EXHIBIT BB 6

STATEMENT & ANNEXURE

OF

SHARLA CHETTY

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

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STATEMENT

I, the undersigned,

SHARLA CHETTY

do hereby state that:

I have been requested by the Commission to provide a statement in respect of the procurement processes followed by Transnet in the awarding of certain high value tenders to specific entities where I was personally involved in such processes. Accordingly, this statement deals with the procurement process relating to the awarding of the Network Services Master Service Agreement (the MSA) to Neotel (Pty) Ltd.

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

INTRODUCTION

2. I qualified as a chartered account in 2000 and joined Transnet in 2003 as the Corporate Financial Accountant at Transnet Port Terminals (TPT), formerly South African Port Operations. My current position is that of Chief Information Officer of TPT. I took up this position from January 2018.

3. During my employment at Transnet I held various senior executive positions in different divisions of Transnet. This includes the following positions: Chief Financial Officer at Transnet Pipelines (TPL), Chief Financial Officer at Transnet Port Terminals (TPT), and Chief Executive of Transnet Pipelines (TPL).

4. During my 15 years of service at Transnet I managed various portfolios and I gained significant experience in IT, procurement and finance. In particular, I gained a sound knowledge of high value tenders (HVT) and the related procurement process. For the period under review (2012) high value tender within Transnet refers to any tender with a value higher than R50 million, this value has subsequently increased to R100 million. The tender for the Network Services Master Services contract falls within the definition of HVT since its estimated total contract value was approximately R1.5 billion.

PROCUREMENT PROCESS AND AWARDING OF THE MSA CONTRACT TO NEOTEL (PTY) LTD

5. In 2013 the former Group Chief Executive of Transnet ("Mr. Molefe") appointed me to act in his position as the Group Chief Executive ("GCE") for the period, 28 October 2013 - 1 November 2013. Mr Molefe delegated his powers to me. **Annexure SC1**

6. In my capacity as the Acting GCE, I was presented with a memorandum for the approval of the procurement process and the awarding of a tender (GSM/13/04/0722) for the provision of Network Services, in accordance with the recommendation made by the Cross Functional Evaluation Team (CFET) to the qualified bidder, Neotel (Pty) Ltd. **Annexure SC2**

7. Due to the fact that I was based in Durban, I was provided with the following documents via email **Annexure SC3** in order to consider the recommendation to approve the procurement process and award of tender:

7.1. Tender Evaluation and Recommendation Report (TEAR) **Annexure SC4;**

7.2. Transnet Internal Audit Reports;

7.2.1. Report 1 – Covering period 6/05/2013 to 14/06/2013 – (Satisfactory report) **Annexure SC5**

7.2.2. Report 2 – Covering period 6/05/2013 to 09/06/2013- (Satisfactory report) **Annexure SC6**

7.2.3. Report 3 - Covering period 13/08/2013 to 15/10/2013 – (Requires Improvement) **Annexure SC7**

7.3. Excerpt of decision of the Board of Directors of Transnet SOC LTD approving the 2-month extension of the existing Neotel Network Master Services Agreement (MSA) and the transition period capped to a maximum of 12 months from 1 November 2013. **Annexure SC8**

8. In my capacity as Acting GCE, I was specifically requested to:

8.1. Approve the procurement process and award of the tender to Neotel (PTY) Ltd **Annexure SC2;**

8.2. Sign a Letter of Intent (LOI) for the preferred bidder; **Annexure SC9**

8.3. Sign Letter of Regret for the four (4) unsuccessful bidders; **Annexures SC10-13**

8.4. Sign the letter to extend the current Neotel contract **Annexure SC14**

9. In arriving at a decision, I was supported by Mr Garry Pita, the Group Chief Supply Chain Officer at the time ("Mr Pita"). Mr Pita and I had a telephonic discussion during which he briefed me on the procurement process that was followed for the specific tender.

10. I furthermore studied the documentation that was provided to me and I was satisfied that the documentation was comprehensive and that it explained the procurement process in sufficient detail to enable me to duly exercise my delegated powers to approve the award of the tender.

