of an organization's procurement policy or it is justifiable in terms of procurement outcomes. Quality measures must not promote captive markets and should result in quality that is appropriate to comply with user requirements as opposed to the best quality available.

5) Bid evaluation criteria need to be disclosed to bidders in a fair, equitable and transparent procurement system.

Example 1: Financial offer and preference

- *Bidder A tenders an amount of R 1 000 000 to construct houses for the public sector and is the lowest financial offer received.*
- *Bidder B tenders an amount of R 1 050 000,*
- *Bidder C an amount of R 1 100 000,*
- *Bidder D an amount of R 1 070 000 and*
- *Bidder E an amount of R 1 030 000.*

What are the evaluation points for financial offer that these tenderers receive, if the value for W1 provided for in the Tender Data is 90 and method 2 (financial offer and preferences) is to be used in the evaluation of bids?

Formula 2 is selected because the tenderer with the lowest financial offer is the most favourable offer.

- *Bidder A gets 90 points (i.e. the maximum), as this is this most favourable financial offer received.*
- *Bidder B obtains*

$90 \times (1 - (\frac{P - Pm}{})) = 90 \times (1-(\frac{1\,050\,000 - 1\,000\,000}{}) = 90 \times (1-0.05) = 90 \times 0{,}95 = 85{,}50$ points,

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- *Pm 1 000 000*

- *Bidder C obtains 90 x (1- (1 100 000 – 1 000 000) / 1 000 000)) = 81,00 points*
- *Bidder D obtains 90 x (1- (1 070 000 – 1 000 000) / 1 000 000)) = 83,70 points*
- *Bidder E obtains 90 x (1- (1 030 000 – 1 000 000) / 1 000 000)) = 87,30 points*

Step 4.5: Award points for preferences

Calculate the total number of evaluation points for preferences claimed in accordance with the provisions of the tender data.

Step 4.6: Total points and rank tenders

Method 2: Financial offer and Preferences	b) Calculate the total number of tender evaluation points (*TEV*) in accordance with the following formula: *TEV = NFO* + NP where: *NFO* is the number of tender evaluation points awarded for the financial offer NP is the number of tender evaluation points awarded for preferences claimed c) Rank bids from the highest number of evaluation points to the lowest.

Step 5 Acceptance of bid offer

1) Accept the bid offer, if in the opinion of the employer, it does not present any unacceptable commercial risk and only if the bidder:
   a) is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
   b) can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
   c) has the legal capacity to enter into the contract,
   d) is not insolvent, in receivership, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
   e) complies with the legal requirements, if any, stated in the tender data (e.g. Bidders who submit bids for public contracts must be in good standing with SARS in so far as their tax obligations are concerned), and
   f) does not have conflicts of interest which may impact on his / her ability to perform the contract in the best interests of the employer.

2) An employer must, before awarding a construction works contract, satisfy him or herself that the contractor concerned -
   a) is registered in terms of the CIDB Regulations;
   b) is not prohibited in terms of any legislation from submitting bids or expressions of interest to an organ of state; and
   c) has demonstrated that-
      (i) he or she has the resource capacity or capability specific to the contract concerned;
      (ii) his or her capacity to perform the construction works concerned will not be unduly compromised on the award of the contract concerned.

3) Most banks can be approached for a recommendation relating to the financial

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capability of a contractor to finance a proposed contract. Typically they require a contract amount and a contract period and provide the following ratings:

A- undoubted / excellent
B- good for amount quoted
C- average/ good if strictly in the line of business
D- fair trade risk
E- figure considered too high
F- financial position unknown
G- paper occasionally dishonoured
H- paper frequently dishonoured
A" to C" rating is generally acceptable.

4) Perform a risk analysis on the bidder having the highest ranking / number of points to ascertain if any of the following, as relevant, present an unacceptable commercial risk to the employer:
   a) unduly high or unduly low tendered rates or amounts in the bid;
   b) contract data provided by the employer; or
   c) the contents of the bid returnables which are to be included in the contract.

Note: 1 The reasonableness of the data provided by bidders in the Contract Data also needs to be considered. In particular, the following needs to be carefully scrutinized, and if necessary adjusted through process of negotiation as they serve the basis for the assessment of the cost component of compensation events / variation orders:

- Professional service contracts: The staff rates.
- Engineering and Construction Works contracts: The hourly rates for Actual cost of manufacture or fabrication outside of the Working Area; the percentage for manufacture or fabrication overheads; the hourly rates for Actual Cost of design outside of the Working Areas; the percentage for design overheads; the percentage for Equipment depreciation and maintenance of special and non-special items; and the percentage for Working Overheads.

The percentage for overheads and profit added to the Contractor's Cost for people and the percentage for overheads and profit added to other Contractor's costs.

Note: 2 Unreasonably high rates, which a bidder refuses to rectify can also be sufficient ground for the overlooking of a bidder.

5) Approach bidder to amend any part of the bid submission that presents an unacceptable commercial risk, if relevant.

6) Recommend highest ranked bidder / bidder with the most evaluation points for the award of the contract or if found to be unsatisfactory, undertake an analysis on the next highest ranked bidder and so on until such time as a bidder satisfies the risk assessment.

Step 6

Recommendation

- Prepare TEAR report containing recommendation to the AC or person with delegated authority
- Record proper minutes of all the proceedings

18.7 RECOMMENDATION

18.7.1 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.

18.7.2 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.

18.7.3 Reasons for recommendation

a) The reasons for recommending a particular Bid(s) must be clearly stated by the recommending officers.

b) The Bid with the highest score must be selected unless there are objective criteria other than the criteria used to evaluate the bid 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 the following:

- instances where the highest ranked bidder's price is above budget;
- 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.

If a Bid other than the Bid with the overall highest score is selected, the recommending committee shall provide a full explanation for this decision, and state which objective criteria are relied upon to justify the recommendation of such Bid.

c) Where two or more Bids have scored the highest equal points based on Price and Preference, the Successful Bid must be the one with the highest score on preference.

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d) If two or more bids have equal points, including equal preference points for BBBEE, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.

e) Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

f) 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 using supporting documentation (e.g. benchmarking against previous prices etc.).

CHAPTER 19 : POST TENDER NEGOTIATION

cidb

This Chapter applies to both general procurement and construction procurement. However, for construction procurement, communications with bidders should only take place for the purpose of clarification and not for negotiation, except where the negotiations form an integral part of the procurement procedure.

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.

a) 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. It is important to note that although negotiations may take place in respect of a number criteria including price, technical, SD, delivery terms, etc, the final evaluation criteria against which the best-and-final Bids will be scored will be strictly on price and preference in terms of the applicable preference point system (i.e. either 80/20 or 90/10).

19.1.2 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'.

19.1.3 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 roles and responsibilities of negotiation members;
- the targeted price reduction;
- the increase in SD commitment;
- B-BBEE commitment;
- the motivation for PTN; and
- other aspects that will be negotiated to achieve a "win-win" situation, e.g. payment terms, minimum order size and frequency, delivery, lead times, etc.

19.2 AUTHORITY TO ENGAGE IN PTN (transactions falling within AC jurisdiction)

19.2.1 Matters falling within the jurisdiction of the AC (i.e. above the minimum R-threshold of the AC), should be submitted for the approval of the AC in the normal manner, indicating in detail the process followed in determining the shortlist of Bidders to be negotiated with, details of the agenda that will be negotiated, etc. (refer to paragraph 19.4 below).

a) Upon receiving AC approval, and completion of the PTN process, and the resultant evaluation and scoring of the best-and-final Bids, full details of the best-and-final offers, must be provided when a recommendation on the final award of the business is made to the relevant AC

b) On these higher value transactions, the negotiating team to be appointed by the relevant AC, shall comprise of procurement, SD, technical, financial and commercial (marketing) and legal disciplines, (where appropriate), to facilitate unity of purpose from Transnet's perspective and to enable the Bidder to deal with all relevant matters before making a final offer.

19.3 STANDING AUTHORITY TO PTN (transactions falling below AC jurisdiction)

19.3.1 It would also be acceptable, especially in respect of transactions falling below the AC minimum Rand thresholds, for certain officials (preferably in procurement), to be given specific standing Delegated Powers to conduct and/or authorise PTN, without the necessary prior AC approval as contemplated in paragraph 19.2 above.

a) This authority must be obtained from the Manager or CPO and must be included in the Delegation of Authority of the relevant official. Copies of this should be filed with the AC Secretariat. The standing Delegation of Authority must clearly reflect the maximum transaction value for which the official may conduct or approve PTNs, without prior AC approval. Full details of all such PTN transactions undertaken, should be reported to the AC at regular intervals.

b) A standing authority to negotiate is different from a standing authority to communicate (refer to paragraph 17.4.3) and separate PTN authority must be obtained. Standing Delegated Powers to negotiate will be granted with great circumspection and only to employees who have demonstrated the necessary negotiation skills.

c) Detailed records must be kept in the relevant files of the Bidders who have been negotiated with, how their eligibility for PTN was determined, including their best-and-final offers received. Copies of such standing authority must also be kept on the relevant files. Standing authority to conduct/approve PTN should not exceed the minimum R-value thresholds of the AC. In such cases the process as outlined in paragraph 19.2 above detailing the AC's involvement in the various stages, must be followed.

19.4 PTN PROCESS

19.4.1 Under no circumstances may prices of one Bidder be disclosed to another with the request to improve on such price in order to be awarded the business. This is considered as 'horse-trading' and is considered an unfair business practice. Such misconduct will not be tolerated and will result in disciplinary action.

19.4.2 It is important that all members of the PTN team sign declarations of interest and non-disclosure or confidentiality agreements when appointed to such teams. These forms must be kept on the appropriate files as an audit trail.

19.4.3 Negotiations must be preceded by thorough research and a caucus discussion by the cross-functional negotiation team to be able to obtain a co-ordinated approach.

a) To ensure fairness, the same agenda must be used with all short-listed Bidders to ensure that all Bidders are provided with the same information and the same opportunity to improve their Bid in all respects. The agenda must be made known in advance to all shortlisted Bidders so that they can prepare for the negotiations. It is important to note that although negotiations may take place in respect of a number criteria including price, technical, SD, delivery terms, etc, the final evaluation criteria against which the best-and-final Bids will be scored will be strictly on price and preference in terms of the applicable preference point system (i.e. either 80/20 or 90/10).

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.

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19.5.4 In instances where the relevant AC has authorised PTN with a single Preferred Bidder, the ultimate award of the business must also be presented to the relevant AC for approval to ensure that the final contract is substantially the same as the terms indicated in the RFP, unless the AC approved the preferred bidder and the subsequent award of the contract, upfront, due to operational requirements, (urgency etc), in which case the final negotiated terms, and contract value needs to be reported to the AC for information purposes only.

CHAPTER 20 : BID ADJUDICATION

cidb

This Chapter applies to both general procurement and construction procurement. The rules governing cancellation of CIDB bids differs from the cancellation of general procurement bids and is dealt with in paragraph 20.7 below.

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 21.2.1, 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. It is important to note that for the purposes of adjudication, bids are required to remain valid only until the matter is considered by the AC provided that the AC approves the process. Should the AC not approve the matter, the validity period must be timeously extended;

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

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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 certificate, VAT certificate (where applicable) and whether the recommended Bidder complies fully with all legal requirements stated in the RFP. Note that in terms of the Preferential Procurement Regulations 2011 no business may be awarded to a person whose tax matters have not been declared to be in order by SARS;

20.2.11 the recommended Bidder is not insolvent, in receivership, bankrupt or being wound up, has his affairs administered by a court or judicial officer, has suspended his business activities or is subject to legal proceedings in respect of the aforegoing;

20.2.12 the award of business to the recommended Bidder would not be harmful to Transnet's image. In this regard, it must be borne in mind that Transnet is a public company and its sole shareholder is the Government of the Republic of South Africa. For this reason, business transactions with entities that could harm Transnet's image should be avoided;

20.2.13 price and other commercial terms are market related; and

20.2.14 The award of business does not pose any other legal or material risks to Transnet that has not been mitigated.

20.3 RISK EVALUATION

Upon receiving a recommendation to award business to a particular Bidder, the AC may at its own discretion call for a risk evaluation on the Bidder if it is of the opinion that this was not considered at the evaluation stage. If on reasonable grounds it is determined that there is a material risk involved in awarding the business to that particular Bidder, the AC may, depending on the likelihood and consequence of the risk materialising recommend one of the following:

- not awarding to the Bidder;
- awarding part of the business to the Bidder; or
- splitting the business between the Bidder and another Bidder.

The concept of material risk must be interpreted restrictively and be limited to instances where Transnet would be severely prejudiced by the award of business to a particular Bidder.

20.4 SPLITTING OF BUSINESS

The AC should enquire whether the splitting of the award of business was considered during evaluation, as this is a feasible mechanism to promote the development of new entrants into the market. Transnet's standard bid conditions allow for the selection of multiple suppliers or the award of the whole, or any part of a Bid to any particular Bidder. Transnet may also choose not to make an award if there are valid grounds for doing so.

Bidders who qualify their Bids on the basis that the whole Bid should be accepted (in conflict with the bid conditions) must be advised that the restriction must be withdrawn before their Bid can be considered.

20.5 DISAGREEMENT REGARDING AWARD OF BUSINESS

20.5.1 Should a dispute arise between the recommending officer(s) and the AC regarding a submission after the AC has referred the matter back to the recommending officer for re-motivation, the matter must be escalated to the Entity's CEO for a final decision.

20.5.2 Where the recommendation of the evaluation team conflicts with the opinion of the end user, the matter must be referred to the AC for a ruling.

20.6 NON AWARD / CANCELLATION OF BIDS

20.6.1 Non award of business must be approved by the relevant AC. A motivation for non award may be considered by the AC at any stage of the process before the Successful Bidder is finally selected and informed about the bid award. Once a Successful Bidder has been selected and informed about the outcome of the bid process (i.e. he/she was awarded the bid), Transnet is said to be *functus officio* and can no longer cancel the bid process without an order of court authorizing it to do so.

20.6.2 It should be noted that a Bidder can only be regarded as the Successful Bidder when he/she was unequivocally informed that the bid was awarded to him/her. An award that is made subject to further negotiation or qualification cannot be regarded as a final and unequivocal award. Thus the award of "Preferred Bidder status", subject to the successful negotiation and conclusion of a subsequent contract does not amount to being selected as the "Successful Bidder" as the award is conditional and subject to the outcome of the negotiation process.

20.6.3 Group legal / the OD Legal department should be consulted before a decision to cancel a bid is taken to advise on the legal risk associated with cancellation and also whether Bidders should be invited to make representations before a final decision can be taken.

20.6.4 The decision not to award business must as far as possible be taken timeously. Bidders must be advised of this decision as soon as possible after the decision has been approved.

20.6.5 Non-award of business (as a result of Transnet's bad planning) should for obvious reasons be minimised as far as possible as Bidders expend a significant amount of time, effort and money when preparing and lodging Bids. Non award has the effect of cancelling a bid and the AC must therefore act judiciously when authorising a non award so as to minimize prejudice to Bidders.

20.6.6 When no Bid can be recommended for acceptance, the Manager concerned shall provide a motivation to the AC clearly stating the reasons why no Bid can be recommended and give an indication as to how need for the required Goods/Services will now be met.

20.6.7 In terms of the Preferential Procurement Regulations, 2011, if it is stipulated that the 80/20 preference point system is applicable to a particular bid process and all bids received exceed R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are within the R1 000 000 threshold, all bids received must be evaluated on the 80/20 preference point system. Similarly, if it is stipulated that the 90/10 preference point system is applicable to a particular bid process and all bids received are equal to or below R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are above the R1 000 000 threshold, all bids received must be evaluated on the 90/10 preference point system. If a bid is cancelled in terms of this paragraph, the correct preference point system must be stipulated in the bid documents of the re-invited bid.

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20.6.8 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, services, works requested. [ACs must ensure that only goods, services or works that are required to fulfil the needs of the institution are procured]; or

b) funds are no longer available to cover the total envisaged expenditure. [ACs must verify that the budgetary provisions exist]; or

c) no acceptable bids are received. [If all bids received are rejected, Transnet must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids].

When the AC authorises a non award on the grounds of a) or b) above, all Bidders should be reimbursed for the bid document fee, if bid documents were sold.

20.6.9 The decision to cancel a bid in terms of paragraph 20.6.8 must be published in the media in which the original bid invitation was advertised.

20.7 CANCELLATION OF CONSTRUCTION RELATED BIDS

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A bid may not be re-issued covering substantially the same scope of work within a period of six months unless only one bid was received and such bid was returned unopened.

This does not prevent an employer from immediately calling for fresh bids should:

- the employer change the contracting strategy or restructure the work covered by the proposed contract;
- all bids received are found to be non-responsive; or
- only one bid was received and such bid was returned unopened to the bidder.

The bidder must be informed in writing of non-awards and cancellations and upon written request reasons for such cancellations must be given.

The CIDB must be informed via the i-Tender system of any non-awards or cancellation of bids after approval from the respective delegation of authority has been obtained.

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SECTION E:

CONTRACT MANAGEMENT

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CHAPTER 21 : AWARD OF BUSINESS AND CONTRACTING PROCESS

cidb

This Chapter is applicable to general procurement and construction procurement.

21.1 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.

21.2 DECISION TO ACCEPT BIDS OR OFFERS

21.2.1 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 delegated Manager's signature or 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 DoA;

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 (not the 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.

21.3 NOTICES OF ACCEPTANCE AND NON-ACCEPTANCE OF BIDS TO BE FINALISED

21.3.1 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.

For construction procurement the successful bidder is notified by means of the signing and returning one copy of the Form of Offer and Acceptance.

21.3.2 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.

21.4 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.

21.5 DELIVERY OF ACCEPTANCE TO BIDDER

21.5.1 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 abovementioned offices shall be considered as delivery to the Bidder.

21.5.2 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.

21.5.3 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.

21.6 FORMAL WRITTEN CONTRACT INCLUDING THE LETTER OF AWARD

A formal commitment in the form of a written contract is entered into with the Successful Bidder.

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 award 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.

For construction procurement the signing and returning one copy of the Form of Offer and Acceptance replaces the Letter of Award.

21.6.1 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.

21.6.2 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.

21.6.3 NEC3 conditions of contract and CIDB Standard for Uniformity

When issuing any RFP for construction procurement the NEC3 must be used. Please note that a standard contract template/standard construction procurement templates has been prepared for Construction related projects. For any additional terms and conditions, OD/Group Legal must be approached via the OD/SU Contract/Compliance Department.

Should the need arise for additional clauses in terms of the NEC3 Z clauses, these must be carefully drafted and approved by OD/Group Legal Department

21.6.4 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.

21.6.5 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.

21.6.6 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.

21.6.7 **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 a financial institution approved by Group Treasury, or a cash deposit with Transnet. 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.

e) The following principles are applicable to the acceptance of all types of guarantees issued under supply agreements. ODs must demonstrate to Group Treasury how the guaranteed notional values are calculated. ODs must obtain sign off on the legal acceptance of the guarantees directly, whilst the notional and issuer acceptance will be facilitated through the Treasury Department. The issuing of Advance payment guarantees (APGs) and Performance bonds (PBs) is governed by the DoA Framework as follows:

	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 written 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 Financial Risk Management Framework (FRMF).

The following additional wording must be incorporated in supply agreements in so far as guarantees are concerned:

"Should the minimum credit rating of the Issuer of the guarantee drops below the stipulated minimum requirement before expiry, the Supplier will have to replace the guarantee at own cost with an issuer that meets the minimum rating criteria".

21.6.8 Foreign Exchange (FX) Risk Management

The following principles should be applied within the Group when supplier agreements are concluded. These are critical to ensure that foreign currency risk exposures are minimised on the day of origin.

- Whenever possible foreign currency risk exposures should be eliminated by entering into **fixed RAND** contracts with both local and/or international based suppliers. Where an international and or local supplier does the hedging, the pricing needs to be compared with Treasury's pricing to ensure that the hedge is reasonable and market related. The acceptance of pricing needs to be done in accordance with the DOA.

- Where the cost of the hedge by the international supplier is deemed excessive, Transnet will accept the FX risk and hedge itself accordingly. This will ensure that Transnet has a fixed RAND liability.

- If locally registered suppliers are used where imported components are involved, invoices can only be issued in RAND as exchange control regulations prohibit local suppliers from invoicing Transnet in a foreign currency. Transnet Entities must request the local supplier to hedge the imported portion where ever practical, possible and or to fix the price in RAND for minimum periods as these indirect FX exposures cannot be hedged by Transnet due to South African Reserve Bank (SARB) regulations. There will be some exceptions where small business enterprises do not have sufficient credit lines to accommodate FX hedging on their balance sheet and or if their cost of hedging is unacceptable to Transnet. For these exceptions, specific SARB approval needs to be obtained by the local supplier to allow them to issue FX invoices to Transnet, after which Transnet will hedge on it's own balance sheet.

- If locally registered incorporated/un-incorporated JVs are utilised, SARB's approval should be obtained by the JV for permission to issue invoices in a foreign currency. This approach should be followed if RAND contracting cannot be achieved.

- All contracts/funding agreements with a foreign currency component of more than R50m should be reviewed by Group Treasury, Group Finance and Group Tax during the establishment process and ODs should get the sign off from all the respective sections before agreements are concluded. Contracts with a foreign currency component of more than R100m should also get the sign off by the GCFO.

- A foreign currency exposure will arise once an agreement/letter of acceptance and or purchase order has been concluded and signed by both parties and agreement on FX cash flows and delivery dates have been agreed upon.

- The OD is expected to submit approved FX cash flows to Treasury within 10 business days after the agreement/purchase order is signed to enable Treasury to arrange hedging within the approvals of DOA.

21.6.9 Export Credit Agency (ECA) Supported Finance

- The following wording must be incorporated in supply agreements in so far as ECA supported finance is concerned:

"In order to finance its payment obligations under a future contract where foreign transactions are involved, Transnet may consider raising debt financing [an "ECA Facility"] from one or more banks and financial institutions, with the benefit of export credit agency [ECA] credit support to be provided by an ECA. Under such circumstances the successful Respondent undertakes:

- to provide [and/or cause the Parent/OEM to provide, as applicable] to Transnet and the banks and financial institutions that may participate in the ECA Facility all such assistance as an importer of Goods and/or Services, which are eligible for ECA credit supported finance by an ECA, is generally required to provide for the purposes of obtaining ECA support;
- not to do or [as Supplier of the relevant eligible Goods or services] omit to do anything, which may adversely affect Transnet's prospects of qualifying for or, once obtained, maintaining ECA credit support by an ECA in respect of an ECA Facility.

All cost, expenses, charges and liabilities incurred by Transnet in establishing an ECA Facility with credit support from an Export Credit Agency, may be for the account of Transnet."

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All contracts exceeding R30 000.00 must be registered with the CIDB i-Tender service within 21 working days from the date in when the contract was accepted in writing.

The CIDB must further be informed on the following:

- Any arbitration entered into or litigation initiated in relation to a construction works contract registered in terms of these Regulations, within one calendar month from the starting date of that arbitration or litigation.
- An award of any contract to an emerging enterprise who has a contractor grading designation lower than that required for the contract
- Non-award and/or cancellation of tenders.

Copies of all of the above notifications/registrations must be placed on the contract file.

21.7 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:

21.7.1 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;

21.7.2 when a Successful Bidder has failed to provide the necessary security, if required;

21.7.3 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

21.7.4 when final contract negotiations with a Preferred Bidder fails and a contract is not agreed upon; and

21.7.5 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.

21.8 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.

CHAPTER 22 : POST AWARD CONTRACT MANAGEMENT

Although the PPM provides general guidance with regard to Contract Management Policy and Contracts Management Procedures, please refer to the Contracts Management Manual for comprehensive guidance in this regard available on the iSCM Transnet Intranet

The NEC3 Contracts are managed and administered outside the Procurement Process.

22.1 WHAT IS CONTRACT MANAGEMENT?

Contract Management is an end-to-end process to ensure that:

- contracts entered into by Transnet are managed in a manner which minimises business risk and maximises intended benefits;
- contractual obligations are fulfilled;
- roles and responsibilities are clearly defined; and
- social value is realised.

Table 18 below sets out the 8 core sub-processes of Contract Management which are addressed in the Contract Management Manual:

TABLE 19: 8 core sub-processes of Contract Management

Governance	**Ensuring that the contract life cycle management process is implemented within each site/OD in accordance with a clear set of norms and standards.**
Human Capital	Ensuring that adequately skilled and sufficient contract management human resources are available.
Planning	Ensuring the effective and efficient planning for the transition from the tender phase to the contract phase.
Delivery Management	Ensuring 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	Ensuring that relationships with suppliers are managed in order to develop and maintain open and constructive associations.
Contract Administration	Ensuring that the formal contractual processes and obligations are complied with.
Contract Review / Close Out	Ensuring that the contract is closed out in an orderly manner, that all the elements of the contract have been adhered to and that lessons learnt have been properly recorded.
Electronic Management Tools	This is a system or process that enables Transnet to manage contracts electronically.

22.2 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
- 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.

22.3 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.

22.3.1 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 22.3.11 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).

22.3.2 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 20

KPA	Sample	KPI	Acceptable	Assessment	Remedial Action
DELIVERY	*Daily* all deliveries	On time	99% on time	*88%*	*Supplier to improve to 92%*
	Daily all deliveries	Accurate	99% accurate	*100%*	*N/A*
	Daily 1 in 5 deliveries	Lead-times met	99% lead-times met	*40%*	*Supplier to improve to 70%*
	Daily all deliveries	Paperwork in order	100% paperwork correct	*100%*	*N/A*
QUALITY	*Daily* 1 in 5 deliveries	No. of items rejected by GR	<2% Items rejected	*0*	*N/A*
	Weekly all deliveries	No of items rejected by production	0 items rejected	*0*	*N/A*
	Weekly 1 in 2 deliveries	Items properly packed	<3% items incorrectly packaged	*0*	*N/A*
PRICE REVIEW	*Monthly* 10 prices	Price charged vs. market	95% of items in market pricing range	*91%*	*Supplier to improve to 95%*
PAYMENT	All payments	Payment within 30 days	90% payments on time	*40%*	*Transnet to improve to 80%*

22.3.3 Performance review meetings

The following must be observed by the Relationship Manager 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.

22.3.4 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.

22.3.5 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.

22.3.6 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.

22.3.7 Remedies – General

In terms of the regulations issued in terms of the PPPFA, Transnet must act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.

Transnet may, in addition to any other remedy that it may have against the bidder or person:

a) Disqualify the bidder or person from the bidding process;

b) Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;

c) Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

d) Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the *audi alteram partem* (hear the other side) rule; and

e) Forward the matter for criminal prosecution.

Group/OD Legal Departments should be consulted in deciding on any of the remedies that are to be applied.

22.3.8 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 22.3.9 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.

22.3.9 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.

22.3.10 Failure by a supplier to perform - liability for additional expenses

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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).

22.3.11 **Risk Management**

Risk can be defined as 'the probability of an unwanted outcome happening".

It is advisable to seek to remove or at least mitigate risk whenever possible before contract award. The obligations placed upon buyers to analyse, assess and mitigate risk during the pre-award stages of contract management are dealt with in previous chapters of this PPM. These pre-award activities can be collectively summarised as follows:

Analysis The process of identifying all potential issues that can go wrong with an activity and estimating the probability of each happening

Assessment The process of assessing the likely impact of a risk on Transnet

Mitigation Having assessed the risks and identified those requiring action, responsibility for managing and mitigating them is allocated, which allocation must be dependent on the assessment of the likelihood and consequence of the risk

Contracts provide the framework to mitigate risks and to measure operational and financial performance as well as compliance with business obligations and regulatory requirements.

Post-award risk management undertaken during the contract period comprises those activities associated with identifying and controlling the risks that may potentially affect the successful fulfilment of the contract. Risks to the contract include such issues as:

- lack of capacity of the supplier, particularly if there are significant increases in demand;
- reduction in demand leading to higher unit costs borne by the supplier;
- an event which causes an increase in the total price to Transnet;
- an event which causes a programme delay;
- supplier staff changes;
- changes to the supplier's business objectives;
- deterioration in the supplier's financial standing;
- demand changes that cannot be met by the supplier;
- deterioration of Quality;
- *force majeure* issues;
- market fluctuations for commodities; and/or
- labour unrest.

When a risk is anticipated or perceived, to manage this involves the parties working together to identify *who* has the responsibility for the risk, the *method* of minimising it and *how* the risk will be managed. In order to do so the contract Managers must undertake the following actions:

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- 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.

22.4 SUPPLIER RELATIONSHIP MANAGEMENT

In addition to the achievement of the contractual and commercial aspects of the contract, a healthy relationship between Transnet and its contractors must be maintained as this underpins the overall successful and 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 nature 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 in consultation with the contract manager and recorded accordingly in the contractor's contract file. Establishing a sound relationship with a contractor will help in building a strong relationship and to provide constructive and positive feedback. All strategic contracts must have a supplier relationship manager, which should ideally be a person other than the Contract Manager/Administrator. A supplier relationship manager must have an appropriate level of seniority. For highly strategic contracts, this may be a CPO, GM or the OD's CE.

22.4.1 Sound Relationship Management

A sound basis for the relationship must be established in the earlier contracting phases, e.g. by having clear and well written terms and conditions, SLAs and regular monitoring and evaluation mechanisms. If the supplier relationship manager is new to the contractual arrangement, efforts will need to be made to understand the relationship that exists between the supplier and Transnet and to develop a specific relationship for this phase as soon as possible. It is particularly important for the manager to understand the background to the relationship and be aware of any problems or issues that have arisen at earlier stages of the procurement process.

The type of contract, its size and duration as well as the culture of the parties and the personalities of the people involved will influence the relationship between the parties.

It is of particular importance to Transnet that contractors not only fulfil the technical and financial aspects of the contracts, but also the socio-economic (Supplier Development, Localisation and Empowerment) aspects. As part of SRM, Transnet and the contractor should constantly look for ways to improve the socio-economic benefits of the contract.

22.4.2 Communication with the contractor

It is important to establish and maintain a constructive relationship through regular communication. In particular, problems that have arisen must be identified and every effort must be made to resolve such problems at an early stage. Problems which are not dealt with timeously can easily become exacerbated resulting in poor relations with the contractor. Escalation procedures must be put in place to deal with any unresolved problems. Providing positive and constructive feedback will assist in maintaining healthy relationships.

Effective SRM will enable Transnet to identify early warning signals and thus indicate whether alternative contractors or products should be identified.

Payments should be made without unnecessary delays in line with Transnet's procedures. To this end Transnet must pay suppliers within 30 days of submission of an undisputed invoice.
It is also important to listen to the contractor's side of the story, to identify any problems, address them promptly and explain decisions in an impartial way. This particularly applies to contracts that involve on-going service delivery that extend over a considerable period of time. In such contracts the management of the relationship with the contractor could consist of:

- Informal, day-to-day discussions;
- Interactions between the supplier and the nominated Transnet Supplier Relationship Manager and Transnet's staff; and
- Formal meetings at pre-determined intervals with nominated personnel from both Transnet and the supplier.

22.5 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 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.

The Contract Manager must ensure that s/he thoroughly understands all the components of a contract, including:

- Expected outcome measure – significant deliverables should be tied to the payment schedule; and
- Acceptance / Rejection Terms – Transnet's right to inspect and accept or reject the goods and/or services and the conditions of acceptance or rejection.

22.5.1 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

22.5.2 Amendments to contracts

Contracts may be amended by:

a) Extending/reducing the period of the contract;
b) Increasing/decreasing the value of the contract;
c) Changing the scope of work;
d) Changing the contracting parties; and
e) Changing any other terms and conditions of the contract.

Extension of contracts, additional work, increase in quantities, price or time by more than 10%, cession and assignments, waiving of penalties, etc., are all examples of material amendments to contracts, and need prior AC approval.

A decision to amend a contract should not be taken lightly. Amendments to contracts must be properly motivated by the end-user in consultation with the contract manager and if approved, must be signed off by the person with delegated authority. Please note that the cumulative value of the contract (i.e. the original value together with the value of any previous amendments plus the value of the current amendment) will determine the level of delegated authority required for sign off of the amendment. However, as stated in the PPM, if the contract came about by way of confinement or if it is a consultancy agreement, the amendment must first be approved by the original approver (e.g. GCE) before it is sent to the delegated authority for sign off.

22.5.3 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.

22.5.4 In view of the 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 60 to 90 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 a recommendation to the GCE or higher that the 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.

22.5.5 Exercising options

a) If Transnet wishes to reserve the right to extend a contract period, this should be stipulated upfront in the RFX. 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)).

22.5.6 Involvement of AC in material contract amendments

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.

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.

22.5.7 General amendment principles

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 provided the cumulative amendments are greater than 10% of the original contract value.

b) Matters within the AC's jurisdiction where there are non-material amendments to contracts and contract amendments where the increase in value and/or the extension of period represents less than 10% of the original contract value or contract period will be dealt with as follows:

In such cases the Manager with the delegation of authority may effect such amendment and is only required to inform the AC of such amendment as soon as possible thereafter. The Manager who approves the amendment may be the original signatory of the contract if the cumulative value of the amended contract is still within his/her delegation of authority. However, if the cumulative value of the amended contract is above the original signatory's delegation, the amendment must be approved by the next level of authority and the original signatory must be informed thereof.

Example: A R999 000 increase on a R10m contract, or a 1 month extension on a 12 month contract.

c) Material amendments in excess of 10% of the original contract value or contract period, up to 40% of the original contract value will be dealt with as follows:

In such cases the Manager with the delegation of authority may not effect such amendments without the PRIOR approval of the relevant AC first of such amendment.

A recommendation must be submitted 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 original signatory (i.e. the person with delegation of authority 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 delegations. However, if the cumulative value of the amended contract is above the original signatory's delegation, the amendment must be approved by the next level of authority on review and recommendation of the original signatory.

Example: R350m contract increased by R70m (i.e. 20%) to R420m: Obtain PRIOR approval from main OD AC (e.g. TREDAC) and then the OD CEO.

d) NOTE: As a general rule, contracts may be amended by not more than 40% of the original contract value. Any deviation in excess of this threshold will only be allowed in terms of paragraph (e) below. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted for approval in exceptional circumstances.

e) Amendments in excess of 40% of the original contract value or contract period will be dealt with as follows:

In such cases PRIOR review and recommendation must be obtained from the appropriate AC first, as well as the original signatory. Thereafter the matter must be submitted for approval to the person with delegations one level higher than the original contract signatory (provided the cumulative value is still within his/her delegations of authority). This rule applies regardless of whether the amendment is still within the original signatory's delegation of authority. On approval, the amended contract will be signed off by the person with the delegation of authority to sign off the contract value concerned.

However, this rule does not apply to amendments falling within the GCE, Board Acquisitions and Disposals Committee (BADC) or the Board's delegation of authority. For such contract amendments, the matter will be submitted to the GCE, BADC or the Board regardless of the value of the contract amendment (provided the cumulative value is still within their delegations of authority).

Example: R320m contract increased by R144m (i.e. 45%) to R464m: Obtain PRIOR approval of the main OD AC (still below R500m main AC threshold) and then the GCFO (R464m actually falls within the GCSCO's delegation, but because the amendment is in excess of 40% of the original contract value, it has to go one level higher, which brings it to that of the GCFO).

f) The rules relating to contract amendment stated above apply to contracts awarded via open tender as well as those awarded via confinement and the appointment of consultants.

g) Furthermore, the 40% rule will also be applicable to construction/CIDB related contracts.

22.5.8 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; or
- Ensure retention of records.

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.

22.5.9 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 (if applicable);
   - authorisations to confine (if applicable);
   - minutes of relevant meetings/briefings;
   - evaluation methodology and 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 (if applicable);
- 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 updated 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.

22.5.10 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.

22.6 CONTRACT LIFECYCLE MANAGEMENT METHODOLOGY

SAP CLM has been identified by Transnet Group as the Contract Management System to be used as the Contract Management Process enabler. At present the system serves mainly as repository of contracts but is in the process of being upgraded to include further functionality. It is imperative that each and every supply chain contract entered into by Transnet is loaded onto SAP CLM. Failure to do so will be considered to be a breach of protocol.

The Contract Manager must ensure that Transnet's SAP CLM system is utilised to manage the contract through its lifecycle. The SAP CLM system ensures enhanced visibility, control and performance monitoring of contracts. It will also be used for purposes of audits and analysis of contract transactions. SAP CLM extends from pre-bidding activities, bidding activities, drafting, negotiations and contract management processes. Modules for all activities should be used and/or made

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available. **(Drafting note: this functionality will be added when upgrades of SAP CLM are effected)**

22.7 INDICATIONS OF SUCCESSFUL CONTRACT MANAGEMENT

Successful contract management will achieve benefits by:

Managing Transnet's own responsibilities during the contract

Ensuring the supplier meets the minimum performance criteria, such as compliance

Allowing the achievement of both short and long term supplier performance improvement through developing effective supplier relationships

Ensuring that suppliers deliver Goods/Services of the agreed quality and price

B-BBEE and SD commitments are closely monitored and enforced

Reduction of costs and continuity of supply

Roles, responsibilities, rights, obligations of all stakeholders are clearly communicated and understood

Early identification and resolution of poor performance and disputes thereby minimising risks

Eliminating unethical practices within Transnet

Enhanced Supplier relationships through the visualisation and establishment of win-win scenarios

Entrenching uniformity of managing contracts and the principle of fairness

Creating a database of lessons learnt to aid future planning through the dissemination of good practices

Increased competitive and strategic advantages through effective control and visibility of contracts

Evaluation of the specification against contract performance and identification of contract changes or variations

In summary, successful contract management is indicated if:

The arrangements for service delivery continue to be satisfactory to both parties

The expected business benefits and value for money are being achieved

The supplier is co-operative and responsive

Transnet understands its obligation under the contract

There are no disputes

There are no surprises

A professional and objective debate over changes and issues arising can be had

Efficiencies are being realised

CHAPTER 23 : BLACKLISTING PROCEDURES AND GUIDELINES

This Chapter of the PPM applies in both construction procurement and general procurement activities. However, where suppliers are blacklisted for construction procurement the CIDB must be informed of this in writing within 21 days.

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, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;

c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;

d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;

e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:

(i) he made the statement in good faith honestly believing it to be correct; and

(ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;

g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;

h) has litigated against Transnet in bad faith.

23.2.2 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers. When a dispute arises between Transnet and its supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

(iii) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;

(iv) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;

(v) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.

(vi) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.

23.2.3 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

a) When issuing RFXs, prospective Bidders must be requested to disclose whether the company or any of its directors were found guilty of a serious breach of the law during the preceding 5 Years.

b) Should any prospective Bidder declare a conviction of a serious nature, the blacklisting process should be considered based on paragraph 23.4 below. If considered appropriate, the blacklisting process should be instituted without delay and dealt with expeditiously, whilst the evaluation of the bidder's Bid continues.

c) Under no circumstances may any prospective Bidder be excluded from the evaluation process or overlooked for the award of business until such time as a final decision to blacklist has been made.

23.2.4 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

23.3 WHO MAY BE BLACKLISTED?

The following persons / entities may be considered for blacklisting:

23.3.1 any person/company who has submitted a Bid in response to a bid request issued by Transnet;

23.3.2 any person/company who has concluded a contract/s with Transnet;

23.3.3 any person who has acted in the capacity of subcontractor to a supplier of Transnet;

23.3.4 any agent or employee of the company concerned, or his/her spouse who may be conducting the same business but under a different name;

23.3.5 Transnet employee found to be involved in fraudulent or corrupt activities;

23.3.6 companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons); and/or

23.3.7 any companies subsequently formed by the person(s) guilty of the misconduct or where such person(s) acquires a controlling stake in an existing company.

23.4 FACTORS TO CONSIDER BEFORE TAKING THE DECISION TO BLACKLIST

23.4.1 A decision to blacklist has far reaching implications for the company/person concerned. Therefore, Transnet must act fairly, reasonably and rationally whenever it decides to blacklist a company/person. The decision to blacklist must be considered on a case-by-case basis and must be based on the merits of the particular matter.

The following factors must be taken into account in deciding whether to blacklist a company/person:

a) the gravity / seriousness of the offence/misconduct/breach;

b) any previous offence/misconduct on the part of the company/person;

c) any remedial action taken by the company, including steps to ensure that the misconduct will not be repeated;

d) the seniority of the person(s) who acted in bad faith;

e) the impact of the proposed blacklisting of the company on Transnet's operations;

f) the reasonableness of the explanation for the misconduct;

g) whether the company/person has received direct or indirect benefit as a result of the misconduct; and

h) whether Transnet suffered actual or potential prejudice.

23.4.2 The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet and must be carefully considered. Associated companies must not be blacklisted by default. The merits of each case will inform the decision as to whether a particular associated company will be blacklisted or not. In addition to considering the factors mentioned above, as a general rule the blacklist should only be extended to associated companies where the directors/members common to both entities were either directly involved in the misconduct against Transnet, or failed to take remedial action for a serious offence. Furthermore, it is important to

consider whether the blacklisted director/member plays an active role in the associated company or has a controlling stake in the associated company.

23.5 GUIDELINES FOR DETERMINING AN APPROPRIATE PERIOD FOR BLACKLISTING

Blacklisting cannot be imposed for an indefinite period. The following is a general guideline on the number of Years of blacklisting to impose on suppliers found guilty of misconduct against Transnet:

TABLE 21

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 be referred to the relevant AC to have the blacklisting approved in principle.

23.6.6 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.

23.6.7 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.

23.6.8 If supported, Group iSCM will draft the final submission and attach all original documents including the relevant AC minutes for consideration by the GCFO.

23.6.9 Final approval for blacklisting will be made by GCFO.

23.6.10 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.

23.6.11 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.

23.11 THE BLACKLISTING PROCESS

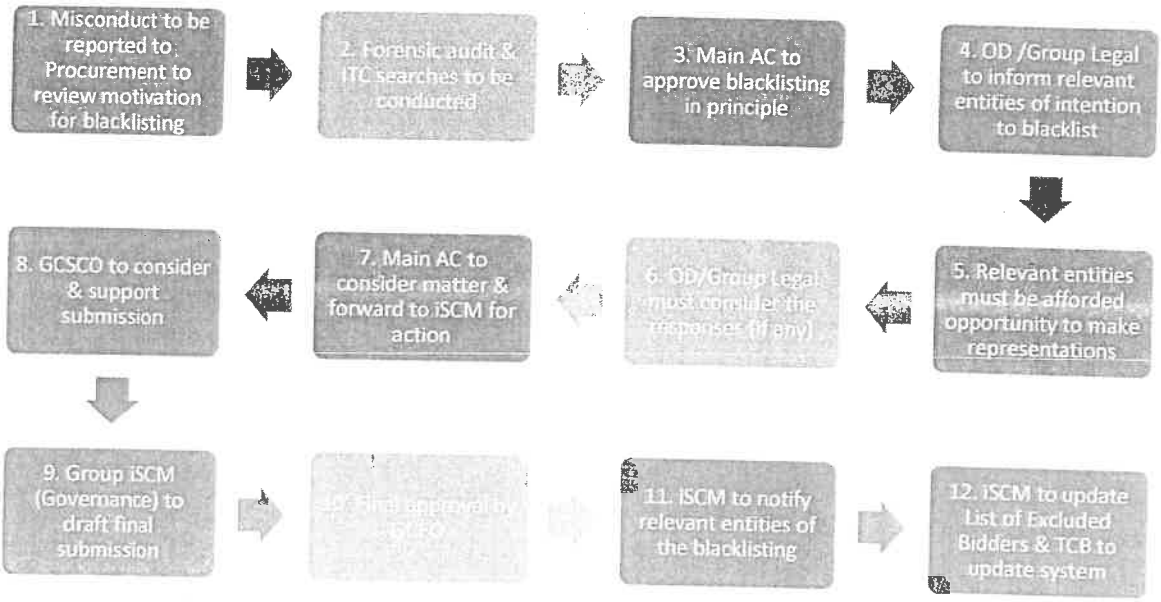

Figure [35] – The blacklisting process

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Background and Context

Procurement planning

Go to Market

Evaluation and Adjudication

Contract Management

SECTION F:

GOVERNANCE STRUCTURES

Chapter 24: Functions of Governance Structures and Departments

Appendices

CHAPTER 24 : FUNCTIONS OF GOVERNANCE STRUCTURES AND DEPARTMENTS

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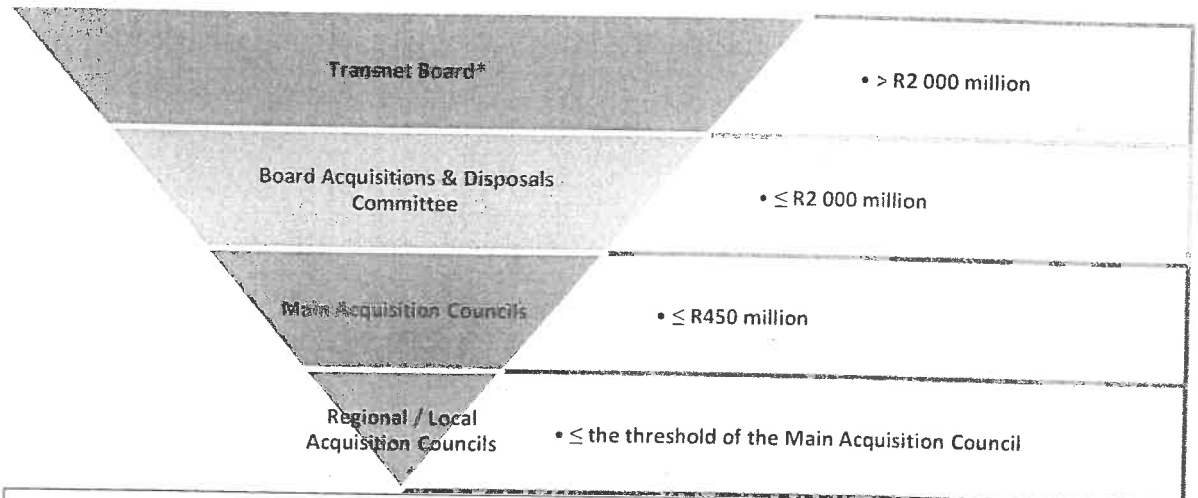
This Chapter of the PPM applies equally to both construction procurement and general procurement activities

24.1 MAIN ACQUISITION COUNCILS (Main AC)

Each division must have its own main AC which must consider and approve all procurement processes, as well as the disposal of scrap, falling within its jurisdiction from R2 million, but not exceeding R450 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 still 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.



NOTE: Should any approval body not agree with the recommendation, the matter must be referred back to the recommending officer(s) for reconsideration or remotivation

Recommendations: The RAC, main AC and the BADC will support the recommendation for transactions above their thresholds. Local/Regional AC normally only consider transactions <R2m but OD CEOs may at their discretion increase these thresholds.

* In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion of the value of Transnet's asset base as per the 2013/2014 version of the Shareholder's compact) before proceeding with the acquisition

Figure [36] – Thresholds for process approval

The **Transnet Acquisition Council** ("**TAC**") has similar roles and responsibilities to that of the ODs' main ACs but it caters for the Group Corporate Head Office requirements, as well as centre led transversal contracts. The TAC has no higher status than the ODs' main ACs.

24.1.1 Composition of the Main AC

The main AC is constituted as a governance committee of the OD CEO and shall consist of senior management members within the OD. The main AC or CEO shall have the discretion to create regional and/or local ACs, hereinafter referred to as secondary ACs. An AC shall be comprised of the following persons:

a) A Chairperson, who will either be the CEO, or an executive or senior management member, shall be appointed by the CEO of the OD. The Chairpersons of secondary ACs will likewise be appointed by the main AC or CEO.

b) A Deputy Chairperson, who shall be one of the members mentioned in paragraph (c) below and who shall be appointed by the OD CEO or elected by the AC at a properly constituted meeting.

c) Members, all of whom are senior Transnet employees in the particular OD or where applicable seconded from Transnet Group, selected by virtue of their specific expertise or business focus, appointed by the CEO, with the clear proviso that the heads of Procurement, Finance, Legal and Risk in the OD will be mandatory appointments.

(i) Members must be capable of exercising sound, unbiased judgement and offer constructive comment.

(ii) It is a minimum requirement for members and appointed alternates to attend the annual training course on AC Roles and Responsibilities, Procurement and Bid Evaluation, presented by the Group Governance Function.

d) ACs may, at the discretion of the OD CEO or Chairperson, opt to appoint alternates for its members. Should the AC opt to appoint alternates, each member may, in writing, nominate one alternate. Alternates must be formally appointed by the CEO. Should the member be unable to attend a scheduled meeting, the appointed alternate should attend in his/her stead. All alternates are to be of suitable seniority to represent the member adequately and to make decisions on the member's behalf.

e) ACs may, at the discretion of the CEO/Chairperson, opt to appoint members on an ex officio basis. Such members shall not be counted to constitute a quorum and shall have no vote.

f) Secretary: The CEO or duly authorised delegate shall appoint an employee of Transnet as secretary to the AC. The incumbent must have extensive procurement and governance knowledge and experience, and should ideally be part of the procurement structure of the particular OD. However, to ensure a proper segregation of duties, the Secretary should report directly to the chairperson for purposes of day-to-day operations and performance management. This is to avoid any perceived conflict of interest which may jeopardise the objectiveness of the Secretary, as procurement will inevitably be tabling the vast majority of submissions.

24.1.2 Primary Mandate (Main AC)

To consider all recommendations from the OD with regard to the award of external contracts for the procurement of Goods and Services, or the disposal of scrap, where the total value of the business exceeds R2 million (subject to the discretion of the CEO to lower such threshold, or to create secondary ACs – see paragraph 24.1.3 below). Likewise such ACs will also consider any subsequent amendments to the contracts falling within their jurisdiction.

24.1.3 Secondary Acquisition Councils

The Main AC or the CEO of an OD may at their discretion decide to lower the limit set in paragraph 24.1.2 above and/or introduce similar secondary structures on local or regional level, to cater for matters falling below the jurisdiction of the main AC. The Terms of Reference of all ACs have been standardised, except for the ambits and

delegations applicable to secondary ACs. The thresholds must be clearly stipulated in the relevant appendices to the Terms of Reference of the respective Main and secondary ACs. It is also a requirement that the Divisional Delegation of Authority, applicable to the signing authorities of individuals (similar to the Transnet DOA Framework) be included as part of the relevant main and secondary ACs' Terms of Reference so as to ensure that there is no uncertainty as to the approval thresholds.

(Refer to DOA Summary Section A, Chapter 6)

24.2 MATTERS FALLING BELOW THE MAIN/SECONDARY AC JURISDICTION

As a general rule, the powers that are normally exercised by the AC will vest in the Manager with the delegation of authority for matters falling below the main AC jurisdiction if a particular Transnet Entity has no secondary ACs or for matters falling below the secondary AC/s jurisdiction if the Entity does have secondary ACs. These include but are not limited to the following:

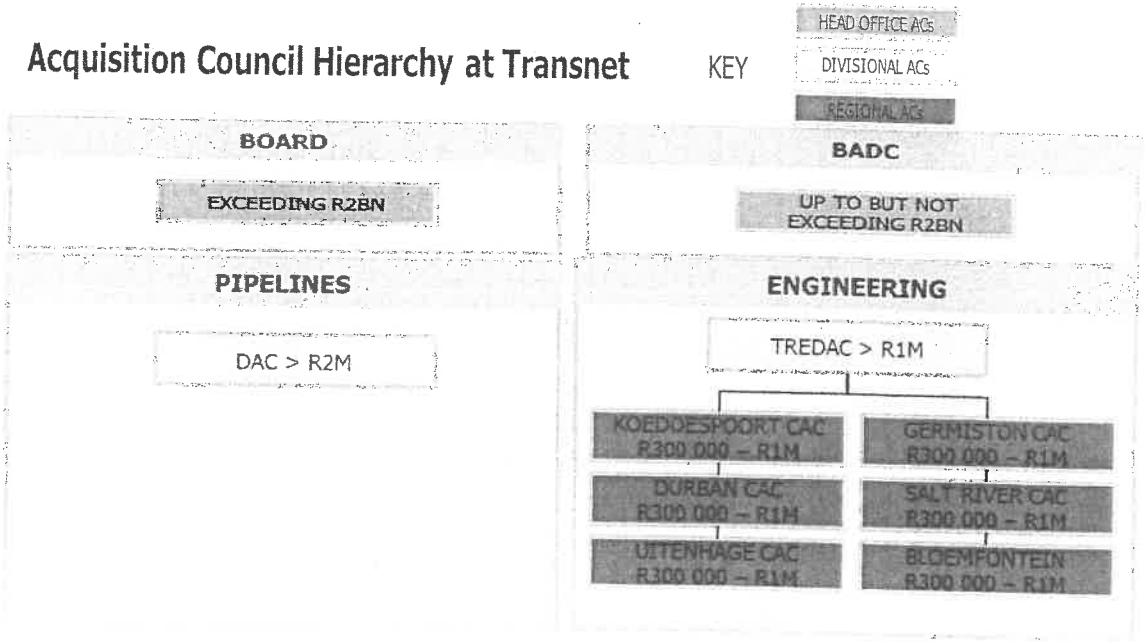
24.2.1 Extension of the validity period of bids;

24.2.2 Any contract amendments up to 40% of the original contract value provided the increase is still within the Manager's delegation of authority. For amendments greater than 40%, the matter must be submitted to the relevant AC even if it is still below the AC's threshold. Where the amendment to a contract brings a matter that was initially below the AC's threshold to a value within the AC's jurisdiction, the contract amendment must be submitted to the AC for approval prior to signature by the person with the delegation of authority; and

24.2.3 Cancellation/Non award of bids.

24.3 ACQUISITION COUNCIL HIERARCHY

Figure [37] below illustrates the current AC hierarchy within the Transnet Group.



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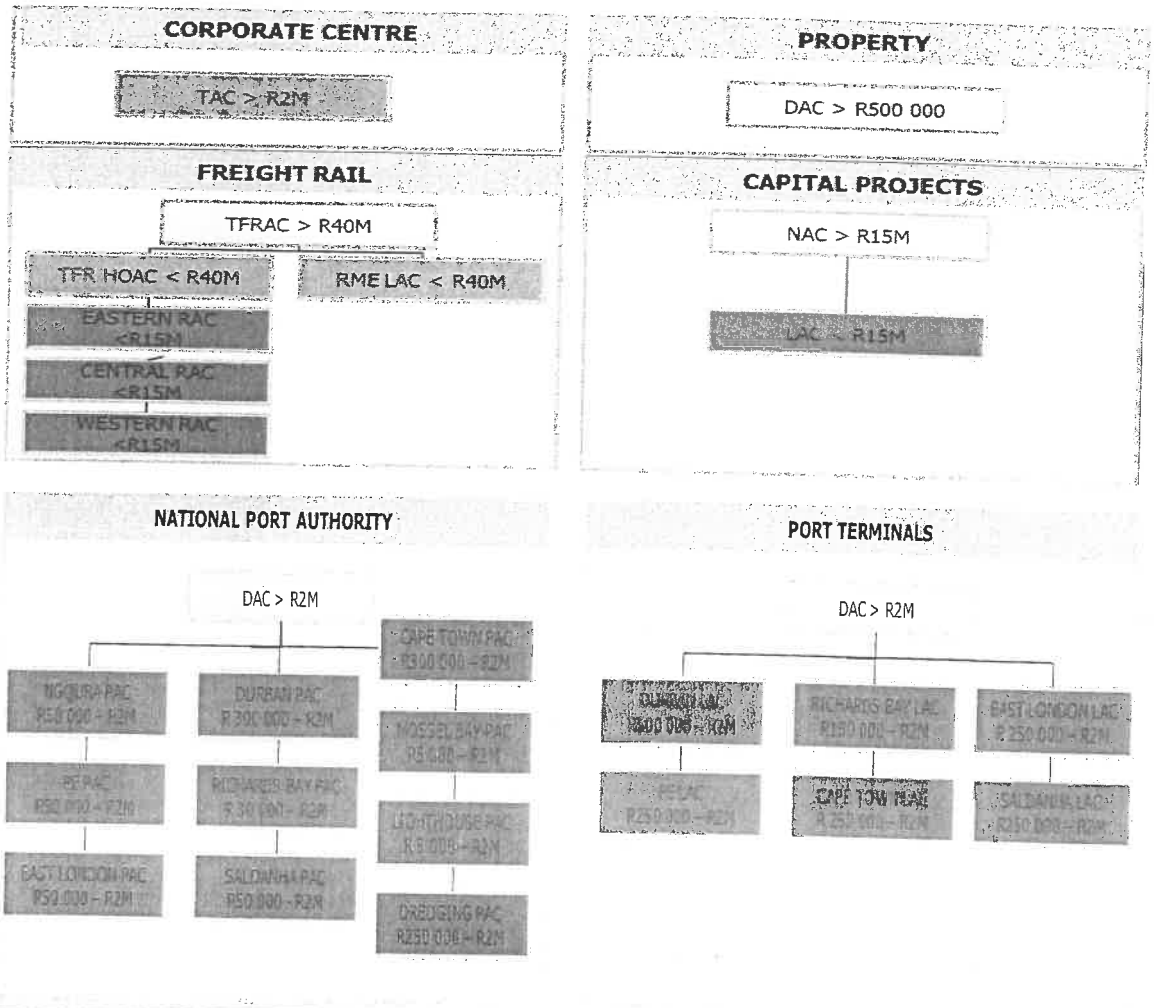

Figure [37] – Acquisition Council Hierarchy at Transnet

24.3.1 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.

24.3.2 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.

24.3.3 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. Should the Chairman have an indirect interest in a matter, the Deputy Chairman will decide on whether he/she should recuse him/herself from a particular matter. The reasons for this decision must be officially recorded and kept on file. This will also apply to circulation ('Round Robin' items).

24.3.4 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 OD CE in the case of ODs and the GCFO in the case of TCC that such member vacates his/her position on the AC.

Individuals who are not members or alternates may, at the invitation of the Chairperson, attend a meeting of the AC in an *ex officio* capacity or to provide clarification on a specific matter(s). Such individual(s) shall be informed that the information which they will be providing will be formally recorded as part of the minutes of the meeting.

24.3.5 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 24.3.4 above should however be observed.

24.3.6 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.

24.3.7 Duties of the AC

a) Chairperson

The Chairperson of the AC shall chair the proceedings at the meetings and exercise the powers vested in him in terms of these procedures and any other DoA.

b) **Deputy Chairperson**

In the absence of the Chairperson, the Deputy Chairperson shall act in his/her stead and shall be empowered to perform all the duties and exercise all the powers vested in the Chairperson under the laid-down procedures and any other DOA.

In the absence of, both, the Chairperson and the Deputy Chairperson from a meeting of the AC, a Chairperson shall be elected out of the members/alternates who are present.

c) **Secretary**

The Secretary shall undertake the tasks as imposed upon him/her by the Transnet Supply Chain Policy and Procurement Procedures Manual (PPM) and other relevant directives, or by the Chairperson of the AC or the GISCM Function or the CEO of the OD.

The Secretary is regarded as the "gatekeeper" of the AC and he/she has to be a person with impeccable integrity and honesty, who has the assertiveness to make a positive contribution to the effective functioning of the AC. The Secretary:-

(i) has the duty to act in good faith, duty of care, with skill and diligence and avoid conflicts of interest;

(ii) shall keep a central bid (RFX) register and shall be responsible for the issuing of RFP, RFQ and RFI numbers in respect of all bids issued by the OD to the external market, falling within the monetary ambit of the AC. He/she will report on progress with regards to completion of the process. (Register template available on the iSCM Transnet Intranet);

(iii) shall give impartial advice and act in the best interests of Transnet and hence should not be subject to undue influence by any of the AC Members. The integrity of the Secretary's position must be protected as it is one of the most effective internal controls available in governance;

(iv) shall be the only person, apart from the AC Chairperson, to consider authorising procurement staff to communicate with Bidders in the period between the closing of the bids and the award of the business;

(v) shall keep the AC members abreast of the latest policies and procedures and any amendments thereto;

(vi) shall provide the AC, as a whole and members individually, with comprehensive, practical support and guidance as to how their responsibilities should be properly discharged in the best interest of Transnet;

(vii) has an important role to play in the induction of new or inexperienced members and shall assist the chairperson in determining the annual AC meeting schedule, training plan and administration of other issues relevant to the AC; and

(viii) provides a central source of guidance and advice to bid and contract administrators throughout the OD, end users and the bidding public.

Other responsibilities of the Secretary are to:

(ix) plan and arrange meetings of the AC, formulate and distribute proper agenda packs (submissions in the prescribed format) for the meetings of the AC. (Standardised submission templates are available on the iSCM Transnet Intranet);

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(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.

24.3.8 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;

(iv) have the right to have a dissenting voice and have the reasons therefore recorded; and

(v) 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.

24.3.9 **Functions of the AC**

a) To consider all recommendations from the OD with regard to the award of external contracts for the procurement of Goods and Services, or the disposal of scrap metal, where the total value of the business exceeds R2 million (subject to the discretion of the CEO to lower such threshold).

b) To consider all subsequent amendments to material provisions (i.e. which have a cost or risk implication) of contracts exceeding R2 million or where the original value of the contract plus the cumulative value of the amendments will exceed R2 million.

c) To consider and approve the non-award of business against any RFX falling within its ambit.

d) To consider recommendations to approach the market to solicit Bids in respect of a contract with a period of more than two Years, regardless of the value (alternatively RFX to provide for different options).

e) The AC must be proactive and clarify uncertainties emanating from submissions, prior to the meeting. This will ensure that matters are not referred back unnecessarily, causing delays. Under no circumstances should matters be referred back by ACs for trivialities.

f) To consider all recommendations in respect of bids as well as any extension of existing contracts of which the original period, or the original period plus the extension of the period together is/are longer than two Years regardless of monetary value, and all subsequent amendments of material provisions to such contracts.

g) With regard to paragraphs 24.3.9 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 24.3.13d) 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.

24.3.10 **Powers of the AC**

When considering any new transaction or any Material Amendment/s to an existing contract, the AC has the power to, at its discretion:-

a) call for any files or papers dealing with offers, enquiries, the invitation and evaluation of Bids in the procurement of Goods and Services;

b) request any information which any employee may have at his disposal relating to the supply of, and/or payment for Goods or Services;

c) require any employee to provide information/advice or to attend any AC meeting in an advisory capacity;

d) invite any Consultant from the private sector to provide additional skills to the AC when necessary;

e) consider and recommend the condonation of any non-compliance with the laid down policies, procedures or directives for sign-off by the CEO en-route to the GCE or higher in terms of the Transnet DoA Framework;

f) offer comments, or note matters submitted for information;

g) refer any submission back for reconsideration/re-motivation;

h) withdraw an item from the agenda of any meeting of the AC, provided that the reasons for such withdrawal are duly recorded in the minutes of the meeting and communicated to the submitter by the Secretary;

i) report any anomalies, irregularities or non-compliance with laid-down policies, procedures or directives to the CEO (should the AC not be chaired by the CEO himself / herself);

j) exercise a discretion in those instances not explicitly provided in the laid-down procedures or as may be entrusted to it by the relevant policies and procedures or the Board Acquisitions and Disposals Committee, the Governance COE (Group iSCM) or the OD's CEO;

k) refer any matter or issue arising from the exercise of the powers or the performance of the aforementioned duties to the Governance COE (Group iSCM);

l) issue 'AC Circulars' to address any trends or issues arising from matters serving before the AC; and

m) periodically review copies of procurement gift registers.

24.3.11 **AC approvals and provisos**

a) The AC does not possess any executive authority to award external contracts for the procurement of Goods and Services or disposal of assets.

b) All AC approvals are subject to the following provisos:

(i) there is still the need for the purchase, sale, hiring, or letting of Goods and procurement of Services before the non-acceptance/regret letters to the unsuccessful Bidder/s and the acceptance of the winning Bid to the Successful Bidder are communicated by a Manager with the appropriate delegation of authority to sign the contract;

(ii) the financial provision is adequate;

(iii) the best interest of Transnet is being served at the time of concluding the contract, and

(iv) the contract is signed by the Manager with the appropriate delegation of authority.

24.3.12 **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

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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 24.3.4, should, however, be observed.

24.3.13 **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.

24.3.14 **Interpretation of PPM and Government Policy**

In cases where the AC requires guidance on Government policy matters and in terms of interpretation of the PPM, guidance must be sought from the GCSCO.

24.3.15 **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 (if practical), 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.

24.3.16 **Reporting/Monitoring**

a) The main OD AC reports to the CEO through its chairperson.

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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.

24.4 TRANSNET ACQUISITION COUNCIL (TAC)

24.4.1 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.

24.4.2 Refer to section 24.1 regarding the main OD AC as this paragraph is also applicable to the TAC. Any powers assigned to a CEO with regard to the Main AC will apply to the GCFO (or his delegate) as far as the TAC is concerned.

24.4.3 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.

24.5 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.

24.5.1 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.

24.5.2 Powers of the Ombudsman

a) The Ombudsman has the power to conduct a full investigation of a complaint and to make appropriate recommendations to the CPO and the CEO of the relevant OD of Transnet regarding the appropriate remedial measures to be undertaken.

b) Such measures may include, but are not limited to the following:

(i) cancelling a bid if there is a material irregularity;

(ii) referring a bid back for re-evaluation;

(iii) amending a bid decision;

(iv) recommending that letters of censure be sent to any Transnet official; and/or

(v) the institution of disciplinary, civil or criminal proceedings where appropriate.

c) The Ombudsman may also on his own initiative launch a review of any bid award, regardless of whether a formal complaint was received or not.

d) An investigation by the Ombudsman of any bid award may also be initiated by an internal referral.

e) In most instances the Ombudsman will conduct the investigation without the need for a formal, oral hearing. However, in highly exceptional circumstances, the Ombudsman may in his sole discretion conduct an oral hearing if it would assist with the resolution of the matter.

24.5.3 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 24.5.1b) and 24.5.1c) 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.

24.6 CAPITAL INVESTMENT COMMITTEE (CAPIC)

24.6.1 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.

24.6.2 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.

24.6.3 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.

24.7 BOARD ACQUISITIONS AND DISPOSALS COMMITTEE (BADC)

24.7.1 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.

24.7.2 Composition

a) The Group Acquisition and Disposal Committee ("the Committee") is constituted as a committee of the Transnet Limited Board.

b) At least four directors of the Group shall be members of this Committee, the majority of whom must be independent non-executive directors. The GCFO and the GCE shall be ex officio members of the Committee.

c) The members of the Committee will be selected by virtue of their specific expertise or business focus, but with a preference to members with specific experience in procurement practices, law and finance. They must be capable of exercising sound, unbiased judgment in order to fulfil their duties.

d) The Secretary shall be the Group Company Secretary.

e) The remuneration of the Chairperson and Committee members will be determined by the Group Remuneration Committee and approved by the Board in accordance with the fee structure approved by the Shareholder.

The following shall attend by invitation:

a) The Group Chief Supply Chain Officer; and

b) Such other persons determined by the Committee, who may include, where deemed necessary by the Committee, members of senior management and independent acquisition and disposal experts.

24.5.3 Roles and Responsibilities

a) The Committee has an independent role, operating as an overseer of the acquisition and disposal function within Transnet. The Committee will also have the power to consider and approve acquisitions and disposals in terms of its mandate from the Board.

b) The Committee does not assume the functions of management, which remain the responsibility of the executive directors, officers and other members of senior management.

24.5.4 Authority

a) The Committee has authority to:-

(i) have access to any information it needs to fulfil its responsibilities;

(ii) seek independent advice at the Group's expense, subject to Transnet's procurement policies and procedures;

(iii) have direct access to any executive of the Group or its subsidiaries; and

(iv) make amendments to the mandate subject to approval by the Transnet SOC Ltd Board.

b) The Committee may form, and delegate authority to, committees and may delegate authority to one or more designated members of the Committee.

c) The Committee shall make the recommendations to the Board that it deems appropriate on any area within the ambit of its terms of reference where action or improvement is required.

24.5.5 Terms of reference

The Committee shall:

a) Oversee an annual review of Transnet's Procurement Procedures Manual and the Construction Procurement Policy, Processes, Procedures and Methods within Transnet Capital Projects and ratify any amendments thereto;

b) Pre approve bids within its delegated authority up to the maximum of investment decision/budget, before the bids are issued to market. This includes acquisition and disposal of movable and immovable property, capital investments, operational expenditure, the provision and acquisition of Services, maintenance, refurbishment and the establishment of infrastructure, purchasing of fuel, but excludes guarantees, indemnities and securities;

c) Monitor trends in general procurement spend;

d) Monitor trends in SD spend and progress on plan (includes support of National Growth Plan, SD, preferential procurement, and Enterprise development);

e) Monitor compliance with PFMA and related supply chain management norms and standards and advise the Board of potential risks in relation to irregular as well as Fruitless and Wasteful Expenditure emanating from procurement practices;

f) Consider strategic acquisitions and disposals and make recommendations to the Board;

g) Consider, for recommendation to the Board, potential private sector participation models;

h) Approve, where so delegated by the Board of Directors, the award of bids in accordance with the Company's Delegation of Authority Framework. The Committee may approve modifications to bid awards where the cumulative value of the contract plus the modification does not exceed the limits of its delegation of authority as stated in the Delegation of Authority Framework document.

i) In considering the approval of a bid or Confinement, the Committee shall have regard to any recommendation made by the relevant AC or senior official within Transnet.

j) The Committee shall submit a list of all bids falling within its delegated authority and approved by it to the Board for information purposes only. With regards to matters above its maximum threshold, it will consider such matters in the normal manner, and then make a recommendation to the Transnet Board.

k) When considering any Bid or any amendments thereto, the Committee may:-

(i) investigate any activity within its Mandate;

(ii) ask questions and request information or advice from any person;

(iii) request any employee to appear before the Committee;

(iv) refer the submission back for reconsideration;

(v) note matters presented to it for information, and/or offer comments; and

(vi) reserve a decision pending further information or clarification of a specific matter.

l) The Committee shall also approve disposals in line with the Delegation of Authority Framework document.

24.6 INTEGRATED SUPPLY CHAIN MANAGEMENT (ISCM)

24.6.2 Composition

Using best practice principles, and undertaking a collaborative approach across all ODs and Group, an integrated 'one supply chain management (iSCM)' strategy and operating model has been developed with centre led Centres of Excellence (COEs) with cross-functional teams, comprised of divisional and corporate task team members, to deliver value through improved efficiencies and compliance to the regulatory environment. The iSCM Governance hierarchy is depicted in the flow chart below:

Supply chain governance structures

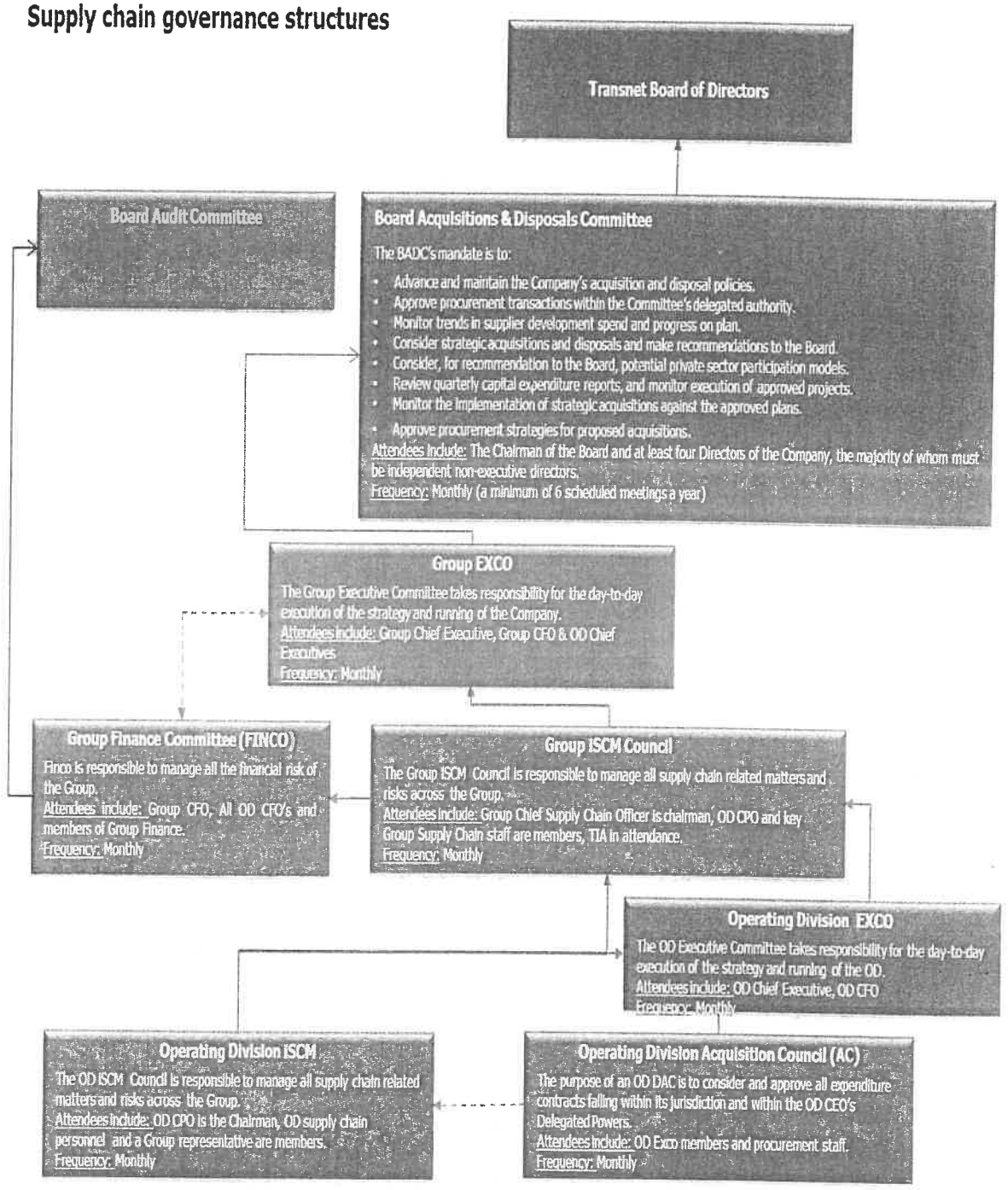

Figure [38] – iSCM Governance hierarchy

24.6.3 Centres of Excellence

a) Centres of Excellence (COEs) are cross-divisional teams focusing on a particular functional area. They focus on tactical issues relating to the functional area, and are aimed at identifying and leveraging on the areas of excellence in Transnet. Key strategic objectives will be executed through the COEs with a risk mitigation plan supported by Enterprise Risk Management (ERM).

The current COEs within iSCM are as follows (*Figure [39]*):

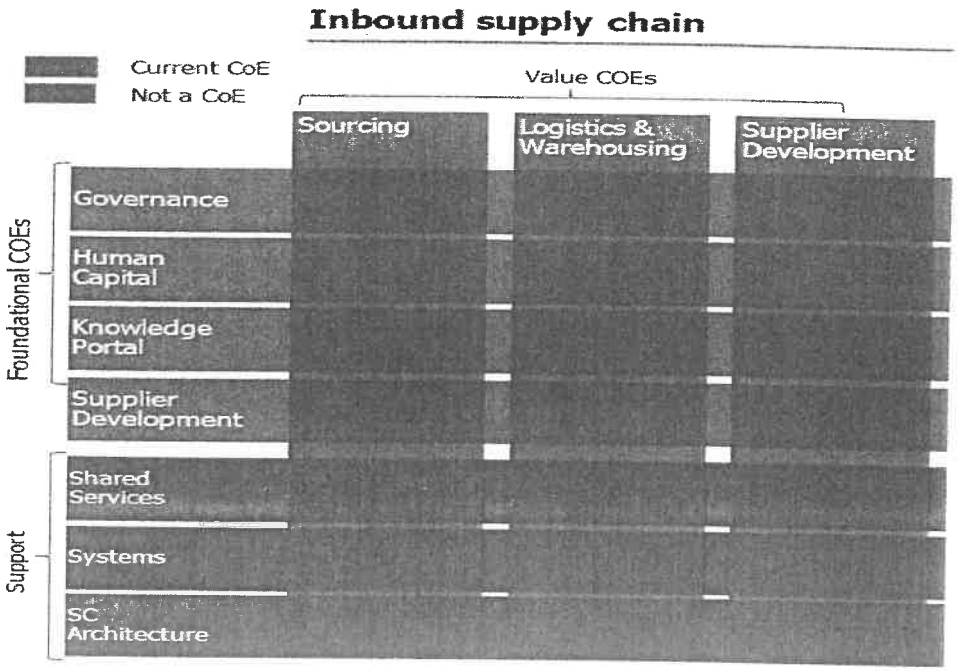

Figure [39] – Centres of Excellence

24.6.4 Integrated Supply Chain Management (ISCM) Strategic Themes

The following are the key strategic iSCM themes:

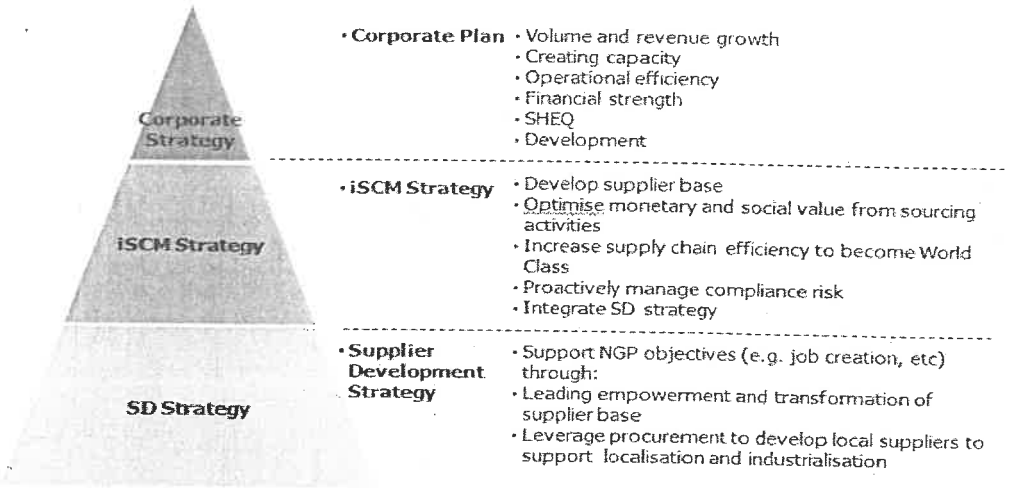

Figure [40] – iSCM themes

24.6.5 Group iSCM Governance

The Group iSCM governance function is the author and custodian of the Transnet Supply Chain Policy and the PPM.

Some of its key functions are to:-

a) issue and review the Transnet Supply Chain Policy and PPM (including standard bid documents and templates);

b) monitor correct interpretation/adherence to policies and control measures in collaboration with audit;
c) conduct research and development applicable to compliance;
d) maintain the iSCM Transnet Intranet as well as update the external website in respect of procurement policies, procedures and bid related matters;
e) continuously build capacity at OD level;
f) administer Transnet's List of Excluded Bidders; and
g) provide assistance and expertise on all governance related issues.

24.6.6 Role and Function of Group Chief Supply Chain Officer (GCSCO)

The GCSCO is the head of the Group iSCM Function. He/she is responsible for the whole of the supply chain function within the Transnet Group. Although the OD CPOs report directly to the OD CEOs, collaboration and synergies between the relevant supply chain functions are achieved via the iSCM Council. This forum meets at predetermined intervals and has representation from all the OD CPOs.

Apart from chairing the iSCM Council, the GCSCO is responsible to vet and recommend all supply chain related submissions requiring Group approval (e.g. confinements, condonations, new contracts and amendments exceeding the DoA of the OD CEOs).

24.6.7 Terms of Reference of the iSCM Council

Group iSCM has been mandated to effectively integrate all supply chain management (SCM) activities across Transnet's core businesses, to ensure that the efficiency and effectiveness of doing business in South Africa is drastically improved through SCM best practices. The iSCM Council is a structure set up to ensure that the iSCM mandate is carried out effectively and efficiently.

The Council will develop the Supply Chain Management Strategy for Transnet, based on consolidation of the individual ODs critical paths.

The Council will ensure alignment of all Operating Divisions' SCM functions in terms of:

- Processes and Procedures;
- Systems;
- Human Capital Development;
- Strategic Sourcing;
- Contract and Supplier Management;
- Capital Procurement;
- Demand Planning & Management;
- Warehousing and Logistics Management;
- Policy, Governance and Standards; and
- Knowledge Management.

The Council will also ensure a uniform strategy with regard to Broad-Based Black Economic Empowerment. It will drive the implementation of B-BBEE initiatives with regard to Preferential Procurement and Enterprise and Supplier Development in terms of the Government's New Growth Path strategy, to ensure that Transnet's obligations in terms of these important issues are met.

In addition, the Council will be the custodian/guarantor of world class standards in supply management, professionalism, ethics and the proper implementation of related policies and procedures throughout Transnet. It will also identify commodity groups where standardisation across the Transnet Group, or the consolidation of spend on commonly used Goods and Services can lead to financial and other benefits for Transnet as a whole – transversal contracts.

24.6.8 Composition of iSCM Council

The Forum will consist of the following members:

- Group Chief Supply Chain Officer, (Chairperson)
- Executive Manager (Supply Chain)
- Executive Manager (Strategy & Execution)
- Executive Manager (Supplier Development)
- Executive Manager (Strategic Sourcing)
- Executive Manager (Governance)
- CPO – Transnet Freight Rail
- CPO – Transnet 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.

REPORT 2(A) – PART E – EXHIBIT 9

TRANSNET

ANNEXURE "B"

DELEGATION OF AUTHORITY FRAMEWORK

(EFFECTIVE FROM 1 SEPTEMBER 2014)

APPROVED BY THE BOARD OF DIRECTORS ON

28 AUGUST 2014

UNDER RESOLUTION 14/5/5

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1 Interpretation and Definitions

The following words and expressions bear the following meanings, unless the context indicates otherwise:-

1.1 **"Alternative Dispute Resolution" (ADR)** refers to the process of resolving disputes among parties without necessarily resorting to court action, although the agreements and outcomes may be legally binding. ADR processes include conciliation, mediation, adjudication and arbitration.

1.2 **"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;

1.3 **"Board Reserved Matters"** means matters reserved by the Board as set out in Annexure "A "of the Delegation of Authority Framework approved by the Board.

1.4 **"CAPIC"** means the Capital Investment Committee, a committee of the Group Executive Committee which has been established to make decisions regarding capital expenditure;

1.5 **"CE"** means Chief Executive of an Operating Division;

1.6 **"Chairperson"** means the person who is appointed as the Chairperson of the Board as per the MOI;

1.7 "**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;

1.8 **"Company Strategy"** means the strategy for the Company as approved from time to time by the Board;

1.9 **"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.

1.10 **"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;

1.11 **"FRMF"** mean Financial Risk Management Framework;

1.12 **"GCE"** means Group Chief Executive;

1.13 **"GCFO"** means Group Chief Financial Officer;

1.14 **"GCSCO"** means Group Chief Supply Chain Officer;

1.15 **"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;

1.16 **"Group Executive (GE) or Group Executive nominee"** refers to the Group Executive responsible for the supporting business or his/her nominee;

1.17 **"Head of Legal" refers to the most senior employee with a Legal qualification in the respective Legal Department;**

1.18 **"International agreements"** means agreements which are required to be construed in accordance with the laws of a foreign jurisdiction including the neighbouring countries;

1.19 **"Memorandum of Incorporation"** or **"MOI"** means the constitutive documents of the Company, as amended;

1.20 **"Neighbouring Countries"** means countries sharing a border with the Republic of South Africa;

1.21 **"Operating Divisions"** means the Operating Divisions of Transnet, namely, Transnet Freight Rail, Transnet Engineering, Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines;

1.22 **"PFMA"** means the Public Financial Management Act 1 of 1999 (as amended), read together with its regulations' including Treasury Regulations;

1.23 **"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) of the Companies Act, Act 71 of 2008, read with Regulation 38. Within the Company, members of Group Exco are designated Prescribed Officers;

1.24 **"Rental"** means money payable for the hire of movable and immovable property in terms of a lease agreement, but excludes the payment of operational expenses and costs.

1.25 **"Shareholder"** means the Government of the Republic of South Africa represented by the Shareholder Minister.

1.26 **"Shareholder Minister"** means the Minister of Public Enterprises as defined in the MOI;

1.27 **"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;

1.28 **"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 GE 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 GE;

1.29 **"Subsidiary"** means subsidiary as defined in the Companies Act 71 of 2008 (as amended) and Subsidiaries shall have a corresponding meaning;

1.30 **"Transnet"** means the Company with its Subsidiaries and Operating Divisions/Specialist Units as stated in clause 1.7 above.

1.31 **"Treasury Regulations"** means the regulations issued in terms of section 76 of the PFMA, amended from time to time;

1.32 **"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

1.33 **"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;
- Project and Programme Frameworks;
- 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 The Delegation of Authority Framework shall be sub-delegated to Group Exco and Extended Exco within 30 days from the date of signature by the GCE.

3.5 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;

4.1.3 the powers delegated by the original bearer of authority cannot be sub-delegated further by the designate unless explicitly stated in the certificate signed by the original bearer of authority; and

4.1.4 the sub-delegated authority may be revoked in writing, 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.

4.5 All delegations of authority, signed by the original bearer of authority and accepted by the designate, must be filed with the Office of the Group Secretariat prior to the effective date.

5 Company Authorities

Limits of authority have been delegated by the Board of Directors to the 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 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 Principal Specialist: Governance and Assurance.

5.1.1 CAPEX in approved budget/Corporate Plan: To commence projects

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	CAPIC/GCFO	Group Exco /GCE	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 R1200m	Up to but not exceeding R2000m	Up to but not exceeding R4400m	Exceeding R4400m
Approval Authority →	**Group Exco Member**		**CAPIC/GCFO**	**Group Exco /GCE**	**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 R1500m	Up to but not exceeding R2000m	Up to but not exceeding R4400m	Exceeding R4400m

*Refer to Materiality and Significance Framework. If the set limit (R4400m) 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 approval must be signed off by the Group Executive: EIMS.
- 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 capitalisations of maintenance projects (COPEX) irrespective of the value of the project provided that it has been included in the Corporate Plan. It is mandatory that submissions to the Group Exco/GCE have been recommended by the approval bodies leading up to the Group Exco/GCE i.e. OD CAPIC and Group CAPIC.
- Front end loading (FEL) studies are to be submitted to CAPIC based on the value of the underlying asset on which the study is based. e.g. If the FEL study is for an asset that exceeds R200m (R400m for TFR) then the

FEL study irrespective of its stage requires approval from Group CAPIC Please refer to the Accounting Policy for Conceptual, Pre-feasibility and Feasibility Studies when capitalising FEL studies.

- Approvals exceeding R2000m but less than R4400m in ETC are to be reported to the Shareholder Minister

5.1.2 Unforeseen CAPEX (not included in budget/Corporate Plan)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	CAPIC/GCFO	Group Exco/GCE	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 R700m	Up to but not exceeding R1000m	Up to but not exceeding R4400m	Exceeding R4400m
Approval Authority →	**Group Exco Member**		**CAPIC/GCFO**	**Group Exco/GCE**	**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 R700m	Up to but not exceeding R1000m	Up to but not exceeding R4400m	Exceeding R4400m

*Refer to Materiality and Significance Framework. If the set limit (R4400m) 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 Group Executive: 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	CAPIC/GCFO	Group Exco/ GCE	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 R1200m	Up to but not exceeding R1400m	Exceeding R1400m
Approval Authority →	**Group Exco Member**		**CAPIC/GCFO**	**Group Exco/ GCE**	**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 R1200m	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 approval must be signed off by the GE: EIMS.
- 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.
- Increases in ETC of a project that results in the project exceeding a specific committee's approval limit needs to be submitted to the next approval body. If CAPIC approved a project at ETC of R700m, and the increase required is R200m then the final approval body for the increase will be Group Exco as the new ETC of R900m is beyond CAPIC's limit.
- Requests for increases in ETC need to be submitted to the approval body that originally approved the project. If Board approved a project to the value of R2100m, any increases to this project will require Board approval.

5.1.3.1 Any increase in excess of the annual approved capital investment budget must be submitted to CAPIC/GCFO for approval. Where the GCFO has approved an increase, the submission should be tabled at the subsequent CAPIC meeting for information purposes.

5.1.4 **Asset Write-off/Scrapping: Movable Assets**

Approval Authority →	**OD Exco/CE excluding TFR**	**TFR Exco/CE**	**Capic/GCFO**	**Group Exco/GCE**	**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**		**Capic/GCFO**	**Group Exco/ GCE**	**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 R4400m) 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 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	Capic/GCFO	Group Exco/ GCE	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**		**Capic/GCFO**	**Group Exco/GCE**	**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 R4400m) is exceeded then the Board need to consider and recommend to the 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 CAPIC if the respective OD limits are reached.
- Write-offs below R10m and below R50m in the case of TFR must be reported to CAPIC/GCFO quarterly.

5.1.6 **Disposal of Movable Assets (excluding sale of scrap)**

Approval Authority →	OD Exco/CE*	Capic/GCFO	Group Exco/GCE	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**	**Capic/GCFO**	**Group Exco/GCE**	**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 limits pertaining to their OD, and to escalate submissions to CAPIC once the respective OD limits are reached.

**Refer to Materiality and Significance Framework. If the set limit (currently R4400m) is exceeded, then the Board need to consider and recommend to the 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 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	Capic/GCFO	Group Exco/GCE	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**		**Capic/GCFO**	**Group Exco/GCE**	**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 (R4400m) is exceeded then the Board need to consider and recommend to the 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 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 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	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 Capic//Group Exco/Acquisitions and Disposals Committee/ Board.

5.2 Treasury

Treasury Policies

Approval Authority →	Group Treasurer	GCFO	GCE	Risk	Audit Committee	Board
Financial Risk Management Framework	Recommend	Recommend	Recommend	Noting	Recommend	Approve

NOTE 1: 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: Operations	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 sell back 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

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.

5.2.8 **Interest Rate Risk Hedging**

Approval Authority →	Notional Amounts	Group Treasurer	GCFO
Group	Notional amount of hedge expressed in USD or equivalent in RAND (FX loans and leases)	Up to but not exceeding $100m or equivalent in RAND	Exceeding $100m or equivalent in RAND
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 (RAND and USD)**

Approval Authority →	Group Treasurer	GCFO
Tenure	Not exceeding 6 months	Not exceeding 18 months
Notional hedge expressed in USD or equivalent in RAND	Not exceeding $25m or equivalent in RAND	Exceeding $25m or equivalent in RAND

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 first priority will be to fix the contract through ZAR based agreement. If not then exposure to be taken on Balance Sheet, subject to hedged accounting. This will limit volatility and bring certainty in terms of the Rand.
The above limits are applicable per hedging submission.
Note: Where no specific limit is mentioned, the FRMF policy on commodity (fuel) risk will apply.

5.2.10 **Hedging of commodity risk exposures in supply agreements, including escalation (other than fuel) in FX or RAND**

Approval Authority →	Group Treasurer	GCFO
Tenure	Not exceeding 24 months	Exceeding 24 months
Notional hedge expressed in RAND	Not exceeding R100m	Exceeding R100m
Notional hedge expressed in USD	Not exceeding $10m	Exceeding $10m

All breaches of the above limits to be reported to the Audit Committee.
The above limits are applicable per hedging submission.
Note: Where no specific limit is mentioned, the FRMF policy on commodity risk will apply.

5.2.11 **Granting of InterTransnet Loans (Interest-bearing only) to divisions/specialist units**

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
Specialist Unit	Up to but not exceeding R10m	Up to but not exceeding R25m	Exceeding R25m

These above limits are cumulative per OD/ SU per financial year.

5.2.12 **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	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.

5.2.13 **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 finance institution 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.
- If loan documentation was approved and signed by either GCFO and/or GCE, the Group Treasurer can approve all drawdowns and sign any ancillary transaction related documentation required from time to time, irrespective of the amounts involved.

- The Group Treasurer is authorised to sign any and all Debt listing/placing documents as well as any ancillary documents related thereto that may be required from time to time.

5.2.14 **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.

5.2.15 **Counterparty Limits: Setting of Limits**

Approval Level			
Group Treasurer	GCFO	GCE	Audit Committee
			Counter Party Risk Limits[1]
Price Risk Limits ≤ R25m³	Price Risk Limits ≤ R250 m³	Price Risk Limits ≥ R250 m³	Overall counterparty limit (as calculated in line with FRMF)
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 the Company is exposed to counterparty issuer risk as a result of advance payment guarantees, performance bonds, retention bonds etc. issued under supplier agreement/contracts[3]	Approval of limits where the Company is exposed to 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 limit 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

5.2.16 **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.	

5.2.17 **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
Companywide	Approve the annual borrowing plan for execution by Treasury

Annual borrowing plan to be recommended by the Audit Committee for approval by the Board.

5.2.20 **Authorisation to enter into binding transactions**

	Group Treasurer
Companywide	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
Companywide	Up to but not exceeding 25m	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.
The Limits are per transaction.

5.2.22 **Issuing Letters of Support**

	Board
Companywide	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
Companywide	Up to but not exceeding R250m	Up to but not exceeding R500m	Up to but not exceeding R1 000m	Exceeding R1 000m

All breaches of the above limits to be reported to the Audit Committee. The limits are per transaction.

5.2.24 **Advance Payment Guarantees (APG) and Performance Bonds (PB) in Supplier Agreements**

	OD CFO	Deputy Treasurer Middle Office[1]	Group Treasurer[2]	Group CFO[3]
Notional Value per OD per financial year	Up to but not exceeding R200m	Up to but not exceeding R250m	Up to but not exceeding R500m	Exceeding R500m
Issuer Acceptance	May accept if included in pre-approved issuer list obtained from Group Treasury	All issuers	All issuers	All Issuers

- The limits are cumulative per OD/SU per annum.
- The OD 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 de
- The minimum long-term credit rating requirements may be acceptable under the following:-
  - A- from Fitch Rating Investor Services or Standard & Poor's Rating Services or A3 from Moody's Investor Services;
  - Issuers not rated by a recognised credit rating agency will not be accepted, unless specific approval has been obtained from GCFO that internally developed credit rating of the Issuer is acceptable;
  - Group Treasury may also consider an equivalent rating from other recognised rating agencies as contained in the FRMF.

Note: The approvals of [123] are additional and do not include the amount of lower level authority.

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**		**Capic/GCFO**	**Group Exco/ GCE**	**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 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.

5.3.5 Establishing financial policy with regard to insurance

Approval Authority →	GCFO	Risk Committee
Authority Level	GCFO after consulting with Chief Risk Officer to recommend to the Risk Committee	Final approval

5.3.6 Inventory Write-off

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**		**CAPIC/GCFO**	**Group Exco/ GCE**	**Audit Committee**	**Board***
Specialist Units	Up to but not exceedingR5m		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.

5.4 Procurement, Enterprise Development and Supplier Development

All procurement transactions (including reverse logistics – selling of goods) must fully comply with the approved Supply Chain Policy and Procurement Procedures Manual (PPM),) 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 and TCP GE*	GCFO	Group Exco/ GCE	Acquisitions and Disposals Committee	Board
Operating Divisions including TCP	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**	**Acquisitions and Disposals Committee**	**Board**
Specialist Units excluding TCP	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.

- Consultants may only be remunerated at set rates as follows:
  - Guideline for fees as determined by the South African Institute of Chartered Accountants.
  - Guide on Hourly Fee Rates for Consultants by the Department of Public Service and Administration.
  - Prescribed by the body regulating the profession of the consultant.
  - In instances of consultants being unregulated ,e.g. Forensics are unregulated a reasonable fee should be approved Prescribed in the Service Level Agreement concluded with lawyers on the Transnet legal panel.

5.4.2 Approval to approach the market for Open Tenders

Approval Authority →	OD CE and TCP GE	GCSCO	GCFO	GCE	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 GE (budget owner)**	**GCSCO**	**GCFO**	**GCE**	**Acquisitions and Disposals Committee**	**Board**
Specialist Units excluding TCP	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 GE in the case of Specialist Units 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 (applicable to transactions above R2m in value)

Approval Authority →	OD CE and TCP GE	GCSCO	GCFO	GCE	Acquisitions and Disposals Committee	Board
Operating Divisions including TCP	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**	**Acquisitions and Disposals Committee**	**Board**
Specialist Units excluding TCP	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 through the GCSCO and the GCFO to the GCE. The OD/SU shall prepare the submission in collaboration with integrated Supply Chain Management (iSCM) to ensure that the motivation for confinement contains sufficient information to meet one or more of the grounds for confinement as stipulated in the PPM. In instances where a confinement is confidential, the GCE may approve such confinement without the confinement request being routed through any other authority.

Note: Confinement must only be used in respect of transactions above R2m in value. For transactions below R2m, the quotation system must be used. The quotation system is a procurement mechanism that may only be used:

- For transactions below R2m in value.
- Relates to goods or services required on a non-repetitive basis.

- Market is known.
- Minimum of 3 quotes must be obtained where possible.

5.4.4. **Management's intervention to address non-compliance with procurement policies and procedures**

Approval Authority →	OD CE and TCP GE	GCFO	GCE	Acquisitions and Disposals Committee	Board
Operating Divisions including TCP	Nil	Nil	Up to but not exceeding R250m	Up to but not exceeding R1000m	Exceeding R1000m
Approval Authority →	**Group Exco Members**	**GCFO**	**GCE**	**Acquisitions and Disposals Committee**	**Board**
SU excluding TCP	Nil	Nil	Up to but not exceeding R250m	Up to but not exceeding R1000m	Exceeding R1000m

Note: All requests for approval of non-compliance must be made by the OD CE/Group Exco member to the GCE. The OD/SU shall prepare the submission in collaboration with 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	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 R2m, but not exceeding R450m. This is subject to the discretion of the OD/SU CE to lower the R2m thresholds, 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 Acquisitions and Disposal Committee). 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 →	ODs, TCP and TCC (Secondary and/or Main) Acquisition Councils	GCSCO	GCFO	GCE	Acquisitions and Disposals Committee	Board
Operating Divisions (including TCP and TCC)	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 (excluding TCP and TCC)(Secondary and/or Main) Acquisition Councils	GCSCO	GCFO	GCE	Acquisitions and Disposals Committee	Board
Specialist Units (excluding TCP and TCC)	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

5.4.7 Enterprise and Supplier Development

Approval Authority →	OD CE	iSCM Council/ GCSCO	GCFO	Group EXCO/ GCE	Acquisitions and Disposals Committee	Board*
Operating Divisions (including TCP and TCC)	Up to but not exceeding R5m	Up to but not exceeding R25m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R500m	Exceeding R500m
Approval	**Group EXCO**	**iSCM Council/**	**GCFO**	**Group EXCO/**	**Acquisitions and**	**Board**

Authority	Members/CE	GCSCO		GCE	Disposals Committee	
Specialist Units (excluding TCP and TCC)	Up to but not exceeding R2m	Up to but not exceeding R25m	Up to but not exceeding R100m	Up to but not exceeding R250m	Up to but not exceeding R500m	Any amount exceeding R500m

*RemSEC to note all Enterprise and Supplier Development transactions.

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 the Company and/or its OD's or SU's or any other legal documents may only do so with the prior advice of the relevant Legal Services department as set out in the 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 Legal Policy and if it relates to Procurement Contracts, the process prescribed in the Procurement Procedures Manual must be adhered to.

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: The PPM prescribes the process that must be followed in terms of approving procurement contract amendments:

- Non-material amendments (i.e. where the scope, value and/or period of the contract is less than 10% of the original contract value): the manager with the delegation of authority may effect such amendment and is only required to inform the AC of such amendment as soon as possible thereafter. The manager who approves the amendment may be the original signatory of the contract if the cumulative value of the amended contract is still within his/her delegation of authority. However, if the cumulative value of the amended contract is above the original signatory's delegation, the amendment must be approved by the next level of authority and the original signatory must be informed thereof.
- Material amendments (i.e., where the scope, value and/or period of the contract is greater than 10% of the original contract value): the manager with the delegation of authority may not effect such amendments without the PRIOR approval of the relevant AC first of such amendment. Following AC approval such amendment needs to be signed off by the original signatory (i.e. the person with delegation of authority 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 delegations. However, if the cumulative value of the amended contract is above the original signatory's delegation, the amendment must be approved by the next level of authority on review and recommendation of the original signatory.
- NOTE: As a general rule, contracts may be amended by not more than 40% of the original contract value. Any deviation (as provided for in the paragraph below) in excess of this threshold will only be allowed in exceptional circumstances.
- Amendments in excess of 40% of the original contract value or contract period will be dealt with as follows: In such cases, PRIOR review and recommendation must be obtained from the appropriate AC first, as well as the original signatory. Thereafter, the matter must be submitted for approval to the person with delegations one level higher than the person with the delegation of authority to approve the amended value. This rule applies regardless of whether the

amendment is still within the original signatory's delegation of authority or above it. On approval, the amended contract will be signed off by the person with the delegation of authority to sign off the contract value concerned. However, this rule does not apply to amendments falling within the GCE, Acquisitions and Disposals Committee or the Board's delegation of authority. For such contract amendments, the matter will be submitted to the GCE, Acquisitions and Disposal Committee or the Board regardless of the value of the contract amendment (provided the cumulative value is still within their delegations of authority).

- For higher value contracts (i.e. those signed by the operating division's GE, 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 GE:TCP**		**GCSCO**	**GCFO**	**GCE**	**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 GE	Group Exco members	GCSCO	GCFO	GCE	**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

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 or Specialist Units, 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 the top 60% value opex items as dealt with by iSCM Strategic Sourcing commodity teams), any authorised official must first liaise with a multi-disciplinary team of experts at Corporate Centre, who should each sign off on any agreement/contract or other binding document:

- Group iSCM.
- Group Legal Services – entire document.
- GCFO to sign-off after sign-off from the Finance Departments (Group Finance/Reporting Financial Planning, Tax and Treasury).
- Group Risk.
- Group Insurance.
- 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 **Contracts with foreign exchange exposure**

- 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 iSCM, Group Legal, Group Treasury, Group Tax, Group Risk, Group Insurance 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 the Company to an embedded derivative. All FX agreements above R100m must apart from the above also obtain written approval from the GCFO. The GCFO to sign-off after sign-off from Group Treasury, Group Tax, Group Risk, Group Insurance, the Finance Departments

(Group Finance/Reporting and Financial Planning), Group Legal Services (the entire document) and Group iSCM.

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/GE: Commercial 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	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 but not exceeding R1.5 bn for the total contract	Up to but not exceeding R500m	From R1.5bn but not exceeding R2bn unlimited	From R2bn but not exceeding R 3bn	Exceeding R3bn
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	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	From R501m up to but not exceeding R1bn	From R1001m up to but not exceeding R3bn	Exceeding R3bn

- Integrated customer agreements where a service incorporates more than one division must be signed off by the Group Executive: Legal and Compliance, 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 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	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	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 OD and or SU's such as service level agreements and project specific agreements may be entered into between OD CE's or SU GE's.

5.5.5 **Property and Lease Agreements**

All internal and external Property Lease Agreements including revenue generating leases and expenditure leases (excluding vacant land).

Approval Authority →	OD CE and GE:TCP	GE: Transnet Property	GCFO	GCE	Acquisitions and Disposals Committee
Operating Divisions	Up to but not exceeding R20m per lease per annum	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 GCFO or Group Executive: Transnet Property. For cession of leases at OD level, the CE of the respective OD/SU may approve cession or assignment of lease agreements.
- Cession of lease agreements, renewals and extensions 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 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.
- Leases for vacant land exclude the leasing in of land to be used for lay down areas and borrow pits for projects.
- 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 and the ODs/SUs may be signed by the CEs or GE's of the respective ODs/SUs.
- Revenue Generating Leases: Lease agreements concluded by Transnet in its capacity as lessor for purposes of generating revenue.
- Expenditure Lease: Lease agreements concluded by Transnet in its capacity as a Lessee.

5.6 Legal Services

NOTE: The provision of legal services must be in accordance with the Legal Policy. In respect of all litigation the bearer of the authority may, after taking legal advice from Group or Divisional Legal Services, as the case may be, execute all documents and do all things necessary to give effect to his/her authorisation including submission through governance structures.

5.6.1 Settling any litigation, arbitration and other forms of Alternative Dispute Resolution

Approval Authority →	Divisional Head: Legal	OD CE, GE: Transnet Property and GE:TCP	GE: Legal and Compliance	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: Legal and Compliance	Up to but not exceeding R50m	Up to but not exceeding R100m with concurrence of GE: Legal and Compliance	Exceeding R100m

Approval limits are per litigation matter and relate to the settlement amount of that particular matter.

5.6.2 Disputes with Government and matters posing a reputational risk to the Company

Approval Authority →	Risk Committee	Board
	Matters which pose a reputational risk to the	Any disputes with government entities or where the outcome of

	Company should be submitted for consideration.	any litigation, arbitration or similar proceedings is likely to have a material effect on the business, financial condition or prospects of the Company

5.6.3 **Defending matters in court or any other competent forum**

Approval Authority →	Legal Manager
	Defending, subject to the Legal Policy, any litigation (actions or applications) in court or any other competent forum, including the appointment of attorneys and/or advocates for such proceedings

5.6.4 **Commencing any litigation in court or any other competent forum**

Approval Authority →	GCE
	Commencing, subject to Legal Policy, any litigation (actions or applications) in court or any other competent forum, including the appointment of attorneys and/or advocates for such proceedings.

NOTE: the Standard Operating Procedures for Litigation Matters prescribes the following:

- Upon receipt of instructions, the Legal Advisor must ascertain from the facts of the case and in law whether:
  - Transnet has legal grounds to pursue litigation and whether it would be financially viable to pursue litigation bearing in mind the quantum of the matter and the costs of pursuing the matter;
  - it would be more advisable to settle the matter;
  - there is any reputational or other risk to Transnet in proceeding with the litigation;
  - whether there is any precedence that needs to be created by the company for future similar matters.
  - Should the Legal Advisor be satisfied that, on the facts presented, Transnet should institute legal action, the Legal Advisor must submit a written request to the person duly authorised, in terms of the Delegations of Authority Framework, for approval:
    - to institute litigation on behalf or Transnet, and
    - to appoint an external attorney from the Transnet approved panel of attorneys.

5.6.5 **Subject to the Legal Policy, the appointment of external advisors, attorneys, advocates and any other external legal advisors including adjudicators, mediators, arbitrators for purposes of alternative dispute resolution process under NEC3 contracts or any other contract.**

Approval Authority →	OD CE	GE: Legal and Compliance	GCE
OPERATING DIVISION	Up to but not exceeding R10m	Up to but not exceeding R50m	Exceeding R50m
	Specialist Units GEs and Heads of Legal	Legal and Compliance	GCE
Specialist Units GEs and Heads of Legal	Up to but not exceeding R5m	Up to but not exceeding R50m	Exceeding R50m

- The amounts indicated relates to the claim amount in the case of commencing litigation, and the estimated legal fees to be charged in all other matters.

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/SU 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 GCE and GCFO.
6. The Remuneration, Social and Ethics Committee (RemSEC) provides final approval for the annual reward allocation including the salary mandate.
7. 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 the Corporate function
GM: HRE	General Manager: Human Resources Enablement
GM: ER	General Manager: Group Employee Relations
OD/SU HR GM	General Manager: Human Resources at the OD/SU
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		Board (on behalf of the Shareholder)	RemSEC	GCE	GE: HR	OD/SU CE/ GE	OD/SU HR GM	LM:G M
1.1	Executive Directors	*FA						
1.2	Group Exco (A level excluding executive directors)		FA	R				
1.3	General Managers (B level)			FA	R	R		
1.4	Executive Managers (C level)				A	FA	R	R
1.5	Senior Management (D level and below)						FA	R

*In consultation with the Shareholder Minister

2	**Personnel Remuneration** • The **RemSEC** reviews the GCE's assessment of performance and recommends the remuneration of 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 DPE 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	Board* (on behalf of the Shareholder)	RemSEC & CORP GOV	GCE	GE: HR	OD/SU CE/ GE	OD/SU HR GM	LM:G M
2.1 Executive Directors	*FA						
2.2 Group Exco (A level excluding executive directors)		C	*FA	R			
2.3 General Managers (B level)			FA	R	R		
2.4 Executive Managers (C level)				A	FA	R	R
2.5 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.

*In consultation with the Shareholder Minister.

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	Board (on behalf of the shareholder)*	REMSEC	GCE	GE: HR	OD/SU CE/GE	OD/SU HR GM	LM: GM
3.1 Executive Directors	*FA						
3.2 Group Exco (A Level excluding executive directors)		FA	R				
3.3 General Managers (B level)			FA	R	R		
3.4 Executive Managers (C level)					FA	R	R
3.5 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 the Company 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	Board (on behalf of the Shareholder)*	REMSEC	GCE	GE: HR	OD/SU CE/ GE	OD/SU HR GM	GM:HR	LM:G M
4.1 Executive Directors	*FA							
4.2 Group Exco (A excluding executive directors)		FA	R	N			R	
4.3 General Managers (B level)			FA	R	R		R	
4.4 Executive Managers (C level)				FA	R	R	R	R
4.5 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/SU CE/ GE	HR GM	GM:HR	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 R 10 000						FA	R	R	R

*In consultation with the Shareholder Minister

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		Board (on behalf of the Shareholder)*	GCE	GE: HR	OD/SU CE/ GE	OD/SU HR GM	GM: ER	LM: GM	LM	ER Manager
6.1	Executive Directors	*FA								
6.2	Group Exco (A level excluding executive directors)		FA	R			R			
6.3	General Managers (B level)		FA	R	R		R			
6.4	Executive Managers (C level)			FA	R	R	A	R		
6.5	Senior Management (D level to F level)					R	A	FA	R	A
6.6	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 Company policies. • The dismissal of an employee for operational requirements must be preceded by a fair consultation process.