11. In reaching my decision to award the tender to Neotel, I had placed reliance on the TEAR as well as the Transnet Internal Audit (TIA) reports that had a green status. The issue highlighted in the TEAR report, regarding the rounding–off of the scores, had been sufficiently addressed through the confirmation received from National Treasury.

11.1. The TEAR report discussed the entire procurement process, from stages 1-5 and it highlights any discrepancies that were identified during stage 3, it further clarifies these discrepancies by stating the corrective measures that were taken to resolve it.

11.2. I took further comfort in the fact that Transnet Internal Audit (TIA) (as set out in page 19 of the TEAR) had produced the requisite gateway reports which confirmed that the procurement process was compliant with Transnet policies.

11.3. After I had duly considered all the facts that were presented to me, I did the following on 31 October 2013:

11.3.1.1. Approved the procurement process and awarded the tender to Neotel (PTY) Ltd;

11.3.1.2. Signed the Letter of Intent (LOI) for the preferred bidder, being Neotel; **Annexure SC9**

11.3.1.3. Signed the Letters of Regret for the four (4) unsuccessful bidders; **Annexure SC10-13**

11.3.1.4. Signed the letter to extend the current Neotel contract in line with the memorandum **Annexure SC14**

11.3.1.5. Approved and signed the memorandum and supporting letters as required by the memorandum. **Annexure SC15**

SUBSEQUENT OVERIDING OF THE AWARD TO NEOTEL

12. I have been presented by the Commission's investigators with documents that reflect subsequent events after I had awarded the tender to Neotel (PTY), in particular, a memorandum dated 20 November 2013. This memorandum was signed by Mr. Molefe and addressed to Anoj Singh the Group Chief Financial Officer and the Mr. Pita, the Group Supply Chain Officer. **Annexure SC16**

13. The aforesaid memorandum reflects a decision to award the Network Services Master Service tender to T-Systems. Effectively overturning the award, I made on 31 October 2013 to Neotel. Paragraph 26 and 27 of the memorandum states the following:

13.1.1. "*....Based on the explanations given above, I request that the group Chief Financial Officer, Group Information Officer and the Group Chief Supply Chain Officer to note my decisions to award the contract to T-Systems South Africa in terms of section 20.5 of the Procurement Procedure Manual (PPM) and that I am overriding the recommendation made in the TEAR report (par 27);*

13.1.2. "*Please find the following attached:*

i. *Signed Letter of Intent to T-Systems South Africa (Annexure G);*
ii. *Signed Letter of Regret to four (4) unsuccessful bidders (Annexure H); and*
iii. *Signed Letter to extend the current Neotel Contract (Annexure I)" Par (27)*

14. Neither Mr. Molefe, nor any of the other officials, consulted with me or informed me that my decision had been overridden /overturned.

CONCLUSION

15. Based on my interpretation of paragraph 20.5 of the Procurement Procedures Manual ("PPM") **Annexure SC17,** if Mr Molefe had concerns on the awarding of the tender to Neotel, he should have referred the matter back to the recommending officers or the evaluation team and he should have considered the responses from the recommending officers before making his final decision. In addition, if there is any material risks as per paragraph 20.2.14 of the PPM that the GCE was aware of, he should have requested for a risk evaluation (if not sufficiently addressed) before making his final decision.
16. Mr Molefe did mention in paragraph 7 of the said letter that he had meetings with recommending officers for re-motivation but we have no sight of their responses which should have been reduced to writing for good governance purposes.
17. Mr Molefe reasons provided for overriding the recommending officers' decision are in my opinion not valid for the following reasons:
    17.1. Counterparty risk and alienation of state assets – I believed this risk was mitigated based on paragraph 11 of the TEAR and could also have been firmed up in the contractual negotiations.
    17.2. Concentration risk – This risk was dealt with in paragraph 2.7 of the TEAR which provides reasons why awarding to a single service provider was more preferable. In addition, awarding the bid to T Systems would actually increase the concentration risk as they were already providing IT services to Transnet. The due diligence report also indicated an amber status for T Systems which indicates that there was a risk of them not being able to fully supply the service to Transnet.
    17.3. BBBEE Partners- This component was part of the evaluation criteria and considered in arriving at the recommendation. This should not have been considered in isolation of the other evaluation criteria.
    17.4. Information Security Incident – Per the PPM unless a bidder has been disqualified or backlisted you cannot use your contract experience with them to not award

business to them if the process followed was fair and transparent. The incident mentioned should have been managed through the current contract and not be used to prejudice a bidder.