HUMAN RESOURCES		Board (on behalf of the Shareholder)*	GCE	GE: HR	OD/SU CE/GE	OD/SU HR GM	GM: ER	LM: GM	LM	ER Manager
7.1	Executive Directors	*FA								
7.2	Group Exco (A level excluding executive directors)		FA	R			R			
7.3	General Managers (B level)		FA	R	R		A			
7.4	Executive Managers (C level)			A	FA	R	R	R		A
7.5	Senior Management (D level to F level)				A	R	R	FA	R	A
7.6	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	Board (on behalf of the Shareholder)*	RemSEC	GCE	GE: HR	OD/SU CE/GE	OD/SU HR GM	GM:ER	LM:GM
8.1	Executive Directors	*FA							
8.2	Group Exco (A level excluding executive directors)		FA	R	R			R	
8.3	General Managers (B level)			FA	R	R		R	
8.4	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/SU CE/ GE	OD/SU HR GM	GM:ER	LM:GM
9.1	Conclusion of any Collective Agreements with Labour excluding shift patterns			FA	R	R	R	
9.2	Mandate for salary and wage negotiations	FA	R	R			R	
9.3	Recognition of Labour and Signing of Recognition Agreement	N	N	FA			R	

10	Deviation from Approved Human Resources Policies								
	HUMAN RESOURCES	Group Exco	GCE*	GCFO	GE: HR	OD/SU CE/GE	OD/SU HR GM	GM: ER	LM: GM
10.1	Any deviation from a Transnet HR Policy		FA		R	R	R	R	R
10.2	Approval of HR policies	FA							
10.3	Report all human capital risks				R				

5.8 General Delegations

5.8.1 Chartering of Aircraft

Authority Level	OD CE/SU GE	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/SU GE are cumulative per aircraft per month.

5.8.2 Mobile phones: Authorising payments exceeding monthly limits (reflected in mobile phone contract)

Companywide	Group Exco Member	GCFO	GCE
	Up to but not exceeding R10 000 per month	Up to but not exceeding R20 000 per month	Exceeding R20 000 per month

5.8.3 Entertainment Expenditure

Authority Level	OD CE	Group Executives	GCE
	Up to but not exceeding R50 000 per occasion	Up to but not exceeding R50 000 per occasion	Amounts exceeding R50 000 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
Specialist units	**Group Exco Members**	**GCFO**	**GCE**	**REMSEC**	**Board**
	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 tariff applications with Regulators

- Policy and Regulation Committee will approve the OD tariff increase applications.
- The OD CE in concurrence with the GCFO are delegated to file the Tariffs applications with relevant Regulatory body.

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

All travel must be in line with the approved Travel Policy as amended in accordance with the provisions of National Treasury instruction Note 1 of 2013/14. Extended Exco Members at an OD/SU 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 OD CE/SU GE or the GCE.

5.8.10 **Establishment of Special Purpose Vehicles (SPVs), Public Private Partnerships (PPPs), Private Sector Participation (PSP) and Trusts**

	Approval Authority
Establishment of SPVs, PPPs, PSPs and Trusts	Board to approve after recommendation by ADC, the GCE, GCFO, GE: Legal and Compliance as per the Materiality and Significance Framework contained in the Compact with the Shareholder if the transaction is specified in the Corporate Plan if not specified in the Corporate Plan then Board may approve the transaction up to but not exceeding capital risk of R100m. Capital risk in excess of R100m are to be recommended by the Board for Shareholder approval.

The Company shall not without the prior written approval of the Shareholder enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the Significance and Materiality Framework.

5.8.11 **Establishment of Joint Ventures or Consortia with Entities incorporated in foreign jurisdictions**
To be read in conjunction with 5.8.10 above.

	Approval Authority
Establishment of Joint Ventures or Consortia with Entities incorporated in foreign jurisdictions	Approval to enter into an agreement or other binding document establishing a joint venture or consortium with an entity incorporated in foreign jurisdiction requires approval from the Shareholder Minister on recommendation from the Board and in addition, if it also contains foreign currency exposure, approval must be sought and obtained as per the monetary thresholds indicated in the second bullet under item 5.5.1.2 above. If capital risk is R100m or below, Board approval is required as per the Materiality and Significance Framework contained in the Compact with the Shareholder. Capital risk in excess of R100m for this transaction are to be recommended by the Board of Directors for approval by the Shareholder.

The Company shall not without the prior written approval of the Shareholder enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the Significance and Materiality Framework (SMF)

5.8.11 **Restructuring and sale of business**

	Approval Authority
Restructuring or sale of business	Board 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

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 the Company, the DEA needs to be informed in writing of the new person responsible for the implementation of the environmental authorisation.

5.8.14 Recommendation on Board-approved Policies

Deviation from Policy:	Board	Audit	Risk	ADC	Corporate Governance and Nominations Committee	RemSEC	Group Exco
Governance and Ethics Management Policies	FA					R	
HR related (succession planning, excluding executive directors)						FA	
HR related (succession planning for executive and non-executive directors)	R				R		
HR related (performance management)						FA	
Procurement related	FA			R			
Property related				FA			
Risk related			FA				
Treasury Related		FA					
Tax related		FA					
CSI related	FA					R	
Compliance related	FA	R					
Marketing	FA					R	
Advertising	FA					R	
Sustainability (Energy and Water)	FA					R	
B-BBEE	FA					R	
PSP	FA			R			
Financial Policy w.r.t. Insurance		N	FA				R

REPORT 2(A)

PART F

REPORT 2(A) – PART F – EXHIBIT 1

MNS

PART F: AGREEMENTS AND ADDENDA		
EXHIBIT NO.	DATE	DESCRIPTION OF EXHIBIT
1.	30/11/2012	Letter of Intent (LOI) from Transnet to McKinsey
2.	04/03/2014	First Addendum to the LOI
3.	14/10/2013	Second Addendum to the LOI
4.	20/01/2014	Agreement for the provision of transaction advisory to the 1064 locomotives tender between Transnet and Regiments
5.	23/01/2014	LOI for the provision of services related to the appointment of a service provider and implement a new best practice framework for the Transnet Second Defined Benefit Fund
6.	04/02/2014	Third Addendum to the LOI
7.	21/02/2014	Master Services Agreement ("MSA") between Transnet and McKinsey
8.	28/04/2014	First Addendum to the MSA
9.	16/07/2015	Second Addendum to the MSA
10.	18/11/2015	Agreement between Transnet and Trillian, for the ZAR 12, 000, 000, 000,00 Club Loan facility in respect of the purchase of Locomotives and general banking

TRANSNET

McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

30 November 2012
Reference: LOI/GSM/12/05/0447

Dear Mr Michael Kloss

RE: LETTER OF INTENT for the provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender over a period of 9 months. LOI/Proposal Reference No: GSM/12/05/0447 ("the Mandate")

Pursuant to our Request for Proposal (RFP Number 12/05/0447), we wish to inform you that your offer has been accepted and that your consortium has been awarded the contract for the provision of **Advisory Services related to the Acquisition of the 1064 Locomotives Tender** (the **Services**) to Transnet, subject to the conditions precedent set out in section 1 below.

The Parties to this agreement are:

(1) **Transnet SOC Ltd** (**Transnet**), a State Owned Company and the procurer of the services, (Registration Number 1990/000900/30); together with

(2) **McKinsey Incorporated** (**the Supplier**), (Registration Number 1995/002398/10) and the other members of the consortium, namely, **Regiments Capital (refer to 1.5)**, **Advanced Rail Technologies**, **Nedbank Capital** and **Utho Capital**.

Transnet wishes to contract with the Supplier for the provision of **the Services** as outlined in clause 3.3 below, which, if mutually agreed by the Parties, will be documented and effected in accordance with a **9 (nine)** month Agreement between the Parties. It is agreed that the Supplier will play the lead role and take overall responsibility for the entire Mandate. This condition also applies to services specified in 1.5 and 1.6 herein.

The Parties are desirous of successfully concluding negotiations and thereafter executing a contract (**the Agreement**) to enable the Supplier to provide the Services detailed in section 3.3 below in a timely manner.

The Parties have identified the Services which Transnet would wish the Supplier to provide in the interim while execution of an Agreement between the Parties is being finalised. Conditions of this requirement are specified in sections 2 and 3 below.

The purpose of this Letter of Intent (**LOI**) is to document the intention of the Parties in respect of the required Services for **the provision of Advisory Services related to the Acquisition of the 1064**

Locomotives Tender and it will remain in effect until the Agreement is signed by both Parties, or until 90 (ninety) days have elapsed from date of issue of this LOI, whichever event should occur first.

NOW THEREFORE IT IS AGREED

1. Conditions Precedent

With reference to the Supplier's offer (07 June 2012), Transnet wishes to finalise pricing, the details of the Service to be provided and other matters in order to conclude the Agreement with the Supplier. In the interim, the under-mentioned conditions precedent will apply:

1.1 The Parties agree to work towards concluding the Agreement for the **provision of Advisory Services related to the Acquisition of the 1064 Locomotives Tender,** over a period of 9 (nine) months, commencing **15 January 2013** and expiring **15 October 2013** (or sooner if completed). Please note that contract timeline may be for a longer period, at no extra cost to Transnet if the deliverables are not executed for whatever reason as this engagement is output based, as opposed to time based.

1.2 The Parties agree to use this document as a proxy for the binding legal Agreement and under its authority Transnet intends to request that the Supplier commences the provision of such Services as required, during which period the detailed Agreement will be negotiated and finalised between the Parties.

1.3 During this interim period Transnet wishes to gain an enhanced degree of comfort in terms of provision of the Services and would wish to reflect such in the Agreement in the form of a Service Level Agreement agreed by the Parties.

1.4 Transnet will discuss with the Supplier and agree the terms and conditions of the Agreement.

1.5 The Supplier agrees to partner with Regiments Capital, for the procurement and supplier development elements of this project.

1.6 The Supplier agrees to relinquish all legal services to Webber Wentzel (WW), a firm that was not part of the original consortium but appointed by Transnet for the delivery of legal services. Notwithstanding the appointment of WW by Transnet, the Supplier will oversee all work and deliverables supplied by WW and manage the deliverables of the entire Transaction Advisory services in an integrated manner.

2. Interim Service Requirement

2.1. The Supplier agrees to promptly commence with the provision of the Services as detailed in section 3.3 below, after this LOI's confirmation date, and in compliance with Transnet's interim purchase order.

2.2. Should negotiations between the Parties break down for any reason, the Supplier may immediately invoice **Transnet Group Finance** for all reasonable, actual costs incurred up until that date and such amount shall become due and payable by Transnet against presentation to Transnet of an undisputed Tax Invoice.

3. Contract Fees and Deliverables (Inclusive of 2.1 above)

The proposed fees for the Services to be rendered, which the Parties in the interim accept, are understood by both Parties (subject to signing of the Agreement) and are as tabled in Annexure A hereto.

3.1. **Fees** and related costs are quoted in South African currency and are exclusive of Value-Added Tax (**VAT**). Expenses will be capped at 10% of the value of the engagement for the Supplier and its sub-contractors and billed on an actual basis capped at R35,2 million excluding disbursements.

3.2. **Payment** will be effected by Transnet, against presentation by the Supplier of undisputed Tax Invoices, within 30 (thirty) days from date of month-end statement for deliverables effected during that month.

3.3. **Key deliverables and project timescales.**

The key project deliverables for a period of 9 (nine) months are for the provision of **Advisory Services related to the Acquisition of the 1064 Locomotives Tender.** Please note that contract timeline maybe for a longer period, at no extra cost to Transnet if the deliverables are not executed for whatever reason as this engagement is output based, as opposed to time based.

The objective is to award the loco tender by the end of the third quarter of the calendar year 2013 on the back of

- a robust and de-risked business case that is fully supported and approved by the Board and the Shareholder
- a fully capacitated and flawless transaction process
- a commercial negotiation that maximises the value delivered to Transnet and South Africa.

The deliverables are covered in detail in annexure B, and include:

- **Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Public Enterprises;**

- **TFR GFB 7 year end to end business case understanding impact of the following based on validated volume expectations:**
  - Wagons
  - Locomotives
  - Infrastructure
  - Optimisation
  - Profitability of each sector- link into efficiencies and capacity
  - Clear capital volume link;

  Any work done in relation to the above is to be carried forward and used as part of the SWAT team's project.
- **Procurement and Legal – Supplier Development and Localisation strategy:**
  - Design and Setting up tendering process in line with requirements applicable to State-owned-companies (SOCs)
  - Request for proposal documentation;
  - Supplier evaluation criteria
  - Request for Information / Quotation documentation
  - Short listed selection of bidders based on criteria
  - Template contract for awarding of the tender
  - Negotiation fact packs and capability building
  - Claims procedure and OEM management approach post award
  - creation of a loco industry in South Africa
  - Integrate this into the transaction and commercial process
  - Execution of transaction process (RFP, process orchestration, adjudication capacity)
  - Develop contracting strategy for programmatic approach;
- **Technical/Operations:**
  - Reduce loco lifecycle costs through technical (specifications) and commercial lever optimisation with short-listed suppliers
  - Technical evaluation levers and estimated value
  - Optimisation approach for joint value optimisation between Transnet and the selected suppliers
  - Improved outcome through value engineering with shortlisted suppliers – optimising for main objectives of procurement strategy (e.g., highest local content at best value for money);

- **Financial:**
  - Developing finance and funding options
  - Develop deal structure (financing, hedging and de-risking options);
- **Project Management Office:**
  - Proactive stakeholder engagement throughout process to ensure all are granted on time (e.g. PFMA)
  - Manage overall process to ensure all parts come together
  - Provide oversight of legal aspects from a project management perspective.

4. Miscellaneous

4.1. Neither Party shall reveal the content of this LOI or anything disclosed to the other Party in pursuance hereof to any third party, except with the prior express written consent of the other Party, and then only to the extent required to facilitate progression of the startup procedures.

4.2. This LOI may only be amended or modified in writing by the authorised signatories of the LOI.

Thus duly signed at JHB, South Africa on this 04 day of December 2017 on behalf of:

Transnet SOC Ltd

NAME: Anoj Singh
Designation: Group Chief Financial Officer

WITNESSES

1 .....

2 .....

Letter of Intent between Transnet and McKinsey Incorporated for the provision of Advisory Services related to the Acquisition of 1064 Locomotives Tender

Thus duly signed at Johannesburg, South Africa on this 06 day of December 2012 on behalf of:

McKinsey Incorporated

NAME: Michael Kloss

Designation: Director

WITNESSES

1 .....

2 .....

ANNEXURE A –FEES/COSTS

Deliverables must be executed for a fee of R35.2m as per the fee note below. Any overrun in terms of time will not be for the account of Transnet as the engagement is output based and not time based. Mckinsey will take overall responsibility for the deliverables and quality of the end products. Expenses will be capped at 10% of the value of the engagement for the Supplier and its sub-contractors and billed on an actual basis:

Contracting strategy	NB/Utho Regiments/Burlington	R1.4m R5.1m
Business case validation	McK	R6.6m
Technical evaluation and execution	McK + ART	R13.5m
PMO, integration and stakeholder management	Regiments/Burlington + McK	R7.6m
Total Loco		**R35.2m**

ANNEXURE B: KEY DELIVERABLES

	Key deliverables	Measure of success
Transactional advisory and procurement execution	**Led by Mck with deal structuring recommendations from Utho/Nedbank, contracting strategy input recommendations from WW, Regiments/Burlington. McK responsible.** **Leading a fair and precise process to maximise socio-economic impact for South Africa and Transnet** • Designed tendering process in line with requirements applicable to State-owned-companies (SOCs) to ensure award on time • Contracting strategy for programmatic approach and maximised localisation; Contracts that maximise Transnet's flexibility if volume predictions are not met • Supplier evaluation criteria and adjudication process • Recommended deal structuring, financing and funding options to minimise risk for Transnet to be delivered by Nedbank Capital/Utho with McK guidance and Mck integration • Overall integration of all stakeholder inputs and communication on process progress	Fair process, professional and transparent to key stakeholders - and in line with requirements applicable to SOCs Deal structure which minimises the financial risk for Transnet Contracting strategy implemented that optimally balances loco demand and supplier development objectives Tender award completed in line with timelines submitted with RFP response)
Technical evaluation and optimisation	**Led by McK and ART** **Lifecycle cost savings from technical improvement levers, and price reduction of locomotives** • Technical evaluation levers and direct impact on loco lifecycle costs by ART and McK • Joint value optimisation between Transnet and the shortlisted suppliers based on levers already identified by ART and implementable in the given timeframe, e.g., highest local content at best value for money	Estimate of total lifecycle cost for each loco type from short listed suppliers quantified and handed over to Transnet Top 3 technical optimisation levers from ART evaluated and quantified Value from technical lever optimisation negotiated and reflected in contract with selected loco suppliers

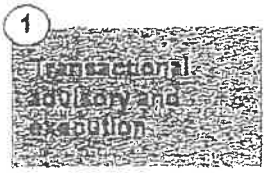
TRANSNET-REF-BUNDLE-06577

Business case integration and re-write	**Led by McK** **Re-write of the business case, approved by Board and DPE** • Integrated end-to-end business case across commodities to validate loco quantities with recommendations to adjust ranges in the fleet plan and get ranges for the contracting • Scenario based modeling to inform contracting based on macro-economic scenarios and links to export coal and export iron ore business cases, and different capex outcomes • Adequately address DPE queries.	Rewritten business case that is approved of by the Transnet Board and DPE
PMO	**Led by Regiments/Burlington with McK leadership oversight** • Monitor overall process timelines against milestones • Setting up and preparing documentation for steering committees and formal reviews • Escalate issues through regular project steercos • Prepare external stakeholder communications	Detailed project plan with milestones Clear governance structure that creates an integrated view of the entire process across all advisors Effective steering committee meetings- clear agenda with decisions to be made, all information required for decisions circulated beforehand, issues logged and resolved Aligned external stakeholders

TRANSNET-REF-BUNDLE-06578

ANNEXURE C: PREREQUISITES

People required from Transnet

1. 

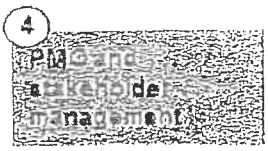
- 1 full time project manager from Group Legal for 26 weeks planning/projects), business planning
- 1 full time TFR procurement specialist to own the procurement process for 26 weeks
- Ad hoc time from Group finance (treasury), procurement;

2.

- 2 workstream leads (1 diesel and one electric)- full time for 10 weeks and then as needed for adjudication; they will drive technical evaluation and optimisation; from TFR

3.

- 1 planning/ GFB business case lead full time for 16 weeks full time; from TFR
- 1 fleet planning specialist full time for 16 weeks; from TFR

4. 

- 1 full time PMO lead full time for 26 weeks; tracks critical path activities, prepares templates/reporting and action; TFR or Group

REPORT 2(A) – PART F – EXHIBIT 2

TRANSNET

FIRST ADDENDUM FOR GSM/12/05/0447 - FOR ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

BETWEEN

Mckinsey Incorporated
(1995/002398/10)
("The Service Provider")

AND

TRANSNET SOC LTD
(1990/000900/30)
("Transnet")

1. PREAMBLE AND INTRODUCTION

1.1 McKinsey Incorporated, and Transnet signed a LOI on the 6th December 2012 in terms of which Transnet acquired the services to assist Transnet with advisory services related to the acquisition of 1064 Locomotives tender ("The agreement");

1.2 The parties now wish to further vary the LOI validity date ;

1.3 In the circumstances, the LOI shall be regarded as amended by the provision of the first addendum.

2. SOLE AGREEMENT

2.2 The LOI and addendum constitutes the sole agreement between the parties relating to the subject matter referred to in paragraph 1.1 of this first addendum and no variation shall be of any force and effect unless reduced to in writing and signed by or on behalf of both parties.

3. VARIATION OF DURATION THE OF THE LOI

3.1 The parties record that certain variations to the LOI needs to be affected:

3.2 The original LOI with the validity date commencing on the 6 December 2012 and expiring on the 6 March 2013 is hereby amended by the resolution of this addendum.

3.3 The LOI validity date shall be extended from the 7 March 2013 to the 15th of October 2013, to further conclude the MSA.

3.4 The fixed contract price of R35 200 000.00 (Thirty five million and two hundred thousand rand only). is not affected by the extension of the original LOI.

4. AUTHOURITY OF SIGNATURE

4.1 This addendum is effected and confirms the variations herein by acceptance of the signed authority's below:

Signed at Johannesburg this 5th of March 2013

Name : Prakash Pandya

Title : Principal

Mckinsey Incorporated

Authorised signatory who warrants that he/she is duly authorised to sign this first Addendum

AS WITNESSES:

1. Name: _____

Signature: _____

2. Name: _____

Signature: _____

Signed at: JHB this 4TH of MARCH 2013

Name : Garry Pita

Title : Group Chief Supply Chain Officer: ISCM

TRANSNET SOC Ltd

Authorised signatory for and on behalf of Transnet who warrants that he is duly authorised to sign this first Addendum

AS WITNESSES:

1. Name: _____

Signature: _____

2. Name: _____

Signature: _____

REPORT 2(A) – PART F – EXHIBIT 3

TRANSNET

SECOND ADDENDUM FOR GSM/12/05/0447 - FOR ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

BETWEEN

Mckinsey Incorporated
(1995/002398/10)
("The Service Provider")

AND

TRANSNET SOC LTD
(1990/000900/30)
("Transnet")

1. PREAMBLE AND INTRODUCTION

1.1 McKinsey Incorporated, and Transnet signed a LOI on the 6th December 2012 in terms of which Transnet acquired the services to assist Transnet with advisory services related to the acquisition of 1064 Locomotives tender ("The agreement");

1.2 The parties now wish to further vary the LOI and extend the contract time lines ;

1.3 The LOI shall be regarded as amended by the provision of the second addendum.

2. SOLE AGREEMENT

2.2 The LOI and addendum constitutes the sole agreement between the parties relating to the subject matter referred to in paragraph 1.1 of this second addendum and no variation shall be of any force and effect unless reduced to in writing and signed by or on behalf of both parties.

3. VARIATION OF DURATION THE WORK TIME LINES

3.1 The parties record that certain variations to the LOI and the contractual time lines needs to be affected:

3.2 The LOI, including all addenda had a validity date expiring on the 15th October 2013. The LOI validity period shall be extended from the 15th October 2013 to the 30th November 2013 to further conclude the MSA.

3.3 The contract time line shall be extended for accommodate for the completion of the deliverables .The revised expiry date will be the 10 November 2013.

3.4 The fixed contract price of R35 200 000.00 (Thirty five million and two hundred thousand rand only). is not affected by the extension of the timeline as indicated in clause 1.1 of the original LOI, as the engagement is output based as opposed to time based.

TRANSNET

4. **AUTHOURITY OF SIGNATURE**

4.1 This addendum is effected and confirms the variations herein by acceptance of the signed authouritys below:

Signed at Johannesburg this 14th of October 2013

Name: Prakesh Panday

Title: Principal

Mckinsey Incorporated

Authorised signatory who warrants that he/she is duly authorised to sign this second Addendum

AS WITNESSES:

1. Name: _____

Signature: _____

2. Name: _____

Signature: _____

Signed at JHB this 14TH of OCTOBER 2013

Name : Garry Pita

Title : Group Chief Supply Chain Officer: ISCM

TRANSNET SOC Ltd

Authorised signatory for and on behalf of Transnet who warrants that he is duly authorised to sign this second Addendum

AS WITNESSES:

1. Name: _____

Signature: _____

2. Name: _____

Signature: _____

REPORT 2(A) – PART F – EXHIBIT 4

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REGIMENTS CAPITAL

Transnet (SOC) Limited
Carlton Centre
150 Commissioner Street
Johannesburg
2001

Date: 20 January 2014
Reference: GSM/12/05/0447

Dear Anoj Singh,

RE: Transaction advisory services related to the acquisition of the 1064 locomotives over a period of 12 (twelve) months

Transnet had expressed its intent to procure transaction advisory services from a consortium of firms (namely, McKinsey Incorporated, Regiments Capital, Advanced Rail Technologies, Nedbank Capital and Utho Capital) pursuant to its letter of intent dated 30 November 2012. The various services that were foreseen at the time are grouped under four categories (contracting strategy, business case validation, technical evaluation and execution, and PMO, integration and stakeholder management). Subsequent to the issuance of the original letter of intent, the realisation for a conflict of interest arising from engaging Nedbank Capital has made the reallocation of the tasks that were originally thought to be handled by Nedbank to other members of the consortium.

This document is therefore intended to clarify the updated scope of transaction advisory work that Regiments Capital will perform in relation to the acquisition of the 1064 locomotives.

The Parties to this agreement are:

(1) Transnet SOC Limited (Transnet), a State Owned Company and the procurer of the transaction advisory services (Registration Number 1990/000900/30); together with
(2) Regiments Capital (Regiments).

Transnet wishes to contract with Regiments for the provision of the following transaction advisory services. The services will be offered over a period of 12 (twelve) months.

NOW THEREFORE IT IS AGREED

1. **Conditions Precedent**

In line with the original LOI dated 30 November 2012 and the subsequent changes in reallocation of tasks, Transnet wishes to finalize the details of the services to be provided by Regiments. The undermentioned conditions precedent will apply:

1.1. The Parties agree to work towards concluding the Agreement for the Provision of Transaction Advisory services for a period of 12 (twelve) months, commencing 22 January 2014, in relation to the structuring and efficiency of the funding required for the acquisition of the 1064 locomotives. The work may extend beyond the 12 (twelve)

month period, at no additional cost to Transnet if the deliverables are not achieved for whatever reason, as this engagement is output-based as opposed to time based.

1.2. Regiments agrees to promptly commence with the provision of the services as detailed in section 2 below.

2. Contract Fees and Deliverables

The proposed fee structure for the services to be rendered is understood by both parties to involve a retainer applicable every month and a performance fee on the funding raised at interest rates below the benchmark.

2.1. **Fees and related** costs are quoted in South African currency and are exclusive of Value Added Tax (VAT). Expenses will be capped at 10% of the value of the total retainer.

2.1.1. Deliverables (except the actual fund raising) must be executed for a fee of R15 million over a period of 12 (twelve) months.

2.1.2. A performance fee equal to 20% of the savings achieved against the benchmark interest rate. The benchmark interest rate is the interest rate at which Transnet was able to raise its most recent funding prior to 1 January 2014.

2.2. **Payment** will be effected at equal monthly instalments by Transnet, against presentation by Regiments of undisputed Tax Invoices.

2.3. **Key deliverables and project timeframe.**

The key project deliverables over the 12 (twelve) month period include the activities and deliverables described below that enhance the cost and structuring of the funding for the acquisition of the 1064 locomotives.

The objective of this specific project is to conduct all the necessary studies and preparatory work to enhance Transnet's ability to raise the required funding at a competitive interest rate and to achieve an optimal funding structure with minimal pressure on Transnet's future liquidity.

The deliverables include:

2.3.1. Determining the development and sustainability impact of the acquisition by:

2.3.1.1. Conducting socio-economic impact studies

2.3.1.2. Determining the acquisition's impact on the environment

2.3.1.3. Examining the project's contribution to regional integration

2.3.2. Conducting a collateral assessment

2.3.2.1. Conduct collateral assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promotion funds/agencies and in the form of vendor finance.

2.3.2.2. Present a detailed analysis with specific recommendations to be pursued and executed.

2.3.2.3. Investigate how asset/component can be secured in order to optimise balance sheet impact and cost of financing within the context of Transnet policy with respect to asset ownership and control.

2.3.3. Developing and implementing a best practice risk management framework to the transaction

2.3.3.1. A financial risk assessment framework (including risk identification, risk assessment, risk response, risk monitoring, performance measurement, risk control, risk reporting and compliance) will be developed and implemented.

2.3.3.2. Cost escalation risk management

2.3.3.3. Legal and regulatory risks

2.3.3.4. Balance sheet impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.

2.3.4. Developing an optimal risk management solution by examining solutions that are embedded in the acquisition agreement, funding agreement and separate risk overlays.

2.3.5. Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute. The full spectrum of funding opportunities that will be evaluated include:

2.3.5.1. Local and international banks

2.3.5.2. Local and international development finance institutions

2.3.5.3. Export credit agencies

2.3.5.4. Vendor financing

2.3.6. Providing execution programme management and support in respect to funding:

2.3.6.1. Assist in the preparation and management of capital raising related tenders/RFPs and RFIs.

2.3.6.2. Participate in road shows and assisting with the preparation of information memorandums.

2.3.6.3. Participate in the negotiation of the commercial terms of funding from the shortlisted funders.

2.3.6.4. Participate in the fulfilment of conditions precedent required by the funders.

2.3.6.5. Participate in the due diligence exercise and responding to all credit queries raised by the funders.

3. Miscellaneous

3.1. Neither Party shall reveal the content of this agreement or anything disclosed to the other Party in pursuance hereof to any third party, except with the prior express

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REGIMENTS CAPITAL

written consent of the other party, and then only to the extent required to facilitate progression of the start-up procedures.

3.2. This agreement may only be amended or modified in writing by the authorised signatories of the Agreement.

Thus duly signed at ....., South Africa on this ..... day of ..... 20..... on behalf of:

TRANSNET SOC LIMITED

NAME: Anoj Singh

DESIGNATION: Group Chief Financial Officer

23/01/14.

WITNESSES

1. .....

2. .....

Subject to items listed below

Thus duly signed at HOUGHTON, South Africa on this 20th day of JAN 20 14 on behalf of:

REGIMENTS CAPITAL

NAME: Niven Pillay

DESIGNATION: Executive Director

WITNESSES

3. .....

4. .....

- The contract for the supply of these services is with McKinsey and Regiments Capital is contracted to them.
- In terms of section 2 there will not be a performance fee for fundraising thus 2.1.2 will be removed as well.
- Expenses will be capped at 10% and paid on approved actual costs in terms of Transnets policies & procedures
- Payment will be made to McKinsey
- Costs and payment against this scope may not be made above R9 million without specific approval by Transnet

REPORT 2(A) – PART F – EXHIBIT 5

Regiments Capital Pty (Ltd)
91 Central Street
Houghton
Johannesburg
2148

Date: 23 January 2014

Reference: LOI/ GSM/14/01/0979

Attention: Niven Pillay
Email : nivenp@regiments.co.za

Dear Niven Pillay

RE : LETTER OF INTENT

FOR THE PROVISION OF SERVICES RELATED TO THE APPOINTMENT OF A SERVICE PROVIDER TO DESIGN AND IMPLEMENT A NEW BEST PRACTICE FRAMEWORK FOR THE TRANSNET SECOND DEFINED BENEFIT FUND.

We wish to inform you that we are pleased to confirm that your company has been identified as the bidder. **For the provision of services in respect to the appointment of a service provider to design and implement a new best practice framework for Transnet's second defined benefit fund for a period of Thirteen (13) months [the Services]** to Transnet, subject to the conditions precedent set out in section 1 below.

The Parties to this agreement are:

(1) **Transnet SOC Ltd [Transnet]**, a State Owned Company and the procurer of the Services. [Registration Number 1990/000900/30]; together with

(2) **Regiments Capital Pty Ltd [the Service Provider]** [Registration Number 2004/023761/07].

Transnet wishes to contract with the Service Provider for the provision of the Services which, if mutually agreed by the Parties, will be documented and effected in accordance with Thirteen [13] Month contract [**the Agreement**] between the Parties.

The Parties are desirous of successfully concluding negotiations and thereafter executing the Agreement to enable the Service Provider to provide the Services detailed in Annexure A hereto.

In the interim, the Parties have identified the Services which Transnet would wish the Service Provider to provide prior to finalisation and execution of the Agreement between the Parties. Conditions of the current requirement are specified in sections 2 and 3 below.

The purpose of this Letter of Intent [LOI] is to document the intentions of the Parties in respect of the required Services and it will remain in effect until the Agreement is signed by both Parties, or until 90 [Sixty] days have elapsed from date of issue of this LOI, whichever event should occur first.

NOW THEREFORE IT IS AGREED

1. Conditions Precedent

With reference to the Service Provider's offer GSM/14/01/0979, Transnet wishes to finalise pricing, the details of the Services to be provided and other matters in order to conclude the Agreement with the Service Provider. In the interim, the under-mentioned conditions precedent will apply:

1.1 The Parties agree to work towards concluding an Agreement to provide the Services over a period of Thirteen [13] months commencing 23 January 2014 and expiring on 31 January 2015.

1.2 The Parties agree to use this document as a proxy for the binding legal Agreement and under its authority Transnet intends to request that the Service Provider commences the provision of such Services as required in the interim, during which period the detailed Agreement will be negotiated and finalised between the Parties.

1.3 During this interim period Transnet wishes to gain an enhanced degree of comfort in terms of the service levels associated with the provision of the Services by the Service Provider.

1.4 Transnet will discuss with the Service Provider and agree the terms and conditions of the Agreement.

2. Interim Service Requirement

2.1. The Service Provider agrees to promptly and immediately commence with the provision of the Service(s) as detailed in this LOI.

2.2. Should negotiations between the Parties break down for any reason, the Service Provider may immediately invoice Transnet Corporate Centre for all reasonable, actual costs incurred prior to that date and such amount shall become due and payable by Transnet.

3. Contract Fees and Deliverables [inclusive of 2.1 above]

The contract Fees for provision of the Services, which the Parties in the interim accept, are understood by both Parties. [subject to signing of the Agreement based on the terms and conditions] . As per the proposal supplied by Regiments Capital Pty (Ltd) payments will be made against milestone achievements as indicated by the work order with reference to Annexure A.

3.1. **Contract Fees**

Contract Fees for the design scope are fixed at R15 217 176 and payable on delivery of each milestone. The contract fees for the implementation scope is fixed at R20 000 000. Disbursements will be capped at 10% (Three Million, Five hundred and twenty one thousand seven hundred and seventeen Rands only). However payments on disbursements will be based on the actual invoices received by Transnet as outlined in our terms and conditions. Contract Fees and related costs are quoted in South African currency and are exclusive of Value-Added Tax [**VAT**].

3.2. **Payment terms**

Payment will be effected by Transnet within 30 [thirty] days from date of month-end statement for deliverables effected during that month.

3.3. **Deliverables**

3.3.1. To design a new best-practice framework to reduce risk and boost the performance of the TSDBF, which will lead to increased benefits to TSDBF members, with reduced risk to the TSDBF and ultimately Transnet. The detailed breakdown for the deliverables with relevant milestones as attached in Annexure A.

3.3.2. To implement the new best-practice framework that was designed. The detailed breakdown for the deliverables with relevant milestones will be negotiated further once approval to commence this part of the scope has been approved by Transnet. The delivery of this deliverable is subject to Transnet approval and Transnet reserves its right not to continue with this deliverable and Transnet reserves its right not to use Regiments Capital (Pty) Ltd to deliver this deliverable.

3.4 **Miscellaneous**

Neither Party shall reveal the content of this LOI or anything disclosed to the other Party in pursuance hereof to any third party, except with the prior express written consent of the other Party, and then only to the extent required to facilitate progression of the startup procedures.

4. Supplier Development Commitments

Supplier Development is part of the qualifying criteria. The Service Provider has committed that 42% of the contract value will be utilised against Supplier Development initiatives. The Service Provider is required to provide Transnet with a comprehensive Supplier Development plan within 45 days from the LOI confirmation date. This Supplier Development Plan is subject to Transnet approval and will form part of the Master Agreement.

The contract documents will be drafted by Transnet and be subject thereafter to final agreement between both Parties. Pending the final approval of the Agreement by both Parties, the Parties hereby attest to the speedy resolution of all outstanding matters in order to finalise the Agreement within 90 [Ninety] days from date of signature hereof.

Thus duly signed at JHB, South Africa on this 23rd day of January 2014 on behalf of:

Transnet SOC Ltd

WITNESSES

1 .....

2 .....

NAME: Anoj Singh
23/01/14

Thus duly signed at ....., South Africa on this ..... day of

..... 20..... on behalf of:

Regiments Capital Pty (Ltd)

WITNESSES

1 .....

2 .....

NAME:

ANNEXURE A - SERVICE DELIVERABLES & ASSOCIATED FEES/COSTS

Outline

The Way Forward

The *Liability-Plus* road map

Design

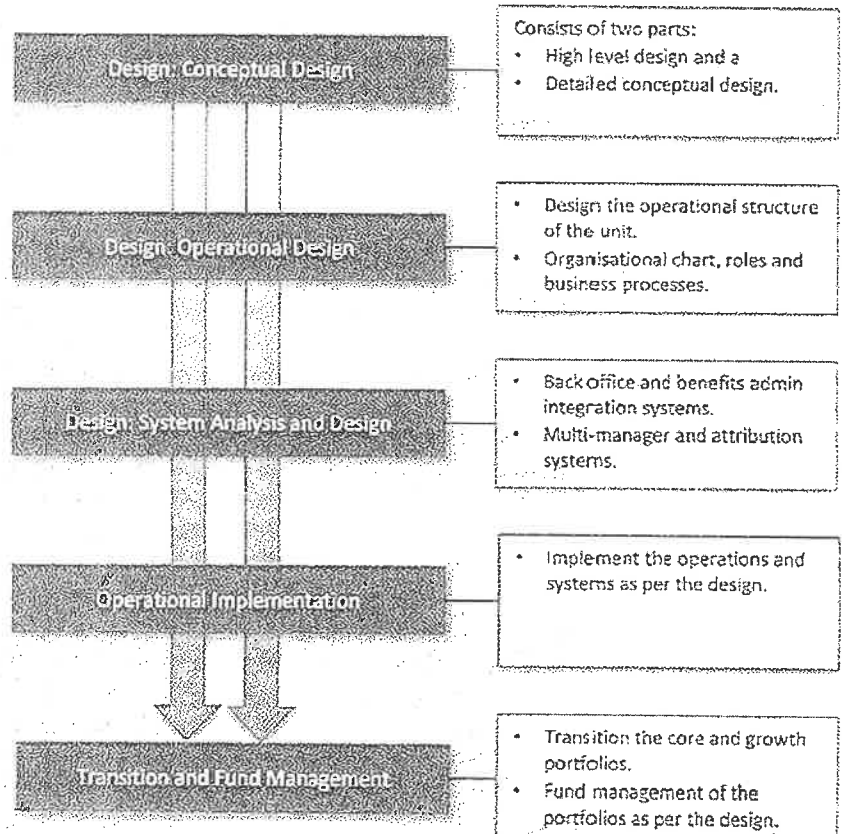
- The design phase consists of three parts: Conceptual Design, Operational Design and Systems Design.

Operational Implementation

- The solution is implemented according to the design and the processes, staff and systems are put in place.

Transition and Fund Management

- After the fund is transitioned, fund management will commence.



This proposal focuses on *Design Phase* of the overall project. This comprise:

- High-level conceptual design
- Detailed conceptual design
- Operational Design
- System Analysis and Design

The specific details of the *Operational Implementation* will be determined from the design phase.

Transnet SOC Ltd
Registration Number
1990/000900/30

Directors: ME Mkwanazi (Chairma
E Tshabalala DLJ Tshepe A Singh*
*Executive

Group Company Secretary: ANC Ceba

TRANSNET-REF-BUNDLE-06597

Design

Conceptual Design

TRANSNET

High level Conceptual Design

High level design of the LDI solution including :

- Core and Growth Portfolios
  - Definition and explanation of the purposes of the core and growth portfolios
  - Anticipated asset allocation between core and growth based on the fund liability profile.
  - Anticipated asset allocation and tenor in core and growth portfolios.
- Risk Budgeting and Attribution
  - High-level design of risk budgeting and attribution framework.
  - Discussion of anticipated factors for *on-benchmark* and *off-benchmark* risks.
- Multi-manager Framework
  - High level design of the methodology used for managing satellite portfolios run by third party managers.
- Integration Framework
  - High level design of roles and responsibilities between the core LDI manager and the satellite managers.
  - Integration design between core and satellite portfolios discussed.
- Next Steps
  - High level design and full mandate outline will be submitted to the board for approval before moving to the *Detailed Conceptual Design*.

Detailed Conceptual Design

Detailed design of the solution based on the high-level design.

- Core Portfolio
  - Initial optimal hedge design detailing exact bonds and swaps to be used. Overall asset allocation to the core portfolio determined. Overall credit limits and leverage levels determined for optimum hedge efficiency determined. When designing the portfolio, cognizance is taken of the current state of the fund in order to optimise transition.
  - Valuation methodology and curves to be used. Risk budgeting framework for *on-benchmark* risk factors such as: interest rate, inflation, liquidity, credit etc.
  - Online actuarial model designed and liability rebalance period determined.
- Growth Portfolio
  - Detailed design of growth portfolio and asset allocation. The current position is analysed to ensure optimal transition.
  - Risk budgeting framework for *off-benchmark* risk factors such as: FX, inflation, liquidity, credit etc.
- Multi-manager Framework and Integration
  - Detailed design of multi-manager framework. Detailed design of integration between LDI core and satellite managers.
- Performance Attribution and Reporting Design
  - Design the attribution methodology and reports. Design the reporting requirements and frequency.

TRANSNET-REF-BUNDLE-06598

Implementation

Operational and Systems Implementation

TRANSNET

Operational and Systems Implementation

Once the design is finalised the process moves on to implementation.

The Implementation Phase involves:

- Setting up the operational structures.
- Staffing the respective roles.
- Implementing the systems to manage the fund.
- Implementing the reports as per the design.
- Fund manager selection for the growth portfolio via an RFP process in conjunction with the Fund.

The some of the above steps can be performed in parallel.

Next Step: Fund Transitioned and Management

Once implementation has completed the fund can be transitioned to the new LDI framework.

- **Core:** The core portfolio is transitioned and core management can then commence.

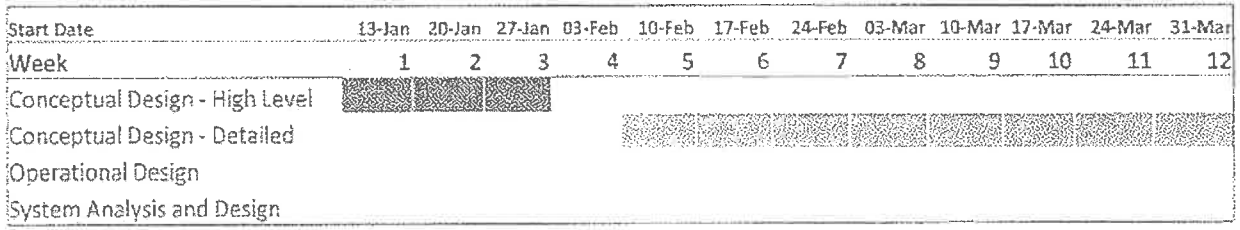
- **Growth Portfolio:** Satellite managers will have been appointed as per the Conceptual Design during the Implementation phase. The growth portfolio will be transitioned and management can then commence.

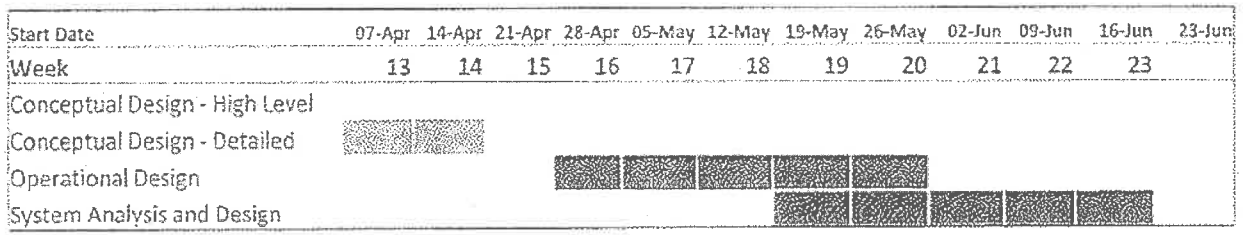
TRANSNET-REF-BUNDLE-06599

Design

Design Project Plan and Milestones

TRANSNET





Milestones	
03-Feb	High Level Conceptual Design Complete Report for Approval
10-Feb	Detailed Conceptual Design Begins
21-Apr	Detailed Conceptual Design Complete for Approval
28-Apr	Operational and System Design Begins
23-Jun	Design Complete

TRANSNET-REF-BUNDLE-06600

Design

Design Pricing

TRANSNET

Fee Schedule	Hourly Rate (Rands)
Executive Management	3500
Actuaries	3370
Senior Consultants	2200
Associates	1200

Design Pricing	Total Weeks	Total (Rands)
Conceptual Design - High Level	2.8	2,703,176
Conceptual Design - Detailed	10.0	6,257,000
Operational Design	5.0	3,128,500
System Analysis and Design	5.0	3,128,500
		15,217,176

Design

The design consists of four parts. The bulk of the design takes place in the first two steps.

In order to complete the *high-level conceptual design* step in the given time frame, a large team is assigned to this task.

Operational Implementation

After the completion of the design, implementation can commence. The exact details of implementation will take direction from the recommendations made in the design phase.

The table on the right shows the indicative pricing for the *Implementation* phase.

Indicative Pricing for Operational Implementation	
Setting up the operational structures	
Staffing the respective roles	
Implementing software systems to manage the fund	
Implementing the reports as per the design	
Fund manager selection for the growth portfolio	
Transition strategy document	
Indicative Price (Rands)	20,000,000

TRANSNET-REF-BUNDLE-06601

Contact Details

TRANSNET

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Regiments Capital
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nivenp@regiments.co.za

Sybil Kekana
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Michael Barcer
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michaelb@regiments.co.za

TRANSNET-REF-BUNDLE-06602

Pension Fund Review of TSDBF and TPF

Regiments Capital was appointed to perform a review of the asset management framework and performance of the TSDBF and TPF. A summary of our key findings and recommendations are presented below:

A best-practice LDI strategy would reduce risk and have better outcomes for all stakeholders than the current framework.

- Best-practice liability-driven investment takes the state of the art beyond the limitations of the past.
- We used to talk about "de-risking" a fund by matching the liabilities. Now, we talk about finding an optimal risk and return balance, taking assets and liabilities into account.
  - Excessive precision can be reduced, and low yields improved.
  - Capital efficiency can be improved.
  - Large unhedged interest rate risk can be immunised to within risk tolerances.
  - A risk budgeting framework can be implemented to optimise risk management.
  - An holistic solution can replace the existing fragmentary approach.
  - Active management can reduce costs and improve flexibility and efficiency. Passive solutions are too inefficient for highly customised applications.

The actuarial model is sound.

- The actuarial models used for the TSDBF and TPF are sound.
- Different discounting is used for each fund. We would recommend looking at using market curves for both, where possible.
- Mortality tables and marriage assumptions are important, and should be verified for accuracy.

The current matched portfolio represents only a partial risk hedge, and its performance can be significantly enhanced.

- In the TSDBF, the current matching portfolio has a low yield, uses substantial capital, and only protects against some of the interest rate risk. It has a substantial unhedged exposure of around R3.4m per basis point after 2021.
- In the TPF, a similar approach is used, with around R1.7m per basis point of remaining exposure.
- There is potential to unlock significant value by migrating to an integrated framework. Overall yields can be improved, risk can be reduced, and more assets should be available for growth.

The current unmatched portfolio asset managers have performed well against their mandates, but these mandates are grounded in a sub-optimal framework.

- Asset managers currently employed by both funds have performed well against their benchmarks, registering an overall outperformance.
- However, the overall framework of each fund is suboptimal.
  - The framework is not holistic, and matching and growth are considered in isolation.
  - *Surplus* is the *ultimate measure* of a fund, so risk and return on the full asset-liability portfolio need to be optimised to manage it effectively.
  - The funds are taking *unintended risks* due to unhedged interest rate risks, and mismatches between fund objectives and manager benchmarks.

A new overarching LDI framework in line with best-practices needs to be designed

- The new framework will focus on the full asset-liability performance. It will also integrate tightly with actuarial modelling, ensuring that results do indeed increase the fund surplus without any valuation surprises.
- Capital freed from matching can be employed for growth, and the remaining assets employed for matching can also generate a positive return themselves.

Immediate Next Steps

1. Design and implement an overarching LDI framework in line with best practices, to meet each fund's goals more effectively. It is quite possible to simultaneously reduce risk as well as boost performance significantly.
2. Optimise and transition the matched portfolio. The existing matching portfolios would be absorbed into the framework and transitioned optimally to meet the desired risk, return and capital requirements.
3. Implement a risk-budgeting framework with performance attribution. Risk and return opportunities are analysed, and risk budgets assigned to managers in a self-correcting framework, ensuring continued optimality. Existing manager performance and mandates will be taken into account.

Our models show that the TSDBF should be able to support increases (actual or discretionary) of 75% of CPI, along with 13th cheques, provided that the fund performs at a level of CPI+6%.

We believe that it is possible for a well-designed, best-practice LDI framework to deliver this level of performance consistently.

REPORT 2(A) – PART F – EXHIBIT 6

ANNEXURE A

TRAN

THIRD ADDENDUM FOR GSM/12/05/0447 - FOR ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

BETWEEN

McKINSEY INCORPORATED
(1995/002398/10)
("The Service Provider")

AND

TRANSNET SOC LTD
(1990/000900/30)
("Transnet")

1. PREAMBLE AND INTRODUCTION

1.1 McKinsey Incorporated, and Transnet signed a LOI on the 6th December 2012 in terms of which Transnet acquired the services to assist Transnet with advisory services related to the acquisition of 1064 Locomotives tender ("The agreement").

1.2 McKinsey further appointed Regiments Capital (Pty) Ltd as a partner in executing the financing aspect of the above mentioned tender agreement, with McKinsey Incorporated being the principal lead.

1.3 The parties now wish to further vary the LOI and vary the scope of work regarding the financing aspect of the transaction.

1.4 The LOI shall be regarded as amended by the provision of the third addendum.

2. SOLE AGREEMENT

2.1 The LOI and addendum constitutes the sole agreement between the parties relating to the subject matter referred to in paragraph 1 of this third addendum and no variation shall be of any force and effect unless reduced to in writing and signed by or on behalf of both parties.

3. VARIATION OF SCOPE OF WORK

3.1 The deliverables for the revised scope of work will be as per clause 2 derived and agreed upon by Regiments Capital Pty (Ltd) for executing the funding portion of tender agreement GSM/12/05/0447. The objective of this work specific project is to conduct all the necessary studies and preparatory work to enhance Transnet's ability to rise the required funding at a competitive interest rate and to achieve an optimal funding structure with minimal pressure on Transnet's future liquidity. The deliverables include:

1. Determining the development and sustainability impact of the acquisition by,
    a. Conducting socio-economic impact studies.
    b. Determine the acquisition's impact on the environment.
    c. Examining the projects contribution to regional integration.

2. Conducting a collateral assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promoting funds/agencies and in the form of vendor finance.
3. Present a detailed analysis with specific recommendation to be pursued and executed.
4. Investigate how asset/component can be secured in order to optimise balance sheet and cost of financing within the context of Transnet policy with respect to asset ownership and control.
5. Developing and implementing a best practice risk management to the transaction:
    a. A financial risk assessment framework (including risk identification, risk assessment, risk response, risk monitoring, performance measurement, risk control, risk reporting and compliance) will be developed and implemented.
    b. Cost escalation risk management.
    c. Legal and regulatory risks.
    d. Balance sheet impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.
6. Developing an optimal risk management solution by examining solution that is embedded in the acquisition agreemnent, funding agreement and separate risk overlays.
7. Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute. The full spectrum of funding opportunities that will be evaluated include:
    a. Local and international Banks.
    b. Local and international development finance institutions.
    c. Export credit agencies.
    d. Vendor financing.
8. Provide execution support programme management and support in respect to funding:
    a. Assist in the preparation and management of capital raising related tenders/RFPs and RFIs.
    b. Participate in roadshows and assisting with the preparation of information memorandums.
    c. Participate in the fulfilment of conditions precedent required by the funders.
    d. Participate in due diligence exercise and responding to all credit queries raised by the funders.

4. VARIATION OF CONTRACT PRICE

4.1 As a result of the additional scope of work required on the financial phase of this contract, the initial price of R35 200 000.00 (Thirty five million and two hundred thousand rand only) will therefore increase by R6 000 000 (Six Million Rands only). This increase will bring the total Contract value to the fixed amount of R41 200 000.00 (Forty One Million and Two Hundred Thousand Rand only).

4.2 The work performed for this deliverable will be a fixed price of R15 000 000 (fifteen million rand only), utilising the contract value allocated to other deliverables that are no longer required, once R9 000 000 (nine million rand only) has been reached Transnet must approve the continuation of the work past R9 000 000 (nine million rand only) to R15 000 000 (fifteen million rand only).

4.3 Expenses for this piece of work will be capped at 10% of the value, based on actual costs incurred and in terms of Transnet Policies and Procedures

TRANSNET

5. AUTHORITY OF SIGNATURE

5.1 This addendum is effected and confirms the variations herein by acceptance of the signed authority's below:

Signed at _____ this _____ of _____ 2014

Name: ERIC WOOD

Title: Executive Director

~~McKinsey Incorporated~~

Authorised signatory who warrants that he/she is duly authorised to sign this Third Addendum

AS WITNESSES:

1.Name: _____

Signature: _____

Signed at JHB this 04 of Feb 2014

Name: Anoj Singh

Title : Group Chief Financial Officer

TRANSNET SOC Ltd

Authorised signatory for and on behalf of Transnet who warrants that he is duly authorised to sign this Third Addendum

AS WITNESSES:

1.Name: _____

Signature: _____

REPORT 2(A) – PART F – EXHIBIT 7

Appendix 76 1467

TRANSNET

Execution Version

AGREEMENT

Entered into by and between

TRANSNET SOC LTD (Reg. Nr. 1990/0009000/30)

And

McKINSEY INCORPORATED (Reg. Nr. 1995/002398/10)

FOR THE PROVISION OF SERVICES RELATED TO THE ACQUISITION OF 1064 LOCOMOTIVES TENDER

Agreement Number	GSM 12/05/0447
Commencement Date	15 JANUARY 2013
Expiry Date	31 MARCH 2014

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SCHEDULE 1 – WORK ORDER(s)

1 INTRODUCTION

This Agreement is entered into by and between:

Transnet SOC Ltd [Registration Number 1990/000900/30] whose registered address is Carlton Centre, 150 Commissioner Street, Johannesburg 2001, Gauteng, Republic of South Africa [**Transnet**]

And

McKinsey Incorporated [Registration Number 1995/002398/10] whose principal place of business is at Sandown Mews East, 88 Stella Street, Sandton, 2196, Gauteng, South Africa [**the Service Provider**].

NOW THEREFORE, IT IS AGREED:

1.1 Transnet hereby appoints the Service Provider to provide, and Transnet undertakes to accept the provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement; and

1.2 The Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement.

2 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

2.1 **AFSA** means the Arbitration Foundation of South Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means 5 January 2013, notwithstanding the signature date of this Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs,

plans, formulae, patents, or inventor's certificates, which a Party discloses to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) The contents of this Agreement;

c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) Information relating to the past, present and future research and development of the disclosing Party;

g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) Information contained in the software and associated material and documentation belonging to the disclosing Party;

i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) Commercial, financial and marketing information;

l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;

2.8 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or

statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;

2.9 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;

2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;

2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;

2.13 **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;

2.14 **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;

2.15 **Materials** means the Deliverables, the Service Provider Materials;

2.16 **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;

2.17 **Party** means either one of the Parties;

2.18 **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any Inventions, products or processes in all fields of technology;

2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

2.22 **Service(s)** means the setup and operation of the MDS Execution support office, the Service(s) provided to Transnet by the Service Provider, pursuant to Schedule 1 "Work Order"(s) in terms of this Agreement;

2.23 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

2.24 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;

2.25 **Service Provider Materials** means including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;

2.26 **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;

2.27 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

2.28 **Trade Marks** mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;

2.29 **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and

2.30 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which shall be appended to this Agreement.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purpose of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

4.1 This Agreement is an agreement under the terms and conditions of which the Service Provider will arrange for the provision to Transnet of the Services which meet the requirements of Transnet, the delivery of which Services is controlled by means of Purchase Orders to be issued by Transnet and executed by the Service Provider, in accordance with this Agreement.

4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 29 *[Amendment and Change Control]* below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such term or provision or condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and

d) The use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.

6.4 The Service Provider warrants that for a period of 90 [ninety] days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] days of notification by Transnet.

6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 29 *[Amendment and Change Control]*.

6.8 The Service Provider warrants that:

a) it has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Materials at the date of the relevant Work Order, and

b) At the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that

a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

6.9 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

6.10 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.

6.11 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 14 *[Service Provider's Personnel]*, Transnet agrees to :

a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and

b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services..

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) Respond promptly to all complaints and reasonable enquiries from Transnet;

b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;

d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;

g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and

h) Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) Render the Services and perform all its duties with honesty and integrity;

b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

c) Endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;

d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;

e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 23 – *Equality and Diversity*];

g) Treat all enquiries from Transnet in connection with the Services with courtesy and respond to all enquiries promptly and efficiently. Where the Service Provider is unable to comply with the provisions of this clause, the Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;

h) When requested by Transnet, provide clear and accurate information regarding the Service Provider's own policies and procedures, excluding Know-How and other Confidential

Information, except where a non-disclosure undertaking has been entered into between the Parties;

i) Not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

j) Not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;

k) Not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and

l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 SERVING COMPETITORS

It is the Service Provider's long-standing policy to serve competing clients and clients with potentially conflicting interests as well as counter-parties in merger, acquisition and alliance opportunities, and to do so without compromising its professional responsibility to maintain the confidentiality of client information. Consistent with such practice and the Service Provider's confidentiality obligations to its other clients, the Service Provider is not able to advise or consult with Transnet about the Service Provider serving Transnet's competitors or other parties. To avoid situations of potential conflict, the Service Provider will not assign consultants, who are providing the Services and who receive confidential information, to a competitively sensitive project for what the Service Provider considers a significant period of time following an assignment for Transnet.

10 FEES AND EXPENSES

10.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.

10.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials (if any) set out in the Work Order and accepted by Transnet or in any relevant Work Order (which will be invoiced to Transnet at cost).

10.3 The Parties have agreed that the value of the Service Provider's expenses in connection with the provision of the Services shall be fixed at 10% of the total Fees which amount shall be paid by Transnet to the Service Provider.

10.4 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

11 INVOICING AND PAYMENT

11.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.

11.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices,

or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 11.4 below.

11.3 All Fees and other sums payable under this Agreement are exclusive of VAT, which will be payable at the applicable rate.

11.4 Unless otherwise provided for in the Work Order(s) appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] days after date of receipt by Transnet of the statement together with all undisputed Tax Invoices and supporting documentation.

11.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 11, the Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.

12 FEE ADJUSTMENTS

12.1 Subject to Clause 10.1, the Fee is fixed for the duration of the Agreement

13 INTELLECTUAL PROPERTY RIGHTS

13.1 Title to Confidential Information and Intellectual Property

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider Materials shall remain vested in the Service Provider.

b) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

c) To the extent Materials includes any Service Provider Materials, the Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive, non-transferable, non-sublicenseable, worldwide licence to use and copy the Service Provider Materials solely as part of the Deliverables and subject to the limitations on the use of the Service Provider name and Deliverables. Subject to the aforegoing and payment in full of the Fees, Transnet will own all Materials furnished by the Service Provider to it in connection with the Services.

13.2 Unauthorised Use of Confidential Information

The Service Provider shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential

Information, and shall promptly notify Transnet of the Information if it becomes aware of any party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting. The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use the Service Provider's name, refer to the Service Provider's work, or make the Deliverables or proposals (including the Service Provider's fees, expenses and other commercial terms) or the existence or terms of this agreement available outside its organization without the Service Provider's prior written permission.

13.3 Unauthorised Use of Intellectual Property

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

b) It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.

c) The Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.

d) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

14 SERVICE PROVIDER'S PERSONNEL

14.1 The Service Provider's Personnel shall be regarded at all times as employees, agents or Subcontractors of the Service Provider and no relationship of employer and employee shall arise between Transnet and any Service Provider Personnel under any circumstances regardless of the degree of supervision that may be exercised over the Personnel by Transnet.

14.2 The Service Provider warrants that all its Personnel will be entitled to work in South Africa or any other country in which the Services are to be performed.

14.3 The Service Provider will ensure that its Personnel comply with all reasonable requirements made known to the Service Provider by Transnet concerning conduct at any Transnet premises or any other premises upon which the Services are to be performed [including but not limited to security regulations, policy standards and codes of practice and health and safety requirements]. The Service Provider will ensure that such Personnel at all times act in a lawful and proper manner in accordance with these requirements.

14.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

14.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

15 LIMITATION OF LIABILITY

15.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury due to negligence; or

b) Fraud

15.2 Each of the Parties shall indemnify and keep the other Party (the "Indemnified Party") indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 15.2 shall be limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.

15.3 Subject always to clauses 15.1 and 15.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of

related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

15.4 Subject to clause 15.1 above, and except as provided in clauses 15.2 and 15.2 above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.

15.5 Nothing in this clause 15 shall be taken as limiting the liability of the Service Provider in respect of clause 13 *[Intellectual Property Rights]* or clause 17 *[Confidentiality]*.

16 INSURANCES

16.1 Without limiting the liability of the Service Provider under this Agreement, the Service Provider shall take out insurance in respect of all risks for which it is prudent for the Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.

16.2 The Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies after written request therefore by Transnet within 30 [thirty] days after date of policy renewals.

16.3 Subject to clause 16.4 below, if the Service Provider fails to affect adequate insurance under this clause 16, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance. The Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Service Provider's liability.

16.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 16.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

17 CONFIDENTIALITY

17.1 The Parties hereby undertake the following, with regard to Confidential Information:

a) Not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;

i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

17.2 The duties and obligations with regard to Confidential Information in this clause 17 shall not apply where:

a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or

b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) Is independently developed by a Party as proven by its written records.

17.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use

Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

17.4 This clause 17 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

18 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

Should the Service Provider fail or neglect to execute the work or to deliver any portion of the Service, as required by the terms of this Agreement or Work Order, Transnet may cancel this Agreement or Work Order in so far as it relates to the unexecuted work or rejected portion of the Service, and, in such event, the provision of any remaining commitment shall remain subject in all respects to these conditions.

19 TERM AND TERMINATION

19.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is 05 January 2013 and the expiry thereof shall occur on 31 March 2015, unless:

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

19.2 Either Party may terminate this Agreement forthwith by notice in writing to the other Party where the other Party has committed a material Default and, where such Default is capable of remedy, has failed to remedy such Default within 30 [thirty] days of receiving notice specifying the Default and requiring its remedy.

19.3 Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time], or if any action, application or proceeding is made with regard to it for:

a) A voluntary arrangement or composition or reconstruction of its debts;

b) Its winding-up or dissolution;

c) The appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or

d) Any similar action, application or proceeding in any jurisdiction to which it is subject.

19.4 Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Service Provider by notice in writing to the Service Provider. For the purposes of this clause, "**control**" means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.

19.5 Transnet may cancel any schedule or Work Order hereto at any time on giving the Service Provider 30 [thirty] days' written notice.

19.6 Notwithstanding this clause 19, either Party may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

20 CONSEQUENCE OF TERMINATION

20.1 Termination in accordance with clause 19 *[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

20.2 On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all final Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.

20.3 To the extent that any of the Deliverables and property referred to in clause 20.2 above is in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with encrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held. Notwithstanding the foregoing, Service Provider shall be permitted to retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

20.4 In the event that this Agreement is terminated by the Service Provider under clause 19.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 19.5 *[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

20.5 The provisions of clauses 2 *[Definitions]*, 6 *[Warranties]*, 13 *[Intellectual Property Rights]*, 15 *[Limitation of Liability]*, 17 *[Confidentiality]*, 20 *[Consequence of Termination]*, 26 *[Dispute Resolution]* and 30 *[Governing Law]* shall survive termination or expiry of this Agreement.

20.6 If either Party (the **Defaulting Party**) commits a material breach of this Agreement and fails to remedy such breach within 30 (thirty) Business Days of written notice thereof, the other Party (hereinafter **the Aggrieved Party**), shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.

20.7 Should:

a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 (as may be amended from time to time);

Then the other Party shall be entitled, but not obliged, to terminate this Agreement on written notice, in which event such termination shall be without any liability and without prejudice to any claims which either Party may have for damages against the other.

21 ASSIGNMENT

Neither Party may assign the benefit of this Agreement or any interest hereunder except with the prior written consent of the other.

22 FORCE MAJEURE

22.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, suppliers, or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the a foregoing, any period stipulated for any such performance shall be reasonably extended.

22.2 Each Party will take all reasonable steps by whatever lawful means that are available, to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree to such modifications proposed by the other Party within 90 (ninety) days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

23 EQUALITY AND DIVERSITY

23.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

23.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

24 NON-WAIVER

24.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

24.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

25 PARTIAL INVALIDITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

26 DISPUTE RESOLUTION

26.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

26.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.

26.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

26.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 26.

26.5 This clause 26 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

26.6 This clause 26 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

27 ADDRESSES FOR NOTICES

27.1 The Parties to this Agreement select the physical addresses and facsimile numbers, as detailed hereafter, as their respective addresses for giving or sending any notice provided for or required in terms of this Agreement, provided that either Party shall be entitled to substitute such other address or facsimile number, as may be, by written notice to the other:

a) **Transnet**

(i) For legal notices:

Transnet SOC Ltd
47TH Floor
Carlton Centre
150 Commissioner Street
Johannesburg 2001
Fax No. 011 308 2348
Attention: Group Legal Counsel

(ii) For commercial matters:

Transnet SOC Ltd
47TH Floor
Carlton Centre
150 Commissioner Street
Johannesburg 2001
Fax No. 011 308 2348
Attention: Executive Manager: Group Finance

b) **The Service Provider**

(i) For legal notices:

McKinsey Incorporated
Sandown Mews East
88 Stella Street
Sandown
Sandton
2196
Fax No. 011 506 9000
Attention: Christina Planert – Partner

(ii) For commercial matters:

McKinsey Incorporated
Sandown Mews East
88 Stella Street
Sandown
Sandton

2196

Fax No. 011 506 9000

Attention: Christina Planert – Partner

27.2 Any notice shall be addressed to a Party at its physical address or delivered by hand, or sent by facsimile.

27.3 Any notice shall be deemed to have been given:

a) If hand delivered, on the day of delivery; or

b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or

c) If faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day.

28 WHOLE AND ONLY AGREEMENT

28.1 The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.

28.2 The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatever between them, with regard to the subject matter dealt with in this Agreement, including any annexures, appendices, schedules or Work Order(s) appended hereto.

29 AMENDMENT AND CHANGE CONTROL

29.1 Any requirement for an amendment or change to this Agreement or to a Work Order shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto.

29.2 In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause 26 *[Dispute Resolution]*.

30 GOVERNING LAW

This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

30.1 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables,

warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 26 *[Dispute Resolution]* above.

31 COUNTERPARTS

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.

Thus signed by the Parties and witnessed on the following dates and at the following places:

For and on behalf of TRANSNET SOC LTD duly authorised hereto	For and on behalf of MCKINSEY INCORPORATED duly authorised hereto
Name:	Name: David Hume
Position:	Position: Director
Signature:	Signature:
Date: 21/02/14	Date: 21/02/14
Place:	Place: Sandton

AS WITNESS: Name:	AS WITNESS: Name: Bongani Hlazi
Signature:	Signature:

AS WITNESS: Name:	AS WITNESS: Name: FABIO PERRAZZI
Signature:	Signature:

SCHEDULE 1 – Work Order No:

For the Provision of Advisory Services Related to the Acquisition of the 1064 Locomotives Tender over a period of 9 months

With reference to the Master Agreement, Reference Number **GSM/12/05/0447** [the Agreement] between Transnet SOC Ltd [**Transnet**] and McKinsey, Incorporated (Pty) Ltd [**the Service Provider**] pursuant to which the Service Provider has agreed to perform certain services to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

In consideration of the mutual covenant and agreements contained in the Agreement and in this Work Order, it is agreed as follows:

1 DESCRIPTION OF THE SERVICES

In support of Transnet's Market Demand Strategy (MDS), Transnet has embarked on a Project to upgrade and replace its current Locomotive Fleet in order to increase handling capabilities in support of the MDS directives. In relation to the Investment expenditure programme, Advisory Services related to the 1064 Locomotives Tender over a period of 14 [fourteen] Months is thus required. Due to the specialist nature of the Project, Advisory services on the process, application and acquisition guidelines required with the award of the Tender are of critical importance and thus are required.

The Service Provider has agreed to the provision of such services in regards to the deliverables of such said service in its entirety and as outlined in this document with reference to this work order.

2 PROJECT DELIVERABLES

The Deliverables, over a period of 14 [fourteen] months and governed by this Work Order, include:

2.1 Advisory Services related to the Acquisition of the 1064 Locomotives Tender

2.2 The objective is to award the Locomotive tender by the end of the third quarter of the calendar year on the back of:

- A robust and de-risked business case that is fully supported and approved by the board and share holder
- A fully capacitated and flawless transaction process
- A commercial negotiation that maximises the value delivered to Transnet and South Africa

2.3 Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and the Department of Public Enterprises;

2.4 Transnet Freight Rail Goods Freight business Year end to end business case understanding impact of the following based on validated volume expectations

- Wagons
- Locomotives
- Infrastructure
- Optimisation
- Profitability of each sector- Link into efficiencies and capacity
- Clear capital volume link

Procurement and Legal – Supplier Development and Localisation Strategy:

- Design and setting up tendering process in line with requirements
- Request for proposal documentation
- Supplier evaluation criteria
- Request for information / quotation documentation
- Short listed selection of bidders based on the criteria
- Template contract for awarding of the tender
- Negotiation fact packs and capability building
- Claims procedure and OEM management approach post award
- Creation of Locomotive industry in South Africa
- Integrate this into the transaction and commercial process
- Execution of transaction process (RFP, Process orchestration, adjudication capacity)
- Developing contracting strategy for programmatic approach

TECHNICAL/OPERATIONS

- Reduce loco lifecycle costs through technical and commercial lever optimisation with short listed suppliers.
- Technical Evaluation levers and estimated value
- Reduce loco lifecycle costs through technical and commercial lever optimisation with short listed suppliers.
- Technical Evaluation levers and estimated value.
- Optimisation approach for Joint value optimisation between Transnet and the selected suppliers
- Improved outcome through value engineering with shortlisted suppliers - Optimising for main objectives for procurement strategy (e.g. highest local content at best value for money)

FINANCIAL

- Developing finance and funding options
- Develop deal structure (financing, hedging and de-risking options)

PROJECT MANAGEMENT OFFICE

- Proactive stakeholder engagement throughout process to ensure all are granted on time (e.g. PFMA)
- Manage overall process to ensure all parts come together.
- Provide oversight of legal aspects from a project management Perspective

3 PROJECT MANAGERS

Transnet Project Manager	MOHAMED MAHOMEDY
Designation	GM
Operating Division	Group Finance Capital Integration
Address	Room 4550
Cell Phone	083 357 2493
Telephone	011 584 0733
Fax	
Email	Mohammed.Mahomedy@transnet.net

Service Provider's Project Manager	CHRISTINA PLANERT
Designation	Partner
Address	
Cell Phone	
Telephone	
Fax	011 506 9000
Email	

4 ACCEPTANCE CRITERIA FOR DELIVERABLES

Transnet's Project Manager or his/her nominated delegate will sign off the authorised approval for the Deliverables as detailed in project deliverables above.

5 PROGRESS REPORTS AND REVIEW MEETINGS

Project management and review meetings will be held on a monthly basis at Carlton Centre, Johannesburg, or as otherwise directed by Transnet's Project Manager.

6 FEES AND DISBURSEMENTS

6.1 Any authorised expenses / disbursements will be reimbursed, subject to the provisions of clause 10 *[Fees and Expenses]* of the Agreement hereto.

6.2 Payment terms are subject to clause 11 *[Invoicing and Payment]* of the Agreement hereto.

Thus signed by the Parties on the following dates and at the following places:

7 **SIGNED** for and on behalf of: 8 **McKinsey, Incorporated**	9 **SIGNED** for and on behalf of: 10 **Transnet SOC Ltd**
11 Signature	12 Signature .....
13 Name:	14 Name:
15 Position:	16 Position:
17 Date:	18 Date:
19 Place:	20 Place:

ANNEXURE A – Project Fees

Deliverables must be executed for a fee of R35 200 000 [Thirty five million and two hundred thousand Rands]. Any overrun in terms of time will not be for the account of Transnet as the engagement is output based and not time based. McKinsey will take overall responsibility for the deliverables and quality of the end products.

McKINSEY	*DESCRIPTION*	*INDIVIDUALS*	*BLENDED RATE*
	Engagement Director and Principals	4	R2,350.00
	Associate Principals	1	R2,350.00
	Engagement managers	2	R2,350.00
	Associates	8	R2,350.00
	Research Analysts	2	R2,350.00
	Specialists and Experts	1	R2,350.00
	Production Specialists	2	R2,350.00
LETSEMA (SUBCONTRACTOR)	Engagement Director	1	R1,273.00 P/H
	Associate Partner	1	R1,273.00 P/H
	Engagement Manager	5	R1,273.00 P/H
	Senior Consultants	8	R1,273.00 P/H
	Consultants	7	R1,273.00 P/H

ANNEXURE B

ANNEXURE B: KEY DELIVERABLES

	Key deliverables	Measure of success
Transactional advisory and procurement execution	Led by McK with deal structuring recommendations from Ubio/Nedbank, contracting strategy input recommendations from WW, Regiments/Barlington. McK responsible: Leading a fair and precise process to maximise socio-economic impact for South Africa and Transnet • Designed tendering process in line with requirements applicable to State-owned-companies (SOCs) to ensure award on time • Contracting strategy for programmatic approach and maximised localisation; Contracts that maximise Transnet's flexibility if volume predictions are not met • Supplier evaluation criteria and adjudication process • Recommended deal structuring, financing and funding options to minimise risk for Transnet to be delivered by Nedbank Capital/Ubio with McK guidance and Mck integration • Overall integration of all stakeholder inputs and communication on process progress	Fair process, professional and transparent to key stakeholders - and in line with requirements applicable to SOCs Deal structure which minimises the financial risk for Transnet Contracting strategy implemented that optimally balances loco demand and supplier development objectives Tender award completed in line with timelines submitted with RFP response)
Technical evaluation and optimisation	Led by McK and ART Lifecycle cost savings from technical improvement levers, and price reduction of locomotives • Technical evaluation levers and direct impact on loco lifecycle costs by ART and McK • Joint value optimisation between Transnet and the shortlisted suppliers based on levers already identified by ART and implementable in the given timeframe, e.g., highest local content at best value for money	Estimate of total lifecycle cost for each loco type from short listed suppliers quantified and handed over to Transnet Top 3 technical optimisation levers from ART evaluated and quantified Value from technical lever optimisation negotiated and reflected in contract with selected loco suppliers

LOI Reference No: GSM 12/05/0447

Business case integration and re-write	**Led by McK** Re-write of the business case, approved by Board and DPE • Integrated end-to-end business case across commodities to validate loco quantities with recommendations to adjust ranges in the fleet plan and get ranges for the contracting • Scenario based modeling to inform contracting based on macro-economic scenarios and links to export coal and export iron ore business cases, and different capex outcomes • Adequately address DPE queries	Rewritten business case that is approved of by the Transnet Board and DPE
PMO	**Led by Regiments/Burlington with McK leadership** oversight • Monitor overall process timelines against milestones • Setting up and preparing documentation for steering committees and formal reviews • Escalate issues through regular project steerco • Prepare external stakeholder communications	Detailed project plan with milestones Clear governance structure that creates an integrated view of the entire process across all advisors Effective steering committee meetings- clear agenda with decisions to be made, all information required for decisions circulated beforehand, issues logged and resolved Aligned external stakeholders

101 Reference No: GSM 12/05/0447

Attachment: Original letter of intent

SUPPLIER DEVELOPMENT VALUE SUMMARY

This section must be duly completed in terms of this procurement event/tender/RFP (OVER THE CONTRACT PERIOD)						
SD Category	No.	SD Measurement	SD Value Indicators			Comments
			Number (#)	Percentage (%)	Rand Value R	
1. Technology and IPR transfer	1.1	Certification of partner(s) qualified to provide specialised services. Indicate number of such proposed service providers and estimated Rand Value of this business over the contract period, subject to Award of contract				
	1.2	Development, support and use of partners to provide other ancillary services. Indicate number of such proposed service providers and estimated Rand Value of this business over the Contract Period, subject to award of contract				
2. New skills development	2.1	Number and Rand value of Black Graduates to be trained over the contract period	0.493		R 41 587.45	
	2.2	Number and Rand value of Black apprentices to be trained over the Contract Period	0.825		R 203,799.12	
	2.3	Is the level of the training offered above in compliance with the National Qualification Framework guidelines (NQF)? - Yes/No (Please Indicate)	NO			
3. Job creation and/or job preservation	3.1	Number and Rand value of new skilled jobs to be created due to Award of Contract (where "skilled" refers to jobs for people in a specialised field of work requiring a defined training path and / or a requisite level of experience in order for them to perform that role. These people could be in possession of a certificate, diploma or degree from a higher education institution)	1.925		R 1,122,317.25	
	3.2	Number and Rand value of new unskilled jobs to be created by Award of Contract (where "unskilled" refers to jobs for people where the field of work does not require extensive formal training or from whom no minimum level of education is required)	0.985		R 48,250.00	
	3.3	Number of jobs which would be preserved through Award of Contract	10.83			
	3.4	Number of jobs to be created for Black youth (where "Youth" means individuals between the ages of 15 - 35 years), Black women and Blacks with disabilities through Award of Contract			We will not put an entry here, because our primary hires are all between the ages of 15-35, and therefore this would be double counting	
4. Small business promotion	4.1	% of your projected procurement spend from businesses with an annual turnover of less than R35 million (QSEs, EMEs and start-up companies)			R 1,228 000.00	
	4.2	% of the estimated contract value which would be subcontracted to EMEs, QSEs or start-up companies				
5. Rural integration and regional integration	5.1	Number of Black people employed from within the town/city of operation				
	5.2	Rand value spent on Black businesses within the town/city of operation				
	5.3	Number and Rand value of Black rural businesses that the Service Provider plans to develop as a result of the contract				

ESTIMATED RAND VALUE TOTAL OF SD COMMITMENT, EXCLUDING VAT : ZAR	Total Value:	2,563,537.52
SD COMMITMENT EXPRESSED AS PERCENTAGE OF ESTIMATED CONTRACT VALUE :	Total Percentage Value:	7.3%

REPORT 2(A) – PART F – EXHIBIT 8

TRANSNET

FIRST ADDENDUM TO MSA GSM/12/05/0447 - FOR ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

BETWEEN

REGIMENTS CAPITAL (PTY) LTD
(AS A RESULT OF THE CONTRACT BEING CEDED BY MCKINSEY INCORPORATED)
(2004/023761/07)
("The Service Provider")

AND

TRANSNET SOC LTD
(1990/000900/30)
("Transnet")

1. PREAMBLE AND INTRODUCTION

1.1 McKinsey Incorporated, and Transnet signed a MSA on the 21st February 2014 in terms of which Transnet acquired the services to assist Transnet with advisory services related to the acquisition of 1064 Locomotives tender ("The agreement");

1.2 McKinsey further appointed Regiments Capital Pty (Ltd) as a partner in executing the financing aspect of the above mentioned tender agreement, with McKinsey Incorporated initially being the principal lead.

1.3 As a result of a cession agreement between McKinsey and Regiments Capital, whereas McKinsey handed over all rights, obligations and deliverables over to Regiments Capital Pty (Ltd), Transnet now recognises Regiments Capital as the principal lead for the contract in its entirety (Annexure A).

1.4 The parties now wish to further vary the MSA and add additional scope and in affect amend the pricing ;

1.5 The MSA shall be regarded as amended by the provision of the First addendum.

2. SOLE AGREEMENT

2.1 The MSA and addendum constitutes the sole agreement between the parties relating to the subject matter referred to in paragraph 1.1 of this first addendum and no variation shall be of any force and effect unless reduced to in writing and signed by or on behalf of both parties.

3. VARIATION OF MSA

3.1 The parties record that certain variations to the MSA needs to be affected:

3.2 The MSA, will be affected the variations of this first addendum, and will now be regarded as amended by the signing of this first addendum.

4. VARIATION OF SCOPE OF WORK – ADDITIONAL SCOPE

4.1 As a result of a number of risks to which Transnet was exposed , Regiments utilised its extensive intellectual property and complex techniques and methodologies to mitigate the risks:

4.2 The scope of work as outlined in the MSA will be amended by the below additions to the original scope of work as outlined in the MSA to mitigate the risks referred to above:

4.2.1 Assist Transnet with negotiations to accelerate the delivery schedule that will resulting in savings in future inflation related escalation costs and savings in foreign exchange hedging costs.

4.2.2 Compute the effects of hedging and escalation based on the original delivery schedule compared to an accelerated/revised delivery schedule.

4.2.3 Optimise and reduce the foreign exchange hedge costs and guarantee bonds.

5. CHANGE IN REMUNERATION MODEL

5.1 The fees for the additional scope will only be due on successfully mitigating the risks as noted above, resulting in significant value created or saved to Transnet.

5.2 Work executed provided significant benefit to Transnet to enable the continued implementation of the MDS Strategy, which otherwise would have been unaffordable.

5.3 Accordingly, the fee shall be fixed at R78 400 000 (Seventy Eight Million and Four Hundred Thousand Rand Only)

6. AUTHOURITY OF SIGNATURE

6.1 This addendum is effected and confirms the variations herein by acceptance of the signed authority's below:

Signed at HOUGHTON this 24th of APRIL 2014

Signature:

Name: Eric Wood

Title: Executive Director

Regiments Capital Pty (Ltd)

Authorised signatory who warrants that he/she is duly authorised to sign this First Addendum

AS WITNESSES:

1. Signature:

Name: KYANSAMBO VUNDLA

Signed at JHB this 24 of April 2014

Signature:

Name : Anoj Singh

Title : Group Chief Financial Officer

Transnet SOC Ltd

Authorised signatory who warrants that he is duly authorised to sign this First Addendum

AS WITNESSES:

1. Name: Nobahle Takane

Signature:

REPORT 2(A) – PART F – EXHIBIT 9

TRANSNET

GSM/12/03/0447

SECOND ADDENDUM TO THE MASTER SERVICES AGREEMENT ("MSA")

FOR TRANSACTION ADVISORY SERVICES RELATED TO THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER

BETWEEN

REGIMENTS CAPITAL (PTY) LTD
(2004/033741/07)
("The Service Provider)

AND

TRANSNET SOC LTD
(1990/000900/30)
("Transnet")

1. PREAMBLE AND INTRODUCTION

1.1 Regiments Capital and Transnet signed the first addendum to the MSA on the 24th April 2014 in terms of which Transnet acquired the services for the provision of transaction advisory services related to the acquisition of the 1064 locomotives tender ("The agreement");

1.2 The parties now wish to further vary the MSA by extending the duration and value; and

1.3 In the circumstances, the MSA shall be regarded as amended by the provision of this second addendum.

2. SOLE AGREEMENT

2.1 The MSA constitutes the sole agreement between the parties relating to the subject matter referred to in paragraph 1.1 of this second addendum and no variation shall be of any force and effect unless reduced to in writing and signed by or on behalf of both parties.

TRANSNET-REF-BUNDLE-06647

3. VARIATION OF CONDITIONS (INCLUDING SCOPE OF WORK, DURATION AND VALUE)

3.1 The parties record that certain variations to the MSA need to be affected as follows:

3.1.1 The scope of work shall be amended to include the following deliverables to be performed by the Service Provider:

- Technical support including building cost escalation models and total cost of ownership models to inform and guide Transnet throughout the negotiation process;
- Develop a detailed funding plan for the acquisition of the 1064 locomotives Transnet from GE, Bombardier, CNR and CSR considering the following:
  - Evaluation of all funding sources including US Exim, EDC, Bond Issuance under Transnet's DMTN and GMTN, China Development Bank (CDB), Sinosure and China Exim;
  - Matching of assets and liabilities;
  - Evaluation of the useful life of all underlying assets; and
  - Identification and management of all financial risks (including liquidity, interest rate, credit and currency risks;
- Assist Transnet in the negotiations with all of the identified Chinese potential funders and in particular the CDB;
- Assist Transnet in negotiating with a number of potential Chinese sources of ZAR funding including:
  - ICBC;
  - Bank of China;
  - China Construction Bank;
  - Sinosure;
- Recommendation, advice and assistance post the successful conclusion of negotiations with the abovementioned sources on the following aspects:
  - Amortization durations;
  - Interest rates;
  - Cross Currency Swaps;
  - Calculations and forecasts;
  - Blended funding models;

3.1.2 The conditions for remuneration for the abovementioned deliverables shall be based on the successful conclusion of negotiations and funding and hedging agreements being entered into with sources as recommended by the Service Provider and accepted and agreed to by Transnet;

3.1.3 The Service Provider shall be entitled to a success or risk based fee of 15bps on yield payable by Transnet which translates to a monetary value equivalent to R 166 000 000.00 (one hundred and sixty six million rand);

3.1.4 To give effect to the remuneration payable to the Service Provider in clause 3.1.3 above, the MSA value shall be increased to an amount not exceeding R 265 500 000.00 (Two hundred and sixty five million five hundred thousand rand); and

TRANSNET-REF-BUNDLE-06648

3.1.5 The MSA expiry date shall be extended until such time that Transnet provides the Service Provider with official notice that deliverables, due to be performed by the Service Provider in rendering finance and deal structuring services including deliverables listed in clause 3.1.1, have been successfully completed or until the date of the 18th May 2016, whichever may occur first.

4. SUPPLIER DEVELOPMENT OBLIGATIONS

4.1 In addition to the thirty percent (30%) supplier development commitment attributable to the initial contract, the Service Provider shall commit ten percent (10%) of the total success or risk based fee payable by Transnet towards supplier development initiatives.

4.2 Supplier development initiatives shall be identified and agreed to between Transnet and the Service Provider. The Service Provider will be required to complete a Supplier Development Implementation Plan post the date of signature hereof.

4.3 The Supplier Development Implementation Plan shall be monitored on a quarterly basis to ensure compliance and consistency towards obligations. The Service Provider shall be subject to penalties equivalent to one hundred percent (100%) of outstanding supplier development commitments, should it be found to be in breach of its supplier development obligations.

TRANSNET-REF-BUNDLE-06649

5. AUTHORITY OF SIGNATURE

5.1 This addendum is effected and confirms the variations of master agreement GSM/12/05/0417 herein by acceptance of the signed authority's below:

Signed at _____ on this __ day of _____ 2015.

Signature: _____
Name: Eric Wood
Title: Executive Director
Regiments Capital (Pty) Ltd
Authorised signatory who warrants that he is duly authorised to sign this second addendum

AS WITNESSES:

Signature: _____ Signature: _____

Name: Mosiua Mothepu Name: Estevão Marcos

Signed at Johannesburg on this 16th day of July 2015.

Signature: _____
Name: Siyabonga Gama
Title: Acting Group Chief Executive
Transnet SOC Ltd
Authorised signatory who warrants that he is duly authorised to sign this second addendum

AS WITNESSES:

Signature: _____ Signature: _____

Name: G.J Pim Name: M. Makae

TRANSNET-REF-BUNDLE-06650

EXHIBIT 10

REPORT 2(A) – PART F – EXHIBIT 10

TRANSNET-REF-BUNDLE-06653

TRILLIAN

BOUTIQUE ASSET MANAGEMENT

To: Transnet SOC Ltd
43 Floor, Carlton Centre
150 Commissioner Street
Johannesburg 2001
South Africa

Attn: Phetolo Ramoshudi

18 November 2018

Dear Sirs

ZAR 12,000,000,000 Club loan facility for the purchase of Locomotives and general banking.

This letter (the "**Engagement Letter**") sets out the terms and conditions on which Trillian (as defined below) is engaged by Transnet SOC Ltd (the "**Client**") to act as Originating, Co-ordinating Mandated Lead Arranger, in relation to a proposed ZAR 12,000,000,000 facility, to enable the Client to fund its payment obligations in connection with [the prospective) contract between the Client and [The Original Equipment] for the supply of locomotives and general banking (the "**Transaction**").

The terms of this Engagement Letter apply to all services provided by Trillian to the Client in connection with the Engagement.

The terms and conditions which are set out in the appendix to this Engagement Letter (the "**Appendix**") also form part of this Engagement Letter and any references to "Engagement Letter" herein and therein shall be construed accordingly. Terms defined in this cover letter have the same meaning when used in the Appendix.

1 **Engagement**

1.1 Scope: The Client hereby appoints Trillian (acting through its investment banking division or any Associate or other division thereof as it determines appropriate to perform the services described in this Engagement Letter) on an exclusive basis as Originating and Co-ordinating Mandated Lead Arranger, in connection with the Transaction. Accordingly, and subject to the terms of this Engagement Letter, Trillian acting through its Associates shall perform the following services in connection with the Transaction:

(a) acting as the principal and primary point of contact for the Client in respect of the structuring and documentation of the Club Loan Financing subject to the Client being included in all correspondence with Trillian;

(b) leading negotiations on behalf of the client (including co-ordination of lenders' positions) on the full documentation suite for the Club Loan Financing

(c) liaising on behalf of the Client with appropriate legal counsel, subject to the clients' review and approval (with caps if required by the Client), co-ordination of lenders' requests for advice and approval of legal opinions;

(d) such other services as Trillian considers expedient and reasonable for the efficient management and completion of the documentation process for the Club Loan Financing; and

Telephone +27 11 707 4367 Facsimile. +27 86 767 1241
Block D, Hobart Square, 23 Hobart Road, Bryanston, 2021 Postnet Suite 488, Private Bag X1, Melrose Arch, Johannesburg, South Africa, 2076
Directors: Jan Pauw, Daniel Roy
An Authorised Financial Services Provider Reg No: 2008/021108/07 FSB number: 42081
www.trillianam.co.za

TRANSNET-REF-BUNDLE-06654

(c) Acting as Lead Arranger and coordinator in accordance with the executed documentation for the Club Loan Financing.

1.2 Exclusivity: The Client agrees not to award any other person any fees, title or role for carrying out any services contemplated by this Engagement Letter without the prior written consent of Trillian.

1.3 Mandate letter: Prior to commencement of the documentation process the Client will, and shall procure that all other Mandated Lead Arrangers, arrangers and lenders appointed or identified in connection with the Transaction will, enter into a mandate letter with regard to, inter alia, the Engagement substantially in the relevant LMA form and otherwise in form satisfactory to Trillian.

2 Financing and Risk Management

Nothing in this Engagement Letter shall be deemed to be a commitment by Trillian to provide or underwrite any financing, However Trillian commit to provide financial Risk Management solution in relation to the Transaction. This could also be provided through our alliance with Regiments Capital or any of our associates.

3 Fees and Expenses

3.1 Fees: In consideration of Trillian accepting and carrying out the Engagement, the Client agrees to pay Trillian the following fees:

Originating and Co-ordinating the Book Build in the Club Loan

ZAR 82,000,000 due and payable upon execution of a Club loan facility agreement relating to the Transaction (including, for the avoidance of doubt, any facility agreement pursuant to which Trillian and its Associates is the Advisor, coordinator and provider of financial risk management solution

The Client acknowledges that Trillian would wish to review the structure of the remuneration to be paid to Trillian if the nature or structure of the Transaction alters materially from that contemplated in this Engagement Letter. However, this is subject to negotiation and should the proposed revised fee be unacceptable to the Client, the Client has the right to replace Trillian with another bank.

All fees payable pursuant to this Engagement Letter shall be paid in South African Rand (ZAR) and are in addition to any other fees payable to Trillian in connection with any other services or financing provided by Trillian to or for the Client in connection with the Transaction or otherwise.

3.2 Costs and Expenses: The Client agrees that it shall be responsible for all costs and expenses (including, but not limited to, any travel and accommodation expenses and the fees and disbursements of our legal and other professional advisers should their advice be required) reasonably incurred and adequately evidenced, together with any applicable value added tax or other similar taxes thereon, incurred by Trillian in connection with the Engagement, whether or not the Transaction is completed. Trillian may invoice the Client monthly for those costs and expenses incurred by Trillian for which the Client is responsible. The Client shall also be responsible for all costs of its own legal, accounting, tax and other agents or advisers as well as for all other expenses relating to the proposed Transaction.

4 Termination

Without prejudice to clause 9 of the Appendix, this Engagement Letter and the Engagement shall terminate on the earlier of:

TRANSNET-REF-BUNDLE-06655

(a) The date of effectiveness of the Club Loan Facility agreement (excluding, for the avoidance of doubt, any facility agreement pursuant to which Trillian is a coordinator or advisor), or if there are multiple agreements, the date of effectiveness of the last such agreement; or

(b) The cancellation of the Transaction by the Client; or

(c) the date on which written notice is given by Trillian to the Client after Trillian has considered, having taken professional advice, that it should cease to act in relation to the Engagement or the Transaction in order to comply with any legal, regulatory or similar enactment or after Trillian has concluded that it should cease to act in relation to the Engagement or the Transaction in order to protect its reputation; or

(d) the date on which written notice is given by Trillian to the Client that the Client has failed to comply to a material extent with any terms of this Engagement Letter; or

(e) or such other date agreed by both parties).

We look forward to working with you on the Transaction. Please confirm your agreement to the terms of this Engagement Letter by signing and returning the enclosed duplicate copy.

Yours faithfully,

For and on behalf of
TRILLIAN

Signed .....

Name:
Position:
Date: 18/11/2015

We agree to the terms of this Engagement Letter.

For and on behalf of TRANSNET SOC LTD

Signed .....

Name: Siyabonga Gama
Position: Acting Group Chief Executive
Date:

Signed .....

Name: Garry Pita
Position: Acting Group Chief Financial Officer
Date:

TRANSNET-REF-BUNDLE-06656

1.1.1 APPENDIX

1.1.2 TERMS AND CONDITIONS

1 **Definitions**

In this Engagement Letter the following capitalised terms have the meaning set out below:

"**Associate**" means, in relation to Trillian, each of the subsidiaries, alliance and the ultimate holding company of Trillian and each of the subsidiaries of such holding company and each of their respective directors, officers, employees, representatives and agents;

"**Trillian**" means any or all of Trillian and any Associate thereof (as the case may be);

"**Communication**" means any document, announcement or statement (including any press release) published, issued or made by or on behalf of the Client in connection with the Engagement or the Transaction;

"**Engagement**" means the engagement of Trillian by the Client to provide assistance and services in connection with the Transaction, as provided for in this Engagement Letter;

"**Party**" and "**Parties**" means each of or both the Client and Trillian;

"**Risk Management**" means all risk management tools used in connection with the Transaction (including but not limited foreign exchange rate, interest rate, inflation linked and any commodity hedging).

2 **Nature of the Engagement**

2.1 Private Engagement. Trillian' appointment under this Engagement Letter is a private engagement. Accordingly, any assistance or advice rendered or provided by Trillian hereunder, in whatever form, will be solely for the use of the Board of Directors (or other equivalent governance body) of the Client in assessing the Transaction and may not be relied on or used by the Client for any other purpose.

The fact of the involvement of Trillian in connection with the Engagement, and all advice and assistance rendered or provided by Trillian in connection with the Engagement, in whatever form, is confidential and may not be disclosed to any third party, nor used or relied on by any third party, nor quoted, reproduced, summarised, described or referred to, without Trillian' prior written consent. Furthermore, the Client agrees that it shall not make, or permit or procure to be made or solicit or assist any other person to make use of Trillian' name or any name including the word "Trillian" for publicity or marketing purposes without Trillian' prior written consent.

2.2 Other Assistance or Advice: The Client acknowledges and agrees that Trillian has been engaged to act only to the extent provided in this Engagement Letter. In carrying out the Engagement Trillian is an independent contractor and is not acting for the Client in any other capacity (including as agent or fiduciary to the Client or any of its affiliates). Nothing in this Engagement Letter, nor Trillian' performance hereunder, nor any previous or existing relationship between the Client and Trillian, will be deemed to create any fiduciary relationship. In addition, Trillian will not be responsible for providing or arranging for the provision of any general financial, strategic or specialist advice, including legal, regulatory, accounting, specialist asset valuation, model auditing, taxation or other technical advice or services which the Client may require. For the purpose of the Engagement, Trillian shall be entitled to rely on any advice provided by other advisers to the Client in connection with the Transaction. However, in no circumstance shall Trillian be responsible for any such advice or for any other work performed by persons other than Trillian.

2.3 Instructions: Subject to any written instructions to the contrary, Trillian will have authority to do anything which it considers necessary or desirable to carry out the Engagement. Trillian may assume that instructions have been properly authorised by the Client if they are given or purport to be given by a person who is or purports to be and is reasonably believed by Trillian to be a director, employee or other authorised person of the Client.

TRANSNET-REF-BUNDLE-06657

2.4 **Commercial Assumptions**: The Client will remain solely responsible for the commercial assumptions on which any financial advice provided by Trillian is based and agrees that Trillian may rely on any commercial assessments conveyed to it by the Client or any director, employee, other authorised person, agent or representative of the Client. In addition, if Trillian agrees to provide any model to the Client in connection with the Transaction, the Client acknowledges and agrees that such model will have been prepared solely for use by Trillian, may not be suitable for us by the Client or any other party and accordingly Trillian shall have no liability whether in contract, tort (including negligence) or otherwise to the Client or any other person arising out of or in connection with the Client's or such other party's use of such model. Any valuation advice or model provided by Trillian will be subject to such assumptions and disclaimers as are considered appropriate by Trillian.

2.5 **Independent Investigation:** The Client shall be responsible for making its own independent investigation and appraisal of the risks, benefits, appropriateness and suitability to and for it of the Transaction and any other transactions contemplated by this Engagement Letter and Trillian is not making any recommendation (personal or otherwise) or giving any investment advice and will have no liability with respect thereto. The decision to proceed with any Transaction will be made by the Client in the light of its own commercial assessments and Trillian will not be responsible for such decision to proceed or such assessments. Unless expressly agreed otherwise in this Engagement Letter, Trillian will not be required to assist the Client in the co-ordination of due diligence work to be conducted by the Client and other advisers instructed by the Client. Trillian shall not in any circumstances be responsible for the adequacy of the Client's due diligence exercise and nor shall Trillian be required to either review the Client's due diligence or conduct any due diligence work itself. It is the responsibility of the Client to inform itself of the work performed by and the advice given by its other advisers and to make its own assessment of such work and advice.

2.6 **Compliance**: The Client will comply with, and will assist Trillian in complying with, all applicable legal and regulatory provisions relevant to the Transaction, including without limitation those of any stock exchange or other regulatory body applicable to this Transaction.

3 Confidentiality

3.1 **Confidential Information:** Subject to clauses 2.1 above and 7.5 below, all information received by each of the Parties from the other in relation to the Engagement shall not be used otherwise than for the purpose of the Engagement, shall be treated as confidential by the recipient and shall not be disclosed to anyone other than the parties to this Engagement Letter unless (i) it is or later becomes public knowledge other than by breach of this Engagement Letter, (ii) it is disclosed to the recipient by a third party reasonably assumed by the recipient not to have breached a duty of confidentiality to the Client or is already in the possession of the recipient and not subject to any duty of confidentiality, (iii) it is disclosed to the recipient's professional advisers (with the prior approval of Trillian) and employees provided that such advisers and employees are made aware of the confidential nature of the information, (iv) it is required to be disclosed by reason of any law, court or regulatory process or regulation or is necessary in the view of the recipient to establish any defence in such process or (v) it is disclosed by the recipient with the other party's prior consent.

3.2 **Club Loan Product Enhancement**: Any financial engineering undertaken or advice given by Trillian in relation to the structuring of any Club Loan Facility (i.e. over and above the relevant Club Loan's "plain vanilla" loan product) by Trillian in connection with the Transaction shall be treated as confidential by the Client and shall not be disclosed to third parties.

3.3 **Inside Information:** Trillian shall not be responsible for the creation or maintenance of insider lists other than Trillian own list of persons within Trillian acting on the Client's behalf and with access to inside information relating to the Client, as required by the appropriate rules or regulations.

4 Intellectual Property

Trillian and its affiliates retain the copyright and all other relevant intellectual property rights in their work products. If the Client makes any copies of the documents that Trillian prepares, the Client agrees that such copies will be used only for the purposes of the Transaction and not (unless otherwise agreed by Trillian) for other matter.

5 Payment Terms

Unless otherwise provided by this Engagement Letter, all fees, reimbursement of expenses and other sums payable to Trillian in connection with the Engagement are payable in cash and are due within ten business days of written demand by Trillian. Unless otherwise indicated, any fees or other prices quoted by Trillian to the Client are exclusive of value added tax or other similar taxes. All sums payable to Trillian shall be paid without deduction or withholding on account of tax of any nature unless such deduction or withholding is required by law. If the Client is required by law to make any deduction or withholding on account of any tax, the amount payable shall be grossed up to the extent necessary to ensure that, after such deduction or withholding, the amount received and retained by Trillian will equal the full amount which would have been received had no deduction or withholding been made.

TRANSNET-REF-BUNDLE-06658

6 **No Obligation to Underwrite/Fund**

Trillian shall not be obliged by this Engagement Letter to sell, acquire, place or underwrite any securities or to lend moneys or provide any other commitment, facility, product, Risk Management solution or service in any way in connection with the Transaction, nor does Trillian represent by the Engagement Letter that it will be possible or advisable to arrange or provide any applicable financing or Risk Management solution for the Transaction or for any financing or Risk Management solution to proceed. Any such participation by Trillian in the Transaction would be the subject of separate documentation prepared and negotiated in accordance with international standards and would only be signed following (i) satisfactory completion of all documentation for the Transaction, (ii) receipt of all necessary internal approvals and (iii) in the determination of Trillian, the completion of satisfactory due diligence in respect of the Client or the subject matter of the Transaction, as applicable.

7 **Information, Communications and Publicity**

7.1 **Provision of Information:** The Client shall promptly provide or procure the provision to Trillian of all information concerning the Transaction, and the business and affairs of the Client and its affiliates which is relevant to Trillian for the proper performance of the Engagement (including information or advice provided to the Client by its other professional advisers) and all such further information as Trillian or its advisers may reasonably request. In particular, the Client shall provide Trillian and its advisers with such direct access to the directors and management of, and advisers to, the Client and its affiliates for the purpose of the Engagement as Trillian may reasonably request.

7.2 **Accuracy of Information:** The Client shall ensure that any information supplied by it (the "**Information**") to Trillian, whether provided orally or in writing and including any expressions of opinion, shall be true, accurate, complete and not misleading in any material way and shall not intentionally omit any material information. The Client will promptly notify Trillian if it subsequently discovers something during the term of this Engagement Letter which renders any such information untrue, inaccurate or misleading in any material respect. The Client acknowledges that Trillian will be relying on the Information and any other information supplied to Trillian on the Client's behalf or available to Trillian from public sources without carrying out any independent verification. The Client agrees that any information furnished to Trillian in connection with the performance of its services under this Engagement Letter shall have been properly obtained and may be properly furnished to Trillian.

7.3 **Communications:** All Communications shall be true, fair and accurate and not misleading (whether by omission or otherwise) and shall be published, issued or made so long as they don't prejudice or negatively impact Trillian in any way. Trillian (save in the case of any Communication which refers directly or indirectly to Trillian, in which case such Communication shall only be published, issued or made with the consent of Trillian). Save as otherwise expressly agreed in writing, Trillian will not be required to approve, issue, transmit or otherwise disseminate any Communication in connection with the Engagement for the purposes of any applicable legislation, regulation or otherwise.

7.4 **Developments:** The Client undertakes that it shall at all times keep Trillian fully informed of all strategies, developments and discussions relevant to the Engagement and that no action which may directly or indirectly affect the Engagement will be taken without prior consultation with Trillian.

7.5 **Publicity:** The Client expressly authorises Trillian to (a) disclose the existence of the Engagement and (b) advertise and publicise its role(s) with regard thereto in the ordinary course of its business. Trillian may do so by, inter alia, placing "tombstones" or similar advertisements in financial or other publications and in marketing and pitching materials provided to prospective clients. These advertisements and marketing materials may contain the Client's name and logo and may describe the services provided or to be provided by Trillian to the Client. They will be prepared and placed at Trillian' own expense.

8 **Indemnity**

8.1 **Indemnity:** The Client shall indemnify and hold harmless Trillian and its Associates (each, an "**Indemnified Person**") on an after-tax basis from and against all claims, actions, proceedings, demands, liabilities, losses, damages, costs and expenses (including legal fees, costs and expenses, and all costs and expenses incurred in connection with investigating, preparing for and defending any such claim, action or proceeding which is pending or threatened) of whatever nature and in whichever jurisdiction, which any Indemnified Person may suffer or incur arising out of or in connection with the Engagement, the Transaction or any other matter or activity referred to in or contemplated by this Engagement Letter, or arising out of any breach by the Client of any of its obligations, duties or any representations or warranties the Client may give or be deemed to have given under the terms of this Engagement Letter, save to the extent that any such liability, loss, damage, cost or expense is finally and judicially determined by a court of competent jurisdiction to have been directly caused by the fraud, gross negligence or wilful default of the Indemnified Person.

TRANSNET-REF-BUNDLE-06659

8.2 **Limitation of Liability:** Neither Trillian nor any of its Associates will be liable to the Client in relation to the Transaction or the Engagement, save to the extent that a court of competent jurisdiction finally and judicially determines that the Client has suffered a loss directly caused by the fraud, gross negligence or wilful default of Trillian or such Associate. The Client agrees that, without prejudice to any claim the Client may have against Trillian or its Associates, no claims may be brought, threatened or established against any director, officer, employee or agent of Trillian or its Associates in respect of the subject matter of this Engagement Letter or the Transaction.

8.3 **Proportionality**: Where any damage or loss is suffered by the Client for which Trillian is or would otherwise be liable with any other person including the Client (an "**Other Liable Person**"), the extent to which such damage or loss shall be recoverable by the Client from Trillian shall be limited so as to be in proportion to Trillian' contribution to the overall cause of such damage or loss, as agreed between the Client and Trillian or, in the absence of agreement, as finally determined by a court of competent jurisdiction. For the purposes of determining Trillian' proportionate contribution or liability for the damage or loss in question, no account shall be taken of (a) any limitation or exclusion of liability of any Other Liable Person under contract or law (including by virtue of the expiry of any applicable period of limitation or prescription) (a "**Relevant Limitation**"), or (b) any actual or potential shortfall in recovery from any Other Liable Person whether due to settlement, limitation of liability, or the insolvency, bankruptcy, death or dissolution of any Other Liable Person. The degree to which Trillian may rely on the work or advice of any other person will be unaffected by any Relevant Limitation.

8.4 **Rights Additional:** This clause 8 is in addition to any rights which Trillian or any of its Associates may have at common law or otherwise including, but not limited to, any right of contribution, and the benefit of this clause 8 is held by Trillian for itself and as trustee for its Associates.

9 **Provisions Which Survive Termination or Expiry**

Any termination or expiry of the Engagement shall be without prejudice to any accrued rights and obligations of the parties and shall not affect in any way the provisions of the following clauses, which shall survive any termination and / or expiry (as the case may be) and shall remain in full force and effect: paragraphs 2 (Financing and Risk Management) and 3 (Fees and Expenses) of the cover letter and clauses 2.1 (Private Engagement), 3.2 and 3.3 (Confidentiality), 4 (Intellectual Property), 5 (Payment Terms), 7.3 (Communications), 7.5 (Publicity), 8 (Indemnity), 10 (Conflicts of Interest), 11.1 (Governing Law and Jurisdiction),, 11.2 (Service of Process) and 11.3 (Assignment) of this Appendix

10 **Conflicts of Interest**

10.1 Trillian is involved in a wide range of commercial banking, investment banking and other activities out of which conflicting interests or duties may arise. The Client acknowledges and accepts that there may be situations in which parts of Trillian or their clients or their personnel either now or may in the future have interests, owe duties, or take actions, that could potentially conflict with the Client's interests or duties owed to the Client in relation to the Transaction. Trillian has in place policies and procedures to identify consider and manage such potential conflicts of interest.

10.2 The Client acknowledges and agrees that no part of Trillian is required to restrict its activities as a result of the Engagement or its participation in the Transaction, and that all parts of Trillian may undertake any activity without further consultation with or notification to the Client. Neither the terms or existence of this Engagement Letter, nor the receipt by any part of Trillian of confidential information, nor any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) that would prevent or restrict any part of Trillian from carrying on any activity, including providing services or advice to any person or engaging in any financing, Risk Management Solution or other transaction (on its own account or otherwise). Furthermore, the Client agrees that Trillian shall not be required to account to the Client for any revenue or profits obtained in connection with any activities of Trillian as referred to in this clause 10.

10.3 In relation to the Engagement, information which is held elsewhere within Trillian but of which none of the individual directors, officers or employees having conduct of the Engagement actually has knowledge (or can properly obtain knowledge without a breach of internal procedures), shall not for any purpose be taken into account in determining Trillian' responsibilities to the Client under the Engagement. No part of Trillian shall have any duty to disclose to the Client or utilise for the Client's benefit any non-public information acquired in the course of providing services to any other person, engaging in any transaction (for its own account or otherwise) or otherwise carrying on its business.

11 **General**

11.1 **Governing Law and Jurisdiction**: This Engagement Letter is and all matters, disputes, claims or non-contractual obligations arising under or in connection with it are governed by and shall be construed in accordance with South African law and the Parties hereby irrevocably submit to the exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) , (or any successor to that division) to settle any dispute arising out of or in connection with this Engagement Letter (including a dispute relating to any non-contractual obligations arising out of or in connection with this Engagement Letter) or, notwithstanding the foregoing, either Party may elect by written notice to

TRANSNET-REF-BUNDLE-06660

proceed by way of arbitration ("Arbitration") in South Africa under the Rules of the Arbitration Foundation of Southern African ("AFSA").

In the case of Arbitration, the arbitration rules of AFSA in place at the relevant time are deemed to be incorporated herein. Subject to the AFSA rules, the tribunal will consist of three arbitrators. The claimant shall nominate one arbitrator, the respondent shall nominate one arbitrator, and the third, who shall act as chairman, shall be selected and appointed by AFSA. The chosen arbitrators shall be practising attorneys or advocates with at least 15 years' experience in commercial and banking law. The seat of arbitration shall be Johannesburg, South Africa, all hearings shall take place in Johannesburg, South Africa, the arbitration proceedings shall be conducted in the English language and the Award shall be in English. The Parties agree decision of the tribunal shall be final and binding on the Parties.

The Arbitral Tribunal shall use its best efforts to produce a final and binding award within six months of the date on which the Arbitral Tribunal is fully constituted. The Parties shall use their best efforts to assist the Arbitral Tribunal in achieving this objective.

11.2 **Service of Process:** The Client agrees that the documents which start any legal proceedings and any other documents required to be served in relation to those proceedings may be served on it by delivery of those documents to 4A Boor, 150 Commissioner Street, Johannesburg.].

11.3 **Assignment:** The Client may not assign or delegate any of its rights or obligations hereunder without the prior written consent of Trillian which consent will not be unreasonably withheld.