17.5. CCTV Network issues – This should have been dealt with contractually with Neotel if there were issues with their performance. This is contract management and cannot be used to prejudice a bidder.

18. Paragraph 2.4 of the TEAR *Fourth Price Evaluation* **Annexure SC3** clearly indicates that the possible price reductions could not be taken into account as the final pricing had already been submitted. Mr Molefe could not approve that the price reduction be considered as part of T System best and final offer as this prejudices the other bidders and is not considered fair and transparent.

SHARLA CHETTY (MAIDEN PILLAY)

DATE: 12 April 2019

COMMISSION OF INQUIRY INTO STATE CAPTURE

ANNEXURE SC 1



TRANSNET

SUB-DELEGATION OF AUTHORITY

I, **Brian Molefe,** in my capacity as the **Group Chief Executive,** hereby delegate all the power of authority vested in me to **Sharia Pillay, Chief Executive: Transnet Pipelines,** for the period **28 October 2013** to **01 November 2013.**

A comprehensive report of significant incidents, rulings, occurrences and decisions taken during my absence, must be forwarded to my office on my return. Copies of all approvals/decisions taken must also be forwarded, for record purposes.

Signed on the 25 day of October 2013 in Johannesburg

SIGNED: _____ **WITNESS:** _____

I, **Sharia Pillay, Chief Executive: Transnet Pipelines,** accept the authority as delegated to me by **Brian Molefe, Group Chief Executive** and will present a report of significant incidents, rulings, occurrences and decisions taken during the period of my acting.

Signed on the 28th day of October 2013 in Durban

SIGNED: _____ **WITNESS:** _____

ANNEXURE SC 2



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Registration
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1990/000900/30

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150 Commissioner
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TRANSNET

MEMORANDUM

www.transnet.net

To: Sharla Pillay, Acting Group Chief Executive (GCE)

From: Mohammed Mahomedy, Acting Group Chief Financial Officer (GCFO)
Mantsika Matooane (Chief Information Officer)
Garry Pita, Group Chief Supply Chain Officer (GCSCO)

Date: 30 October 2013

Subject: **RFP No. GSM/13/04/0722 for Provision of Network Services – Request for approval to approve the process, award contract and issue a Letter of Intent (LOI) inviting Neotel to further negotiations as the preferred bidder of this RFP**

PURPOSE OF SUBMISSION:

1. To request the Group Chief Executive (GCE) to:

   - Approve the procurement process and award of business to Neotel (Pty) Ltd;
   - Sign the Letter of Intent (LOI) for the preferred bidder (See Annexure Q);
   - Sign letters of regret for the four (4) unsuccessful bidders (See Annexure R) and
   - Sign the letter to extend the current Neotel contract (Annexure T).

BACKGROUND:

2. The current five (5) year Neotel contract for Network Services was established through a sale agreement of Transtel to Neotel. This agreement was due to expire on 31 March 2013 and the Board subsequently approved five (5) and two (2) months extensions respectively and the current expiry date is 31 October 2013.

3. All Transnet Operating Divisions (ODs) make use of this contract for their Network Services requirements and the contract is managed at Group level by EIMS previously known as Group ICT.

4. The need for the Network Services RFP came about as a result of the imminent expiry of the Network Services agreement with Neotel (Pty) Ltd and the Transnet Board requested that management should test the open market for this requirement.

DISCUSSION

5. A Network Services sourcing strategy and RFP was prepared by the Cross Functional Sourcing Team (CFST) that consisted of technical representatives from all ODs. This sourcing strategy was recommended by the Executive Committee (EXCO) and Board Acquisitions and Disposal Committee (BADC) and approved by the Board of Directors (Board) in February 2013. The subsequent amendments on the sourcing strategy pertaining to the contract period and technical threshold were further approved by the BADC on 29 May 2013.