11.4 **Entire Agreement:** This Engagement Letter constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto, whether written or oral. This Engagement Letter may be executed in counterparts and may not be amended except in writing signed by all Parties hereto.

11.5 **Severability:** If any provision of this Engagement Letter is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.

11.6 Regulation. Trillian is authorised by the Financial Services Board (FSB) and, to the extent required, the Client acknowledges that Trillian will have imposed on it certain resulting obligations.

PART G

MNS

PART G: OTHER DOCUMENTS		
EXHIBIT NO.	DATE	DESCRIPTION OF EXHIBIT
1.	12/04/2013	Invoice from McKinsey for R 8 334 079.01 (Vat incl.) paid by Transnet
2.	20/11/2013	Invoice from McKinsey for R 2 669 310.00 (Vat incl.) paid by Transnet
3.	13/02/2014	Invoice from Regiments for R 4 902 000.00 (Vat incl.) paid by Transnet
4.	13/02/2014	Invoice from Regiments for R 7 353 000.00 (Vat incl.) paid by Transnet
5.	24/02/2014	Invoice from Regiments for R 7 353 000.00 (Vat incl.) paid by Transnet
6.	24/02/2014	Invoice from Regiments for R 3 676 500.00 (Vat incl.) paid by Transnet
7.	24/02/2014	Invoice from Regiments for R 2 451 000.00 (Vat incl.) paid by Transnet
8.	27/03/2014	Invoice from Regiments for R 79 230 000.00 (Vat incl.) paid by Transnet
9.	27/03/2014	Invoice from Regiments for R 136 800 000.00 (Vat incl.)
10.	31/03/2014	Invoice from Regiments for R 3 676 500.00 (Vat incl.) paid by Transnet
11.	31/03/2014	Invoice from Regiments for R 6 127 500.00 (Vat incl.) paid by Transnet
12.	31/03/2014	Invoice from Regiments for R 1 225 500.00 (Vat incl.) paid by Transnet
13.	June 2015	Regiments slide presentation
14.	03/06/2015	Invoice from Regiments for R 189 240 000.00 (Vat incl.) paid by Transnet
15.	18/11/2015	Invoice from Trillian for R 93 480 000.00 (Vat incl.) paid by Transnet
16.	11/11/2017	McKinsey Media Statement
17.	February 2019	Consultative Report: Transaction Advisor Analysis related to the Advisory Services and Fees for the Procurement of 1064 Diesel and Electric locomotives by Transnet compiled by Dr. Jonathan Bloom (Multipurpose Business Solutions)
18.	13/09/2018	MNS investigation into the appointment of the transaction advisors and the acquisition of the 1064 Locomotives interview held with Mr P Ramosebudi (transcript)

REPORT 2(A)

PART G

REPORT 2(A) – PART G – EXHIBIT 1

McKinsey&Company

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

PR: 1036361
PO: 45-226411

McKinsey and Company
VAT no: 4710150048

Tax invoice: 5302

Charge code: TRX063

Payment due within 30 days of invoice date

12 April 2013

Professional fees: 4 March 2013 to 12 April 2013	R 6,556,588.00
Out of pocket expenses and support services @11.5%	R 754,007.62
Sub Total	R 7,310,595.62
Vat at 14%	R 1,023,483.39
TOTAL	R 8,334,079.01

TRANSNET PAID

Payment may be made by direct transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

52447461

1000-316

G O O D S R E C E I P T S L I P 5000461756/0001

Goods receipt date : 13.12.2013
Current date : 13.12.2013

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5302
Name : MCKINSEY AND CO
PO : 4500226411/00040
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees Mar 13 - Apr 13

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Mohammed mah
loadg. point: R4529, Carlton Centre
st center : 0001002040

Issued by : 0000031 S I G N A T U R E

REPORT 2(A) – PART G – EXHIBIT 2

McKinsey&Company

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

PR: 10363601
PO: 45-226411

McKinsey and Company
VAT no: 4710150048

Tax invoice: 5574

Charge code: TRX069

Payment due within 30 days of invoice date

20 November 2013

Professional fees: 6 May to 17 May 2013	R	2,100,000.00
Out of pocket expenses and support services @11.5%	R	241,500.00
Sub Total	R	2,341,500.00
Vat at 14%	R	327,810.00
TOTAL	R	2,669,310.00

TRANSNET PAID 16/12/2013

Payment may be made by direct transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

16/12/2013

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

SZ 477459

1000316

G O O D S R E C E I T S L I P 5000461757/0001

Goods receipt date : 13.12.2013
Current date : 13.12.2013

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5574
Name : MCKINSEY AND CO
PO : 4500226411/00050
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees May 6-17 May 13 GCI

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Mohammed mah
nloadg. point: R4529, Carlton Centre
st center : 0001002040

Issued by : 0000031 S I G N A T U R E

TRANSNET
PAID

REPORT 2(A) – PART G – EXHIBIT 3

PR: 10374762.
PO: 45-232329

REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

Tax Invoice

Invoice: TRX1064TCO01
VAT #: 4620216665
Date: 13 Feb 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

TRANSNET PAID

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TCO work done to date.	R 4 000 000.00
Out of pocket expenses (7.5%)	R 300 000.00
VAT (14%)	**R 602 000.00**
Total	**R 4 902 000.00**

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

TRANSNET PAID 18-02-2014

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

PAY.
18/02/14.

52-430724

1009909

2014 -02- 20

REPORT 2(A) – PART G – EXHIBIT 4

REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

Tax Invoice

Invoice: TRX1064FRM01
VAT #: 4620216665
Date: 13 Feb 2014

PR: 10374762
PO: 45-232329

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

TRANSNET PAID

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – FRM work done to date.	R 6 000 000.00
~~Out of pocket expenses (7.5%)~~	R 450 000.00
VAT (14%)	R 903 000.00
Total	**R 7 353 000.00**

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

TRANSNET PAID

paid 19/02/14

okb
PAY
18/02/14.

Regiments Capital (Reg No 2004/022761/07)
Directors LM Nyoka, NM Kilian, EA Wood (SP 15931

52-430723

2014 -02- 28

1009909

1561

5000475443/0001

G O O D S R E C E I T S L I P

Goods receipt date : 20.02.2014
Current date : 20.02.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500232329/00020
Buyer Name : Duran Balbathur

Delivery note: TRX1064FRM01

Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees Adv serv, FRM work done 1064

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 S I G N A T U R E

TRANSNET
PAID

REPORT 2(A) – PART G – EXHIBIT 5

1526

REGIMENTS CAPITAL

[illegible]

Tax Invoice

Invoice: TRX1064FRM02
VAT #: 4620216665
Date: 24 Feb 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

PR : 1037 6690
PO: 45 - 233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – FRM work done to date.	R 6,000,000.00
Out of pocket expenses (7.5%)	R 450,000.00
	R 6 450 000,00
VAT (14%)	R 903,000.00
Total	**R 7,353,000.00**

TRANSNET PAID

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

26/02/14

52-433192

[illegible]

PAID -03- 27

1527

G O O D S R E C E I ` T S L I P 5000477709/0001

Goods receipt date : 27.02.2014
Current date : 27.02.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064FRM02
Name : REGIMENTS CAPITAL
PO : 4500233265/00030
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Trans adv serv - 1064 locos FRM work don

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 S I G N A T U R E

REPORT 2(A) – PART G – EXHIBIT 6

(GRV not printed.)

REGIMENTS CAPITAL
311 Central Street Houghton, 2198
Postnet Suite 25, Private Bag x1, Ballard Park, 2066
Tel: +27 11 731 0500 Fax: +27 11 214 0501
www.regiments.co.za

Tax Invoice

Invoice: TRX1064TCO02
VAT #: 4620216665
Date: 24 Feb 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

PR: 1037 6690
PO: 45-233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TCO work done to date.	R 3,000,000.00
Out of pocket expenses (7.5%)	R 225,000.00
	R 3 225 000,00
VAT (14%)	R 451,500.00
Total	**R 3,676,500.00**

TRANSNET PAID

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

26-02-2014

26/02/14.

52-433194

2014-02-27

1009909

REPORT 2(A) – PART G – EXHIBIT 7

REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

Tax Invoice

(GRV not printed).

Invoice: TRX1064TE01
VAT #: 4620216665
Date: 24 Feb 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

PR: 10376690
PO: 45-233265

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TE work done to date (escalation modelling, insurance and warrantee)	**R 2,000,000.00**
Out of pocket expenses (7.5%)	**R 150 000.00**
	R 2 150 000,00
VAT (14%)	**R 301,000.00**
Total	**R 2,451,000.00**

TRANSNET PAID

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

26-02-2014

52-433193

1009909

2014-02-27

REPORT 2(A) – PART G – EXHIBIT 8

PR: 0010389965
PO: 4500240755

REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

Tax Invoice

Invoice: TRX1064RISK01
VAT #: 4620216665
Date: 27 Mar 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Flip
— Title to TFR
— Capitalise to 1064 locos.

Risk Share - 1064 Locomotives Foreign exchange and warranty bonds	R 69,500,000.00
VAT (14%)	**R 9,730,000.00**
Total	**R 79,230,000.00**

30/04/14.

TRANSNET
PAID

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

29/04/14
Approved for payment PO
Once we've

30/04/14
Paid.

1009909 52-448837

REPORT 2(A) – PART G – EXHIBIT 9

REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 15 Ninham Park 2035
Tel: +27 11 728 6100 Fax: +27 11 728 6111
www.regiments.co.za

Tax Invoice

Invoice: TRX1064RISK01
VAT #: 4620216665
Date: 27 Mar 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Risk Share - 1064 Locomotives Foreign exchange and warranty bonds	**R 120,000,000.00**
VAT (14%)	**R 16,800,000.00**
Total	**R 136,800,000.00**

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

REPORT 2(A) – PART G – EXHIBIT 10

REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

Pr: 10385269
po: 45-238554

Tax Invoice

Invoice: TRX1064FRM03
VAT #: 4620216665
Date: 31 March 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – FRM work done to date.	R 3 000 000.00
Out of pocket expenses (7.5%)	R 225,000.00
Sub Total:	R 3 225 000,00
VAT (14%)	R 451,500.00
Total	**R 3,676,500.00**

TRANSNET
FINANCE

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

02104114

07-04-2014

INV 9909

G O O D S R E C E I T S L I P 5000489118/0001

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064FRM03
Name : REGIMENTS CAPITAL
PO : 4500238554/00060
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees GSM12/05/0447 1064 locos FRM w

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

ecipient : Anoj Singh
nloadg. point: R4529, Carlton Centre
ost center : 0001003002

Issued by : 0000031 S I G N A T U R E

G O O D S R E C E I T S L I P 5000489118/0002

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064FRM03
Name : REGIMENTS CAPITAL
PO : 4500238554/00070
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : disbursements

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 S I G N A T U R E

REPORT 2(A) – PART G – EXHIBIT 11

REGIMENTS CAPITAL™

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

PR: 10385269
PO: 45-238554

Tax Invoice

Invoice: TRX1064TA01
VAT #: 4620216665
Date: 31 March 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (Financial modelling, escalation calculation, pricing and contract negotiation support)	R 5,000,000.00
Out of pocket expenses (7.5%)	R 375,000.00
Sub-Total:	R5 375 000,00
VAT (14%)	R 752,500.00
Total	**R 6,127,500.00**

TRANSNET

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

Originally Approved for Original Paym

52-443195

1009909

2014 -06- 0 9

G O O D S R E C E I P T S L I P 5000489117/0001

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064TA01
Name : REGIMENTS CAPITAL
PO : 4500238554/00040
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees GSM12/05/0447 Trans adv serv

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 S I G N A T U R E

G O O D S R E C E I T S L I P 5000489117/0002

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064TA01
Name : REGIMENTS CAPITAL
PO : 4500238554/00050
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : Disbursements

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 S I G N A T U R E

TRANSNET

REPORT 2(A) – PART G – EXHIBIT 12

REGIMENTS CAPITAL™

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0535
www.regiments.co.za

PR: 10385269
PO: 45-238554

Tax Invoice

Invoice: TRX1064TCO03
VAT #: 4620216665
Date: 31 March 2014

Transnet Soc Ltd
35th Floor, Carlton Centre
50 Commissioner Street
Johannesburg
VAT Number: 4720103177

Your Reference: GSM 12/05/0447

Professional fees: Transaction Advisory Services (acquisition of the 1064 locomotives) – TCO work done to date.	R 1,000,000.00
Out of pocket expenses (7.5%)	R 75 000.00
Sub total :	R 1 075 000,00
VAT (14%)	R 150,500.00
Total	**R 1,225,500.00**

TRANSNET

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

07-04-2014

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S2.443/96

1009909

G O O D S R E C E I T S L I P

5000489120/0001

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909
Name : REGIMENTS CAPITAL
PO : 4500238554/00080
Buyer Name : Tshegofatso Shaku

Delivery note: TRX1064TC003
Telephone : 011 308 1087

Material :
MPN :
Description : Prof fees GSM12/05/0447 1064 loco TCO wo

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Loadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 S I G N A T U R E

G O O D S R E C E I P T S L I P 5000489120/0002

Goods receipt date : 09.04.2014
Current date : 09.04.2014

Plant : 4000
Description : Group Services

Vendor : 0001009909 Delivery note: TRX1064TCO03
Name : REGIMENTS CAPITAL
PO : 4500238554/00090
Buyer Name : Tshegofatso Shaku Telephone : 011 308 1087

Material :
MPN :
Description : Disbursements

Quantity : 1 EA

C O N S U M P T I O N / U S A G E I N F O R M A T I O N

Recipient : Anoj Singh
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003002

Issued by : 0000031 S I G N A T U R E

REPORT 2(A) – PART G – EXHIBIT 13

Advisory support for the funding of 1064 locomotives and executing risk hedging strategy

June 2015

REGIMENTS
Enabling Progress

Content

1 Background

2 Discussion

3 Value add

4 Budget and financial implications

This submission intends to report on the performance of the 1064 locomotive funding advisors

Background

- Post the successful completion of the commercial negotiations, and as part of the next phase of this assignment Regiments was tasked with developing a detailed funding plan for the acquisition of the 1064 locomotives from GE, Bombardier, CNR and CSR
- Given the size of the required funding, the need to limit the impact of this funding on the local credit lines and the financial benefit to be realised from using ECAs and export promotion initiatives from exporting countries, Transnet aimed at exploring foreign sources of funding
- Due to the limited appetite for ZAR denominated funding from the majority of foreign sources, Transnet has considered the procurement of USD denominated funding
- Compliance to Transnet's Financial Risk Management Framework necessitates the effective hedging of currency and other risks arising from the procurement of this funding
- However, there is a recognition that the cost of hedging the currency risk associated with securing a USD loan will be higher than comparative locally sourced ZAR funding
- Therefore, the GCFO required strategy and execution support in order to secure the right type of funding and a cost efficient innovative hedging solution to achieve an optimal all-in funding for the resulting ZAR loan

Discussion

The Transaction advisory services included funding plan preparation, execution and negotiation support

Funding plan

- A funding plan was prepared by Regiments providing due consideration to the following:
  - Evaluation of all funding sources
  - Matching of assets and liabilities
  - Evaluation of the useful life of all underlying assets
  - Identification and management of all financial risks (including liquidity, interest rate, credit and currency risks)

Execution support

- The execution support that was provided by Regiments included the evaluation and comparative analysis of a number of funding sources:
  - US Exim funding for the GE locomotives
  - EDC funding for the Bombardier Funding
  - Bond issuance under Transnet's DMTN and GMTN
  - China Development Bank (CDB), Sinosure, China Exim funding for the Chinese locomotives

Negotiation support

- Negotiation support comprised an important part of the execution support provided by Regiments
- Assistance was provided to Transnet during the negotiation process with all of the identified Chinese potential funders, and in particular with the detailed and protracted negotiations with CDB

Achieved savings

- The savings achieved via the CDB margin compression, the blending of the ZAR syndicated loan, the change in the applicable reference rate (3 month as opposed to the 6 month Jibar), complementing the CCS with the CCDS structure and the raising of the ZAR portion of the funding as a club loan have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows

Note: 'Successful is used here in a narrow sense as the beneficiary were only the white population

Value add by the service provider

Value adding measures aimed at cost saving and liquidity easing initiatives were successfully negotiated

– *Value add from the negotiation support provided by Regiments*

- A fifteen year amortising profile was negotiated, as opposed to CDB's proposed 10 year amortising profile (the longer duration provides a better asset/liability match)
- The capital grace period was extended from 36 months to 54 months, thereby lengthening the duration of the loan profile further, in line with the asset/liability matching requirements
- CDB's initial pricing of 300bps over 6 month Libor, was successfully negotiated to the final agreed margin of 257bps over Libor - a saving of 43bps (a net present value benefit of $64.5m based on the $2,5bn facility)
- Regiments have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk in line with the requirement of Transnet's Financial Risk Management Framework (FRM)
- Regiments' advice and the subsequent decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market

Several immediate cost saving measures were implemented

Change of reference rate

- The reference interest rate for the CDB loan was 6 month Libor. Regiments assisted Transnet in negotiating for a change of the reference interest rate from 6 month Libor to 3 month Libor. This change translates to a significant financial benefit when the liability is converted from a USD loan to a ZAR loan (as required by Transnet FRM framework) and, the imminent swapping of the floating interest rate to fixed rate on the ZAR loan. The benefit derived from the change of the 6 month Libor to the 3 month libor is expected to be in the region of 40 bps at the point that Transnet chooses to fix the resulting 3 month Jibar linked interest rate. (The current market pricing difference between the NACQ and the NACS swap of float to fixed for this loan profile amounts to a pricing premium of approx. 40bp on the NACS profile). This NPV difference is approx. R720m for the $2.5bn loan

Sensitivity in executing CCS

- In the course of the commercial negotiations with CDB, CDB decided (on its own initiative) to test the cross currency swap pricing on this transaction with 8 banks. The effect of this unauthorised action (given the illiquid nature of the ZAR CCS market) caused an adverse pricing move for Transnet. Subsequent to this Regiments assisted Transnet in evaluating all options that would allow for Transnet to complete this transaction at fair pricing. Regiments advised Transnet that the transaction should be hedged with a single counterpart of substance, willing to place balance sheet behind the transaction. It is in this light that Regiments assisted Transnet in the selection of J.P. Morgan as the CCS counterparty

Blended rate

- In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Transnet implemented Regiments' recommendation to only utilise $1.5bn of the CDB facility, and blend that with a $1bn (R12bn) ZAR syndicated loan issue. The ZAR syndicated loan issue would allow for a reduction in the blended rate paid by Transnet of approx. 37 bps (a net present value saving of approx. R666m as opposed to utilising the full CDB facility of $2.5bn with the full cost of the CCS)

Note:

Further cost cutting measures were implemented

Introducing cost efficient hedging strategy

- Recommendation and execution of the appropriate and innovative hedging strategy was part of the execution support services required of Regiments. In order to further reduce the effective cost of the foreign sourced funding from CDB, Regiments proposed a number of enhancement solutions (including currency options, credit default swaps and extinguishing swaps). Regiments assisted Transnet in the evaluation and negotiation of the final selected enhancement solution (CCDS). This enhancement solution has the effect of reducing the effective ZAR cost of the CDB by 112.5bps (a net present value benefit to Transnet of approx. R1.2bn)

Blended loan to achieve lower all-in cost

- In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Transnet implemented Regiments' recommendation to only utilise $1.5bn of the CDB facility, and blend that with a $1bn (R12bn) ZAR syndicated loan issue. The ZAR syndicated loan issue would allow for a reduction in the blended rate paid by Transnet of approx. 37 bps (a net present value saving of approx. R666m as opposed to utilising the full CDB facility of $2.5bn with the full cost of the CCS)

Stand-by Facility

- Following the decision to use only USD 1.5 billion out of the total USD 2.5 billion proposed by CDB, Regiments' negotiated and an agreement has been reached during the negotiations to have the unutilised USD 1.0 billion available for Transnet with no commitment fee until September 2015. Besides the financial benefit accruing to Transnet as a result of not paying the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet

Note:

Value add in respect to the ZAR funding

Exploring local and foreign funding sources

- As per the conscious decision made by Transnet to utilise a portion of the CDB's USD 2.5bn loan, Regiments has led the effort to negotiate with a number of potential Chinese and local sources of ZAR funding for the required ZAR funding facility, including:
  - ICBC (R2bn funding- term sheet to be provided this week)
  - Bank Of China (R7bn – term sheet provided)
  - China Construction Bank (R1bn of 5-7 year funding indicated)
  - Sinosure - (Pursued the potential for a ZAR guarantee)
  - Nedbank/Old Mutual (R6bn funding- term sheet to be provided

Club platform vs loan syndication

- Given the execution of the bulk of the work that was done by Regiments to raise an additional funding of R12bn to R18bn (in place of the unutilised USD 1bn stand-by facility from CDB), Transnet has decided to pursue, with the support and guidance of Regiments, the procurement of the required funding in a club platform as opposed to loan syndication
- Transnet's financial savings as a result of the Transaction Advisory services of Regiments further improve by an additional amount of approximately R36 million that would have otherwise been paid to a Lead Syndication Agent

Note: [1]Successful is used here in a narrow sense as the beneficiary were only the white population

Financial savings in excess of R3.396bn was realised as a result of advisory and execution support

Regiments value add to Transnet in relation to the 1064 locomotive funding and hedging strategy can be summarised in the table below:

- The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Regiments is calculated to be in excess of R 3.39 billion
- In this regard, with Regiments assistance the weighted average cost of the blended finance for the Chinese locomotives is around 10.40%, as opposed to the current weighted average cost of funding payable by Transnet on its existing loan portfolio of 9.70%.
- The current debt portfolio has a significantly shorter duration than the Chinese locomotive funding, and the current funding is predominantly ZAR based as opposed to the predominantly USD based funding of the Chinese locomotives.

Specific initiative	Savings in ZAR
Compression of CDB's pricing from 300 bps to 257 bps over LIBOR	R774m
Changing the reference interest rate from 6 months to 3 months	R720m
Using both USD and ZAR funding as opposed to utilising the full USD 2.5bn loan from CDB (benefit from blending mix)	R666m
Combining the cross currency swap with CCDS – thereby achieving a 112,5bp reduction in the effective cost of the loan	R1 200m
Assisting in the ZAR club loan as opposed to raising the funding in the form of loan syndication- (saving 20bp which would otherwise be payable)	R36m
TOTAL	R3 396m

Sources

Budget and financial implications

Budget and financial implications

Regiments provided key financial advice and negotiation support

- The entire process took in excess of 12 months
- The work was done at risk with an expectation of compensation only on successful completion of the transaction
- Given the invaluable contribution of Regiments to the successful conclusion of this transaction, Regiments is due a success based fee of 15 bps on the yield as reflected in the NPV calculation below:

Success fee in bps	Success fee in Rand (NPV)
15	166.3 mil

- This success fee must be measured in the light of the savings achieved by the advisor of R3.39bn (as per the table above).
- The success fee therefore represents 4.89% of the savings achieved

REPORT 2(A) – PART G – EXHIBIT 14

REGIMENTS CAPITAL

91 Central Street Houghton 2198
Postnet Suite 25 Private Bag x 11 Birnam Park 2015
Tel + 27 11 715 0300 Fax + 27 11 715 0935
www.regiments.co.za

Tax Invoice

Invoice: TRXFR00001
VAT #: 4620216665
Date: 03 June 2015

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Debt origination $1.5 billion – China Development Bank

Arrangement of cross currency Swap and credit default Swap with JP Morgan

- Success contingency fee	R166,000,000.00
VAT (14%)	R 23,240,000.00
Total	R189,240,000.00

Banking Details:

Bank: Standard Bank
Account Name: Regiments Capital (Pty) Ltd
Account Number: 200477757
Branch: Parktown
Branch Code: 000 355

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

APPROVED

14-136475

Regiments Capital (Reg No 2004/020751/07)
Directors LM Mabhongwha, NM Pillay, EA Wood. FSP No

Payee:
Regiments Capital
91 Central Street
Houghton

2198

PAYMENT ADVICE

Date 11 JUNE 2015

Description	Invoice no.	Date	R	C
Debt Origination $1.5 Billion – China Development Bank	TRXFR00001	03 June 2015	166,000,000	00
		Sub total	166,000,000.00	
		VAT	23,240,000.00	
		Total	189,240,000.00	

TRANSNET PAID

By Hand	Tel. No : 308-2022	Ref.:
Compiled by: Norman Mbazo	Approved by:	

COCE	GL	R	C
1003013	676100	189,240,000	00

FOR OFFICE USE

Verified: CB. Approved:

Vendor No: 1009909 Date: / / Document no:

1009909

1900136475

REPORT 2(A) – PART G – EXHIBIT 15

Trillian Asset Management
2008/023108/07
VAT No 4860250580

Trillian Asset Management (Pty) Ltd
Postnet Suite 488
Private Bag X1
Melrose Arch
2076

Tax Invoice

Date 18/11/15

Page 1

Document No IN101237

Transnet SOC Ltd
Carlton Centre
150 Commissioner Street
Johannesburg
2001

Deliver to

Carlton Centre
150 Commissioner Street
Johannesburg
2001

Account	Your Reference	Tax Exempt	Tax Reference	Sales Code
TRANSN		N	4720103177	Exclusive

Code	Description	Quantity	Unit	Unit Price	Disc%	Tax	Nett Price
1400000	Lead Arranger of ZAR12,000,000,000 Club Loan Facility for Transnet SOC Ltd					14.00%	82 000 000.00

TRANSNET
PAID

2015.05.12 07

Trillian Asset Management
Investec CDM Main Account
A/c No 50005027729 Br 580105

Received in good order

Signed ..... Date .....

Sub Total		82 000 000.00
Discount @	0.00%	0.00
Amount Excl Tax		82 000 000.00
Tax		11 480 000.00
Total		93 480 000.00

© Softline (Pty) Ltd

19-151857

Payee:
Trillian Asset Management (Pty) Ltd
Postnet Suite 488
Private Bag X1

Melrose Arch 2076

PAYMENT ADVICE

Date :19.11.2015

Description	Invoice no.	Date	R	C
Lead Arranger of ZAR 12,000,000,000 Club Loan Facility for Transnet SOC Limited	IN101237	18.11.2015	82,000,000	00
		Sub total	82,000,000.00	
		VAT	11,480,000.00	
		Total	93,480,000.00	

By Hand | **Tel. No (011)308-1217** | Ref.:

Compiled by: F Bangani | Approved by:

COCE	GL	R	C
[redacted]	[redacted]	93,480,000	00

FOR OFFICE USE

Verified | Approved

Vendor No: | Date: _____/_____/_____ Document no:

REPORT 2(A) – PART G – EXHIBIT 16

November 11, 2017 – Statement of David Robert Fine

STATEMENT OF DAVID ROBERT FINE

Introduction:

My name is David Robert Fine, and I am a Senior Partner at McKinsey & Company ("McKinsey") based in London.

I appreciate the opportunity to appear before you today and answer your questions. These issues are of immense importance to all of us at McKinsey, including in a very real sense the more than 250 people employed in our South Africa office. As a South African who has dedicated a large part of my career to improving the functioning of South African businesses and government so that they work better for all of the people in this country, I have felt deeply the allegations that have been made in recent months involving McKinsey and state-owned entities that I and others at McKinsey have served.

As I will go into in greater detail in a moment, I have worked with Transnet since 2005 and was the Senior Partner responsible for that relationship between 2007 and 2013. It was and is my strong belief that the extensive work McKinsey performed at Transnet over the years delivered great value and made significant contributions to Transnet's operations, and I would be grateful for the opportunity to discuss some of that with you today.

While I have not served Eskom and so am not able to discuss that relationship with the same degree of personal knowledge, I am obviously aware of the allegations made relating to our firm's contracts with Eskom. McKinsey recently released a statement that clarified the nature of our work alongside Trillian and noted, among other things, that our extensive review to date found that McKinsey never made payments directly or indirectly to secure contracts, nor did we aid others in doing so. I have not seen anything that would contradict this.

Before turning to the substance of my remarks, let me say at the outset that I am fully committed to seeing that your inquiry into these matters is thorough and complete and to cooperating fully with you throughout this process. Even as your work and the work of other governmental authorities remains ongoing, McKinsey has made clear that we are currently reviewing our own actions in this matter to ensure that we promptly identify areas in which we should improve our risk policies and practices and will make any necessary improvements without compromise or delay.

Background:

McKinsey & Company is a global management consulting firm committed to helping institutions in the private, public, and social sectors achieve lasting success. McKinsey was founded in Chicago in the 1920s and has grown, almost entirely organically, into a truly global firm. Today, we have over 30,000 employees from 122 countries who speak 136 languages. Despite that scale, we remain a privately-owned partnership, owned and governed by our partners worldwide.

For 90 years, our primary objective has been to serve as our clients' most trusted external advisor. With consultants in over 120 cities in over 60 countries, across industries and functions, we believe that we bring unparalleled expertise to clients anywhere in the world. Our focus is on forming long-

lasting relationships of trust with our clients. The vast majority of our work involves repeat business for existing clients.

McKinsey has had a continuous presence in South Africa for more than 21 years. Despite significant local demand, our firm took a principled decision not to work in South Africa prior to 1994 on the belief that any activity that might have aided the Apartheid regime would have been incompatible with our values.

In late 1995, soon after South Africa held its first democratic elections, a group of five consultants established our office in Johannesburg. I first joined McKinsey and that office later that year in September 1995, which made me the very first South African consultant to work for McKinsey in South Africa. After being elected a Partner in 2002 and then Senior Partner in 2008, I was selected to lead the Johannesburg office from 2010 to 2014.

In 2014, I was offered a promotion in the form of an opportunity to lead McKinsey's Public and Social Practice in the CIS, Eastern Europe, Middle East and Africa regions. In 2016, I was further promoted to global leader of McKinsey's Public and Social Sector Practice, my current position, which required relocating from South Africa. In this current position, I advise clients in a range of industries including the public sector, banking, transport and logistics, mining, utilities, and oil and gas.

Today, McKinsey's presence in South Africa has grown so that it employs over 250 people in our South Africa office, more than 60% of whom are black South Africans. We invest heavily in our people and their development. 39 nationalities are represented among our consultants in South Africa. We have delivered over 1,000 projects in South Africa, and a further 1,400 across Africa.

As part of its work in South Africa, McKinsey has a long history of providing pro bono consulting support to organisations and projects that both develop black South African talent and give back to black South Africans. To give some examples of which I am particularly proud:

- In 2012, we established the Social Advancement Foundation (SAF), a non-profit organisation that supports disadvantaged communities by providing consulting services and financial donations in healthcare, education and welfare. McKinsey's Johannesburg office contributes 26% of its annual profits to the SAF.
- The two-year McKinsey Leadership Programme (MLP) was created as an unrivalled springboard to a high-impact career for exceptional black South Africans with strong leadership profiles and distinctive academic and professional experience. Since January 2016, 28 future young black South African leaders were part of the programme. Those who have participated have gone on to establish successful careers in leading South African organisations.
- Additionally, the McKinsey Leadership Academy (MLA) supports and trains previously disadvantaged individuals, many of whom have disabilities. In 2016, 15 learners graduated with a Higher certificate in Business Management (NQF level 5), of which two took up permanent positions within McKinsey.
- McKinsey was awarded the Top Empowered Socio-Economic Development Award in 2015 at the annual Oliver Empowerment Awards. In 2016, we received the Legends of Empowerment and Transformation award.

Having spent nearly 20 years growing this office, I have a tremendous stake in its accomplishments and the team we have built and a great deal of concern for how certain of McKinsey's actions have

been portrayed. I hope to spend the balance of my statement giving an overview of some of the work we performed and to give context for the topics that I understand we will be discussing today.

McKinsey's Work for Transnet (2005-2016):

McKinsey began working for Transnet in 2005 and worked continuously for Transnet for four CEOs and over thirty senior executives until 2016. As you know, Transnet is South Africa's state-owned rail and ports company, whose primary shareholder is the Department of Public Enterprises. As stated in public figures, Transnet employs on the order of 60,000 people (as of March 2017), and its activities create or sustain some 200,000 to 300,000 jobs in the wider South African economy, making it one of the most important employers in South Africa. Additionally, the role it plays with respect to rail and port infrastructure makes it a critical actor in the country's overall economy.

All McKinsey projects with Transnet followed a typical governance process which served to ensure accountability of delivery. This included weekly progress reviews with Group Finance executives. In addition, a steering committee for each project was typically set up with relevant line executives. We also supported our clients with documentation to ensure relevant approvals were obtained from relevant board and executive committees e.g., Group capital and investment committee (CAPIC) and Board Acquisition and Disposals Committee (BADC). Finally, we provided documentation when necessary to ensure the relevant approvals were obtained from the Department of Public Enterprises and National Treasury.

2005-2011: Vulindlela Project and Other Smaller Projects

McKinsey's relationship with Transnet began when McKinsey won a tender in 2005 to work on turnaround project known as the "Vulindlela" project. Drawing on McKinsey's considerable rail and port experience, the project focused on ways to reduce Transnet's central costs, increase divisional revenue, and improve operational performance. Through our work on this project – a four-year program that involved nearly 100 South African McKinsey consultants, 94 international consultants and over 140 full-time Transnet employees – we were able to make a significant positive impact on Transnet. As confirmed by Transnet's internal (Ernst & Young), these impacts included:

- Improving Transnet's annual operating profit by R5.6b per annum
- Increasing the availability of locomotives from 83% to 87%
- Increasing the availability of wagons from 85% to 95%
- Improving throughput in Durban harbour by 36%
- Successful partnership with Letsema Consulting as our supplier development partner (more details to follow)

Between 2008 and 2011, McKinsey also began working on a series of smaller projects for Transnet, including: a Ports Regulatory Strategy, an Enterprise Performance Management project, some smaller strategies for the Commercial and Strategy Organisation, and some senior leadership workshops for several operating divisions including Transnet Port Authority and Transnet Freight Rail. But up until 2011, McKinsey did not work on so-called "capital projects" (that is, the purchase, construction, expansion or maintenance of infrastructure or other assets) for Transnet.

2012: McKinsey Support for Transnet's New "Market Demand Strategy"

November 11, 2017 – Statement of David Robert Fine

Beginning in 2012, McKinsey began undertaking new and additional types of projects for Transnet. These projects were intended to address weaknesses of Transnet that were causing reverberations for the broader economy. As you will recall, as of 2011 South Africa's economic growth had remained strong and infrastructure was seen to be essential to continued GDP growth. South Africa, however, had not fully benefitted from the commodity boom due to under-capacity in rail and port infrastructure – essentially Transnet was unable to transport South Africa's commodities to market.

Upon examination, it became clear these challenges had their origins in the fact that the pace, quality and cost effectiveness of Transnet's capital projects had declined. Up until this point, Transnet had developed and invested in capital projects only when customers first confirmed their demand. This led to delays in project delivery as customers generally prefer not to commit up front to financing large infrastructure projects.

Following a change in Government policy towards the objectives of the 'Developmental State'- and under the leadership of the new CEO at the time, Brian Molefe -- Transnet decided to embark on a new strategy (known as the "Market Demand Strategy" or "MDS") to stimulate demand by investing in infrastructure projects without confirmed orders from customers. Such a strategy requires detailed projections of freight demand based on realistic assumptions of global growth and demand.

In 2011-2012, McKinsey helped Transnet launch the Market Demand Strategy. In the years that followed, McKinsey supported Transnet on key pillars of the MDS until March 2016. Among other changes required by the strategy, McKinsey's work included: developing projections for the amount of commodities Transnet might need to transport (based on McKinsey's understanding of the global commodities markets and proprietary models); improving Transnet's capital project expenditure; and increasing Transnet's operational performance. Amongst others, the impact of our work in this period includes saving Transnet of over R100bn in capital expenditure. This was reflected directly in the annual budgets. Additional performance monitoring activities, a new pricing strategy and operational efficiency initiatives all contributed to greater volume and accountability for delivery.

The MDS also required Transnet to procure new locomotives and improve its rail capacity in other ways to meet expected demand. At the time, long-term projections for freight capacity required in South Africa were looking promising for a number of reasons. These included opportunities to export additional coal, manganese and chrome to Asia; strong growth expected in domestic freight sectors like iron ore, coal and cement; and the fact that significant number of containers then transported on South Africa's roads could be transported by rail.

Because I understand that Transnet's acquisition of locomotives in March 2014 ("the 1064 locomotive transaction") is of particular interest to you, I have included a detailed summary of that transaction as an appendix to this statement. A key point to highlight is that McKinsey ceased advising Transnet on locomotives in February 2014 and had no involvement in advising Transnet in relation to the awarding of the tender in March 2014, the selection of the suppliers, or in how the locomotive prices were determined.

Unfortunately, in 2015, several years after the MDS was developed, the economic situation in South Africa and abroad changed. Demand for commodities fell significantly due to unexpected external factors. In particular, the Chinese economy experienced an unprecedented slow-down in 2015, and

because China accounts for 45-55% of steel and coal consumption, this slow-down had a substantial effect on global commodity demand, commodity prices, and ultimately on the demand for South Africa mining export that help drive demand for freight capacity. In addition, several external factors negatively impacted Transnet's performance including community unrest in the Phalaborwa channel, flash flooding due to unseasonal rains, and massive failure of the tippler at Majuba.

These changes had major implications for Transnet in that it posed significant balance-sheet risks, required the company to rapidly reduce its capital spending and improve operating profit. This meant that McKinsey's work for Transnet over this latter period focused predominantly on reducing spend on capital projects, improving volume delivery and reducing non-essential operating costs. McKinsey's last engagement with Transnet ended on 8 April 2016.

McKinsey's Work with Supplier Development Partners at Transnet

McKinsey's presence in South Africa is based on a commitment to supporting the development of the country and its people, including developing the skills and capabilities of the next generation of leaders. McKinsey & Company South Africa has achieved B-BBEE Level 1 contributor status under the latest Codes of Good Practice and invests 26% of its annual South African profits for the direct benefit of historically disadvantaged South Africans. Before describing our work with development partners at Transnet, it is important to make three framing points at the outset:

- First, on all the projects where we worked with Supplier-Development partners at Transnet, in line with our B-BBEE commitments, we supported the development of these organisations through working on joint or parallel teams, providing on-the-job training, formal training workshops, dedicated coaching and feedback sessions, and having joint leadership structures.

- Second, all of our Supplier-Development partners were paid by Transnet directly and not by McKinsey. This was to ensure that Transnet and not McKinsey benefited from B-BBEE supplier spend. As a prime contractor, McKinsey was expected to review the work completed by our sub-contractors and provide assurance to Transnet that the work had been adequately completed. But the payments went directly to the Supplier-Development partner.

- Third, in addition to typical Supplier Development requirements of B-BBEE, in 2011 Transnet required at least 30% of its spend with consultants to be allocated to South African Black owned companies. This was based on the Department of Public Enterprises directives related to the Preferential Procurement Policy Framework Act (5/2000).

All of the Supplier Development partnerships with which I was involved reflected a genuine commitment and effort by McKinsey to meet and exceed the B-BBEE requirements in South Africa and to do so in the spirit that these requirements were intended – to provide opportunities for historically disadvantaged South Africans to participate meaningfully in the economy. While I appreciate there are current allegations to the contrary (in particular, Bianca Goodson née Smith's testimony before this Committee), those allegations do not accord with what I observed during my more than two decades at McKinsey. In my experience, McKinsey always took our supplier development very seriously and were committed to building local black owned businesses. Bianca Goodson's testimony before this Committee, about McKinsey's approach to supplier development at Eskom, is inconsistent with my views and experiences. I have no personal knowledge of whether the

statements made by Ms. Goodson, and attributed to Lorenz Jüngling (a former partner), occurred or not. However, such behaviour would be completely against our values and beliefs about Supplier Development.

McKinsey's Work with Letsema

Supplier development was a key objective for McKinsey from the very beginning of its relationship with Transnet, and a requirement for Transnet's procurement, during the Vulindlela Programme (2005-2008). At that time, McKinsey partnered with a small consulting company called Letsema Consulting. I managed the Letsema Relationship, alongside my Partner, Norbert Doerr.

Over the course of the Vulindlela Programme, McKinsey helped Letsema become a strong and vibrant company that could compete with McKinsey and conduct independent work at Transnet. The process of developing Letsema was not without its challenges (at times, McKinsey consultants needed to be reminded to be patient and in particular consultants from outside South Africa needed to be trained on the importance of supplier development) but, in my view, the challenges we faced in developing Letsema were normal for a Supplier Development partnership, where the aim is to help small, black-owned companies develop skills and capabilities they do not already possess.

McKinsey partnered with Letsema Consulting from 2005 until 2012. By 2012, Letsema's turnover had grown to a point that exceeded B-BBEE supplier development guidelines. In addition, Letsema had grown to a size whereby they were competing with McKinsey for work. While in many respects this was a success story given the goals of supplier development, it did give rise to conflict. In addition, a professional conflict issues arose in 2012 during the contract award to McKinsey (described in the appendix) when Letsema was identified as working with General Electric – a potential bidder for supplying locomotives to Transnet.

McKinsey's Decision to Partner with Regiments

From 2012 to 2016, Regiments Capital Partners ("Regiments") became our Supplier Development Partner at Transnet. It is important to stress that McKinsey did not introduce Regiments to Transnet. Rather, Regiments had been suggested to us by Transnet as a possible B-BBEE partner to consider in late 2012, based on: they were already a registered supplier for Transnet; and the positive regard for its prior work for Transnet's Treasury department (a prior engagement that Regiments highlighted in a company profile in July 2012 – see Annexure A).

In the course of deciding whether to work with Regiments in 2012, McKinsey conducted a basic level of due diligence that included the following:

- I personally reviewed documentation provided by Regiments on their work for a number of SOCs and Public Sector institutions in South Africa, including Transnet (for whom they were already an approved supplier).

- I personally reviewed the resumes of the owners, which I thought were impressive (Litha Nyhonyha was from at Ernst & Young and had established Thebe Investment Holdings, Niven Pillay had two degrees from Princeton, and Eric Wood had a Masters of Management from WITS cum laude).

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- I reached out to personal contacts in the business world about Regiments and received positive feedback about both Litha Nyhonyha and Eric Wood. In addition to this feedback, we took into account that Anoj Singh, then Transnet's CFO, had told us that Regiments' work at Transnet's Treasury Department had been well regarded.

Based on an internet search I conducted, I came across an article in which Regiments was discussed as having profited from a contentious deal with the City of Johannesburg. McKinsey raised this issue directly with Regiments, and we were told that Regiments' work had been conducted on an at-risk basis and that the City was contesting their fees.

I was the Senior Partner responsible for the Transnet relationship at the time we engaged Regiments, and I am not aware of any requirement -- stated or unstated -- for McKinsey to partner with Regiments in order to work at Transnet.

McKinsey's Work with Regiments

McKinsey first worked with Regiments in January 2013 on a project at Transnet to support the company in implementing the MDS strategy discussed above. Vikas Sagar led the original negotiation with Regiments and continued to be the primary point of contact between Regiments and McKinsey. Over the years of our work with Regiments, we developed a constructive working relationship, partnering on various projects. We often worked in integrated teams and held working sessions to jointly develop the solution for the client.

During this time period (2013 to early 2014) most projects were related to capital optimisation (in other words, helping Transnet ensure effectiveness and cost-effectiveness of its infrastructure spending). As with Letsema, the beginning of the relationship with Regiments was challenging and the McKinsey teams were initially unhappy with Regiment's performance and the day-to-day leadership. But as with Letsema, we took steps to improve our working relationship, including engaging external facilitators to work with the joint leadership teams to resolve our differences.

In my experience, Regiments added value to our engagements including by bringing capabilities in financial modelling and funding analysis, a core competency from their investment banking experience that was critical for a number of initiatives. Regiments also added consultants who performed well, including through their subsidiary Burlington Consultants.

Ongoing Challenges and the End of McKinsey's Relationship with Regiments

In addition to the diligence performed at the outset, McKinsey took steps over the course of the relationship to ensure that its work with Regiments accorded with our policies and standards.

- In July 2014, allegations were published in the Mail & Guardian (http://mg.co.za/article/2014-07-24-the-house-of-graft-and-lies) about alleged improper conduct by Niven Pillay (who had been our main Regiments contact up until that point). In response, McKinsey wrote to Regiments asking for Mr. Pillay to be separated from all projects with McKinsey and for written that Regiments is in compliance with regulations including the South Africa Prevention and Combatting of Corrupt Activities Act, US FCPA, and UK

Bribery Act. McKinsey ultimately decided to continue the relationship only after we received confirmation from Regiments on 28 August 2014 that: (1) "the allegations in the press are baseless," (2) Regiments had policies for "the promotion of honest and ethical behavior" and a "corporate governance framework specifically address[ing] issues such as bribery, corruption, conflict of interest and disclosure of interest"; and (3) Mr. Pillay "step down from the Executive Committee of the Consortium" and Eric Wood would "assume the lead role on the part of Regiments." Moreover, I consulted with the Transnet CFO and CPO and was advised by Anoj Singh that Transnet was also seeking confirmation from Regiments of its compliance with relevant anti-corruption regulations. In the wake of these discussions, Mr. Wood became our principal contact, and the relationship with Regiments and the quality of its work improved for a period of time (Annexure B).

- In the middle of 2015, there was rising concern about the Regiments working arrangements within McKinsey. The quality of Regiments employees being deployed declined, and there was a concern that they could not keep up with commitments. In one case the delivery was so poor that McKinsey needed to staff one of Regiments' projects with McKinsey personnel and claim payment from them. McKinsey Partners serving Transnet raised these issues regularly with Mr. Wood and frustration with their performance built up towards the end of 2015.

- In late 2015, at a meeting of the Transnet Client Service Team, the McKinsey leadership team agreed to look into other partnerships. McKinsey partners had raised additional questions about Regiments, including about: their beneficial ownership, their values, their impact orientation, their B-BBEE transformation credentials, given that their senior consultants and Mr. Wood did not reflect South African demographics. Around the same time, we heard from Mr. Sagar that Regiments had proposed splitting in two: Regiments Capital, with its financial advisory business, and Trillian, that would grow its management consultancy arm. My partners and I saw this as a potential solution to the capability concerns we had raised.

Nevertheless, the concerns only grew. In February 2016, our concerns were heightened after an article was published by London-based outlet Africa Confidential that alleged that Mohammed Bobat (a Regiments Director appointed as an advisor to the Minister of Finance in December 2015) was connected to the Gupta Family. On 15 February, McKinsey sought clarification of Mr Bobat's relationship with Regiments and Trillian and their relationship with politically exposed persons referenced in the article (Annexure E). While McKinsey received a letter from Bianca Goodson née Smith on 26 February (Annexure F) claiming that Mr Bobat had ceased to be employed by Regiments in December 2015, I noted at the time that Mr Bobat's LinkedIn profile described him as a Regiments Director.

On 23 February 2016, Vikas Sagar and I wrote to Transnet (Annexure C) confirming that we would end our relationship with Regiments, for reasons that included: questions about their performance, the rate of their transformation, and recurring issues raised in the media (which they declined to address with us). The letter was also explicit that we would not work with Trillian unless they pass a detailed due diligence. Within days, I initiated a review of our work at Transnet that involved external legal advisors, a process that was later handed over to the Africa Office Leadership and McKinsey's General Counsel. On 17 March 2016, Vikas Sagar and I met with Litha Nyhonyha and Niven Pillay

and mutually agree to end our relationship with Regiments. This was confirmed in writing on 18 March 2016.

The above developments reflect that my McKinsey colleagues and I were put in the in position of having to respond in real time to new information that was coming to light about a firm with which we had worked for several years. In assessing the speed of our actions, it is important to separate what is known now from what was known then. In particular, certain claims currently being raised in the media relate to things that I simply had no knowledge of at the time:

- First, I am aware of recent media reports alleging that Regiments paid a portion of its fees received through work with McKinsey to companies including Albatime, Forsure and Fortime (companies the journalists suggest are linked to the Gupta family). At no time, however, was I aware of any such payments.

- Second, I am also aware from media reports that Mr Pillay has said "[Moodley's company] Albatime … took us into a relationship with McKinsey and got paid a commission for that ..." As far as I am aware, this is categorically incorrect. I note that Mr. Moodley himself is quoted in the same article confirming that "I don't know McKinsey, …" (http://amabhungane.co.za/article/2017-10-23-the-mckinsey-dossier-part-5-how-transnet-cash-stuffed-gupta-letterboxes)
- Third, during the preparation of this submission, I have recently been made aware of two 2014 responses to Transnet RFPs for a coal project and to support Transnet's New Multi-Product Pipeline project (NMPP) that include references to Albatime, Homix and Accompany Advisory as companies Regiments intended to sub-contract. It appears these sections of our proposals were copied and pasted from Regiments Capital. I had no knowledge of these documents at the time but can confirm that only Accompany Advisory were involved in any project with which McKinsey was involved.

McKinsey's Due Diligence of Trillian

McKinsey has previously explained in a public statement that although McKinsey worked alongside Trillian for a few months at Eskom, we never had a contract with Trillian. The statement further explained that Trillian failed our due diligence and we terminated discussions with them about a supplier development partnership in March 2016. We now believe that Trillian withheld information from us about its connections to a Gupta family associate.

As noted, I have not served Eskom and so cannot speak from personal knowledge of many of the events relevant to these matters. It should also be noted that at that time, unlike now, State Owned Entities were not considered McKinsey public sector clients and did not fall under Public-Sector Risk policies. Eskom and related projects were not within my formal mandate to review.

In early 2016 I became aware of a substantial working relationship between McKinsey and Trillian. When I enquired about Trillian with external contacts, they raised significant concerns. During a February 2016 Partner meeting, I and other McKinsey partners raised serious concerns about Trillian's B-BBEE status and their ultimate beneficial ownership. Consequently, the South African office initiated a due diligence of Trillian with an external party. I therefore engaged in McKinsey's due diligence process with respect to Trillian given my strong concerns about Trillian.

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McKinsey wrote to Trillian several times during February and March 2016, requesting details of Trillian's corporate structure and ultimate beneficial ownership. Trillian failed to provide this information. In addition, Mr. Sagar and I met with Eric Wood on 5 March 2016 to discuss the split of Trillian from Regiments and asked again who the shareholders/ board members of Trillian would be and received concerning answers. On 14 March 2016, I participated in a McKinsey Global Risk Committee discussion on the proposed Supplier-Development partnership with Trillian at Eskom as the Leader of the Public Sector in the EEMA region (the Commonwealth of Independent States (CIS), Eastern Europe, Middle East, Turkey, Pakistan and Africa). The committee reviewed the results of our due diligence process and decided that we should terminate discussions with Trillian. The next day, on 15 March 2016, McKinsey wrote to Mr. Wood informing him of this decision. McKinsey also wrote to Eskom on 30 March 2016 to inform Mr. Singh of this decision (Annexure G).

Lessons learned and personal reflections

These events have led to no shortage of self-reflection from McKinsey as a firm and for me personally. McKinsey holds itself to a higher standard than strict legalities, and as a firm we take great pride in the contributions we have made to the government and people of South Africa. It has been immensely difficult to be associated with companies and people who are now widely believed to be involved in State Capture.

In the interest of being as forthcoming as possible with the Committee, there a few points that I would like to emphasise before closing.

First, while with the benefit of hindsight I certainly wish we would have ended our association with Trillian sooner, I am heartened that our due diligence process prevented what could have been an even more serious matter for the firm. The decision to first consider working with Trillian and our subsequent decision to terminate our relationship with Trillian was the subject of a healthy and sometimes heated debate within our firm, especially in the South African office. Many partners believed very strongly that we should not associate McKinsey with Trillian and that by so doing we would risk bringing McKinsey into disrepute. There were others, however, who believed that the paramount consideration was that we not abandon Eskom, an important South African State-Owned Enterprise, in its hour of need because of suspicions and allegations that were unproven. Additionally, some colleagues were concerned about the size of the contract for McKinsey. There was genuinely felt discomfort and debate. In the end, McKinsey's governance processes took the decision to end our association with Trillian. That is a positive thing, but my view now is that we should have put clearer guidelines in place for the Partners managing the work at Eskom to ensure that we avoided the association risk while deliberations were happening.

Second, while our investigation found no evidence of illegality, McKinsey has previously acknowledged -- and I wholeheartedly agree -- we should have done some things differently.

In particular, we were not careful enough with whom we associated with. Had we known that Trillian was owned by Mr. Essa (who is widely believed to be a business associate of the Gupta family), which is now publicly reported, we would not have worked with them. It is my view now with the benefit of hindsight that Trillian deliberately withheld information about their ultimate beneficial ownership from McKinsey (Annexure Eric Wood email 14 March 2016). While we terminated the discussions

with Trillian, I regret that we did not move even more quickly when media reported potential links between Trillian and the Gupta family in 2016. We should not have worked alongside Trillian, even for a few months, before completing our due diligence and without a contract. While our risk process ultimately worked, we should have completed it sooner.

Among other lessons learned from these events:

1. Some of our processes were inadequate. I and McKinsey's South African office leadership were not aware of the letter sent to Eskom on 9 February 2016. This letter inaccurately characterised our relationship with Trillian and was a mistake. My Partners should not have prepared such a letter authorising, even conditionally, payment for an entity with which we did not have a contract. Eskom has confirmed it did not rely on this letter to make any payment to Trillian.
2. We did not communicate appropriately to Advocate Budlender, a deeply respected advocate in South Africa. However, Advocate Budlender was acting on behalf of Trillian and requested confidential information about McKinsey's clients. This was of great concern internally in McKinsey given our legal agreements with our clients. While we terminated the discussions with Trillian, I regret that we did not proactively investigate in detail in 2016 when media reported potential links between Trillian and the Gupta family.
3. I was not party to negotiations with Eskom on the "at-risk" engagement on the Turnaround programme. It is public knowledge that McKinsey worked on the turnaround programme at its own risk. McKinsey invested substantial resources (at its peak 108 consultants plus an additional 16 specialists/experts and 13 members of the leadership team from around the world) with no guarantee of any payment by Eskom. In recent discussions with Partner colleagues who were involved in the negotiation process, I understand it was never the intention for McKinsey to profit excessively from the eleven months of work at Eskom. However, I wish to make my personal points of view clear:
    a. McKinsey provided value for money for Eskom on the Turnaround Programme. Based on my discussions with my colleagues I understand this was independently verified by Oliver Wyman which is consistent with an McKinsey's review.
    b. However, in my view, we should have capped our fee structure and the total fees in absolute terms. While we do big programmes around the world, in my view, it was unlikely that Eskom had the management capacity and depth to absorb this much change in a sustainable way. These are of course judgements of mine that may differ with my colleagues.
    c. Even though the fees were an agreed percentage of savings and the benefits to Eskom were large, uncapped fees would be perceived negatively. We should have been more sensitive to the country's and Eskom's economic situation.

    McKinsey's Public Sector practice is now reflecting deeply how we structure these engagements in future in terms of contractual terms and conditions.
4. It was Eskom's responsibility to secure National Treasury approval for the Turnaround Programme. It turns out Eskom failed to do this. We should have insisted that Eskom confirm in writing Treasury's approval for the project and we should not have begun the project without that written confirmation.
5. In this specific case, the Turnaround Programme used metrics agreed with Eskom to trigger performance-related payments to McKinsey. I understand these were negotiated at great length between McKinsey and Eskom and the implementation levels used were broadly in line with our standard approach for at-risk projects globally. I also understand that some colleagues

of mine were concerned about whether we would be paid. In hindsight, we are exploring ideas like very rigorous stage-gating for such risk-based arrangements to make sure that the organisation can absorb our work and have comfort that the benefits are sustainable. In the case of Eskom, this would have given the South African public greater comfort that McKinsey had delivered sustainable impact through our work.

6. Recently the Shareholders Council of McKinsey met to review our risk policies related to SOE's. We resolved to subject SOE's to the Public Sector risk process in circumstances where SOE's are subject to public procurement laws. This means that today, Eskom would be subjected to McKinsey Public Sector risk review.

Lastly, I want to highlight one thing we are doing to move forward from these events by clarifying McKinsey's position on repaying the fees earned on the Turnaround Programme. Eskom has said that they acted without the required treasury approval and they contend that the contract was therefore invalid. McKinsey does not want to benefit from an invalid contract.

Therefore, McKinsey's Partners have agreed that the money paid by Eskom to us should be returned to South Africa. We avail ourselves to have any discussions with the appropriate authority, inclusive of Eskom and National Treasury, to find the appropriate mechanism to effect this commitment. I fully support McKinsey's decision to set aside the full amount with the intention to pay all of it back to South Africa.

Closing

Thank you for the work you are doing. I want to reiterate the importance of these matters and the seriousness with which they are being taken by McKinsey. I was born and raised in this country, my family still lives here, and I cannot overstate the significance of the inquiry in which you are engaged to the people of South Africa. Without belaboring the point, we all have a stake in understanding what happened and learning from these experiences. I look forward to answering your questions and hope that I am able to assist you in your inquiry.

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APPENDIX: SUMMARY OF 1064 LOCOMOTIVE TRANSACTION

1. A summary of McKinsey's work on this transaction is intended for clarity.
2. On 15 January 2013, a consortium led by McKinsey won a tender to provide advisory services to Transnet on their planned locomotives acquisition. The RFP was GSM/12/05/0447. The consortium had submitted the tender in May 2012.
3. The Consortium initially consisted of five parties: McKinsey (prime contractor), Letsema Consulting (Supplier Development Partner, with experience at Transnet in Locomotive component procurement), Utho/Nedbank (deal structure and funding), Advanced Railway Technologies (ART provided technical assessment of locomotive fleet and requirements). Transnet asked McKinsey to use Webber Wentzel as legal advisors.
4. The Letter of Intent from Transnet indicated that the total value of this tender would be R35.2 million, excluding VAT.
5. There were four primary workstreams, which were intended to start in March 2013 and conclude in October 2013. The workstreams were:
    1) McKinsey & Company would be responsible for validating the business case, to include projections for the volume of commodities Transnet could transport, validate that the procurement of 1064 locomotives was viable financially (Transnet had projected 1064 would be required), and conduct scenario planning to inform contracting.
    2) Letsema would be responsible for programme Management, to monitor overall progress against timelines and ensure proper governance.
    3) Utho/Nedbank, Webber Wentzel, and McKinsey would provide transaction advisory services and procurement execution, to minimise financial risk for Transnet and ensure suppliers deliver on their commitments.
    4) ART and McKinsey would provide technical evaluation and optimisation by assessing the lifecycle costs of suppliers short-listed by Transnet.
6. However, in 2012, Transnet raised a conflict issue about Letsema, who were serving General Electric Locomotives, Transnet felt this was a conflict of interest. In May 2013, shortly after awarding the tender to the consortium, Nedbank indicated it that it wanted to participate in the financing of the transaction and therefore no longer wanted to participate in the advisory part of the engagement.
7. Transnet suggested that Regiments Capital had the advisory skills of Nedbank, the programme management experience of Letsema (through their relationship with Burlington Consultants), and a strong track record at Transnet, should join the consortium in their place.
8. Mr Sagar raised this suggestion with the Transnet client-service team at McKinsey. After a discussion amongst our partners and some due-diligence (Annexure A), we decided to accept this suggestion as we thought that Regiments would bring the required skills and knew how to work with the Transnet. At no time did I feel compelled to use Regiments Capital
9. The work initially proceeded according to the agreed timelines.

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10. From early 2013 to the end of April 2013, McKinsey facilitated the development of the business case, to determine whether the acquisition of 1064 locomotives was financially viable. This was done by analysing commodity trends across the freight system and the corresponding locomotive requirements. The approach optimised delivery flexibility so that supply timing could reflect changes in the volumes of commodities Transnet transported.

11. The recommendations McKinsey made in the business case were explicit and signed off by Transnet's Executive Committee ('Exco') and Board in the first half of 2013, namely:

    a. Without locomotive procurement, the shortfall between locomotive capacity and market demand would rise to almost 112 million tons by 2021/2022, i.e. a 59% shortfall in capacity.

    b. The projections of the likely future volumes of commodities Transnet could transport were the most sensitive variable for the business case. Since the global financial crisis in 2008, McKinsey's standard practice is to advise our clients to ensure their capital investment plans are able to scale back or accelerate to better match volume movements. We included this advice to Transnet on its capital expenditure programme, including the 1064 Locomotive Transaction. Therefore, the procurement process proposed included flexibility in the contracts so that the number of locomotives could be adjusted downwards or upwards if necessary.

    c. Local supplier content was important and possible. Our calculations showed that 50% local supplier content would probably add only 2% to the price and create about R68 billion in economic impact for South Africa.

    d. The likely capital expenditure ('Capex') required for the 1064 locomotives would be R38.6 billion over a 7-year period, including the costs of hedging in the business case on page 38 of Annexure D, and South African and US inflation included in the business case of US 2.2.% per annum, SA 5.2% per annum. Locomotive cost estimates were provided by Transnet freight Rail based on recent locomotive acquisitions combined with expert input from Advanced Railway Technologies. They estimated each diesel locomotive would cost around R25 million and each electric locomotive, around R34 million).

    e. Using likely efficiency improvements and projecting past volume performance at Transnet, we recommended that Transnet might only require the 1064 locomotives beyond the business case timeframe of seven years. This was because Transnet would still require to procure between 60-80 locomotives per annum to maintain its locomotive fleet.

    f. Detailed recommendations on procurement security and governance, given the size of the transaction. This included a secure data room with controlled access

    g. McKinsey did not propose any locomotive costs.

12. After completing the validation of the business case in April 2013, McKinsey tried to start up our team to prepare for the procurement execution phase of the project. However, Transnet did not provide McKinsey with access to Transnet Freight Rail's ('TFR') data, which was essential for McKinsey to support Transnet on this element of the project. Mr Singh committed over the course of the second half of 2013to resolve the matter with TFR CEO Siyabonga Gama, but remained unsuccessful.

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13. Transnet also experienced serious delays in the second half of 2013 in terms of the work it had committed to perform as part of this project and only completed their work by the end of 2013. In particular:
    1) The Transnet RFP for potential locomotive suppliers was delayed
    2) Transnet did not secure the necessary internal approvals within agreed timelines
    3) DPE and National Treasury approvals were not submitted in time
14. McKinsey was not involved in the Technical, Financial or B-BBEE assessment of bidders. McKinsey played no role in identifying, scoring/assessing or awarding bidders.
15. As a result of these delays, and because McKinsey was not given access to essential data, we were unable to progress to the next step of the project – procurement execution.
16. In January 2014, Transnet told us it wanted to complete the locomotive procurement process more rapidly than originally intended so revised the scope of work for the project. McKinsey expressed concern about the revised scope and timing. The delays and proposed shortened procurement timing meant that there were few negotiation levers left, given the time available to Transnet. We therefore felt that our value-add would be very limited.
17. McKinsey took the following actions:
    a. 31 January 2014 - we wrote to Anoj Singh, describing what we would require in order to complete the work in the revised timing. The note set out the specific information and access to key personnel we would require in order to meet the deadlines.
    b. 4 February 2014 - after one week of work, a pattern of delays and lack of response thereto, we wrote to Transnet to withdraw from the project. (Annexure D)
18. On 5 February 2014 it was agreed in a meeting between Mr Singh and Mr Sagar that McKinsey would transfer the remaining contract to Regiments. According to Mr Singh, Regiments was required to provide the financial advice required as per the 'transaction advisory' workstream in order to complete the locomotive procurement.
19. After McKinsey withdrew from the project, I am aware that Transnet signed a three-year locomotive acquisition contracts with four manufacturers, for 1064 locomotives at a total cost of around R54 billion (including contingencies) on 17 March 2014, which compares with the original R38.6 billion. When McKinsey asked Transnet about these changes, Mr. Singh said that Transnet had done new calculations based on funding costs, exchange rates and inflation and had come to the conclusion that it was better to secure the deal they did.
20. McKinsey had no involvement in advising Transnet in relation to the awarding of this tender nor on how the locomotive prices were determined after 4 February 2014
21. McKinsey had no involvement in the currency hedging and interest rate derivatives, which Regiments Capital advised Transnet to purchase and which are discussed in (the OCCRP article of date 03 Nov 2017 – https://www.occrp.org/en/28-ccwatch/cc-watch-indepth/7215-guptas-nedbank-skillfully-extract-money-from-south-african-state-firm)
22. McKinsey & Company was paid R8.4 million (excluding VAT) for its work on the Locomotive Business Case.

23. I have no knowledge of how the cost of the Locomotives Advisory Contract (RFP GSM/12/05/0447) increased to over R200 million as reported in the media (http://amabhungane.co.za/article/2016-09-16-xhow-to-eat-a-parastatal-like-transnet-chunk-by-r600m-chunk).

24. As mentioned above, projections of the commodity volumes Transnet would transport decreased in 2015. As a result, in 2016, McKinsey supported Transnet for six weeks to identify options for how Transnet might engage with the locomotives manufacturers so that the timing of locomotive deliveries was better aligned with the new projections and financial constraints.

25. McKinsey provided these options to Transnet but were not part of any of the discussions with the OEM's and any subsequent agreements.

REPORT 2(A) – PART G – EXHIBIT 17

multipurpose
business solutions

Transaction Advisor Analysis related to the advisory services and fees for the procurement of 1064 Diesel and Electric locomotives by Transnet

Draft Consultative Report

Prepared for MNS Attorneys

MNS
MNCEDISI NDLOVU & SEDUMEDI
ATTORNEYS

This report consists of 87 pages

February 2019

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1. Glossary

Asset-backed securities mean a **security** whose income payments and hence value are derived from and collateralized (or "**backed**") by a specified pool of underlying **assets**.

Basis point(s) (bps) means a percentage expressed in terms of units (1 basis point is 1/100th of 1%), e.g. 0.5% refers to 50 basis points.

Blended rate means the weighting average of the rates applicable to the total loan, as different spreads (margins) are applicable to different loan issues. The outcome is a blended rate that is applicable to the full loan.

Counterparty means the other party that participates in a financial transaction. Every transaction must have a counterparty in order for the transaction to succeed.

Currency swap, also known as a cross-currency swap is an over the counter transaction in which two parties exchange principal (capital portion of the loan) in different currencies.

Development finance institution (DFI) or development bank is a financial institution that provides risk capital for economic development projects. They are often established by governments or charitable institutions to provide funds to projects that would normally not be able to get funds from commercial lenders.

Export Credit Agency (ECA) means a financial institution that offers financing for companies in a country exporting assets. ECAs offer loans and guarantees to such companies to help remove the risk of uncertainty of exporting to other countries and also underwrite the political risks and commercial risks of overseas investments. In most instances, ECA funding is more cost effective than comparable funding.

Execution Agent means the intermediary that performs the task of trading a financial instrument in the market.

Global Medium-Term Note Programme (GMTN) means the issuance of senior and subordinated debt securities, which may be offered to investors via public or private placements.

JIBAR means the Johannesburg Interbank Average Rate (JIBAR), which is the money market rate used in South Africa. It is calculated as the average interest rate at which banks buy and sell money and can have different terms, such as 3 months, 6 months, etc.

LIBOR is the London interbank offered rate and is similar to JIBAR. It is the interest rate at which banks offer to lend funds (wholesale money) to one another in the international interbank market. LIBOR is a key benchmark rate that reflects how much it costs banks to borrow from each other.

Loan issuer means the institution willing to partake (loan the funds) in the transaction at a certain interest rate for a pre-determined duration.

Mark-to-market means a fair value determination results from official market data to calculate a daily profit or loss figure.

Knockout swaps means an interest rate swap with an additional feature of a knockout barrier. In other words, a knockout swap terminates periodically or permanently if a designated interest rate breaks

out above or below a stipulated benchmark for a given floating reference rate. A knockout swap has an embedded option to terminate the underlying transaction when it is favourable for a respective party to do so. In return, the other party has the advantage of paying a lower fixed rate on that swap.

Point value or PV01 is the present value of one basis point determined by changes in the daily market yield. The PV01 becomes smaller as the maturity of a bond or financial structure becomes shorter.

Tied loan facility means credit agreements where the borrowing base is tied to "eligible" assets that permit the borrowing of funding based on the liquidation value of assets on the balance sheet.

Vanilla [basic] Interest Rate Swap is a forward contract in which one stream of future interest payments is exchanged for another, based on a specific principle amount. Interest rate swaps usually involve the exchange of a floating interest rate to a fixed rate or *vice versa*, to reduce or increase exposure to fluctuation in interest rates or to obtain a marginally lower interest rate that would have been possible without the interest rate swap.

List of Abbreviations

BADC	Board Acquisition and Disposals Committee
bps	Basis Points
BER	Bureau for Economic Research
BESA	Bond Exchange of South Africa
CCS	Cross Currency Swap
CCDS	Contingent Credit Default Swap
CDB	China Development Bank
CNR	China North Rail
CSR	China South Rail
DFI	Development Finance Institution
DoA	Delegation of Authority and Approved Mandate
ECA	Export Credit Agency
IPS	Investment Policy Statement
FRMF	Financial Risk Management Framework
GCFO	Group Chief Financial Officer
GCE	Group Chief Executive
LDI	Liability Driven Investment
LOI	Letter of Intent
MSA	Master Services Agreement
NACS	Nominal Accrued Compounded semi-annually
NACQ	Nominal Accrued Compounded quarterly
NCD	Negotiable Certificate of Deposit
PFMA	Public Finance Management Act
RFP	Requests for Proposals
SDP	Supplier Development Partner
TSDBF	Transnet 2nd Defined Benefit Fund
TPPM	Transnet Procurement Procedures Manual

2. Terms of Reference and Introductory Notes

2.1 Multi-Purpose Business Solutions was instructed by MNS Attorneys to prepare an assessment of the nature and scope of transaction advisory services offered to Transnet as part of the 1064 Locomotive Procurement and funding project. The instruction entailed the following:

2.1.1 Perusal of hard copy documentation and soft copy information provided by MNS Attorneys, which included various memoranda signed and unsigned, Requests for Proposals (RFPs), proposal submissions and advisory services reports; and

2.1.2 Comment on the fees, structures and realism of assumptions adopted when executing the funding transactions, including the introduction of the swap transactions post funding.

2.2 For the purposes of the analysis presented herein, the financing of the Chinese locomotives refers to a USD 2.5 billion facility agreed between Transnet and the China Development Bank (CDB). The splitting of the facility into a USD 1.5 billion loan drawn down over time and a USD 1 billion facility. A R12 billion Club Loan relates to the USD 1 billion facility that was not drawn down.

2.3 There are two "Club Loans" for the purposes of interest rate swaps from floating to fixed; one for R12 billion (referred to as the "R12 billion Club Loan") and a further one to the value of R11.3 billion (with four parties being part of the structure). The latter does not relate to the funding of the 1064 Locomotive Procurement, but other Transnet debt.

2.4 The analysis prepared of the interest rate swaps implications for Transnet and the TSDBF, as the counterparty for the loans associated with EDBC-Investec , Libfin, OMSFIN and Standard Bank does not form part of the financing or trading of derivative instruments related to the 1064 Locomotive transaction.

2.5 Section 19 of the report is supplementary information provided to offer more context to the information analysed in the body of the report.

2.6 The report should be read with the Executive Summary prepared as a separate stand-alone document, but aligned with the report.

2.7 The findings are based on information and data available at the time of preparing the report. Care has been taken in the preparation of the analysis and discussion, but these could be amended if further information not at our disposal effects the outcomes of the analysis.

3. Allegations related to financing and hedging transactions for the CNR and CSR locomotives

3.1 The primary allegations against the transaction advisors and particular individuals within Transnet are detailed below.

3.1.1 Standard operating policies and procedures were flouted and the capacity and skills available within Transnet Treasury were underutilised or ignored in favour of external advisory services, which had no justification for certain funding transaction and derivatives executed in the market, except for the Contingent Credit Default Swap (CCDS);

3.1.2 Decisions taken aimed to self-enrich individuals within Transnet and various parties to and that participated in the execution of the financing transactions and subsequently, the execution of several derivative instruments;

3.1.3 Many of the funding and derivative decisions had no fundamental or technical basis and were certainly not taken in the best interest of or to the benefit of Transnet;

3.1.4 Fees paid for advisory services were excessive and significantly above market norms and standards, and could never be justified in terms of value for money or transparency to which Transnet must adhere to in terms of the Public Finance Management Act (PFMA).

3.1.5 A clear cover-up by certain parties forming part of the transactions occurred; there was no transparency and many of the decisions had limited or no justification. Decisions that were to result in short-term gain for certain individuals and companies have and will result in significant losses to Transnet over the long-term.

3.1.6 Deliberate mispricing of interest rate swaps resulted in larger spreads and excessive fees for the parties involved and thus added more profit to the bottom line of parties to the transactions, together with larger and extended losses for Transnet over time.

3.1.7 Persons implicated should be held responsible and liable for excessive fees and unwarranted advisory work, but also for a significant portion of the costs that bind

Transnet and cause significant losses related specifically to the CDB loan financing, together with the execution of derivative instruments that would be perceived to benefit Transnet, but resulted in short-term gain for the parties involved.

3.2 The allegations stated above are elaborated on in the following sections and are based on a comprehensive analysis of various decisions considered prudent to achieving an outcome that highlights matters that should be considered and pursued due to the practices engaged in and applied to various transactions.

3.3 The assessment focuses on transaction advisors, the nature of transactions and the outcomes, while relating the same to norms and standards in the market. The premise for the allegations is the advice linked to transaction advising activities and the execution thereof, together with the advisory and transaction fees aligned thereto, and are elaborated on in the following sections.

4. Defining the scope of the transaction advisory services

4.1 On 20 August 2012, Mr Anoj Singh (Transnet GCFO) submitted a memorandum to Mr Brian Molefe (Transnet GCE), motivating the appointment of Transaction Advisors for the 1064 Locomotive Tender. The memorandum was signed and accepted on 22 August 2012 **(Annex 15.1)**.

4.2 The memorandum recommended the appointment of the McKinsey Consortium to execute the complete advisory services. The McKinsey Consortium comprised McKinsey (35%), Procurement Partner (20%), Utho & Nedbank (10%) and Advanced Rail Technologies (15%).

4.2.1 In addition, Mr Weber Wentzel was appointed for the legal advisory work.

4.2.2 The value of the advisory services was estimated to be R50 million and included the following scope:

4.2.2.1 Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and the Department of Public Enterprises;

4.2.2.2 End-to-end requirements of the overall General Freight Programme;

4.2.2.3 Identifying value optimisation potential and technical optimisation options;

4.2.2.4 Setting up the tender process in line with all requirements applicable to State-Owned Enterprises;

4.2.2.5 Developing a shortlist of potential suppliers;

4.2.2.6 Developing the contracts for the Tender; and

4.2.2.7 Developing finance and funding options.

4.2.3 On 22 May 2013, the GCFO corresponded with McKinsey regarding a potential conflict of interest with Nedbank **(Annex 5)** and Mr PD Naidoo **(Annex 6)**.

4.2.4 On 19 October 2013, the GCFO confirmed the conflict of interest between McKinsey and Nedbank, who together were to provide funding options and deal structures for the 1064 Locomotive transaction. The GCFO recommended that Regiments Capital (Regiments) replace Nedbank in the McKinsey Consortium **(Annex 2)**.

4.2.5 On 16 April 2014, McKinsey ceded most of their rights and obligations to Regiments in respect of the Transaction Advisory services for the 1064 Locomotive transaction **(Annex 1)**. In addition, the GCFO signs a memorandum addressed to the GCE regarding the Transaction Advisory Services stating the following **(Annex 3)**:

4.2.6 Ratify the amendment for the re-allocation of the scope of work from McKinsey to Regiments;

4.2.7 Agree that Regiments replaces Nedbank;

4.2.8 Approve the amendment of the remuneration structure, which resulted in an additional fee of R78 million (excluded VAT);

4.2.9 Delegate the GCFO to make all decisions in this regard.

4.2.10 The memorandum was approved by the GCE on 17 April 2014.

4.2.11 Comparison of the Transnet agreements with McKinsey and Regiments (LOI vs MSA)

4.2.12 An agreement entered into between Transnet and McKinsey/Regiments resulted in a scope of work covered in the Third Addendum to the Letter of Intent (LOI) and the Second Addendum to the Master Services Agreement (MSA) regarding advisory services related to the funding and financing of 1064 locomotives **(Annex 37).**

4.2.13 A need exists to peruse, consider and assess the alignment of the two scopes of work related to advisory services for the financing of 1 064 locomotives. Since the individual tasks stated in the scopes of work presented in the LOI and MSA are not categorised, a level of categorisation was required to align the scopes that were adopted:

a) Funding plan and balance sheet implications;

b) Assessment of financing options;

c) Consideration and analysis of applicable funding and financing risks;

d) Ancillary tasks and activities related to the scopes and not included in (a) - (c); and

e) Supplementary tasks not specific to the funding and financing advisory services.

4.3 Funding plan and balance sheet implications

4.3.1 An assessment of items (d), (e.4) and (b) included in the LOI would form part of the funding plan (b) in the MSA. In other words, a funding plan is already provided for in the assessment of all the items and in particular, matching assets and liabilities (b.2) would be included in the tasks stated in the LOI.

4.3.2 The additional scope included in the MSA related to funding plan and balance sheet implications, refers to recommendation, advice and assistance post the successful conclusion of negotiations with [ICBC, Bank of China, China Construction Bank and Sinosure] on the following aspects: Amortization durations, Interest rates, Cross-currency swaps, Calculations and forecasts and Blended funding models.

4.3.3 These items (4.8.2) together with the scope included in the LOI, would be required as part of an assessment to consider and address the impact on the Transnet balance sheet (i.e. assets and liabilities). The assessment of the items stated in Section 4.8.2 are therefore considered during an assessment of the "impact" pre-negotiation (or pre-money) and post-negotiation (or post-money). This would be monitored on a post-negotiation basis through internal processes and standard operating procedures and not an outsourced basis.

4.3.4 Based on the premise adopted in Sections 4.8.1 through 4.8.3, the scopes stated in the LOI and MSA are essentially the same, but stated or crafted differently in the MSA.

4.4 Activities related to assessment of financing options

4.4.1 Consideration of the scopes related to financing options stated in the LOI and MSA indicate a complete fit, in other words, the scope of the LOI is duplicated in the MSA with the following task description, "Evaluation of all funding sources including US Exim, EDBC, Bond Issuance under Transnet's DMTN and GMTN Programme, China Development Bank (CDB), Sinosure and China Exim".

4.5 Activities related to an assessment of applicable risks

4.5.1 The LOI elaborates on several risk items that require consideration in the analysis of financing options. The MSA indicates what appears to be a consolidated scope of the items stated in the LOI with specific reference to the item, "Identification and management of all financial risks (including liquidity, interest rate, credit and currency risks)."

4.6 Ancillary activities related to the scopes

4.6.1 Assistance in negotiations is provided for in both the LOI and MSA. Items (h.3) in the LOI, "Participate in the fulfilment of conditions precedent required by the funders", and item b.5 and sub-items of the MSA, "Assist Transnet in negotiating with a number of potential Chinese sources of ZAR funding including: (b.5.1.) ICBC; (b.5.2.) Bank of China; (b.5.3.) China Construction Bank; (b.5.4.) Sinosure", are therefore duplicated in the MSA.

4.7 Non-overlapping tasks

4.7.1 The following tasks stated in the LOI (Addendum 3) do not overlap with any tasks stated in the MSA Scope:

(i) Determining the development and sustainability impact of the acquisition by:

(a) Conducting socio-economic impact studies.

(b) Determine the acquisition's impact on the environment.

(c) Examining the project's contribution to regional integration.

4.8 Salient pointers emanating from the analysis

4.8.1 The Second Addendum of the MSA is replicated from the Third Addendum of the LOI, but crafted to imply either an extension of the scope of the LOI or a totally revised scope of tasks stated in the LOI. Notwithstanding, the MSA implies the same work with specific reference to activities of funder engagement, risks assessment and financing processes (which are essentially all encompassing).

4.8.2 Various tasks, such as an assessment of risks and balance sheet implications, are considered after the fact and should have been conducted before any LOI was signed. This in turn would have negated the need for a further agreement in the form of the MSA and consequently, the duplication of the tasks covered in the LOI scope of work.

4.9 Allegations

4.9.1 Payments to Regiments for work related to both scopes stated in the LOI and MSA are unjustified and unwarranted. The scope of work in the LOI and the MSA are (with the exception of some items) the same, but crafted in a manner that the untrained eye would accept as being different. Regiments was paid on the basis of both the LOI and MSA, which implies excessive payment for no work related to the MSA, as this was covered by the LOI.

4.9.2 The fees paid to Regiments based on both the LOI and MSA, should be recouped and the person that approved both the LOI and MSA, should be held to account for permitting double payment for essentially the same work.

5. Financing of the 1064 Locomotives Transaction

5.1 On 17 March 2014, Transnet awarded the acquisition of 1064 locomotives to the following successful bidders:

5.1.1 China South Rail (CSR): 359 Electric locomotives for a value of R18.1 billion;

5.1.2 Bombardier Transport (BT): 240 Electric locomotives for a value of R13.0 billion;

5.1.3 China North Rail (CNR): 232 Diesel locomotives for a value of R9.9 billion; and

5.1.4 General Electric (GE): 233 Diesel locomotives for a value of R 8.4 billion.

5.2 The value of the deal amounted to R54.5 billion excluding VAT and inclusive of forward escalation, hedging costs and an allocation of R4.9 billion for contingencies.

5.3 This transaction had increased in value from the bid value of R38.6 billion at the bidding stage to R54.5 billion **(Annex 38)**.

5.4 A debt requirement for R28.0 billion (USD 2.5 billion) at an exchange rate of R11.20 was required to fund the Chinese locomotives produced by the CNR and CSR and funding therefore would be sourced from and funded by the Chinese Development Bank (CDB).

5.5 BT and GE were financed through the Export Development Bank Canada (EDBC) and US Exim loans, respectively.

5.6 The CDB loan was approved by the Transnet Board of Directors (Board) in August 2014 for a facility of USD 2.5 billion.

5.7 On 28 April 2015, Mr Siyabonga Gama (Acting GCE) submitted a memorandum to the Board Acquisition and Disposals Committee (BADC) requesting the appointment of JP Morgan and Regiments Capital as the Supplier Development Partner of JP Morgan to conclude the CDB loan **(Annex 4)**.

5.7.1 The appointment was confined;

5.7.2 JP Morgan would lead and underwrite the equivalent syndicated ZAR loan;

5.7.3 JP Morgan would hedge the financial risk of the CDB loan at each drawdown;

5.7.4 Approve the extension of the Transaction Advisory contract for Regiments from R99.5 million to R265.5 million for amongst other items, the advice taken to utilize only USD 1.5 billion of the CDB loan and blend that with a ZAR equivalent syndicated loan of USD 1.0 billion (which became known as the "R12 billion Club Loan"). Both loans were sourced on a floating rate basis.

5.8 On 27 August 2015, Mr Eric Wood from Regiments and Mr Phetolo Ramosebudi (Transnet Group Treasurer) agreed to conclude the R12 Billion Club Loan **(Annex 15)**.

5.9 The syndicated Club Loan of R 12 billion comprised the following parties:

a) Nedbank: R3.0 billion

b) Bank of China: R3.0 billion

c) ABSA: R3.0 billion

d) OMSFIN: R1.0 billion

e) Future Growth: R1.5 billion

5.10 A schematic illustration of the approved USD 2.5 billion facility and the splitting of the loan into the USD 1.5 billion and a USD 1 billion facility with the associated parties, is indicated in Figure 1.

5.11 Figure 1 indicates that for the CDB loan of USD 1.5 billion (as an example), Transnet would receive a LIBOR plus 257 basis points and would pay JIBAR plus 371 to 436 bps for the cross-currency swaps.

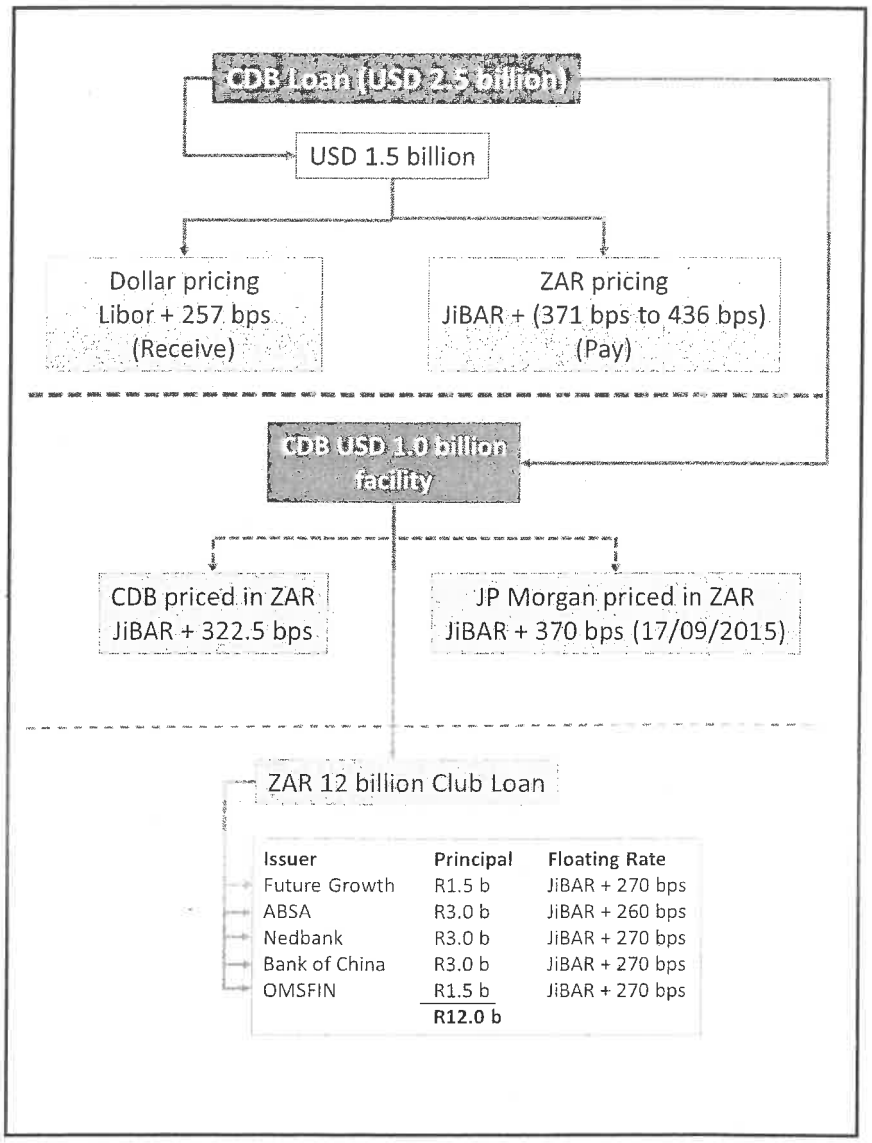

Figure 1: The structure of loans acquired for the financing of the 1 064 locomotives

Note: The payment leg of the cross currency swap to date has cost Transnet between 371 and 436 basis points and could be referred to as the high and low margins applicable to drawdowns of the CDB loan to date

Source: Various & Swap Position Report dated 1/11/2018

5.12 The *funding* for the CNR and CSR locomotives entailed an amount of USD 2.5 billion, which was subdivided into a USD 1.5 billion drawdown and a USD 1.0 billion facility, with the latter essentially an option to extend the funding to the full amount of USD 2.5 billion.

5.13 The context of the ZAR swap Rand leg rate (i.e. 3mJIBAR plus between 371 bps and 436 bps) is drawn from the Transnet Treasury Swap Position Report as at 1 November 2018 and

represents the range of margins obtain in the market with reference to the 39 drawdowns to date **(Annex 39)**. The LIBOR rate plus 257 bps was fixed for the term of the drawdowns. The all-in rate over the period of the drawdowns to date (as at 1 November 2018), ranged between 10.48% (the rate of the first drawdown) and 11.54%.

5.14 On 7 September 2015, Regiments provided Mr Phetolo Ramosebudi the Nedbank Term Facility Agreement **(Annex 10)**. On 11 September 2014, Mr Ramosebudi forwarded this email to Daniel Roy at Trillian Asset Management (Trillian) **(Annex 14)**.

5.15 On 17 September 2015, the Acting GCE (Mr Siyabonga Gama) submitted a signed memorandum to the BADC requesting the appointment of Trillian as the lead manager for the Club Loan **(Annex 8)**.

5.16 On 22 September 2015, the recommendation to replace JP Morgan with Trillian was submitted to the GCE.

5.17 The appointment was approved by the BADC on 1 October 2015.

5.18 On 18 November 2015, the Club Loan facility agreement was signed by Mr Daniel Roy from Trillian, Mr Siyabonga Gama (Acting GCE) and Mr Gary Pita (Acting GCFO) **(Annex 9)**.

6. Risk management instruments related to the transactions

6.1 Alignment between the funding and risk management

6.1.1 According to the Transnet Group Treasurer (Mr Phetolo Ramosebudi), the volatility associated with the Rand as a free-floating currency and the country's status as an emerging market (by definition more risky than developed economies), necessitated the need to mitigate risk by introducing derivative instruments that cover the term of the loans. This creates a greater level of certainty for budgeting and balance sheet risk assessment purposes. In terms hereof, several hedging strategies to mitigate the risk were introduced and related specifically to currency, credit default and interest rate fluctuations.

6.1.2 Nature and scope of derivative instruments applied

6.1.2.1 The scope of the hedging transactions used to mitigate risk associated with the CDB Loan and the R12 billion Club Loan is illustrated in Figure 2.

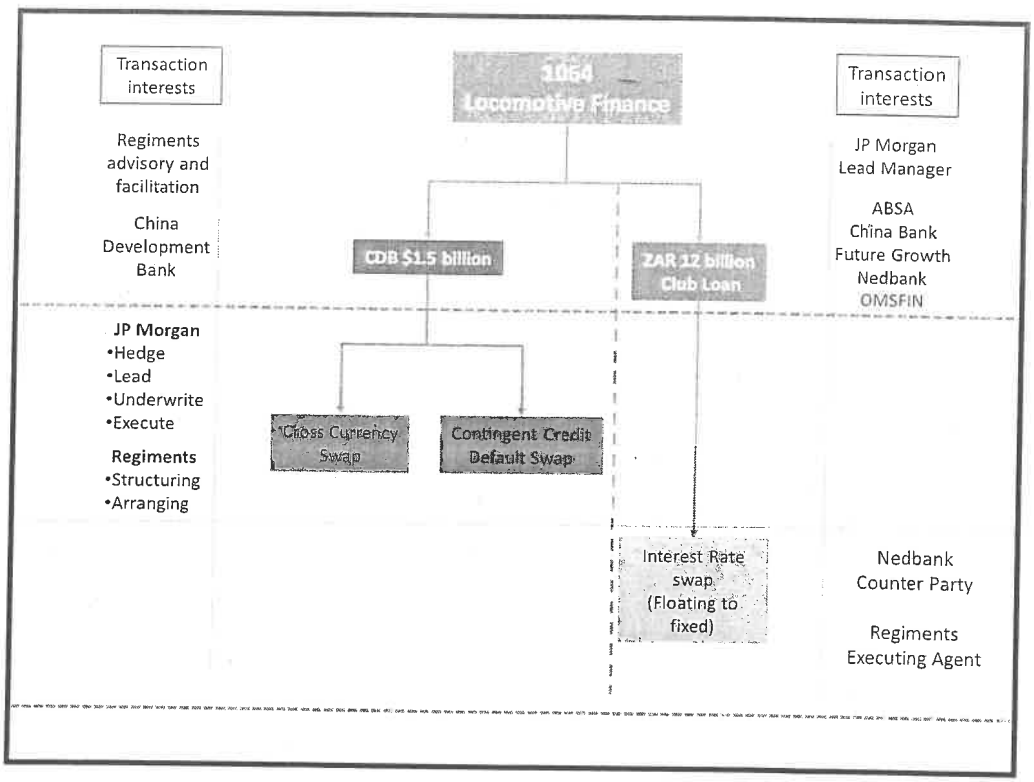

Figure 2: Transaction interests aligned with the CDB and R12 billion Club Loan

6.1.2.2 Figure 2 indicates that three types of hedging instruments were used to mitigate risks associated with the currency (converting USD to ZAR and *vice versa*), potential to default on, for instance, interest payments, and risks associated with fluctuating interest rates. Each of the hedging instruments are discussed below and related to the two loans.

7. Transnet Specialist Units

7.1 Up until 30 April 2017, the Transnet Treasury Dealing Room team comprised of four Traders and a Market Analyst. The Transnet Treasury Dealing team members have a combined experience of almost a hundred years in the local, Money, Capital and Forex Markets. This includes Banking as well as Corporate Treasury experience. The Transnet Treasury Dealing Room team qualifications include HonsBSc (Applied Mathematics), MCom (Economics), BSc (Mathematical Sciences), CFA, HonsBCom (Economics) and HonsBCom (Investment Management). These dealers have priced and transacted a vast number of different spot and derivative transactions in all markets in the past. The track record is sound and all the transactions are accounted for and can be retrieved, and margins can be compared as proof of the success and especially the financial value that this function has added to Transnet.

7.2 During 2014, Transnet had a funding team that had three highly experienced Funding Managers and an Analyst. Between them, they have cumulative experience in excess of 50 in fund raising in most capital markets.

7.3 Transnet's Treasury was rated as one of the best in the world by Mckinsey in a 2010 Survey (refer to Section 9.8). Transnet Treasury Team had all the ability, skills, qualifications and experience to raise debt and execute financial transactions in most markets.

7.4 On 1 March 2015, Mr Phetolo Ramosebudi became the Group Head of Treasury **(Annex 40)** and since his appointment, the skills and capability within Transnet Treasury and related departments appears to have been deliberately watered down to the extent that the persons that would execute tasks, were excluded from the transactions or where instructed without the necessary rigour of analysis and confirmation. This approach was the basis adopted for many of the transactions detailed in this report.

7.5 There was no need for Transnet to engage Transaction Advisors for funding, nor to advise and execute financial instruments, except for the Contingent Credit Default Swap (CCDS), which was a complex transaction arranged, structured and executed by JP Morgan.

8. Alignment between the realised total execution cost and the execution cost that the Transnet Dealing Room could have achieved

8.1 If one accepts that trades are not executed without the payment of a fee, an analysis was prepared to ascertain the net difference in terms of two adopted approaches:

8.1.1 Payment of market-related fees for execution of interest swap transactions; and

8.1.2 Transnet Dealing Room doing the trade at 30 bps using the blended mid-market rates quoted by Bloomberg on the day the trades were executed.

8.2 The findings related to the assertion that the Transnet Dealing Room could also execute the transaction at a cheaper price, is provided in Tables 1 and 2.

Table 1: Data applicable to the swaps with Nedbank as counterparty for both tranches of the R12 billion Club Loan

Issuer	Loan amount (R' billion)	Execution date	PV01	Blended mid-rate	Fixed	Basis-point difference
			1	2	3	4
ABSA	1.5	4 December 2015	R866 457	11.156	11.83	67.4
Bank of China	1.5	4 December 2015	R972 302	11.156	11.83	67.4
Old Mutual	0.5	4 December 2015	R326 601	11.156	11.83	67.4
Future Growth	0.5	4 December 2015	R326 601	11.156	11.83	67.4
Nedbank	0.5	4 December 2015	R326 601	11.156	11.83	67.4

Issuer	Loan amount (R' billion)	Execution date	PV01	Blended mid-rate	Fixed	Basis-point difference
			1	2	3	4
ABSA	1.5	7 March 2016	R833 676	11.444	12.27	82.6
Bank of China	1.5	7 March 2016	R939 364	11.444	12.27	82.6
Old Mutual	1.0	7 March 2016	R631 503	11.444	12.27	82.6
Future Growth	1.0	7 March 2016	R631 503	11.444	12.27	82.6
Nedbank	2.5	7 March 2016	R1 578 758	11.444	12.27	82.6

Source: Bloomberg and own calculations

Table 2: Calculation of execution costs and fees applicable to ZAR 12 billion Club Loan interest rate swaps utilising the Transnet Dealer Room

Issuer	Execution date	PV01	Total execution cost including the Regiments fee of 20 bps	Transnet Dealer Room (30 bps)	Excess cost utilising Regiments
			(5)	8= 30bps x (1)	9= (5) – (8)
ABSA	4 December 2015	R866 457	R 58 399 202	R 25 993 710	R 32 405 492
Bank of China	4 December 2015	R972 302	R 65 533 155	R 29 169 060	R 36 364 095
Old Mutual	4 December 2015	R326 601	R 22 012 907	R 9 798 030	R 12 214 877
Future Growth	4 December 2015	R326 601	R 22 012 907	R 9 798 030	R 12 214 877
Nedbank	4 December 2015	R326 601	R 22 012 907	R 9 798 030	R 12 214 877
ABSA	7 March 2016	R833 676	R 68 861 638	R 25 010 280	R 43 851 358
Bank of China	7 March 2016	R939 364	R 77 591 466	R 28 180 920	R 49 410 546
Old Mutual	7 March 2016	R631 503	R 52 162 148	R 18 945 090	R 33 217 058
Future Growth	7 March 2016	R631 503	R 52 162 148	R 18 945 090	R 33 217 058
Nedbank	7 March 2016	R1 578 758	R 130 405 411	R 47 362 740	R 83 042 671
Total		**R7 433 365**	**R571 153 864**	**R223 000 967**	**R348 152 897**

Source: Bloomberg and own calculations

8.3 Discussions with the Transnet Dealing Room staff indicate that they have and at the time had the capacity and skill to execute the interest rate swap transactions. The hypothetical execution fee of 30 bps used as a premise is conservative, as this could even be lower. If the execution cost incurred by utilising the Transnet Dealing Room is subtracted from the total realised execution fee (including the fee paid to Regiments for the execution of the transaction), it would result in a saving of R348.2 million. As there was no reason to doubt the capacity and skills of the traders (refer to Section 7.1 and 7.2), the over-payment of fees for the execution of the swap transactions cannot be justified and is therefore also irregular and unwarranted.

8.4 From an efficiency and cost perspective, Transnet should have utilised its Specialist Units internal departments for the most efficient outcome and to save costs.

9. R12 billion Club Loan funding

9.1 In addition to the CDB loan, a second loan denominated in South African Rand ("ZAR") and referred to as the R12 billion Club Loan, was sourced for an amount of R12 billion; several of the loan issues had different maturity dates and face values (refer to Annexure B of memorandum prepared by Mr Mohammed Mahomedy) **(Annex 41)**. Commitments were received from Nedbank, Bank of China, ABSA, OMSFIN and Future Growth. The funds displayed a mix of sources as illustrated in Figure 1.

9.2 A RFP issued to lead arrange the R12 billion Club Loan was issued on 6 May 2015 with a closing date of 8 May 2015 **(Annex 29.1)**. JP Morgan submitted a proposal by the closing date and the appointment was confirmed on 12 May 2015 to lead arrange and underwrite the R12 billion Club Loan **(Annex 29.2)**.

9.3 JP Morgan would be paid R24 million for the lead arranging per the proposal dated 8 May 2015 and confirmed on 12 May 2015 by the then GCFO **(Annex 29.1 & 29.2)**. This fee is 241.67% less than the fee claimed by Trillian, who replaced JP Morgan on 1 October 2015.

9.4 A raising fee of 20 bps was indicated by JP Morgan in their proposal dated 8 May 2015 **(Annex 29.3)** to lead arrange the loan. A fee of 50 bps or even less would have been applicable using industry norms for the nature and size of the loans and applied to the notional value of the loan.

9.5 The risk of not obtaining financing for the locomotives was significantly diminished due to the nature and scope of the transaction and the standing of Transnet in the international banking community. The arranging fees (or debt origination fee as stated) should therefore be significantly lower. This assertion further relates to the fact that sufficient capacity and skills were available within Transnet to attend to the transaction (refer to Section 7.2 and 7.3). This was confirmed by the former Group Treasurer (Ms Mathane Makgatho) at the time and other staff within Transnet Treasury. It was clear from our analysis and discussions with former and current Transnet Treasury staff that sufficient professionals were available in a total Treasury staff compliment of approximately 35 persons to address all the matters related to the CDB Loan.

9.6 It was further understood that sufficient funding and credit lines were available to Transnet to do large-scale funding of prospective asset purchases. According to Ms Mathane Makgatho, Transnet had commercial paper and bond funding programmes available at seven days' notice and at any given time, R13 billion of bank facilities at 24 hours' notice, which include a contingency overdraft facility of R4 005 million with Standard Bank and other sources **(Annex 42)**. The funding of the Chinese locomotives could be obtained from various sources at more favourable rates (see below), with the USA funding in the form of a guarantee being the least expensive at the time. The market was susceptible to the size of the loan being required and structuring of the transaction was available (e.g. a grace period before repayments start). This would reduce the spread or margin.

9.7 According to a presentation by Transnet to CDB representatives in July 2014, Transnet could obtain the following spreads based on the 3m JIBAR from various funders at the time **(Annex 43)**:

LIBFIN:	175 bps (concluded)
EDBC:	200 bps (willing to provide ZAR funding)
ADB:	230 bps (willing to provide ZAR funding)
US Exim:	155 bps (willing to provide ZAR supported funding in the form of guarantees being an ECA)
CDB:	430 bps (translates to LIBOR + 275)

9.8 It is clear that Transnet was a premier client in the market and thus received preferential rates. The assertion is also considered in the context that the Transnet Group Treasury was rated in the top 10 Treasuries worldwide in a 2013 Global Survey by McKinsey. It is therefore unjustifiable why CDB with a spread between 200 bps and 275 bps (i.e. between the highest and lowest margins stated above) would be selected to provide the funding for the Chinese locomotives. The fees were out of line with market norms at the time and it was apparent that 3mJIBAR funding plus 260 bps could be sourced, while fair value at the time was approximately 3mJIBAR plus 210 bps **(Annex 42)**.

9.9 Structured Finance and the other departments within Group Treasury were apparently not consulted in the discussions and approval of the CDB facility or the agreed rates. It is unclear in terms of standard operating procedures, how such a transaction would fit with the lines of

authority and delegation. Notwithstanding, given the nature and size of the loan facility, the Executive (the GCE and GCFO) would reasonably have consulted with the Group Treasury team. This apparently did not happen and due to the appointment of Regiments as the transaction advisor and lead negotiator through a parallel process, the decision was taken at an Executive level that ignored any formal input from the Group Treasury team and Structured Finance.

9.10 The actual fee payable to Regiments as Transaction Advisers was R99.5 million. This accrued prior to the lead manager and debt origination work for the CDB loan. The R99.5 million fee translates into an additional 88 bps (0.88%) calculated on the notional value of the loan, or 10 bps calculated on the yield to maturity **(Annex 7)**.

9.11 It is also strange that the success fee is based on the total loan amount over 15 years, including principal and interest, alternatively stated as the yield to maturity. Success fees, which translate into the arranging fee, are applicable per norms and market standards and are based on the face value or notional value of the loan. This approach to calculate the fees based on the total loan cannot be condoned, is unjustifiable and unwarranted.

9.12 Furthermore, it appears that no performance agreement was signed that addressed this matter and that could justify a payment based on a saving generated through benchmarking, while there is also no legal basis for this payment as JP Morgan were appointed to lead arrange and hedge financial risks from interest rates to currency. The justification for the payment relates to a Memorandum dated 22 September 2015 that recommended the payment to Trillian and that was signed by the Acting GCEO, Acting GCFO, Acting Group Supply Chain Officer and prepared by the Group Treasurer **(Annex 30)**. This attempted to legitimise how the amount was determined, but still does not provide the legal basis for the payment.

10. CDB Loan Funding

10.1 The CDB Loan facility for USD 2.5 billion was approved by the Transnet Board in August 2014. Regiments advised Transnet to commit to USD 1.5 billion with the remaining USD 1.0 billion being optional and available. The CDB loan was agreed on the basis that it would fund the acquisition of locomotives from CSR and CNR through the 1064 Locomotive transaction.

10.2 The CDB provided export credits in the form of direct loans to CNR and CSR as two of four preferred bidders for the provision of a portion of the 1064 locomotives to Transnet. Since these Chinese companies are suppling Chinese manufactured products and would be conducting business in South Africa (a foreign country), the funding from the CDB as a development finance institution (DFI) underpins the role of an Export Credit Agency (ECA).

10.3 The rationale for the use of ECA funding options is that the cost of funding is normally cheaper than conventional commercial banking institutions as it essentially entails a Transnet-to-country arrangement.

10.4 However, the CDB pricing is based on the probability of credit default by Transnet and the sovereign rating of South Africa, which increases the probability that the funding could be more expensive when compared to sourcing the same locally. A credit rating above investment grade for South Africa existed at the time that would enable and facilitate negotiations for cheaper funding. The pricing is therefore quoted in accordance with international benchmarks.

10.5 It became apparent after discussions with the former Group Treasurer (Ms Mathane Makgatho) that the pricing of the CDB loan was not in line with other asset-backed facilities offered by DFIs **(Annex 43)**. The latter is aligned to a decision by Transnet to diversify its funding sources to include ECA's and DFI's in its funding portfolio and thereby increase the maturity profile of the debt portfolio and achieve cost-effective funding.

10.6 The CDB facility is tied to procurement from China and would therefore imply supporting the funding of the CNR and CSR locomotive contracts, where the terms and conditions should mirror that of tied facilities as well as asset-backed facilities. These types of facilities should translate into cost-effective funds where the pricing should be comparable to local funds, together with less stringent terms and conditions **(Annex 42)**.

10.7 The pricing of a global bond is transparent and in line with other international bond issuance of similar rated entities. A lack of transparency and adequate benchmarking is symptomatic of creating deliberate positions that would not be in the interest of Transnet over the long-term and would likely result in additional costs and/or losses **(Annex 42)**.

10.8 Fees Paid to Regiments

10.8.1 The letter from Regiment's CEO dated 15 July 2015 **(Annex 31)**, further creates the inference that "*The* total *contingency fee paid to Regiments amounted to R166 million*" [it appears that this letter was written to justify the payment after the fact] of which R152 756 408 was related to the role of lead manager and debt originator. The total fee paid for this part of the work was R252.3 million (R99.5 million as part of transaction advising services plus R152.8 million (rounded) or 235 bps related to the USD 1.5 billion CDB Loan). This is the same work for which JP Morgan were appointed through a confinement on 28 April 2015 and approved by the GCE **(Annex 44)**.

10.8.2 A further justification for the payment of fees to Regiments is based on what is termed by Regiments (Trillian) as a saving on the "restructuring" or splitting of the USD 2.5 billion with more favourable interest rates, for which a fee was due and payable. The work related hereto and comparative assessment of the debt origination, by definition, formed part of the work for which Regiments were paid transaction advising fees of R99.5 million **(Annex 45)**. The work to assess the best option of either drawing down on the USD 1 billion facility (that formed part of the USD 2.5 billion arranged with CDB) or securing a R12 billion loan, would form part of the analysis related to the original transaction advisory services where Regiments replaced Nedbank.

10.8.3 Trillian Asset Management (of which Mr Salim Essa is a 60% shareholder) was paid 10% of a "saving" that related to an amount of R820 million, which essentially comprised two "savings". The first saving of R418 million was associated with the equivalent USD funding from CDB and the second with R796 million on equivalent USD funding from JP Morgan, both in respect of the R12 billion Club Loan **(Annex 30)**. The issuers (providers of the funds) of the Club Loan are all South African registered entities, except for the Bank of China, and would provide the funding in Rand for which

no conversion or risk hedging in terms of cross-currency swaps was required. The fee payable was recommended on 22 September 2015 by the acting GCFO and acting GCEO with a further endorsement by Acting Group Chief Supply Chain Officer (Mr Edward Thomas). The Memorandum dated 22 September 2015 from the Acting GCEO addressed to BADC, was prepared by Mr Phetolo Ramosebudi **(Annex 30).**

10.8.4 It is unclear why a "success fee" is due for work that entails advisory services. The comparison of rates related to USD-denominated funding appears to be a theoretical exercise and demonstration of a saving that would have been considered as part of the fees paid to Regiments prior to the debt origination stage for which they obtained transaction advisory fees. This benchmarking exercise does not warrant and justify any payment for the said work as the benchmarking initiative was used to justify a payment. There could thus be no justification for the payment of R82 million to Trillian for work, irrespective if the work was done by Regiments.

10.8.5 The payment is further inflated (i.e. more than doubled) by claiming two savings from an assessment of different funders, i.e. CDB and JP Morgan. The funds paid should be recouped with interest, as the basis for the payment is advice given by Regiments and not by Trillian as part of the splitting of the CDB Loan. It does not justify a success fee as the information was already known at the time and formed part of transaction advisory services for which payment was made.

10.8.6 On 17 September 2015 **(Annex 8),** the GCE submitted a signed memorandum to the BADC requesting the appointment of Trillian as the lead manager on the R12 billion Club Loan that emanated from the USD 1 billion portion of the CDB facility.

10.8.7 The transaction advisory fee for the lead manager and debt origination was unjustifiably paid to Regiments, given an applicable spread of between 20 bps and 50 bps based on a notional Rand value of the loan, i.e. R18 billion used by Mr Eric Wood in his calculation of the fee.

10.8.8 The actual payment of R99.5 million for transaction advising fees represented 88 bps (0.88%) calculated on the notional value of the USD 1.5 billion, or 10 bps calculated on the yield to maturity. For this part of the advisory work, a total of 235 bps (85 bps

– (R152 756 408/R18 billion) + 88 bps) = 171 bps was paid to Regiments based on the notional value of the loan, or 25 bps (15 bps +10 bps) on the yield to maturity (which was R101 837 605 333).

10.8.9 The yield to maturity used as the basis for the calculation of the advisory fee, which was knowingly and unjustifiably adopted by Regiments to obtain a significantly higher fee, is not within any market norms or standards.

10.8.10 The payment of R82 million is unjustifiable and has no basis as the fee would have been paid by Transnet as part of the R99.5 million advisory services fee charged by Regiments on a so-called "success fee" basis. The fee of R82 million should be returned by Trillian Asset Management and the Transnet officials that approved the same should be held accountable for the irregular expenditure.

10.9 GCFO Accountability

10.9.1 The GCFO did not question the exorbitant fee or ask for any benchmarking, and merely signed off the fees.

10.9.2 Transnet should recoup a minimum of the fee stated above together with interest from the date when the invoice was paid.

10.9.3 The GCFO should also be held accountable for firstly agreeing to a fee that is neither market-related nor offers value for money, and secondly for authorising the payment. Regiments and the GCFO should be held jointly and severally liable for the repayment of the fees together with interest.