6. The Board delegated authority to approve the Sourcing Strategy, RFP, Advert and Award to the Group Chief Executive Officer subject to approval of the BADC and the BADC concurred with that recommendation. Refer to Annexure B of the attached TEAR report for the BADC resolution delegating authority to the GCE as indicated above.

7. An RFP was sent out to the market on 14 June 2013 and closed on 13 August 2013 after being extended twice as per requests from the bidders and approved by the GCE. A compulsory briefing session was held on 27 June 2013 and all nineteen (19) bidders who purchased the RFP document attended the briefing session. Only five (5) bidders responded to the RFP.

8. Bidders were evaluated against specific criteria as set out in the Request for Proposal (RFP) that was approved by the GCE on 09 June 2013. The table below indicates the number of bidders that passed at each of the evaluation stages.

Evaluations				
Stage 1	**Stage 2**	**Stage 3**	**Stage 4**	**Stage 5**
Administrative Responsiveness	Substantive Responsiveness	Technical Evaluation	Commercial Evaluation	Award incl. Post Tender Negotiations
5	4	3	3	1

9. It was concluded during the technical evaluation process that three (3) bidders namely Neotel (Bidder 1), Dimension Data (Bidder 3) and T-Systems (Bidder 5) passed stage 1 to 4 of the evaluation process.

10. The preliminary Network Services evaluation results in the form of a Tender Evaluation and Recommendation (TEAR) report were presented to Management for review on 01 October 2013. Management identified scoring discrepancies and requested that the Cross Functional Evaluation Team (CFET) should re-moderate areas where there were huge scoring discrepancies to be in line with Section 18.4.1(iii) of the PPM that stipulates that 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. A re-moderation session was held at Carlton Centre on 04 October 2013 where all the impacted service towers were re-moderated and agreed upon by the entire evaluation team including Transnet Internal Audit (TIA).

11. Transnet has also considered the issue of Vodacom acquiring Neotel, its assets and customer base as part of this RFP. Neotel has however indicated as part of the process

that this risk will be mitigated and should the Due Diligence being conducted by Vodacom prove to be positive for the sale and should the Competition Commission approve the sale Neotel will continue to fulfill its mandate as part of Vodacom and offer services under the agreed Terms and Conditions between Neotel and Transnet. Should the sale not be concluded Neotel has also committed to continue delivery of services to Transnet on the proposed services as described in their RFP response with the necessary commitment from their shareholders.

12. A recommendation for approval of Due Diligence and negotiations was submitted to the GCE for approval upon conclusion of commercial and B-BBEE evaluations. The GCE approved the Due Diligence and negotiations request on 14 October 2013 and a copy of the approved memorandum is included as Annexure C of the attached TEAR report. Due Diligence and negotiations letters were issued to the bidders on 14 October 2013 and the process commenced on 16 October 2013.

13. The Due Diligence process kicked off with discussions on the bid proposals with the individual shortlisted bidders to clarify their assumptions and enable them to submit their Best and Final Offers (BAFO) to Transnet. The process progressed to site visits to the three (3) shortlisted bidders' facilities to conduct interviews with some of their key resources and to conduct a facilities inspection to determine their technical capability to execute on the contract if successful on this RFP. The Due Diligence process culminated in conducting of telephonic interviews with two of the three references that were provided by each bidder to establish their performance track-record on the network related contracts which they have with their current customers. The above process was finalised on 23 October 2013 and a Due Diligence report that was compiled by the CFST is included as Annexure O of the Network Services TEAR report.

14. The Network Services TEAR report detailing the entire RFP process is included as **Appendix 1** of this memorandum. The High Value Tender (HVT) Gateway reports 1 and 2 provided by Transnet Internal Audit (TIA) as required by the HVT process indicates full compliance (green audit) to the Procurement process. The HVT Gateway 3 report indicated a need for improvement due to the rounding-off of technical scores and the possible conflict of interest issue between T-Systems and Detecon Consulting. The above mentioned issues have already been mitigated through the rounding-off permission that was received from the National Treasury and a written Affidavit from T-Systems confirming that there was never any information sharing between them and Detecon Consulting. Copies of the TIA Gateway Reviews reports are included as Annexure P of the attached TEAR report.