10.9.4 Group Treasury departments such as Funding were not consulted in the discussions and approval of the CDB Loan facility or the floating interest rate agreed between the parties, and any attempt by Funding to provide input was considered by the Executive as ill advised. The instruction in terms of having the delegated authority and the decision to proceed with the CDB transaction, came from the GCEO and GCFO - assumedly in consultation with Regiments as the Transaction Advisor and lead negotiator for the CDB Loan.

11. "Fixed Rate" Strategy

11.1 Transnet adopted a "fixed rate" strategy, but it is unclear who mandated the adoption of the strategy or what the basis for its implementation was.

11.2 However, given the financial implications, approval at a level that permits transactions of this size, should have been with the Group Treasurer recommending the transaction and the GCFO approving the same (refer to Section 17.4).

11.3 Interest rate swaps

11.3.1 Typical parties in the transaction to effect an interest rate swap are the Loan issuer(s), Principal (in this case Transnet), a counterparty and an execution agent. The TSDBF swap transaction is used as an example.

a) **Loan issuer**: ECBD-Investec, OMSFIN, Standard Bank and Libfin (the institutions willing to partake in the transaction for a certain interest rate)

b) **Counterparty**: Transnet Second Defined Pension Fund (TSDBF) or Nedbank serves as the counterparty party to the interest rate swaps as an over the counter transaction and accepts the risk.

c) **Execution Agent/Broker**: Regiments Capital

11.3.2 Section 7.1 clearly indicates that sufficient capacity and skill was available within the Transnet Dealing Room to execute the swaps. Hence, it was unnecessary and ill advised to appoint external advisers to trade the swaps. The statement should also be read together with Section 17.1 and 17.2).

11.3.3 **Vanilla [basic] Interest Rate Swap** is a forward contract in which one stream of future interest payments is exchanged for another, based on a specific principle amount. Interest rate swaps usually involve the exchange of a floating interest rate to a fixed rate or *vice versa*, to reduce or increase exposure to fluctuation in interest rates or to obtain a marginally lower interest rate that would have been possible without the interest rate swap.

11.3.4 The swap is executed to remove risk by shifting the risk to a counterparty by swapping a floating or variable interest rate that fluctuates in accordance with monetary policy decisions, to fixed interest rate over the term of the loan or *vice versa*.

11.3.5 The argument put forward by the Transnet Group Treasurer was that short-term interest rates were forecasted to increase. However, it appears that this was a two-year view in 2016 and 2017 and was based on forecasts available from the Bureau for Economic Research, Stellenbosch University.

11.4 The floating to fixed rate structure of the Transnet debt book stood at a ratio of 45% : 55% and was changed to 20% : 80% (This restructuring of the debt is stated in a memorandum of 25 August 2014, which cannot be retrieved).

11.5 There could be no justification for the execution of the extreme change to the floating to fixed rate strategy in the manner considered and ultimately executed, while the argument is baseless as can be concluded from the analysis below.

11.5.1 The strategy adopted assumes an environment of higher interest rates over a period of 15 years - the tenor of the loans, with quarterly swaps.

11.5.2 It is not possible to predict interest rates so far into the future and adopting an extreme adjustment to the structure from floating to fixed interest rates as seen above, is irresponsible and unfounded, especially when conferring a likely losses on Transnet.

11.5.3 At best, a phased approach in small increments would have been prudent based on evolving market conditions.

11.5.4 It appears that the decision to fix the interest rates of the loans is based on short-term interest rate fluctuations that do not support the interest rate curve; even the curve utilised by Mr Eric Wood for the calculation of the Regiments fee does not suggest extreme movements in short-term interest rates **(Annex 46)**.

11.5.5 The Transnet Group Treasurer assumed that a steep yield curve (see Figure 3 below) would be the future trajectory of long-term interest rates (aligned with a fixing

strategy), while no indication to date and even at the time alludes to the likelihood of such dramatic upward movements in interest rates.

11.5.6 It was therefore irresponsible to fix a large portion of the debt at the time and amend the debt structure from floating to fixed in a manner that had no underlying basis.

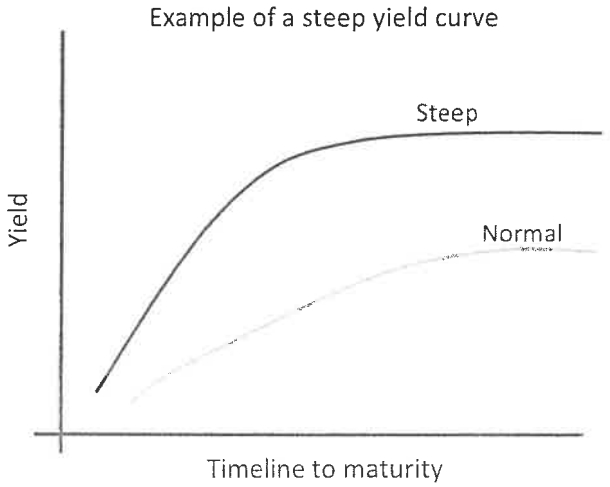

Figure 3: Illustration of normal and steep yield curves

11.5.6.1 Figure 4 illustrates the South African Long Bond over a period of 10 years. It is clear that the Long Bond rate over this period has moved within a range of between 6.2% and 10.3%.

11.5.6.2 The fixed rates applicable to the execution of the interest rate swaps is between 11.15% and 12.27%, which is between 100 bps and 200 bps more than the highest point of the Long bond rates over the past 10 years.

11.5.6.3 If an analysis was conducted of long-term rates and aligned with short-term interest rates, such as the 3m JIBAR and even the 6m JIBAR, it would have been clear that there was no need to fix interest rates at the levels that these swaps were executed.

11.5.7 The strategy of fixing rates at the levels executed would be very beneficial to the counterparty and the Execution Agent/Broker, as there was limited risk that rates would achieve or reach those levels unless a substantial financial crises would confront South Africa and the Rand would weaken to levels that would necessitate a significant and swift increase in short-term interest rates.

11.5.8 Once again, the rational for such a strategy is baseless and those persons that approved the strategy and mandated the transactions should be held to account for a significant portion of the losses.

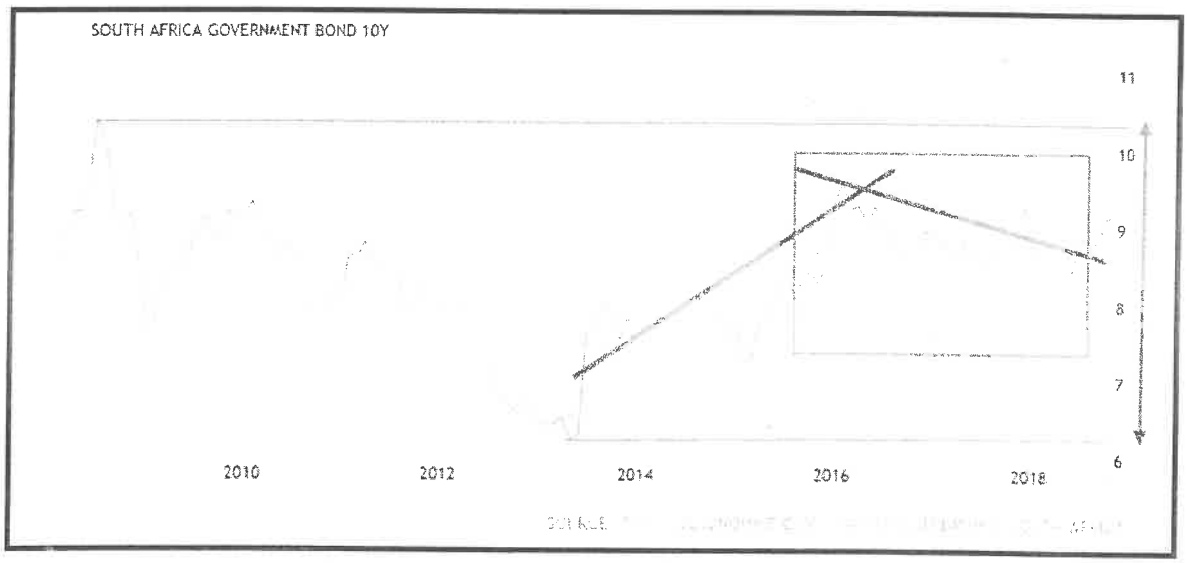

Figure 4: An illustration of the yield on RSA 10-year government bond with trend lines from 2016 when the swap transactions were executed

11.5.9 It is also very clear from Figure 4 that a downward trend emerged after the swap transactions were concluded. The applicable portion of the curve is indicated by the block inserted on the graph and reflects the short-term movements in yields that spiked, but retained a more sustainable downward pattern thereafter, indicating confidence in economic fundamentals and stability. This is further evidence that the transactions were executed quickly without being cognisant of the implications of emerging interest rate trends. It is also clear that the strategy adopted would result in additional cost of financing that Transnet could/would incur and the benefit thereof

would be for the counterparty (Nedbank and the TSDBF) and Regiments executing the swaps.

11.6 Further research provides the basis for the irrational decisions made to fix the interest rates of the *Club Loan*.

11.6.1 The illustration in Figure 5 plots the 3mJIBAR against the 6mJIBAR for the period February 1999 to October 2018, with a linear trend line fitted to each of the line graphs. If the premise was for short-term interest rates to rise, it is clearly not evident from the illustration of the 3mJIBAR.

11.6.2 The average spread between the 3mJIBAR and 6mJIBAR is 26 bps in favour of the 6mJIBAR rate. This alludes to a positive or normal long-term yield curve, which therefore does not justify the fixing of interest rates on the Club Loan in the manner it was applied.

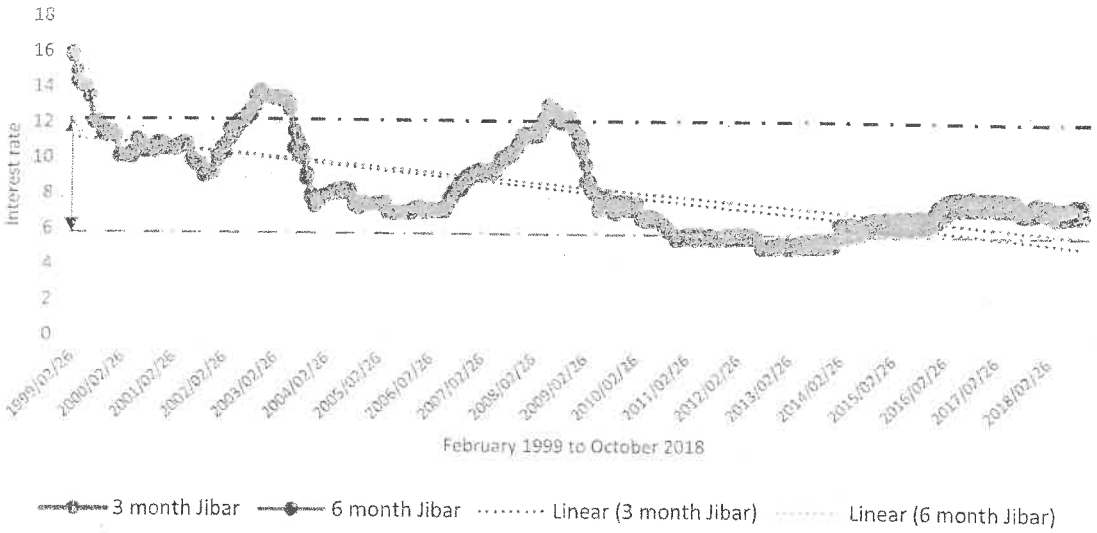

Figure 5: Illustration of the 3m JIBAR and 6m JIBAR over the period February 1999 to October 2018 with a linear trend line and its associated upper and lower bounds

Source: Bloomberg and own calculations

11.7 A further analysis to underpin the unwarranted decision to fix interest rates in the manner applied, which appears more than ever was promoted by a strategy to enable certain parties

to the transaction to benefit financially, is illustrated in *Figure* 6 and indicates the 3m NCD (Negotiable Certificate of Deposit) rate that is closely aligned to the 3m JIBAR rate.

11.7.1 The reason for the use of the 3m NCD rate is that the BER does not forecast the 3mJIBAR, which is indicative of the inability to actually forecast interest rates, especially over the long-term. The 3m NCD rate is plotted against the 10-year government bond yield on an annual basis with a five-year forecasts for the period 2018 to 2023.

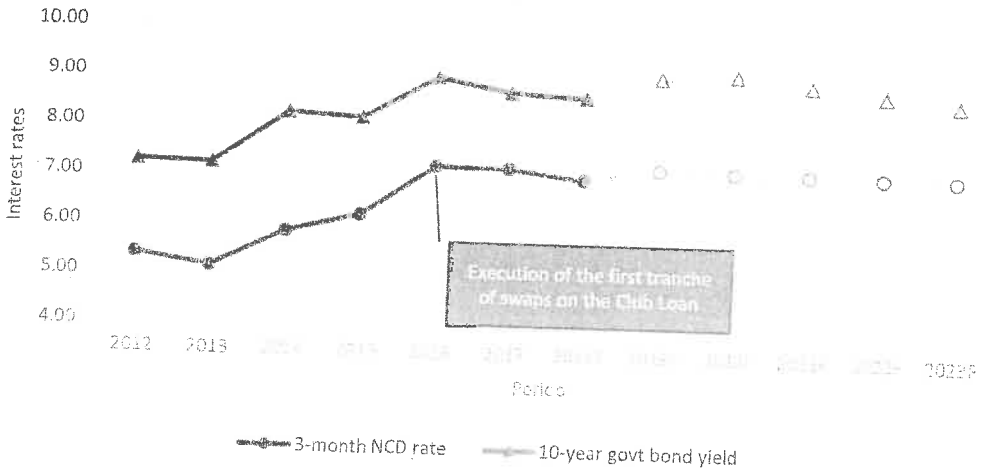

Figure 6: An illustration of the 3m NCD rate and 10-year government bond yield on an annual basis from 2012 to 2017 with forecasts from 2018 to 2023

Source: Bureau for Economic Research (BER) (October 2018)

11.7.2 It is clear from Figure 6 that the annual 3m NCD rate historically from 2012 to 2017 ranged between 5.13% and 7.23%. The forecast of the 3m NCD rate by the BER indicates a spread of 7.02% to 7.03% (i.e. from 2018 to *2023*).

11.7.3 Forecasts for a period of more than five years are likely to have a high margin of error and would therefore be meaningless.

11.7.4 If the short-term rate is contrasted to the yield on the 10-year Government Bond, a similar pattern abounds with the historical annual rates between 7.20% and 9.02%, while the forecast by the BER is between 8.67% and 9.17%, not even close to the fixed

rates of 11.15% and 12.27% applicable to the interest rate swaps for the R12 billion Club Loan and the R11.3 billion of Transnet Debt respectively.

11.7.5 There is also no trend of divergence between the short and long-term rates; there appears to be more of a slight convergence that suggest the short and long-term interest rates would move within bounds and no shocks are expected that would justify fixing rates at the levels they were over the long-term.

Should the forecasts be realised over the period 2019 to 2023, Transnet would have paid between 189 bps and 298 bps more based on the lowest fixed rate (11.15%) for any of the loan issues associated with the interest rate swaps, and between 310 bps and 410 bps more for the highest fixed rate (12.27%) at which the swaps were executed.

11.8 Figure 7 illustrates what the strategy has cost Transnet in terms of basis points from inception to 1 October 2018 on the first series of swaps for an amount of R4.5 billion executed on 4 December 2015.

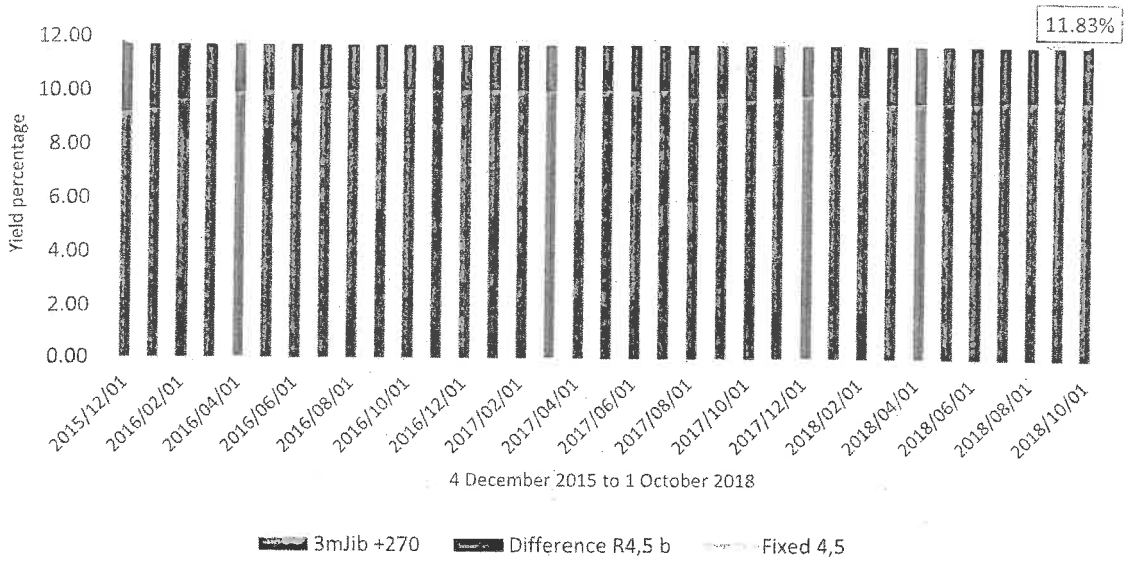

Figure 7: Illustration of the monthly differences (red bars) between the 3m JIBAR + 270 bps and the fixed rate at which the interest rates swaps were executed for the first tranche of R4.5 billion related to the R12 billion Club Loan.

Source: Bloomberg, Transnet and own calculations

11.8.1 The red bars indicate the monthly accrued realised negative cash flow accounted for in the Transnet income statement (refers to "Losses") incurred by Transnet due to the introduction of a regime of fixing interest rates over the period 4 December 2015 to 1 October 2018.

11.8.2 A Loss of R262.6 million on the first series of R4.5 billion swaps has been incurred by Transnet as at 1 October 2018.

11.8.3 Figure 8 illustrates what the floating to fixed interest rate swaps has cost Transnet from inception to 1 October 2018 on the second series of swaps for an amount of R7.5 billion executed on 7 March 2016.

11.8.4 The red bars indicate the monthly losses in terms of basis points incurred by Transnet due to introduction of a fixed interest rate regime over the period 7 March 2016 to 1 October 2018.

11.8.5 The Loss as at 1 October 2018, is R480.1 million on the R7.5 billion swaps related to the Club Loan.

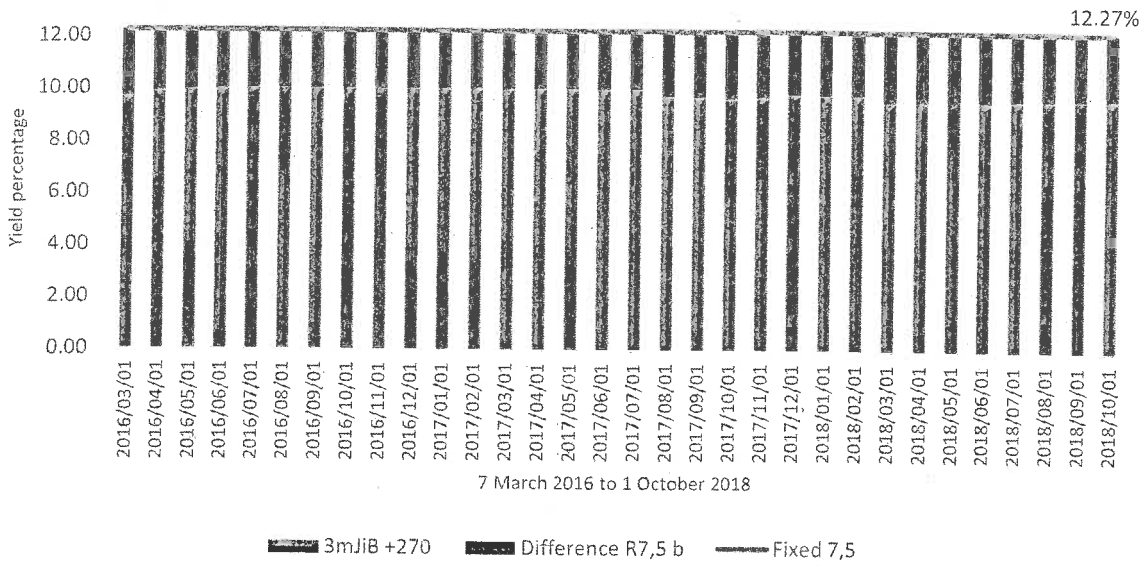

Figure 8: Illustration of the monthly differences (red bars) between the 3m JIBAR + 270 bps and the fixed rate at which the interest rates swaps were executed for the R7.5 billion tranche.

Source: Bloomberg, Transnet and own calculations

A total Loss of R742.7 million related to the R12 billion Club Loan was incurred by Transnet as at 1 October 2018 due to a strategy of fixing rates at the levels executed.

11.8.6 The same approach was adopted for the swaps related to the Transnet debt of R11.3 billion.

11.8.7 The amount and credit (pricing) is different for each issuer.

11.8.8 Table 3 highlights the "Losses" caused by a strategy that was implemented to extract maximum benefit from unfounded interpretation of the market interest rate movements.

Table 3: Illustration of Losses to Transnet for the interest rate swaps related to the Transnet Debt of R11.3 billion

Issuer	Execution date	Pricing	Fixed	Loss to Transnet as at 31 October 2018
EDBC	30 March 2016	6m Jib + 200 bps	12.07	R422.4 million
LIBFIN	8 April 2016	3m Jib + 175 bps	11.15	R92.2 million
Old Mutual	8 April 2016	3m Jib + 205 bps	11.15	R49.7 million
Standard Bank	8 April 2016	3m Jib + 165 bps	11.15	R102.1 million
Total				**R666.4 million**

The Loss to Transnet of fixing the interest rates of the swaps related to the R11.3 billion of Transnet Debt, is R666.4 million.

The Loss to Transnet by implementing the "Fixed Rate" strategy on a total of R23.3 billion, is R1409 million as at 31 October 2018.

11.9 Benchmarking

11.9.1 Benchmarking enables the consideration of several scenarios to ensure consistency in decision-making and to ascertain the cost implications of embarking on a strategy that has long-term implications.

11.9.2 The use of interest rate swaps over a 15 year maturity has implications and specifically opportunity costs if the adopted strategy is not thought through and the implications contemplated.

11.9.3 Together with the analysis of the SA Government Bond presented in Section 11.5.8, a need existed to consider the initial use of Transnet corporate bonds and compare the same to the fixed interest rate swap options in the market.

11.9.4 At the time (4 December 2015) when the first tranche of R4.5 billion of the R12 billion Club Loan interest rate swaps was traded, it was possible to issue a Transnet TN30 Bond with the same maturity (15 years) and same credit as the interest rate swap. The official JSE/BESA (Bond Exchange of South Africa) closing rate for the TN30 bond on 4 December 2015 was 11.18%.

11.9.4.1 The rate (yield to maturity) of 11.18% was applicable with half-yearly interest payments referred to as Nominal Accrued Compounded semi-annually (NACS).

11.9.4.2 The R12 Billion Club Loan Swaps are priced on a quarterly basis, which, if converted to ensure parity, would imply a rate of 11.03% (Nominal Accrued Compounded quarterly, NACQ) applicable to the R4.5 billion.

11.9.4.3 The PV01 per R1 million nominal on the R4.5 billion structure is R626.35. On the date the transaction was executed, the Transnet TN27 Bond closed at a rate of 10.66% (NACS). If converted to NACQ, the applicable rate is 10.52%.

11.9.4.4 On the date of the transaction, The PV01 per R1 million nominal TN30 Bond was R690.00 and R610.00 on the TN27 Bond.

11.9.4.5 This specific structure is closer to the duration of the TN27 Bond, which could have been issued (NACQ) at 10.52% compared to the fixed rate of 11.83%. This suggests that the fixed rate of the swap should have been closer to the 10.52% yield of the TN27 Bond, which implies an approximate difference of 131 bps.

11.9.5 At the time (7 March 2016) when the second tranche of R7.5 billion of the R12 billion Club Loan interest rate swaps was traded, it was possible to issue a Transnet TN30 Bond with the same maturity (15 years) and same credit as the interest rate swap. The official JSE/BESA (Bond Exchange of South Africa) closing rate for the TN30 bond on 7 March 2016 was 11.80%.

11.9.5.1 The rate (yield to maturity) of 11.80% was applicable with half-yearly interest payments referred to as Nominal Accrued Compounded semi-annually (NACS)

11.9.5.2 The R12 Billion Club Loan Swaps are priced on a quarterly basis, which, if converted to ensure parity, would imply a rate of 11.63% (Nominal Accrued Compounded quarterly, NACQ) applicable to the R7.5 billion.

11.9.5.3 The PV01 per R1 million nominal on the R7.5 billion structure is R615.31. On the date the transaction was executed, the Transnet TN27 Bond closed at a rate of 11.33% (NACS). If converted to NACQ, the applicable rate is 11.17%.

11.9.5.4 On the date of the transaction, The PV01 per R1 million nominal TN30 Bond was R641.00 and R567.00 on the TN27 Bond.

11.9.5.5 This specific structure is closer, but lower in duration to the TN30 Bond, which implies that Transnet could have issued a similar duration bond at approximately 15 bps lower than the TN30 Bond, which implies a yield of 11.65%. If converted to NACQ, this is 11.48%. This suggests that the fixed rate of the swap should have been closer to 11.48%, which implies an approximate difference of 79 bps.

11.9.6 The pricing related to the swaps of 4 December 2015 (first tranche of R4.5 billion) were traded at a fixed price of 11.83% and the swaps executed on 7th March 2016 (second tranche of R7.5 billion) at a price of 12.27%.

11.9.7 The analysis that should have been conducted for benchmarking purposes, was not done and neither were the dealers requested to provide comparative pricing when assessing the financial implications for Transnet.

11.9.8 In addition to Interest Rate swap, Transnet executed cross-currency swaps on the CDB loan.

12. R12 billion Club Loan swaps

12.1 A Request for Proposals (RFP) dated 6 May 2015 was issued for the hedging of financial risks (interest rate, credit and currency risk) and to act as lead arranger for R12 billion Club Loan for a period of up to fifteen (15) years **(Annex 29.1)**.

12.2 On 3 December 2015, Mr Phetolo Ramosebudi submitted a memorandum to the Acting GCFO that was approved and stated *inter alia*, the following **(Annex 27)**:

12.2.1 "Hedge the interest rate risk exposures from a floating to a fixed basis..."

12.2.2 "Instruct Regiments Capital as per the 1064 Locomotives mandate to execute the hedges with Transnet approved counterparts."

12.2.3 "The execution cost of hedges by Regiments Capital will be all inclusive in the rate of the interest rate swap".

12.3 Regiments was appointed to execute the interest rate swaps from a floating (variable rate) to a fixed rate for the remaining term of the loan. This is confirmed by the Affidavit prepared by Mr Eric Wood related to the Club Loan. It is stated on page 62 (807) of the Affidavit *"that Regiments would benefit from certain interest rate swaps that would take place as a result of the Club Loan"* **(Annex 46).**

12.4 The Club Loan was a floating rate loan, which was swapped to fixed one week later. The initial loan could have also been negotiated as a fixed rate loan, which would then have not necessitated any hedging related to interest swaps from floating to fixed.

12.5 The analysis as per the memorandum prepared by Mr Phetolo Ramosebudi shows that there was no justification for entering into the interest rate swap transactions to fix interest rates using a "short-term" outlook while knowingly entering into a transaction that would likely have negative financial implications for Transnet over a period of 15 years. Such actions would invariably increase the risk to Transnet due to the tenor of the loan. Furthermore, the rates at which the transactions were executed, were well above market levels and has cost Transnet R742.7 million as at 1 October 2018.

12.6 Mr Phetolo Ramosebudi should indicate the justifiability of fixing the rates knowing that this was not defensible at levels well above the mid-market blended rate indicated by Bloomberg on the day the swaps were executed **(Annex 47)**.

12.7 This decision effectively bound Transnet to a significant risk and costs incurred that could not be mitigated at a later stage, except at significant cost, and which has already resulted in substantial Losses for Transnet at 1 October 2018 (R12 Billion Club Loan) and 31 October 2018 (R11.3 billion Transnet Debt).

12.8 A Loss of R348.2 million was generated due to the mispricing of the trades when aligned with the Bloomberg blended mid-rate. This is based on the difference between the fixed rate of the swap and the Bloomberg blended mid-rate, and the Point Value (PV) determined using the Bloomberg Pricing module, as well as an assumed 30 bps that is the assumed cost the Transnet Dealer Room would be able to trade.

12.9 This Loss together with interest that would accrue is due and payable and Transnet should recoup the losses from Mr Phetolo Ramosebudi as the compiler of the memorandum, Mr Garry Pita (Acting CFO) and Regiments as the advisor to Transnet, who were responsible for the nature and scope of these transactions and who further approved the swaps from floating to fixed for the second tranche of R7.5 billion related to the R12 billion Club Loan on 29th February 2016 **(Annex 48)**.

12.10 The interest rate swap (float to fixed) on the Club Loan was traded in two tranches:

12.10.1 Execution of swaps on 4 December 2015 (R4.5 billion):

a) Swap Confirmation No 31477670 for R1.5 billion (Nedbank);

b) Swap Confirmation No 31477785 for R1.5 billion (Nedbank); and

c) Swap confirmation No 31477836 for R1.5 billion (Nedbank).

12.10.1.1 Calculations show that the fixed rate of the first tranche of the R12 billion Club Loan, after the conclusion of the interest rate swap and a fair value total cost is added, based on the Transnet Dealing team historical trades, should have

been approximately 11.35% at closing (blended mid-rate on closing of 11.156% plus 20 basis points).

12.10.1.2 The first tranche interest rate swap was transacted by Regiments Capital through Nedbank at a fixed rate of 11.83%.

12.10.1.3 The first tranche of the Club Loan interest rate swap was traded on 4 December 2015. Mr Phetolo Ramosebudi argued a volatile economic environment with high inflation and a volatile exchange rate as the basis for the interest rate swaps. It is so opportune that this argument would only hold water if some "black swan event" could trigger exchange rate volatility or higher inflation, which would invariable drive interest rates higher. Five days after the execution of the first swaps with Nedbank, the Finance Minister at the time, Mr Nhlanhla Nene, was sacked (9 December 2015), which was a "black swan event" and caused significant volatility in the Rand **(Annex 49).**

12.10.2 The event referred to in Section 12.10.1.3 is best understood in the context of short-term interest rates represented by the 3mJIBAR. Figure 9 indicates the 3mJIBAR for the period 16 November 2015 to 31 December 2015, and also highlights the day on which Mr Nhlanhla Nene (9 December 2015) was sacked and the appointment of Mr Pravin Gordhan (14 December 2015).

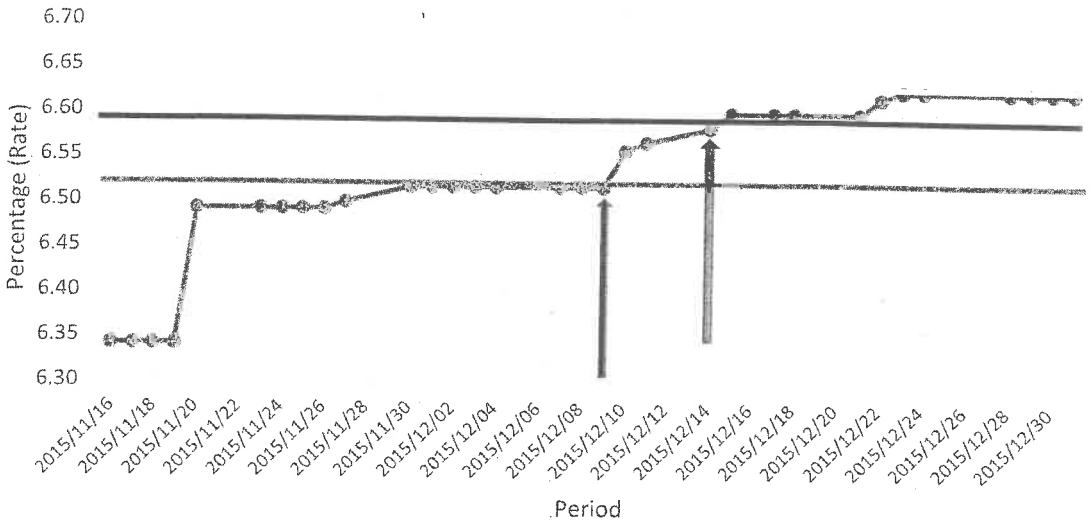

Figure 9: 3mJIBAR interest rates for the period 16 November 2015 and 31 December 2016.

12.10.2.1 Short-term interest rates increased by 6.6 bps from the date Mr Nhlanhla Nene (9 December 2015) was sacked and the appointment of Mr Pravin Gordhan (14 December 2015). After the appointment of Mr Pravin Gordhan, short-term interest rates moved within a narrow bound that indicate some stability in the market. However, these events never resulted in short-term interest rates achieving the levels of fixed rates for the R4.5 billion of 11.83% and 12.27% for the R7.5 billion, both of the R12 Billion Club Loan.

12.10.2.2 Figure 10 indicates the impact of the abovementioned events on the long-term interest rates represented by the R186 Government Bond. The spike in long-term yields is clear after the firing of Mr Nhlanhla Nene, reaching a high of 10,35% before receding once it became apparent the Mr Pravin Gordhan would be appointed as the finance minister.

12.10.2.3 Not even the "black swan event" resulted in long-term interest rates increasing to above 10.35% when compared to the fixed rate of 11.83% on the R4.5 billion tranche of the R12 Billion Club Loan. The rates were still 148 bps lower that the fixed rate despite long-term interest rates increasing by 118.8 bps between 9 December 2015 and 11 December 2015. Long-term rates varied between 9.30% and 9.89% from 14 December to 31 December.

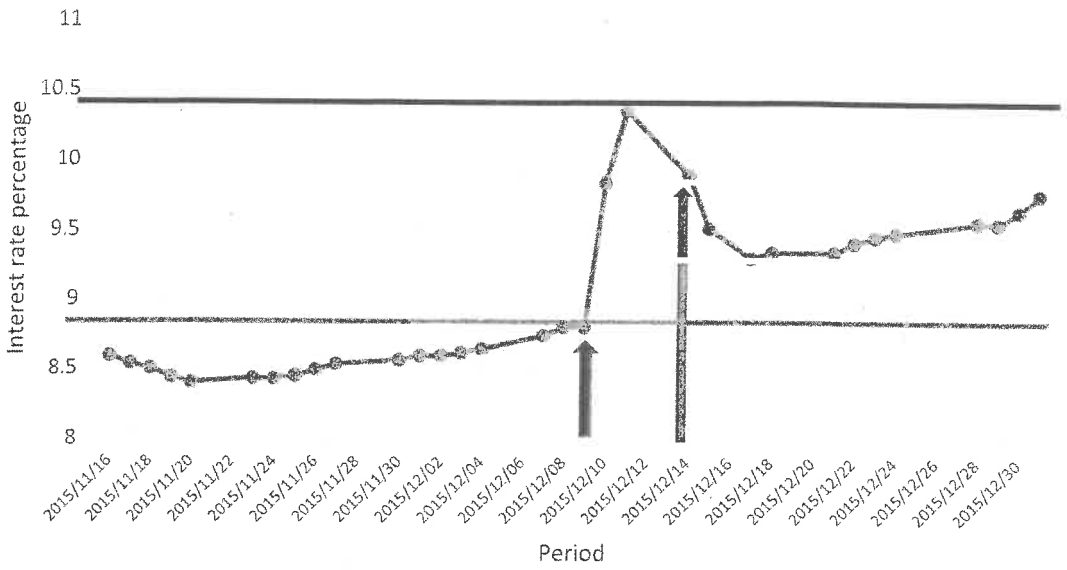

Figure 10: R186 government bond representing long-term interest rates for the period 16 November 2015 and 31 December 2016.

12.10.3 Execution of swaps on 7th December 2015 (R7.5 billion) **(Annex 26):**

a) Swap confirmation No 32537127 for R1.5 billion (Nedbank);

b) Swap confirmation No 32538332 for R1.5 billion (Nedbank);

c) Swap confirmation No 32539770 for R1.5 billion (Nedbank);

d) Swap confirmation No 32538073 for R1.5 billion (Nedbank); and

e) Swap confirmation No 32537127 for R1.5 billion (Nedbank).

12.11 Mispricing implications

12.11.1 All derivative instruments must be mark-to-market using the closing parameters to fair value the instrument in order to obtain a daily profit or loss figure.

12.11.2 Mark-to-market involves recording the price or value of a security, portfolio or account to reflect the current market value at a point in time.

12.11.3 This indicates to what extent you are recording profits or Losses from your decision. The mark-to-market on the transactions were still out of money (i.e. a loss is still being recorded to date by Transnet), which indicates that short-term and long-term interest rates did not increase as expected.

12.11.4 As at 1 October 2018, the situation is the same, resulting in Losses for Transnet as illustrated above or stated differently, being out of the money.

12.11.5 After Regiments did the trade, the Transnet Traders requested prices in the swap market and the prices received from two banks (HSBC and ABSA) were 15 and 35 bps above the mid-rate (price) (**Annex 58**).

12.11.6 The blended mid-price (rate) according to Bloomberg (utilising the Swap Pricing Module) at the close on the day the swaps were executed, was 11.156% and 11.444% for the first and second tranches of R4.5 billion and R7.5 billion, respectively.

12.11.6.1 The blended rate means the weighting of the rates applicable to the total loan as different spreads (margins) are applicable to different loan issuers.

12.11.6.2 The outcome is a blended rate that is applicable to the full swap.

The total Losses of fixing the interest rates on all loan issuens including fees, i.e. for the R12 Billion Club Loan (1 October 2018) and Transnet Debt of R11.3 billion with the TSDBF as the counterparty (31 October 2018), is R1 409 million (based on the difference between floating and fixed interest rates).

12.12 It is important to understand the financial effect of a higher fixed rate to comprehend the additional cost to Transnet and the income / profit to the agent (Regiments Capital) and the counterparty (Nedbank).

12.12.1 One basis point is one hundredth of one percent. The longer the interest rate swap maturity, the higher the present Rand value of one basis point.

12.12.2 It is crucial to understand that one basis point on the swap is not the same as one basis point on the face value of the loan.

12.12.3 The cost of an extra basis point on the swap is an additional cost for each payment on interest that is made until the swap matures.

12.12.4 One basis point on the swap of both tranches is approximately R7.0 million, so 20 basis points or 0.20% is approximately R148.0 million.

12.12.5 Regiments would receive a total fee of R148.7 million for swaps related to the R12 Billion Club Loan based on the fixed yield (market interest rate).

12.12.6 It should be noted that Regiments would receive a fee of 20 bps every quarter for the execution of the swaps over a period of 15 years, the tenor of the loan, of which about 11 to 12 years remain.

12.12.7 It must be determined whether Regiments is paid by Nedbank on a quarterly basis for the execution of the swaps or in the same manner as dealt with by Transnet, whereby the fees are calculated over time to a present value and a once off payment is affected.

12.13 In terms of market norms, the fee payable on yield would be 1.0 bps or less or a fee of between 20 and 25 bps on the notional value, which is dependent on the agent's fee structure.

12.14 Transnet therefore overpaid Regiments by an amount of R141.3 million for the execution of the swaps on the Club Loan.

12.15 Regiments must repay R141.3 million plus interest (refer to Section 19.9.4).

12.16 As Treasury staff were excluded from providing any advice and benchmarking, it is unclear what basis was used to consider the decision to not fix the interest rate of the CDB loan. If the additional inflated cost of the interest rate swap was included, a fixed rate loan would have been a much better proposition.

12.17 As the "fixed rate strategy" was already in place at Transnet, this was a creative way by Regiments as advisers to "produce" more large transactions, especially derivative transactions so that prices can be inflated and hidden, resulting in larger fee income and / or profit, and to defraud Transnet, which resulted in sustained financial losses.

12.18 The funding that was needed to replace the R5.0 billion loan that matured in February 2016, was outside Regiments' Transaction Advisory mandate, but was included in the negotiated facility and again, Transnet Treasury was excluded by the acting GCFO as well as Mr Phetolo Ramosebudi.

12.19 Nedbank as the counterparty for the Club Loan interest rate swaps, should explain what arrangement existed between Regiments and themselves with regard to the execution of the transactions in terms of the following:

12.19.1 Was Regiments paid a present value of all the execution fees over the tenor of the loan, which is their "fee recovery policy"? The applicable agreement that refers to the payment of fees to Regiments is required from Nedbank.

12.19.2 Were there any other payment arrangements between Regiments and Nedbank related to Nedbank as the counterparty for the swaps of the R12 Billion Club loan?

12.19.3 This is prudent as the Transnet dealers were not party to the pricing, structures or execution of the swaps.

12.20 An email addressed by Mr Phetolo Ramosebudi to Mr Moss Brinkman (Head: Balance Sheet Management – Treasury, Nedbank Corporate & Investment Banking) on 16 March 2016 at 15:40, nine days after the execution of the second tranche of interest rate swaps for a value of R7.5 billion, indicates the following **(Annex 50):**

12.20.1 Mr Ramosebudi clearly indicates that it is acceptable to miss-price the swaps and confirms the same by indicating that "I am further aware and agree that these trades were executed at a level of 12.37% which results in a difference of 95 bps over the mid-market value [11.42% nacq)".

12.21 An email from Mr Moss Brinkman to Mr Ramosebudi on 16 March 2016 at 13:30 states the following: ".... our compliance is requesting a letter that essentially states that Transnet has looked at the transaction and the rates concluded and that Transnet is satisfied with the pricing and value of the transaction". For ease – essentially they are looking for something along these lines: "In terms of the Interest rate Swap transactions entered into with Nedbank on or about 8 March 2016, I am aware that these trades priced at a pure mid-market rate of approximately 11.42% nacq. I am further aware and agree that these trades were executed at a level of 12.37% nacq – which results in a difference of 95 bps over mid-market value" **(Annex 51).**

12.22 Mr Ramosebudi copied the proposed wording from Mr Moss Brinkman and sent the response as stated above. This confirms the endorsement by Transnet of the Swaps at 12.37% and acceptance thereof by Nedbank, irrespective of the large spread. It also clear in the email from Mr Moss Brinkman that Nedbank appeared unsure of the large difference in the fixed

rate and the mid-market rate, but proceeded with the trades anyway, not questioning the *modus operandi*.

12.23 Mr Ramosebudi was responsible for the derivative transactions and should be held accountable together with the GCFO who would authorise the execution of such transactions. Alternatively, in terms of the DoA, all interest rate swap transactions could be approved by Mr Ramosebudi and the GCFO. The only difference is the approval threshold.

13. CDB Loan Swaps

13.1 Cross-currency Swaps (CCS): CDB Loan

13.1.1 *A* currency swap*, also known as a* cross-currency swap*, is an off-balance sheet [over the counter] transaction in which two parties exchange principal (capital portion of the loan) in different* currencies*. The purpose of a* currency swap *is to hedge exposure to* exchange rate *risk (https://www.investopedia.com*).

13.1.2 JP Morgan would act as sole hedge counterparty, lead and underwrite the equivalent ZAR amount for a loan of USD 1.5 billion. Transnet would enter into a hedging transaction with JP Morgan in *the* form of a series of cross-*currency* swaps and credit contingent structures in the form of Contingent Credit Default Swaps. JP Morgan was also mandated to execute the swaps **(Annex 52)**.

13.1.3 It should be noted that JP Morgan proposed in the CDB hedging considerations (December 2014) that Transnet and/or its advisors seek a price from two or maximum three banks for a smaller transaction with timing and details that are quite different from the underlying trade, whilst still allowing visibility on comparable execution charges for market and credit risk. It is unclear if Transnet or Regiments did this and what the outcomes were in terms of a pricing comparison.

13.1.4 Regiments was paid a contingency fee of R7.5 million for advisory services to Transnet for structuring and arranging the CCS. There was sufficient capacity and know-how within the Transnet Dealer Room to price swap structures and execute the CCS and no need existed for external advice due to the nature of the swaps being referred to as vanilla (simple/standard) (see Section 17). It was clearly conveyed by the Group Treasurer to the dealers, which was confirmed by them in subsequent discussions, that all deals and structures would not be priced, structured or executed by the Transnet Dealer Room despite the capacity and skill among the traders to do the same.

13.1.5 This fee was unjustifiably paid to Regiments and represents wasteful and irregular expenditure in terms of the PFMA and the TPPM. The invoice submitted by Regiments was not issued to anyone at Transnet in particular, but the GCFO would as part of the oversight role and given the size of the invoice amounts, have the delegated authority

to sign-off such large invoices. The GCFO, who worked directly with Regiments with the knowledge of the Group Treasurer, should be held accountable and Regiments should return the fees together with the interest from when the invoice was paid. It is within the mandate of the Group Treasurer and the GCFO to perform the necessary oversight, which clearly was not done and as a consequence, they supported this undue payment to Regiments.

13.1.6 Transnet paid JP Morgan 20 bps for the cost of the hedge at each hedging transaction. It is not possible to determine if and what Regiments was paid as JP Morgan was responsible for the execution of the swaps. It is further unclear what role Regiments had in the transaction for which JP Morgan was appointed to hedge and execute (Regiments was the SDP of JP Morgan through the appointment).

13.1.7 It is unclear why Regiments was paid a contingency fee of R7.5 million for advisory services to Transnet in terms of structuring and arranging the cross-currency swaps, what the basis thereof was and how the amount was determined. The amount paid to Regiments by Transnet does not seem to have any basis.

13.1.8 JP Morgan was appointed to deal with all matters related to managing and introducing mechanisms that would protect Transnet from financial and other associated risks over the term of the loan, which included advice, structuring and executing the swaps.

13.2 Contingent Credit Default Swap (CCDS): CDB Loan

13.2.1 A credit default swap (CDS) is "contingent" upon two triggers. The first is an ordinary Credit Default Swap (CDS), where the buyer receives the face value of the bond or loan from the protection seller in the event of a default. This is termed a credit event, such as defaulting on interest payments. The other trigger is specific to the *contingent* part of the CDS and is another event usually in relation to a macro-economic variable (not firm specific). A contingent CDS is designed to provide cover against unfavourable market movements (https://www.financialencyclopedia.net).

13.2.2 In order to hedge the CDB Loan and mitigate the risk, there was an apparent need for the application of CCDS, which were introduced at each capital drawdown. This was

a requirement from Transnet in terms of the RFP issued to prospective bidders for hedging the CDB Loan transaction.

13.2.3 Regiments claims to have structured and arranged the CCDS structure to effectively reduce the ZAR interest rate payable on the loan structured by Transnet (per the letter dated 15 July 2015 sent by Mr Eric Wood to Mr Anoij Singh **(Annex 31)**. This is not true as the intellectual property to conceive, implement and execute the CCDS structure was introduced by JP Morgan in terms of their appointment. The approval of their appointment and the agreed terms were signed off by the GCFO and accepted by the Acting GCE. Based on this premise, there could be no justification for any payment to Regiments for the work they purported to have done.

13.2.4 The fee of R5 743 592 (unclear how this was calculated) should be repaid by Regiments with interest from the day the invoice was paid. The GCFO at the time should be held accountable for the payment of the fees related to the CCDS, while the Group Treasurer at the time should explain the use of Regiments for advisory services related to the swaps while JP Morgan was appointed in terms of their mandate to price, structure and execute the swap transactions. The latter would have fallen within the mandate of the Group Treasurer and GCFO. Regiments, the GCFO and Acting GCE should be held liable both jointly and severally for the recoupment of the fee together with interest from the date the invoice was paid by Transnet.

14. Interest rate swaps: TSDBF

14.1 Regiments was responsible for the execution of the interest rate swaps related to Transnet Debt of R11.3 billion.

14.2 The cost to or loss generated for Transnet by fixing the interest rates on the R11.3 billion of Transnet Debt as at 31 October 2018, was R666.4 million and has subsequently increased. These losses are expected to increase further over the remaining tenor of the swaps. The Group Treasurer, who has the mandate and authority together with the GCFO for using derivative instruments, should be held liable for a large portion of the losses as there could be no justification for so drastically changing the debt structure from floating to fixed over such an extended period of time. Attempting to unwind these positions would result in further excessive costs for Transnet.

14.3 Regiments would have been paid 20 pbs as an execution fee totalling R112.4 million for the swaps related to the Transnet Debt (see Section 10.6.3).

14.4 Regiments received or drew R227.8 million from TSDBF for executing the swap transactions on 30 March 2016 and 8 April 2016 at a fee of 20 bps. The alignment of the fee paid to Regiments and the approach adopted for the analysis in this report, indicate that Regiments received 40.537 bps and not 20 bps as per the Memorandum (dated 28 August 2017 and prepared by the Group Treasurer) for the execution of each of the four swaps related to the TSDBF as the counterparty **(Annex 53)**. This is well above market norms where transactions of this size may attract a fee of less than one basis point based on yield, and is therefore highly irregular and unwarranted. Regiments was paid R115.4 million in addition to the 20 bps that Transnet would pay the TSDBF as part of the rate for the execution of the swaps. Under normal circumstances, the execution fee is tied up in the yield (market rate).

14.5 These funds should be recouped from the Group Treasurer (Mr Phetolo Ramosebudi) who was party to the approval of the execution fee of 20 bps as part of his mandate and from the GCFO Officer (Mr Garry Pita) who approved the fee of 20 bps for the execution of the swaps related to the TSDBF as a counterparty **(Annex 54)**.

14.6 The Group Treasurer (Mr Ramosebudi) approved the fee payable to Regiments at 20 bps as part of his mandate **(Annex 53)**, acknowledging the fee rate paid to Regiments, and is

therefore liable for not adopting marked norms and standards as demonstrated, or eliciting quotations for the fee applicable to the execution of such a large swap. Therefore, the Group Treasurer and others the approved the transaction should be held responsible for the overpayment of fees to Regiments ranging from between R106.8 million and R111.0 million based on market norms. In addition, the Chairperson of the Board of Trustees and where applicable, the Trustees of the TSDBFA should indicate how such a large fee for executing interest rate swaps was justified. In addition, minutes of the meeting where said decision was taken should be provided, failing which a significant portion of the fee should be recouped with interest from the date the swap transactions were executed.

14.7 Cost and fees determination

14.7.1 The cost and fees payable for interest rate swaps are based on a Point Value determined through the Bloomberg Swap Pricing Module on the date the transaction is executed. The applicable notional value of the loan is used as input and a point value (PV01) (i.e. one basis point) is calculated based on the terms of the loan and credit (applicable coupon rate). For the trades related to R11.3 billion Transnet debt, the PV01 for the loans are different as the interest rates are different. A screenshot of the Bloomberg interface for the Interest Rate Swap Module is provided in Figure 11 as an illustration of one of the swaps related to the R12 billion Club Loan.

14.7.2 The important figures to note on the screenshot that refers to the ABSA loan of R1.5 billion with the swap executed on 7 March 2016, are the following. The ABSA loan is part of the second tranche of the R12 billion Club Loan. There are two legs to the loan as floating rates are to be swapped for fixed rates.

(a)	Notional:	Value of the loan to be swapped
(b)	Coupon:	The blended mid-rate at the time of the swap transaction that is used for benchmarking purposes and refers specifically to the fixed leg of the transaction
(c)	Index:	3mJIBAR (base short-term interest rate)
(d)	Latest index:	JIBAR rate at the time of execution
(e)	Spread:	260 bps (margin or profit that the bank wants on the transaction)

(f) PV01: Point value for one basis point used for the calculation of fees

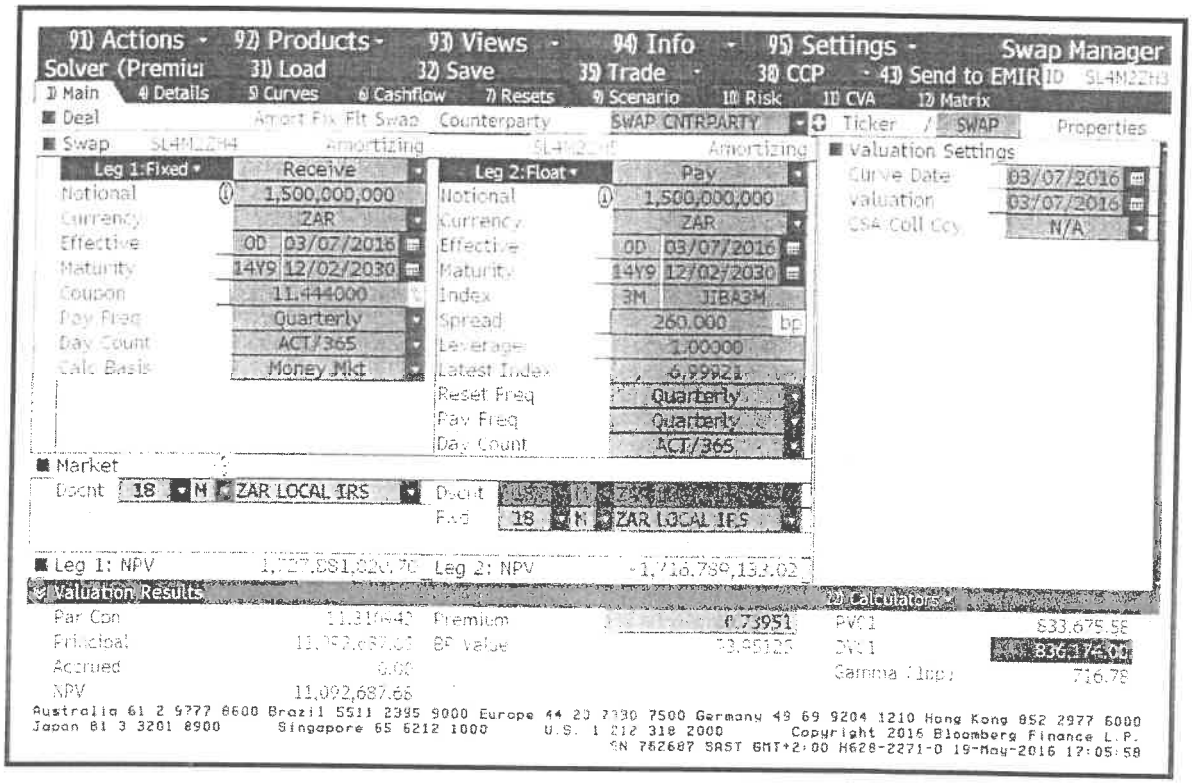

Figure 11: Screenshot of the Bloomberg Swap Pricing Module for the ABSA loan on 7 March 2016

Source: Bloomberg and Transnet

14.7.3 Table 3 indicates the Execution date, Point Value, Blended mid-rate (from Bloomberg), fixed rate at which the swap transaction was executed and the basis point difference between the blended mid-rate and fixed rate.