15. Table 2 below indicates project timelines for the remaining activities to the completion of this procurement event for the Network Services RFP:

Item	Activity	Planned Completion Date
1	Stage 1: (Administrative Evaluations & Moderation)	Finalised
2	Stage 2: (Substantive Evaluations & Moderation)	Finalised

3	Stage 3: (Technical Evaluations & Moderation)	Finalised
4	Stage 4: (Commercial Evaluations & Moderation)	Finalised
5	Issuing of presentations invites to the shortlisted bidders	Finalised
6	Presentations by the shortlisted bidders	Finalised
7	Submit recommendation for approval of Due Diligence and Negotiations to the GCE for approval	Finalised
8	Conduct Due Diligence to clarify assumptions and establish the shortlisted bidders' technical capability	Finalised
9	Request Best and Final Offers (BAFO) after Due Diligence	Finalised
10	Stage 5: Post Tender Negotiations with the preferred bidder	Deferred to post issuing of the LOI
11	Present a final recommendation for award together with LOI(s) to the GCE for approval	25 – 30 October 2013
12	Stage 6: Issue LOI(s) to the successful bidder	31 October 2013
13	Discuss transition plan with the preferred bidder	31 October 2013
14	Negotiate and sign Master Services Agreement (MSA) during the transition period including Supplier Development Plan	01 November 2013 to 28 February 2014

Table 2: Project Timelines

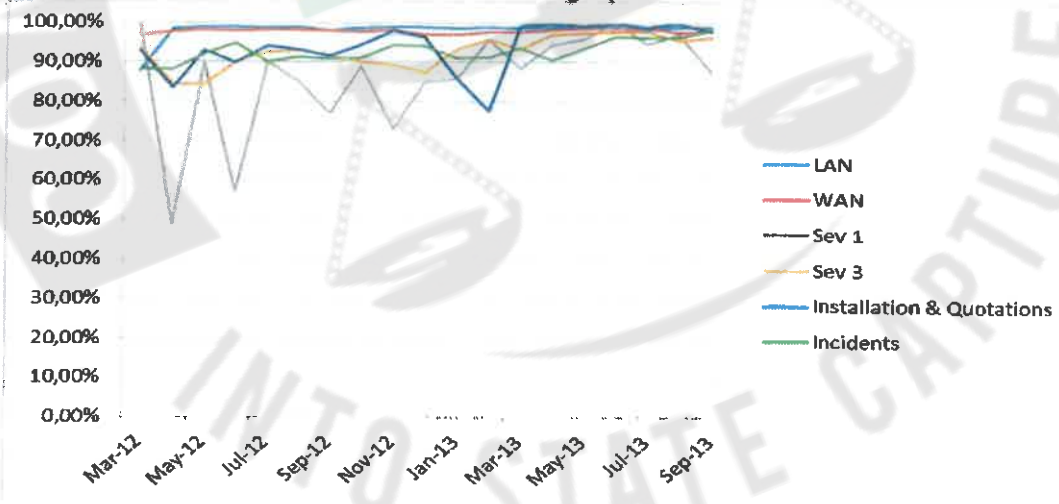
RISKS ASSOCIATED WITH THE CURRENT SERVICE PROVIDERS

16. Two of the bidders are current service providers to Transnet and risks linked to current services and mitigating actions are highlighted in the table below:

Bidder 1 – Neotel		Bidder 5 – T-Systems	
Risk	Mitigating actions	Risk	Mitigating actions
Security services not meeting requirements	• Security requirements have increased significantly between the current contract and the RFP; • Transnet has implemented external monitoring of the network; • Real time monitoring; • Implementation of next generation firewalls; • Supplier has committed to employ additional resources; • All findings linked to security incident has been cleared.	Security services not meeting requirements	• Security requirements have increased significantly between the current contract and the RFP; • Transnet has implemented external monitoring of the network; • Real time monitoring; • Implementation of next generation firewalls; • Supplier has committed to employ additional resources; • All findings linked to security incident has been cleared.
Lack of project	• Strong contractual support to	Lack of project	• Strong contractual support to

governance	force supplier to enact the appropriate governance with the support from bidders internal governance functions; • Transnet will require independent certification of competence of project delivery function; • SLA's will also be applicable on future project with service credits linked to the project budgets and timelines.	governance	force supplier to enact the appropriate governance with the support from bidders internal governance functions; • Transnet will require independent certification of competence of project delivery function; • SLA's will also be applicable on future project with service credits linked to the project budgets and timelines.
		Overall quality of service delivery	• Service credits are being charged; • Focus on continuous service improvement.
		Poor Financial Management	• Project launched to identify weaknesses and to improve current financial reporting; • Internal Audit initiated to validate the accuracy of current billing.

17. Considering the factors above management is confident that any risk linked to the recommend bidder can be mitigated, if not already done by implementing the new contract and more onerous service level agreements as included in the RFP process.
18. The proposed bidder's overall service delivery trends have also improved over the previous 18 months as is evident from the graph below:



APPROVALS AND DELEGATION:

19. The Group Chief Executive has already provided the following approvals:

    - Approval of the Request for Proposal (RFP) and Advert to go out on an open tender;
    - Approval to advertise and issue a RFP to the open market for provision of Network Services for a period of three (3) years with an option to extend for another two (2) years;
    - Approval to conduct Due Diligence and Negotiations on the Network Services RFP.

20. In terms of clause 6.4(e) of the Delegation of Authority on the latest PPM effective from 01 October 2013, all recommendations for award exceeding R2 billion should be approved by the Board. This recommendation is forwarded to the GCE for approval as per delegation from the BADC dated 29 May 2013, a copy of which is included as Annexure B of the attached TEAR report.

FINANCIAL IMPLICATIONS:

21. The estimated contract value for a period of three (3) years is estimated at R1.5 billion. Transnet does have an option to extend the contract for an additional 2 years, which would increase the cost with an estimated R1 billion.

22. A minimum savings target of 10% will be negotiated with the preferred bidder during post tender negotiations as part of Transnet's FY 2013/14 cost savings drive.

BUDGET IMPLICATIONS:

23. All Transnet OD's and Specialist Business Units (SBUs) have budgets available for their respective Network Services requirements.

COMMISSION OF INQUIRY INTO STATE CAPTURE

RECOMMENDATION:

24. To request the Group Chief Executive (GCE) to:

- Approve the procurement process and award of business to Neotel (Pty) Ltd;
- Sign the Letter of Intent (LOI) for the preferred (See Annexure Q);
- Sign letters of regret for the four (4) unsuccessful bidders (See Annexure R); and
- Sign the letter to extend the current Neotel contract (Annexure T).

COMPILED BY

pp

Macdonald Maluleke
Commodity Manager: Group Strategic Sourcing
Date:

RECOMMENDED / ~~NOT RECOMMENDED~~

Mandla Dube
Category Manager: Group Strategic Sourcing
Date: 30/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Fanie van der Walt
Executive Manager: Group Strategic Sourcing
Date: 31/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Gerrie van der Westhuizen
Executive Manager: Office of the CIO
Date: 31/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

pp

Peter Volmink
Executive Manager: Governance & Compliance
Date: 31 OCTOBER 2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Yusuf Loonat
Executive Manager: EIMS Service Delivery
Date: 31/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Garry Pita
Group Chief Supply Chain Officer
Date: 31/10/13

RECOMMENDED / ~~NOT RECOMMENDED~~

Mantsika Matooane
Chief Information Officer
Date: 31/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Mohammed Mahomedy
Acting Group Chief Financial Officer
Date: 31. 10. 2013.

APPROVED / NOT APPROVED

Sharla Pillay
Acting Group Chief Executive
Date:

ANNEXURE SC 3



Maria M.A. Etsebeth

From: Sharla Chetty Transnet Port Terminals <Sharla.Chetty@transnet.net>
Sent: Wednesday, 23 January 2019 14:09
To: Maria M.A. Etsebeth
Cc: Gilbert G. Swats; Pierre P. Leonard
Subject: FW: Network tender documents
Attachments: 2298_001.pdf; 2299_001.pdf; 2292_001.pdf; 2293_001.pdf; 2294_001.pdf; 2295_001.pdf; 2296_001.pdf; 2297_001.pdf

Importance: High

From: Vanessa Govender Transnet Pipelines DBN
Sent: Wednesday, 23 January 2019 14:02
To: Sharla Chetty Transnet Port Terminals <Sharla.Chetty@transnet.net>
Subject: FW: Network tender documents
Importance: High

From: Vanessa Govender Transnet Pipelines DBN
Sent: 31 October 2013 02:45 PM
To: Gerrie van_der_Westhuizen Transnet Corporate JHB <Gerrie.van_der_westhuizen@transnet.net>
Cc: Lydia Matebisi Transnet Corporate JHB <Lydia.Matebisi@transnet.net>; Sharla Pillay Transnet Pipelines DBN <Sharla.Pillay@transnet.net>; Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net>
Subject: RE: Network tender documents
Importance: High

Dear Gerrie

Please find attached signed documents from Acting Group Chief Executive.

Regards
Vanessa

From: Sharla Pillay Transnet Pipelines DBN
Sent: 31 October 2013 12:12 PM
To: Vanessa Govender Transnet Pipelines DBN; Lydia Matebisi Transnet Corporate JHB
Subject: FW: Network tender documents

From: Gerrie van_der_Westhuizen Transnet Corporate JHB
Sent: 31 October 2013 12:12 PM
To: Sharla Pillay Transnet Pipelines DBN
Cc: Mantsika Matooane Transnet Corporate JHB; Garry Pita Transnet Corporate JHB; Anoj Singh Corporate JHB;

Mohammed Mahomedy Transnet Corporate JHB
Subject: Network tender documents

Hi Sharla,

Hope you are well.

Your earlier conversation with Garry Pita refers.

Please find attached the following documentation relating to the network tender:

- **Covering memorandum - for your approval;**
- **Tear report – for your approval;**
- 3 x Transnet Internal Audit reports – Front page and Executive summaries (Full reports can't be emailed due to size)
  - Report 1 – Satisfactory
  - Report 2 – Satisfactory
  - Report 3 – Requires Improvement with 2 issues raised:
    - Potential conflict of interest – T-Systems vs Detecon (Issue 1)
    - Issue relating to the rounding of the T-Systems score for technical evaluation (Issue 2)
- Affidavit from T-Systems to mitigate the risk raised by TIA – Issue 1
- E-Mail from National Treasury to mitigate the risk raised by TIA – Issue 2
- Board resolution delegating authority to the GCE to extend current contract with Neotel;
- **Extension letter to Neotel – for you approval;**
- **Letter of intent to Neotel – for your approval; and**
- **Regret letters x 4 to the unsuccessful bidders – for your approval.**

The documents which require your signature have been highlighted in bold.

Please don't hesitate to give me a call should your require anything further as it relates to this tender award.

Kind Regards

TRANSNET

Gerrie van der Westhuizen
Executive Manager: Office of the Head EIMS
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Transnet SOC Ltd

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ANNEXURE SC 4



Transnet Group iSCM
Tender Evaluation And Recommendation Report
Description of Goods /Service: Provision of Network Services
RFP No. GSM 13/04/0722

Date: 30 October 2013

TENDER EVALUATION AND RECOMMENDATION REPORT

DESCRIPTION OF GOODS /SERVICE: Provision of Network Services

RFP No. GSM 13/04/0722

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Transnet Group iSCM
Tender Evaluation And Recommendation Report

1. EXECUTIVE SUMMARY

1.1 Project Background

Transnet currently procures Network Services from Neotel (Pty) Ltd since 2008 as a result of the sale agreement for Transtel to Neotel as a going concern. The current agreement with Neotel is due to expire on 31 October 2013 and Transnet went out on open tender in order to test the market. The successful service provider for the services sought on this RFP will be awarded a three-year outsourcing agreement with an option to extend for two (2) years at Transnet's discretion.