Table 3: A summary of the swap transaction inputs for loans from the specified financial institutions

Issuer	Loan Amount R' billion	Execution date	PV01	Blended mid-rate	Fixed rate	Basis-point difference
			1	2	3	4
EDBC-Investec	6.991	30 March 2016	R3 557 774	11.27	12.07	80
LIBFIN	1.604	8 April 2016	R856 772	10.43	11.15	72
Old Mutual	1.000	8 April 2016	R603 026	10.43	11.15	72
Standard Bank	1.700	8 April 2016	R601 977	10.43	11.15	72

Source: Bloomberg and own calculations

14.8 The Point Values are used to calculate the total execution cost and any other fees applicable to the transaction. Table 4 indicates the execution cost including the fee paid to Regiments based on the difference between the mark-to-market and the fixed rate of the swaps.

14.9 The data provided in Table 4 indicate that Regiments was paid an execution fee of R112.4 million for swaps related to the Transnet debt of R11.3 billion. A saving of R264.5 million would have accrued to Transnet if it was done by the Dealing Room.

Table 4: Calculation of execution costs and fees applicable to R11.3 billion Transnet Debt with specific reference to Regiments

Issuer	Loan Amount R' billion	Execution date	PV01	Total execution cost including the Regiments fee of 20 bps	Regiments fee (20 bps)	Excess cost utilising Regiments
				5 = (1) x (4)	6= 20bp x (1)	7= (5) – (6)
EDBC	6.991	30 March 2016	R3 557 774	R 284 621 902	R 71 155 475	R 177 888 689
LIBFIN	1.604	8 April 2016	R856 772	R 61 687 569	R 17 135 436	R 35 984 415
Old Mutual	1.000	8 April 2016	R603 026	R 43 417 873	R 12 060 520	R 25 327 092
Standard Bank	1.700	8 April 2016	R601 977	R 43 342 310	R 12 039 531	R 25 283 014
	11.295		**R5 619 549**	**R 433 069 654**	**R 112 390 962**	**R 264 483 210**

Note: Read with Table 3
Source: Bloomberg and own calculations

15. Conflict of interest

15.1 Regiments was also appointed as the only service provider to conduct reviews in the LDI (Liability-Driven Investment) DB Pension space and was found through an independent review by Mr Harry Gazendam (email dated 12 March 2014) to be the only provider who met the requirements of Transnet. In terms of RFP NUMBER GSM/12/0775A, Regiments was thereby appointed to perform a review of the TSDBF **(Annex 32.1)**.

15.2 In terms hereof, a TSDBF Execution Version Mandate prepared by ENS drafted as a Portfolio Management Agreement (the Agreement) was entered into between the TSDBF and Regiments Fund Managers (Pty) Ltd on 1 October 2015. The function and responsibilities as well as authority of the Portfolio Manager are referenced in Sections 6 and 7 of the Agreement **(Annex 36).**

15.3 It should be noted that nowhere in the Agreement is the TSDBF Policy Investment Statement referred to or referenced. *The purpose of an Investment Policy Statement (IPS) is to establish a clear understanding regarding the Pension Fund's investment objectives and management practices between the TSDBF and its Investment Managers (Regiments Fund Managers (Pty) Ltd) engaged by the TSDBF.* The Investment and Risk Management Framework is referenced on numerous occasions, but this would be sub-ordinate to the Investment Policy Statement that is overarching and sets the regulatory framework for the fund as an extraction of the Fund Rules.

15.4 Advisory *services* at the time of considering the interest rate swaps related to R11.3 billion from floating to fixed were provided by Regiments to Transnet having been appointed as far back as May 2013. In October 2015, six months before the *execution* of the swaps, Regiments were appointed by the TSDBF as portfolio managers of the fund.

15.5 Clearly, being an advisor to Transnet at the time and having the mandate to manage the portfolio of the TSDBF in terms of the TSDBF Investment Policy Statement, resulted in a situation where Regiments was advising both Transnet and the TSDBF related to transactions that would need to and could only benefit one party through the execution of the interest rate swaps and would therefore be detrimental to the other party. This is a clear conflict and there can only be one winner.

15.6 In order to understand whether a conflict of interest arose, which could have been knowingly exploited by Regiments, the following checklist prepared by the Law Society of British Columbia in Canada (as amended) would suffice to assess the basis of a conflict of interest.

Statement	Context and view
Did Regiments accept the duty to avoid conflicts of interest, the duty of commitment to Transnet's cause and the duty of candour?	This is clearly not the case as only one party would benefit (be in the money) from the interest rate swaps based on the fixed rate and the other would incur losses (or be out of the money).
Did Regiments disclose potential conflict that takes into consideration the duty of confidentiality to Transnet as their client?	No, officials of Transnet were aware of the elaborate scheme and knowingly would assisted in structuring the deal that would cause likely losses for Transnet based on the manner in which the swaps were structured.
Regiments knowingly jointly represented Transnet and the TSDBF; how did Regiments address the potential conflicts?	Due to the implementation of the interest swaps knowingly advising both parties, conflicts of interest were not addressed and neither declared.
Did either Transnet and/or the TSDBF raise conflict of interest issues related to Regiments advising either party on the potential outcomes of entering into a counter-party transaction with specific reference to the interest rate swaps?	On both sides, officials that were party to transaction were clear on the mandate and unperturbed about conflict of interest. No consideration given to the potential negative consequences for one of the parties when entering into the swap trades.
Regiments' loyalty to or representation of TSDBF could materially and adversely be affected by Regiments' relationship with Transnet, or interest in Transnet or the subject matter carried substantial risk?	Loyalty to Transnet as the client never assumed any good faith and it was an elaborate effort to ignore any potential risks as the conflict of interest was never a burning platform.
Regiments had a financial interest related to both parties that would reasonably be expected to affect their professional judgment in terms of securing a favourable outcome for Transnet.	The essence of the transaction was to enable duplication of fees and irrespective of the outcome, fees would be paid directly and indirectly by both parties to the transaction, and Regiments would consequently benefit irrespective of the outcomes from the trades.

15.7 Contravention of Fund Manager Mandate and Investment Policy Statement of the TSDBF

15.7.1 TSDBF is a statutory fund that is not subject to the rules of the Pension Funds Act, but was established in terms of the Transnet Pension Funds Act, 1990 (Act 62 of 1990), as amended. Transnet controls the board of trustees of the TSDBF, whereas private funds must have half of their board elected by members. The TSDBF is also not regulated by the Pension Funds Adjudicator.

15.7.2 In terms of Section 4.9.2 of the Transnet Pension Fund Rules, the Investment Committee shall, subject to guidelines prescribed by the Trustees and the requirements of the Pension Fund Act, 1956 (Act 24 of 1956), invest or cause to be invested the moneys of the Fund not immediately required for current expenses and benefit payments **(Annex 55)**.

15.7.3 The mandate accorded the Investment Committee is underpinned by the Investment Policy Statement (IPS), which is the responsibility of the Trustees. It is usually developed with the assistance of the fund actuary and investment/asset consultant. Notwithstanding, it is adopted and approved by the Trustees **(Annex 35)**.

15.7.4 The Fund rules and IPS must be congruent. The Fund Rules are approved and is thus the "law" of the Fund; the IPS is a subset of the rules and must align with it. Although not applicable to the TSDBF per se, the Good Governance for Retirement funds (under the Pension Fund Act) and with specific reference to Circular PF130, an IPS must be done for a fund and regularly reviewed **(Annex 34)**.

15.7.5 Regiments Fund Managers (Pty) Ltd was not only required to adhere to the Portfolio Management Agreement (PMA), which was subject to all applicable law and the Investment and Risk Management Framework (of Transnet), but also the Investment Policy Statement (IPS) of the Transnet 2nd Defined Benefit Fund adopted and approved as Version 3 on 30 September 2010. Amendments were made to the TSDBF Investment Policy Statement in September 2013 with specific referenced to Unmatched Portfolios. The Statement includes certain Mandate Restrictions and states as follows: *"The mandates given to the Investment Managers [Regiments Fund Managers] that manage portfolios on behalf of the Fund [the TSDBF] include*

restrictions on among others, the Use of Derivatives". Restriction implies a *limiting condition and in this case, a contravention of a mandate and Fund Rules* ***(Annex 33)***.

15.7.6 Regiments Fund Managers contravened their obligations of managing the Fund in terms of the Portfolio Management Agreement with specific reference to Section 16.3.1 of the PMA that states, "*..., undertake not place itself in a position where the interests and duties of Regiments may conflict with the interest of the Client [TSDBF].....*", and the TSDBF Fund Rules and by extension the IPS as highlighted above by entering into interest rate swap transactions in terms of the prescribed framework, i.e. *Investment* Policy Statement of 2010 as amended **(Annex 36)**.

16. Summary of fees to be recouped from parties

16.1 Regiments, Trillian and various persons in senior positions within Transnet - whether acting or not - with specific reference to the GCFO, GCEO and Group Treasurer, are to a greater or lesser degree implicated having the mandate, authority for approval and acting on advice that led to collusion with reference to the CDB Loan, the R12 billion Club Loan, TSDBF and related derivative transactions.

16.2 The total irregular expenditure incurred by Transnet on fees paid to Regiments for the execution of the swaps is between R248.1 (R146.8 million (R12 billion Club Loan) + R111.0 million (TSDBF) and R257.8 million (R141.3 million (R12 Billion Club Loan) + R106.8 million (TSDBF) based on a comparison with market norms plus the difference in the payment to Regiments by TSDBF (R227.8 million less R112.4 million) based on market norms and the application of sensitivity analysis. That latter refers to a range of fees as these differ between players in the market.

16.3 Total fees to be recouped from Regiments and other parties that approved and authorised the transactions, thus range between R363.5 million and R373.2 million plus interest from the date transactions were executed, thus rounded to an effective amount of R370 million plus interest.

16.4 Regiments was paid R166 million for advice related to management and debt origination, which was unjustified in terms of the CDB Loan of USD 1.5 billion. A further R99.5 million was paid to Regiments as a so-called "success fee" for which no justification was found. There were no grounds to pay for transaction advisory services on a success fee basis and the budget of R21.1 million should have been sufficient **(Annex 45)**. Therefore, an additional payment of R68.4 million cannot be justified.

16.5 Losses incurred by Transnet by fixing the interest rate at a rate much higher than the mid-market blended rate applicable to the R11.3 billion Transnet Debt and R12 Billion Club Loan, are due to the reckless and dubious nature of the decisions made by persons mandated to ensure that financing decisions are taken in the best interest of Transnet. By 31 October 2018, these Losses amounted to R1 409 million and have subsequently increased.

16.6 The total losses from the payment of unjustifiable and excessive fees, transaction costs related to various swap transactions and the blatant mispricing of interest rates associated with the swaps, is estimated at R2 094 million.

16.7 Table 5 indicates the nature and scope of each transaction, the responsible party, the amount to be recovered and the reference in the report.

Table 5: Indication of the nature and scope of the transaction, responsible party and the amount to be recovered

Nature	Scope	Party	Amount to be recovered	Reference in report
1064 locomotives	Transaction advising – deal structuring, financing and funding options	Regiments	R68 400 000	Section 10.8.1
CDB financing	Lead manager and debt originator	Regiments	R152 756 408	Section 10.8.1
CDB Loan Facility split	Demonstration of savings	Trillian (Regiments)	R82 000 000	Section 10.8.3
CDB (JP Morgan mandate)	Cross-currency swaps – structure and arrange	Regiments	R7 500 000	Section 13.1
CDB (JP Morgan mandate)	Contingent Credit Default swap	Regiments	R5 743 592	Section 13.2
Fees beyond market norms (R12 Billion Club Loan (fees)	Interest rate swaps	Regiments	R141 300 000	Section 12.14
Fees beyond market norms (Transnet debt of R11,3 billion)(fees)	Interest rate swaps	Regiments	R112 400 000	Section 14.3
TSDBF (over-payment of fee charge)	Fees less 20bps for swap transaction	Regiments	R115 400 000	Section 14.4
		SUBTOTAL	**R685 500 000**	

Nature	Scope	Party	Amount to be recovered	Reference in report
Losses to Transnet due to mispricing of interest rate swaps	R12 billion Club loan (R4.5 billion)	Group Treasurer and others	R262 600 000 (as at 1/10/2018)	Section 11.8.2
Losses to Transnet due to mispricing of interest rate swaps	R12 billion Club loan (R7.5 billion)	Group Treasurer and others	R480 100 000 (as at 1/10/2018)	Section 11.8.5
Losses to Transnet due to mispricing of interest rate swaps	Transnet Debt (R11.3 billion)	Group Treasurer and others	R666 446 489 (as at 31/10/2018)	Section 11.8.8
		SUBTOTAL	**R1 409 146 489**	
		GRAND TOTAL	**R2 094 646 489**	

Note: These figures are not final and will change monthly as the JIBAR changes and calculation are revisited.

16.8 In order to siphon off funds from Transnet to the extent and magnitude realised through the implementation of various schemes, individuals would need to contrive collectively and at a level of executive power and decision-making to achieve the desired outcome. The analysis suggests that Regiments, Trillian and the persons working for and associated with these entities, together with the GCFO, the GCE and the Group Treasurer of Transnet, were pivotal and instrumental in hatching the plan that led to a plethora of decisions that cost and continues to cost Transnet significant amounts of money, while Losses could continue for the remaining tenor of the loans, which to date have 12 years to run in order to reach maturity.

17. Transnet Policy Breaches

17.1 Original Transnet Procurement Procedures Manual

17.1.1 Clauses 8.3 and 8.4 state, "The Specialist Units mentioned above must be utilised by other Transnet Entities for required Goods and Services falling within their scope. The external market may not be approached for Goods and Services falling within the strategic Specialist Units' or Division's core-competency areas. This would also include specialist services that are required which may be performed by a particular internal functional area, e.g. Group Treasury and Group Tax. The only exception to this rule is if the Specialised Unit indicates in writing that they do not have the ability or capacity to provide the required Goods or Services."

17.1.2 Through the appointment of Regiments and Trillian, these clauses were breached as Transnet Treasury and Structured Finance were more than equipped to support these transactions.

17.2 Amended Transnet Procurement Procedures Manual (Version 3, dated 1 June 2015)

17.2.1 Chapter 8 of the said Manual refers to the identification of **Strategic Specialist Units,** but it excludes Treasury. In Section 8.3 that refers to **Compulsory utilization of specialist Units**, the Manual state the following: "*The Specialist Units mentioned above must be utilized by other Transnet Entities for required Goods, Construction Works and Services falling within their scope. The external market may not be approached for Goods, Construction Works and Services falling within the Strategic Specialist Units' or Division core-competency areas. This would also include specialist services that are required which may be performed by a particular internal functional area e.g.* ***Group Treasury*** *and* ***Group Tax***".

17.2.2 Chapter 15 covers with the Appointment of Consultants, which must be aligned with and regulated by the National Treasury Instruction Note 01 of 2013/2014 on Cost Containment Measures. The PPM In Section 15.8 *inter alia* states, "*In order to justify the appointment of Consultants, the purpose for making use of consulting services must be fully understood and well-motivated. In all instances, the first check is to determine whether the Service can be sourced internally (i.e. are these skills available*

within Transnet). It is important that there is a justifiable reason and purpose for using external consultants". Subsequently, National Treasury issued Instruction Note 2 of 2016/2017 on cost containment measures, which replaced Instruction 1 of 2013/2014 that introduced revised cost containment measures.

17.2.3 The TPPM in Section 15.8.2, Approval to appoint Consultants, states, "The engagement of consultants is to be strictly controlled and appropriately approved. Transnet may only contract with a Consultant after a gap analysis has confirmed that Transnet does not have the requisite skills or resources in its full time employ to perform the services in question. A gap analysis would be conducted to identify any gaps between current available human resources and human resources required to complete a specific project".

17.2.4 This implies that Transnet should first conduct a skills gap analysis within its structures prior to seeking the use of consultants.

17.2.5 "Based on a business case the appointment of a Consultant may only be approved by a person with Delegation of Authority. In this regard, the motivation to appoint a consultant should provide a concise overview of the type of consulting services which are required and why the proposal / motivation for appointment of Consultants should be supported".

17.2.6 "The appointment of Consultants should by default follow the Open Bid process to ensure fair competition. In exceptional cases, one may motivate the Confinement route, or the quotation route for low value consultancy appointments. Irrespective of the value, Consultants may only be approached for quotations AFTER the necessary prior in-principle approval has been obtained from the appropriate person / body with the required Delegation of Authority".

17.2.7 The TPPM in Section 15.8.3 alludes to justifiable reasons for consultant services, which may include:

a) Only an external consultant can offer the skills and expertise that are not available within Transnet.

b) Employees within Transnet who do have the skills or do not have the time to get involved in the particular project. Consultants, guided by experience and expertise, can get the job done more quickly as they do not have to continue with business functions.

c) The initiative cannot be assigned to anyone in-house due to confidentiality or sensitivity.

d) An outside perspective is required. A consultant can view the situation objectively, without the filters and existing paradigms that internal employees may have.

e) Exposure to best practices is required. Due to larger consulting houses having a breadth of research and experience from different organizations, including international exposure, a consultant can provide the requisite intellectual property and provide essential skills development.

f) There may be other justified reasons to obtain an external view.

17.2.8 The PPM at 15.8.4 Remuneration of Consultants states: Consultants may only be remunerated at the rates:

a) Determined in the "Guideline for fees" issued by the South African Institute of Chartered Accountants (SAICA);

b) Set out in the Guide on Hourly Fee Rates for Consultants" by the Department of Public Service and Administration (DPSA); or

c) Prescribed by the body regulating the profession of the Consultant.

17.3 The Financial Risk Management Framework (FRMF)

17.3.1 Section 12.5 of the FRMF indicates that the preferred option will be to enter into a loan with the fix/floating characteristics as required. Interest rate risk hedges can be done at a later stage when markets or trends have changed. Interest rates did not change to the extent that warranted hedging at the time the interest rate swaps were executed.

17.3.2 Section 12.4 of the FRMF states the parameters within which the debt structure between floating and fixed can vary. The approach adopted to lean substantially on a higher fixed portion of the Transnet debt, was unwarranted as there was nothing in the market that alluded to some "catastrophic" event that would drive the Rand:US Dollar exchange rate to levels that would necessitate interest increases and significantly higher inflationary pressures.

17.3.3 Transnet are permitted in terms of Section 19.1 of the FRMF to enter into and trade interest rate swaps.

17.4 Delegation of Authority and Approved Mandate (DoA)

(a) In terms of the DoA and with specific reference to Interest Rate Swaps (hedges), the delegations for approval of such USD-denominated transactions rest with the Group Treasurer for amounts of less than USD 100 million and amounts above USD 100 million with the GCFO. Amounts of up to but not exceeding R1 000 million and exceeding R1 000 million is approved by the Group Treasurer and GCFO, respectively. Approval for terms less than five years is the authority of the Group Treasurer and beyond five years, the GCFO **(Annex 56)**.

(b) It is important to note that all the interest rate swap transactions related to the CDB loan and motivation therefore was approved by the GCFO, but compiled by the Group Treasurer. No reference is made in any submissions to inputs from other Treasury departments or confirmation of the rates proposed for the transaction, etc.

(c) It is also apparent in the DoA that no parameters are stated for the approval of fee structures. No regulatory mechanism exists to consider the fees in terms of benchmarks

or to report on the same when decisions are made if fees are cost-effective, fair and transparent. It is clear that the PFMA principles would form the basis of such decisions, but this appears not to be the case.

18. Conclusion

18.1 Regiments was overpaid for transaction advising and services related to funding and swaps by R431.8 million.

18.2 Due to deliberately overcharging on fees related to interest rate swaps when compared to market norms of similar trades, a further fee of R246.4 million should be recovered.

18.3 A further recovery of funds is associated with the deliberate mispricing of the interest rate swaps that resulted in and continues to result in extensive losses for Transnet. A sizable percentage of the losses should be recouped from the difference between the fixed rate and the blended mid-market rate on the day the swaps were executed.

18.3.1 The losses calculated on the basis mentioned for the R12 Billion Club Loan was R742.7 million as at 1 October 2018 and the losses for the Transnet debt of R11.3 billion was R2 753.4 million as at 31 October 2018.

18.4 Parallel processes were introduced that would generate fees for Regiments and other Transnet officials, while JP Morgan was assigned and mandated to do the same work and provide advisory services covering what Regiments was required to do. In addition, the Transnet dealers with the necessary capacity and skill were sidelined at great expense to Transnet, with no justification. This was essentially orchestrated by the Group Treasurer, who was the mandated person with the requisite authority to ensure that deals are concluded and transactions executed in the best interest of Transnet and the Country.

18.5 Several salient matters emanating from the analysis include the following:

18.5.1 Regiments (with the endorsement of Transnet) was paid for the same work related to the hedging of the CDB Loan for which JP Morgan was appointed, although sufficient capacity existed within the Transnet Treasury and the Structured Finance division. The Group Treasurer would have been aware of this, but did not question the reasoning for the use of consultants/advisors to replicate the work done within Treasury and its various sub-divisions and as a consequence, contravened various sections of the Amended Transnet Procurement Procedures Manual (Version 3, dated 1 June 2015).

18.5.2 The swaps were mispriced with the knowledge of the Group Treasurer who authorised all the swap transactions, while structuring the swaps in a manner that increased the spread and resulted in Transnet paying more for the cost of funding than comparable rates from institutions providing similar type USD-denominated loans. The implications hereof could be further financial losses incurred due to the use of said structuring derivatives (e.g. knockout swaps) that placed Transnet at significant risk.

18.5.3 Unfounded payments were made by Transnet to Trillian for advisory work done by Regiments related to the CDB Loan transaction that formed part of and was included in a contingency fee paid to Regiments.

18.5.4 Treasury and by implication the Group Treasurer, negated their responsibility to monitor and oversee the work of Regiments with specific reference to the use of derivative instruments in the financing of the CSR and CNR locomotives.

18.5.5 Regiments was clearly conflicted being an advisor to Transnet at the time and having the mandate to manage the portfolio of the TSDBF. In terms of the TSDBF Investment Policy Statement, this resulted in a situation where Regiments is advising both Transnet and the TSDBF related to transactions that would need to and could only benefit one party through the execution of the interest rate swaps and would therefore be detrimental to the other party. This is a clear conflict and there can only be one winner.

18.5.6 The TSDBF in terms of the IPS was restricted from using derivate instruments and therefore Regiments as the fund managers of the TSDBF contravened the Fund Rules of the TSDBF and the mandate of the Fund not to trade derivatives.

18.5.7 Mr Phetolo Ramosebudi indicated in a discussion that Regiments was not paid for the execution of the interested rate swaps between Nedbank and between Transnet and the TSDBF and Transnet. This is incorrect as a memorandum dated 28 August 2017 and signed by the Group Treasurer, indicates that Regiments was paid 20 bps on the yield for the execution of the swaps.

18.5.8 In terms of governance, it is unprecedented that Regiments was elevated to a role and performed functions that effectively side-lined officials within Group Treasury and the Structured Finance division, where Regiments initially assumed the role as the Supply Development Partner of JP Morgan. There was no oversight of the work done by Regiments by either JP Morgan or the Group Treasurer, who would have the responsibility and delegated authority to do the same. It is incomprehensible that the Group Treasurer was not aware of the alternative and parallel processes operating alongside Treasury.

18.5.9 Mr Phetolo Ramosebudi by his own admission, did not benchmark processes or have officials confirmed and endorsed the advice provided by Regiments working with JP Morgan with regard to financial derivative instruments, which resulted in certain cases in significant financial loses for Transnet.

18.5.10 It further appears that the Group Treasurer did not work with Risk Planning to consider the impacts of the proposals made by Regiments; they appeared to be merely authorised and implemented through instruction.

18.5.11 The Group Treasurer would have been aware of the use of the TSDBF as a counterparty in interest rate swap transactions applicable to R11.3 billion of the Transnet debt. Imposing risks on a pension fund using the stated instruments is untoward and it was indicated that the Fund Managers [Regiments] contravened their mandate and transgressed the Fund Rules by engaging with and entering into such transactions. The IPS is clear that restrictions are placed on the use of derivatives Mr Ramosebudi would have been party to the transaction insofar as having knowledge of using the pension fund as the counterparty and approving the a day after the execution of the first interest swaps related to the EDBC same (see email addressed to Mervin dated 31 March 2016) **(Annex 57)**.

19. Additional context for the analysis provided in the body of the report

19.1 Context of funding for the CNR and CSR locomotives

19.1.1 Figure 12 illustrates the alignment between the nature of the funding sourced for the 1064 locomotives and the risk mitigation measures adopted to manage the risk over 15 years, the term of the loans applicable to the funding of the China North Rail (CNR) and China South Rail (CSR) locomotives from China.

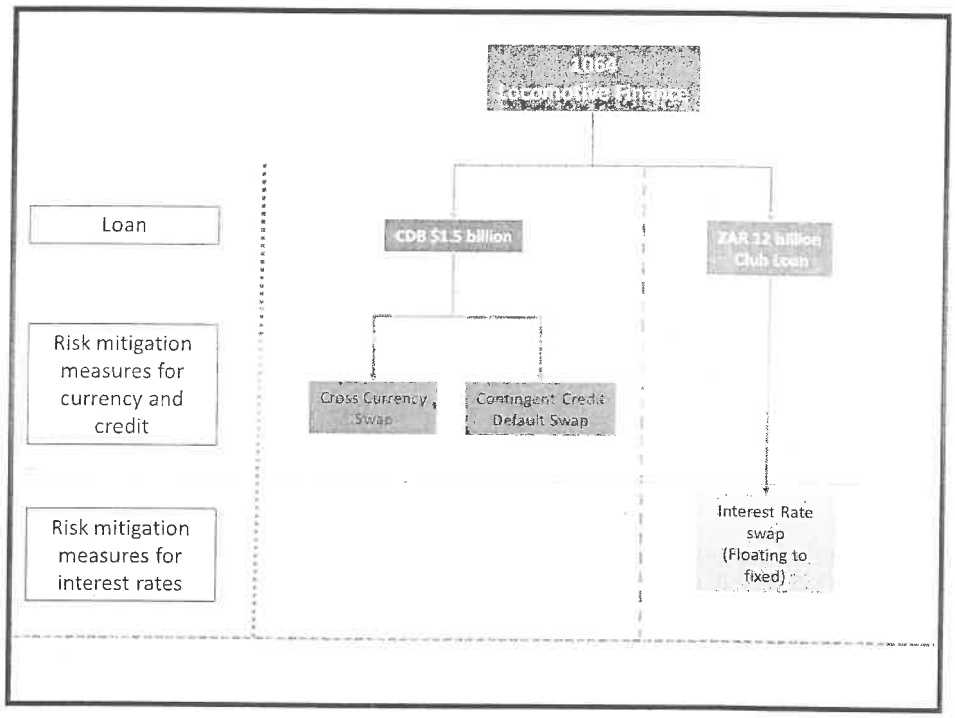

Figure 12: China Development Bank (CDB) Loan and R12 billion (syndicated) Club Loan aligned with applied risk mitigation measures

19.1.2 Figure 12 indicates the loan sourced from China Development Bank (CDB) and a syndicated loan among mostly South African financial institutions denominated in Rand. In addition, the risk mitigation measures are stated and involved the use and application of derivatives that cover various instruments. A derivative *is a financial security with a value that is reliant upon or derived from an underlying asset. Its price is determined by fluctuations in currencies and interest rates.*

19.2 Advisory fees related to the CDB Loan

19.2.1 Various advisory fees related to the aforementioned loans were payable and entailed activities related to deal structuring, financing and funding options with specific reference to the CDB Loan. Regiments took over this task from Nedbank. In terms of the R12 billion Club Loan, JP Morgan was appointed to lead arrange the syndicated Club Loan. The transaction parties/advisors and fees are illustrated in Figure 13.

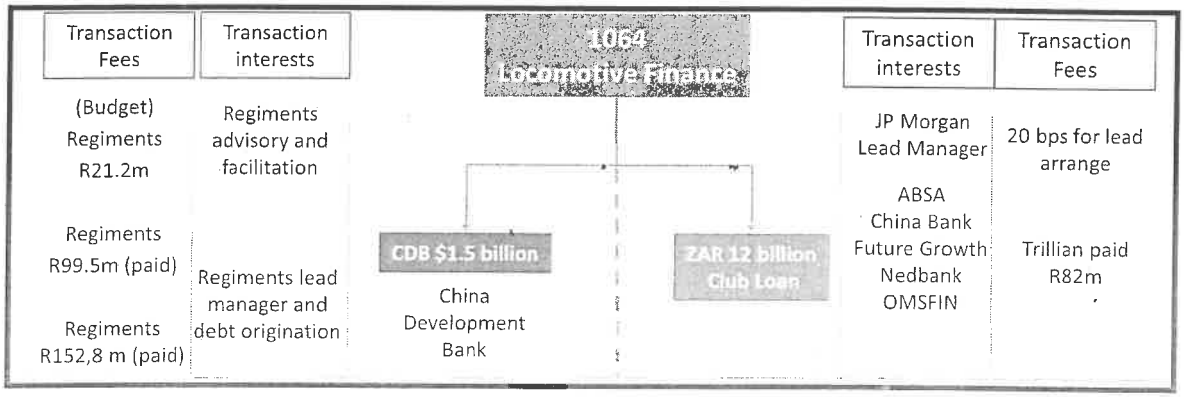

Figure 13: Indications of transaction interests and advisory fees related to the CDB Loan and the R12 billion Club Loan

19.2.2 Regiments originally had a budget of R21.1 million, which was part of a R35.2 million fee for advisory services that encompassed several advisors. This figure increased from the budgeted amount of R35.2 million to R51.2 million (which was paid), i.e. an increase of R16 million. From this analysis, is possible to deduce that the fee originally applicable to Nedbank was about R5 million to R6 million, given the replacement of Nedbank by Regiments in the Mckinsey consortium.

19.2.3 It is unclear why the remuneration model was changed to a success-fee basis after Regiments already completed a portion of the work. What portion of the scope had already been concluded by the time of changing the remuneration model is uncertain. It is not possible to ascertain the extent of the work that had been completed to reduce the risk of engaging on a success-fee basis. This would enhance the opportunity to obtain more fees at almost no or extremely limited risk. The

introduction of a success-fee basis of remuneration appears unwarranted and begs the question why Regiments would assume risk if fees to be earned are guaranteed in terms of the scope. This would likely only occur if a great degree of certainty existed and significant benefit could result by embarking on a success-fee based remuneration model.

19.2.4 Regiments was actually paid fees totalling R99.5 million, an increase of 371.56% (or R78.4 million) from the stated budgeted amount of R21.1 million. The basis for the amendment is purported to be "an adjustment to the remuneration model" that alludes to a "success" fee arrangement for the work that would follow. This should be read in the context of no risk and high reward as information was already available to ensure success and reduce the risk to almost zero.

19.2.5 In order to align the fees and tasks, the re-alignment of the scope suggests that the increase in fee from the budgeted amount to what was actually paid to Regiments, should have been R31.1 million as they took over a large part of the work covered by the McKinsey budget of R20.1 million for which McKinsey were only actually paid R10.0 million. This assumes the same original scope as there is no indication that additional scope was added to the work agreed in the original LOI.

19.2.6 A need exists to understand the basis for the payment of an additional R68,4 million (R99.5 million less R31.1 million) to Regiments before further payments were made for work related to debt origination, transaction management and hedge advisory services (per letter dated 15 July 2015 from the Regiments CEO), which were essentially covered in the LOI.

19.2.7 A further amount of R152 756 408 was paid to Regiments for lead manager and debt origination (brokerage fee) related to the CDB Loan. This was based on renegotiating the tenor (term of the loan) from 10 to 15 years and the cost (the 3mJIBAR + spread). No alignment or parallels exist between the fee paid and the advisory services.

19.2.8 Further analysis of this matter indicates that the yield to maturity on which the fee of 15 bps is based, is R101.8 billion and not the notional or face value of the loan, which is the norm for calculation of fees related to the nature and scope of work that

Regiments was required to do. The yield to maturity *commonly refers to the interest or return that the investor receives from a loan and is usually reported as an annual figure. It is based on a ZAR equivalent loan of R18 billion (used by Mr Eric Wood in an Affidavit related to the Club Loan, p. 68) at an exchange rate of ZAR12 : USD1 and an all-in interest rate of 9.508% as at 4 June 2015. The 3mJIBAR at 4 June 2015 and 12 June 2015, the dates used for the calculation of the fees due to Regiments, was the same. In the memorandum of the Group Treasurer dated 28/8/2018 (p. 3), the 3-month JIBAR rate was quoted as 6.308% (the rate in September 2015), which brought the* 3mJIBAR + spread *to 9.538% and not 9.508%.*

An additional 3 bps was realised as a consequence of what is stated above and a benefit therefore accrued to Regiments that executed the transaction. This occurred due to mispricing the 3mJIBAR rate that increased the margin and resulted in a higher all-in rate.

19.2.9 A need *exists* to understand the basis of the fee charged by Regiments, i.e. how the yield to maturity was determined. Using the Reuters System, analysis of the transaction data on 12 June 2015 (the date used by Regiments to calculate the advisory fee) indicates that a fixed rate of 8.3877% plus 3.225% (322.5 bps) (per memorandum dated 22 September 2015) plus 0.0015% (15 bps) due to Regiments as an advisory fee was applied, resulting in a Net Present Value (NPV) of R152 791 710, which is aligned - with a small variation - to the present value of the fee paid to Regiments (R152 756 408).

19.2.10 The all-in rate applied was therefore 11.76%. When compared to the highest and lowest rate that Transnet paid for the cross-currency swap to date, it is clear that the additional charge (or loss incurred by Transnet) by using the CDB Loan facility and applying the rate advised by Regiments, is between 0.22% (11.76% less 11.54%) and 1.28% (11.76% less 10.48%). Based on the yield to maturity of R101 837 605 333, the market value of losses incurred to date would be between R224 042 731 and R1 303 521 348.

19.2.11 The difference between using the yield to maturity and notional value of the loan for determining the fees, is analysed as follows:

(a) 15 bps paid to Regiments based on the notional amount of R18 billion, the amount used by Regiments to calculate the fee, at an exchange rate of *ZAR12 : USD1* amounted to R27.0 million.

(b) 15 bps on the yield of R101.8 billion (the total loan) to maturity is R152 756 408, which translates to a point value (PV01) of R10 183 761 (per basis point).

(c) Regiments was overpaid by R125 756 408 (based on R18 billion) for the debt origination based on these assertions.

19.3 R12 billion (syndicated) Club Loan

19.3.1 In response to the Request for Proposals (RFP) issued on 6 May 2015, JP Morgan indicated that as the lead arranger of the ZAR-denominated syndicated loan of up to R12 billion, 0.2% (20 bps) of R12 billion (the notional face-value) or R24 million would be the fee due. Thirty-five percent (35%) of this amount equates to R8.4 million associated with Regiments as the Supplier Development Partner.

19.3.2 Estimated fees for the hedging of the risks stated in the RFP, which covered cross-currency swaps, interest swaps and contingent credit default swaps, are approximately R40 million and is determined for each transaction at the due date. An amount of R14 million (or 35%) is related to Supplier Development.

19.3.3 The total figure associated with Regiments as part of the supplier development initiatives is R22.4 million of the R64 million due to JP Morgan for lead arranger and hedging transactions of the Club Loan.

19.4 Fees applicable and flow between the parties in the transaction

19.4.1 Figure 14 aligns the parties to the various transactions and offers an indication of the fees paid by Transnet for each type of transaction.

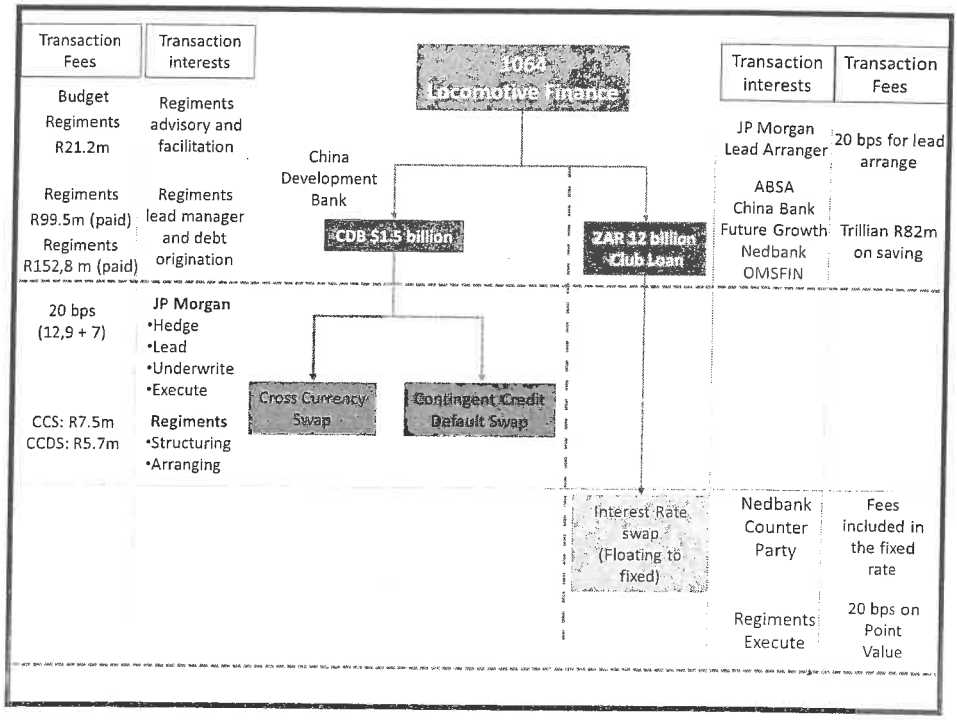

Figure 14: Alignment of transaction interests, advisory fees and transaction fees related to the CDB USD 1.5 billion and the R12 billion Club Loans

Note: Fees related to the swap transactions were paid on the yield (market rates) and not on notional value

19.5 Alignment of the total execution cost and Transnet Dealer Room Fee - R11.3 billion Transnet Debt

19.5.1 If one accepts that trades are not executed without the payment of a fee, an analysis was prepared to ascertain the net difference in terms of two adopted approaches:

(a) Payment of market related fees for execution of swap transactions related to bonds; and

(b) Transnet Dealer Room doing the trade at 30 bps using the blended mid-market rates quoted by Bloomberg on the day the trade would be executed.

19.5.2 Table 6 indicates the execution cost, including a fee applicable to the Transnet Dealer Room, based on the difference between the mark-to market and the fixed rate of the swaps.

Table 6: Calculation of execution costs and fees applicable to ZAR 11.3 billion Transnet debt loan with specific reference to the Transnet Dealer Room

Issuer	Execution date	PV01	Total execution cost including the Regiments fee of 20 bps	Transnet Dealer Room fee (30 bps)	Total execution cost less Dealer Room fees
			(5)	8= 30bps x (1)	9= (5) – (8)
EDBC	30 March 2016	R3 557 774	R 284 621 920	R 106 733 220	R 177 888 700
LIBFIN	8 April 2016	R856 772	R 61 687 584	R 25 703 160	R 35 984 424
Old Mutual	8 April 2016	R603 026	R 43 417 872	R 18 090 780	R 25 327 092
Standard Bank	8 April 2016	R601 977	R 43 342 344	R 18 059 310	R 25 283 034
			R 433 069 720	**R 168 586 470**	**R 264 483 250**

19.5.3 Discussions with Transnet Dealer Room representatives indicate that they had and have the capacity and skill to execute the swap transactions. The hypothetical execution fee of 30 bps is used as a basis for the calculation, but could be lower at about 25 bps. If the fee charged by the Dealer Room is subtracted from the total execution cost (inclusive of the fee [20 bps] paid to Regiments), a saving of R264.5 million would accrue to Transnet. As there was no reason to doubt the capacity and skills of the traders, the overpayment of fees for the execution of the swap transactions cannot be justified and is therefore also irregular and would only benefit the counterparty and party executing the swap transactions.

19.6 Market norms and standards

19.6.1 If normal market norms and standards and the R2030 Government Bond with a 13-year maturity and coupon rate of 8.5%, for instance, were applied as at 25 October 2018, the Rand value of one basis point was R698.94 per R1 million of the notional value of the loan. The loans related to the USD 1.5 billion ZAR equivalent that have different maturity dates, which impact the value per point.

19.6.2 The Agent/Broker determines the fee based on the order to execute and is payable by Transnet to the counterparty. The commission paid for the execution of the swaps is usually included in the yield (market rate) of the trade and is normally a fraction of a

basis point per R1 million of the nominal value of the loan. The size of the trade will determine the fraction and is at the discretion of the Agent/Broker. It can range between 0.5 basis points and 1 basis point, depending on the size of the transaction.

19.6.3 The swaps that Regiments executed as the Agent was at 20 bps when compared to market norms of one basis point. If the trade was done in the bond market with the same maturity and size of transaction (Transnet debt of R11.3 billion), the fees payable to the Execution Agent would be R1.4 million at 0.25 bps; R2.8 million at 0.5 bps; or R4.2 million at 0.75 bps. If a full basis point was charged by the Execution Agent, the fee would be R5.6 million. Table 7 indicates the fee Regiments received in relation to market norms and the amount that Transnet overpaid based on the sensitivity analysis of using fractions of a basis point.

Table 7: Overpayments made by Transnet due to the use of Regiments as opposed to market-related rates

Execution fee (bps)	Regiments	Market norms	Transnet overpaid
0.25	R112,4 million	R1.4 million	R111.0 million
0.50	R112.4 million	R2.8 million	R109.6 million
0.75	R112.4 million	R4.2 million	R108.2 million
1	R112.4 million	R5.6 million	R106.8 million

19.6.4 The Group Treasurer confirmed the fee and would have been responsible for approving the fee payable to Regiments at 20 bps (refer to the Regiments and Trillian Review prepared by the Group Treasurer, dated 28 August 2017, acknowledging the fee paid to Regiments) and is therefore liable for (1) not adopting market norms and standards as demonstrated, and (2) not eliciting quotations from financial institutions for the fee applicable to the execution of such a large swap. The Group Treasurer should therefore be responsible for the overpayment of fees ranging from between R106.8 million and R111.0 million. A significant portion of the fee should be recouped with interest from the date the transaction was executed.

19.7 Interest rate swaps – R12 billion Club Loan

19.7.1 Nedbank was paid a fee of 20 bps as the counterparty for the interest rate swaps related to the R12 billion Club Loan. Regiments was the Execution Agent for the transaction. In a Regiments and Trillian Review prepared and signed by the Group Treasurer on 28 August 2017, it is stated that Regiments Capital were paid 20 bps on the yield as the Execution Agent (p. 1).

19.7.2 As with the CDB USD 1.5 billion ZAR equivalent, the cost and fees payable for the swaps are based on a Point Value determined through the Bloomberg Swap Pricing Module. The applicable notional value of the loan is inputted and a point value (PV01) (i.e. one basis point) is calculated based on the data. The PV01 for the loans are different due to the different notional values. A summary indicating the PV01 for each loan, blended mid-rate, fixed rate and basis point difference is presented in Table 8.

Table 8: Data applicable to the swaps with Nedbank as counterparty for both tranches of the R12 billion Club Loan

Issuer	Execution date	PV01	Blended mid-rate	Fixed	Basis-point difference
		1	2	3	4
ABSA	4 December 2015	R866 457	11.156	11.83	67.4
Bank of China	4 December 2015	R972 302	11.156	11.83	67.4
Old Mutual	4 December 2015	R326 601	11.156	11.83	67.4
Future Growth	4 December 2015	R326 601	11.156	11.83	67.4
Nedbank	4 December 2015	R326 601	11.156	11.83	67.4
ABSA	7 March 2016	R833 676	11.444	12.27	82.6
Bank of China	7 March 2016	R939 364	11.444	12.27	82.6
Old Mutual	7 March 2016	R631 503	11.444	12.27	82.6
Future Growth	7 March 2016	R631 503	11.444	12.27	82.6
Nedbank	7 March 2016	R631 503	11.444	12.27	82.6

Note: Read with Table 8

Source: Bloomberg and own calculations

19.7.3 The point values (PV01) are used to calculate the total execution costs and any other fees applicable. Table 9 indicates the execution cost including the Regiments fee, the actual Regiments fee and the total execution cost less the fee paid to Regiments.

19.7.4 The data provided in Table 9 indicates that Regiments was paid an execution fee of R148.7 million for swaps related to the R12 billion Club Loan of which a further windfall of R422.5 million was generated by the counterparty due to the mispricing of the trades as indicated by the Bloomberg blended mid-rate.

Table 9: Calculation of execution costs and fees applicable to the R12 billion Club Loan

Issuer	Execution date	PV01	Total execution cost including the Regiments fee of 20 bps	Regiments fee (20 bps)	Total execution cost less Regiments fee
			5 = (1) x (4)	6= 20bp x (1)	7= (5) – (6)
ABSA	4 December 2015	R866 457	R 58 399 202	R 17 329 140	R 41 070 062
Bank of China	4 December 2015	R972 302	R 65 533 155	R 19 446 040	R 46 087 115
Old Mutual	4 December 2015	R326 601	R 22 012 907	R 6 532 020	R 15 480 887
Future Growth	4 December 2015	R326 601	R 22 012 907	R 6 532 020	R 15 480 887
Nedbank	4 December 2015	R326 601	R 22 012 907	R 6 532 020	R 15 480 887
ABSA	7 March 2016	R833 676	R 68 861 638	R 16 673 520	R 52 188 118
Bank of China	7 March 2016	R939 364	R 77 591 466	R 18 787 280	R 58 804 186
Old Mutual	7 March 2016	R631 503	R 52 162 148	R 12 630 060	R 39 532 088
Future Growth	7 March 2016	R631 503	R 52 162 148	R 12 630 060	R 39 532 088
Nedbank	7 March 2016	R631 503	R 130 405 411	R 31 575 160	R 98 830 251

Source: Bloomberg and own calculations

19.8 Market norms and standards

19.8.1 If normal market norms and standards were applied together with the R2030 Government Bond with a 13 year maturity and coupon rate of 8.5% and using the market yield on 25 October 2018, the Rand value of 1 basis point was R698,94 per R1 million of the nominal amount of the loan. Note that the maturities of the Club Loans are also 2030.

19.8.2 The Agent/Broker determines the fee based on the order to execute and is payable by Transnet to the Agent/Broker (in this case Regiments). The commission is usually included in the yield of the trade and is normally a fraction of a basis point per R1 million. The size of the trade will determine the fraction and is at the discretion of the Agent/Broker, and can range between 0.5 bps and 1 bps for the size of the transaction.

19.8.3 The swaps that Regiments executed as the Agent, was at 20 bps when compared to market norms of one basis point. If the trade was done in the bond market with the same maturity and size of the R12 billion Club Loan transaction, the fees payable to the Execution Agent would be between R2.1 million at 0.25 bps ; R4.2 million at 0.5 bps, and R6.3 million at 0.75 bps. If a full basis point was charged for the execution of the swap, the fee would be R8.4 million.

19.8.4 Table 10 indicates the fee Regiments received compared to market norms using different fractions and the amount that Transnet overpaid based on the number of basis points.

Table 10: Overpayments made by Transnet due to the use of Regiments as opposed to applying market related rates to execute the transactions

Execution fee (bps)	Regiments	Market norms	Transnet overpaid
0.25	R148.7 million	R1.9 million	R146.8 million
0.50	R148.7 million	R3.7 million	R145.0 million
0.75	R148.7 million	R5.6 million	R143.1 million
1	R148.7 million	R7.4 million	R141.3 million

19.8.5 As with the Rand equivalent of the USD 1.5 billion CDB Loan, the Group Treasurer approved the fee payable to Regiments at 20 bps and is therefore liable for neither adopting market norms nor standards as demonstrated, or eliciting quotations for the fee applicable to the execution of such a large swap. The Group Treasurer should

therefore be held responsible for the overpayment of fees ranging between R141.3 million and R146.8 million.

19.8.6 These funds should be recouped from the Group Treasurer (Mr Phetolo Ramosebudi) that approved the execution fee of 20bps and from the Group Chief Financial Officer (Mr Garry Pita) who approved the fee of 20 bps for the execution of the swaps related to the TSDBF as a counterparty. However, an execution fee of 40.53 bps was paid to Regiments for each of the swap transactions at each quarterly trade and therefore the recoupment in terms of the TSDBF is between R256.7 and R262.2 million.

19.9 Oversight and parallel process

19.9.1 In terms of the role of Regiments as lead manager, the scope of advisory services related to the process associated with the acquisition of the loan and management until drawdown and the management of the loan thereafter, it is our contention that internal structures within Transnet with the scope of expertise (including legal, tax, accounting, structured finance and risk management representatives), were overly sufficient to monitor, evaluate and manage the processes after the first drawdown and any subsequent drawdowns and hedge management and monitoring requirements.

19.9.2 It was apparent from the discussion with the former Group Treasurer that CDB was not the only option for funding the Chinese locomotives. However, it became apparent that misinformation of the currency swap rates created a chasm with the rates between 3mJIBAR plus 400 and 3mJIBAR plus 260, a significant spread applicable to a large amount. A fair price or margin at the time was 210 bps plus some upside. It was also clear that creating efficiencies was not part of the operating procedure that would have ensured that fair pricing would have applied.

19.9.3 The payment to Regiments for continually managing the financing process after conclusion of the CDB Loan agreement, while also being paid upfront for the work, raises questions related to the position, function and role of the internal structures within Transnet that would be mandated to manage the process of locomotive financing and by implication, also service providers that were engaged at the time.

19.9.4 Although these are process-related matters, it became apparent from discussions with the existing head of Group Treasury that no oversight role was provided by Treasury to ensure compliance with the scope of work and outcomes assigned to Regiments. This can only be a gross violation of standard operating procedure as all Treasury divisions would be approached at different times in the process of evaluating bids for financing. The Group Treasurer would lead any negotiations on financing. This simply did not happen.

19.9.5 In practical terms, it appears that Regiments reported via the Group Treasurer directly to the GCFO at the time and it was therefore not possible for the persons to whom said service providers (including Regiments) would usually report to effectively manage them. This resulted in the required departments within Group Treasury not being part of the process and negotiations as Regiments was performing the work that Treasury would have done as input and advice for decisions taken at the Executive level. Furthermore, no benchmarking was done and no confirmation was provided for rates captured in the Dealer Room. The rates captured in the Transnet Quantum system were not signed off and dealers were simply instructed by the Group Treasurer to book all deals related to the CDB and Club Loans.

19.9.6 The process of obtaining the funds and introducing cross-currency swaps are in accordance with a procedure that essentially entails several activities, of which the following are important for the assessment: (1) Preparation of an Utilisation Request and (2) Submission to draw the funds from the JP Morgan Dollar account.

19.9.7 When a drawdown is required to settle invoices issued by the locomotive manufacturer, an Utilisation Request is sent to the CDB. The payment in dollars from CDB will be made to a JP Morgan Dollar account. In order to draw the dollars from the JP Morgan Dollar account, i.e. for the cross-currency swap, a Submission must be prepared, recommended and approved. In terms hereof, the Group Treasurer together with the accountants and hedge accountant specialists will recommend the transaction and approval therefore would be required from the GCFO. The submission is then sent to the Dealer Room for execution and the booking of the deal.

19.9.8 It was noted during the discussion with Group Treasury staff that all deals were not executed through the Dealer Room as would be required by Transnet Standard Operating Procedure. The Transnet dealers did not trade the interest rate swaps with Nedbank or TSDBF and were only instructed by the Group Treasurer to book the trades. For the interest rate swaps, it seems that none of the delegated dealers did the trading activities. It is alleged that these were executed outside of Treasury and the dealers were requested by the Group Treasurer to merely book the deals.

19.9.9 In an email dated 29/2/2016 sent by Mr Ramosebudi, Group Treasurer at the time, confirmed the swaps to be executed on 7 March 2016 and ordered the booking of the deals. No email correspondence from the Group Treasurer was available to confirm the instruction to Regiments for the execution of the swaps on 4 December 2015. Confirmation for booking the deals by the Transnet traders was through an instruction issued by the Group Treasurer on 7 December 2015.

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figures, from the Nedbank Group it is 6-billion, from Bank of China it is 3-billion, ABSA, 3-million.

MR RAMOSEBUDI: Okay.

CHAIRPERSON: So that is the part that I think I am just trying to get clarity on.

MR RAMOSEBUDI: Rephrase your question again.

CHAIRPERSON: You are expected in the last 15 minutes, you have been saying Regiments was appointed and Regiments is the one that did all this work, they went to source, you were (inaudible) them to speak to the banks and wharra-wharra-wharra, as a result of their output you were able to get these 12... (intervenes)

MALE SPEAKER: Billion.

CHAIRPERSON: Billion South African rands that was done by Regiments, but I am saying I see a memo here which was saying it was actually Trillian that was appointed.

MR RAMOSEBUDI: No, you are correct, that is who was paid.

CHAIRPERSON: No, we will get to who was paid, okay. Then how do you change from what you told us, that Regiments did their work, requested and did their work to what is contained in the main?

MR RAMOSEBUDI: Through the ST requirements.

CHAIRPERSON: No, but what I am saying is, in the main... (intervenes)

MR RAMOSEBUDI: Ja, but you understand? The memo says Trillian is requested to be replacing JP Morgan in the club loan or to be a leader in the club loan, Trillian.

CHAIRPERSON: Yes.

MR RAMOSEBUDI: But they came through Regiments as a supply and development of Regiments. That is what they came.

CHAIRPERSON: I want to go, (indistinct) I just ask one question, so is it normal that you pay supply and development and not pay the main party to the contract?

MR RAMOSEBUDI: I do not know, that is why the chap from Group Supply Chain has to make recommendations to this memo because he best know those type of things, I have no background. By profession I am a physicist, so from a procurement point of view and those things I do not know, but he has advised that it is normal to do that, that is why he has recommended the transaction.

CHAIRPERSON: Which chap? Sorry?

MR RAMOSEBUDI: This is Eddie Thomas.

CHAIRPERSON: Okay, we will get to that part, let us first (indistinct), let us talk about... Look, it means I will come to the (indistinct). It is common cause that it was Trillian that was paid, that is what I understood it (inaudible), that one we know, Trillian was paid. It is why for me it is important... (intervenes)

MR RAMOSEBUDI: That is why there are memos and the payment invoices that... (intervenes)

CHAIRPERSON: Correct.

MR RAMOSEBUDI: You know, is linked to Regiments... (intervenes)

CHAIRPERSON: It goes to the issue of who was appointed, because you know with an interview you agree that Regiments was appointed,

but you compiled a memorandum... (intervenes)

MR RAMOSEBUDI: On the advice of my colleagues that this is the right thing to do.

CHAIRPERSON: All right, let me just ask this question then, it goes back to, remember we have been on that first memorandum? When you were signing as a compiler of the memorandum, did you know that the person that was appointed and who was doing the work, was Regiments?

MR RAMOSEBUDI: I knew.

CHAIRPERSON: You knew?

MR RAMOSEBUDI: Ja.

CHAIRPERSON: So you knew very well that when I am drafting this thing, when I see Trillian here it is not correct, it is Regiments?

MR RAMOSEBUDI: But I have consulted to the extent to which you know, the request was brought to me.

CHAIRPERSON: Ja, so by (inaudible).

MR RAMOSEBUDI: No, no, the CFO.

CHAIRPERSON: Okay, CFO... (intervenes)

MR RAMOSEBUDI: Gary.

CHAIRPERSON: And Gary (inaudible)?

MR RAMOSEBUDI: Ja.

CHAIRPERSON: So when on a straight face you knew that it was Regiments that did the work?

MR RAMOSEBUDI: But as I said, at some point at a later stage, Daniel Roy you know, came into the picture.