The need for a Network Services RFP came about as a result of the eminent expiry of the current agreement with Neotel. The Network Services outsourcing strategy was developed with the assistance of an international ICT Consulting Company (Detecon Consulting) which was contracted for a period of three (3) months to assist with Due Diligence on the current agreement and advise Transnet on the available sourcing strategy options based on the Due Diligence findings (**See Annexure A**). The intention of the RFP process was to partner with a single primary service provider that would best support the achievement of Transnet's current and future Network Infrastructure Services requirements. It was however clearly stated in the RFP that Transnet will reserve the right to award each service tower to more than one service provider.

The Cross Functional Sourcing team (CFST) completed all preparation work to go out to market after the following approvals were obtained:

- EXCO, BADC and Board approval on the sourcing strategy to go out on an open tender for a period of 3 years with an option to extend for 2 years;
- Sourcing Strategy, RFP and Advertisement approval by the GCE as delegated by the BADC and Board **(See Annexure B).**

All the above-mentioned approvals have already been obtained and are available on request.

1.2 Project Details & Deliverables

Sourcing Strategy

The objective of the Network Services RFP is to source all services through a Preferred Service Provider capable of servicing all Transnet Operating Divisions in their locations around the country. Should this service provider not be able to provide the full complement of the required services, they will need to partner with other service providers to fill these service gaps. This partnering can be via creation of a Consortium or a Joint Venture. The nominated senior service provider within the Joint Venture or Consortium will be the Prime Contractor with whom Transnet will contract for the full complement of services. The Prime Contractor will take full responsibility for end to end delivery of the services and relationship with Transnet.

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Based on the advice of the ICT Outsource Partner (Detecon) and internal analysis and review of the available sourcing options, the following four (4) sourcing options were identified:

- In-Sourcing with external service delivery (Option 1)
- In-Sourcing with internal service delivery (Option 2)
- Multi-Sourcing model with each OD appointing their own Network Services SP (Option 3)
- Single Sourcing (Managed Services Model) where one primary SP is appointed to provision Network Services to all Transnet ODs. This is the recommended option which was approved with the Network Services sourcing strategy.

1.3 Approvals already granted by the Group Chief Executive are as follows:

All the approvals listed below have already been achieved and are available on request.

- Approval to go out to the open market on a Request for Proposal (RFP) for the Provision of Network Services for a period of three (3) years with an option to extend for two (2) years;
- Approval to Shortlist, Conduct Due Diligence and Negotiations on the Network Services RFP **(See Annexure C).**

1.4 Request for Proposals (RFP)

The RFP was drafted with Transnet's terms and conditions, and requested the market to respond on specific Technical, Supplier Development (SD), B-BBEE, and Pricing criteria. The templates on which the bidders were required to respond on and submit to Transnet were included as part of the RFP. This was to ensure that Transnet's RFP is fair, transparent, equitable, competitive and cost effective in line with the PPPFA guidelines. Furthermore the templates would allow Transnet to evaluate the received bid documents using the standard evaluation methodology consistently across all bidders.

Cross Functional Sourcing Team (CFST) team meetings were held to develop the Sourcing Strategy, RFP and all Annexures. Each Transnet Operating Division was represented in the CFST.

The Network Services RFP was issued to the market on 14 June 2013 and closed on 13 August 2013. The above closing date was extended twice by a period of two (2) weeks as a result of extension requests that were received from the potential bidders. The RFP extensions mentioned above were duly approved by the GCE and copies of the approved documents are available on request.

A five stage evaluation process as stipulated in the RFP was employed with the following evaluation stages:

- Stage 1 – Administrative Responsiveness
- Stage 2 – Substantive Responsiveness (Technical Critical Criteria and Supplier Development Initiatives of 30% of overall bid price set as a Prequalification)
- Stage 3 – Technical Evaluation (Minimum threshold of 70%)

- Stage 4 – Final Score proportioned by:
  - Price - 90%
  - B-BBEE (Scorecard) - 10%
- Stage 5 – Post Tender Negotiations (including Pricing, Technical, SD & B-BBEE Improvement Plans)

Group Strategic Sourcing aligned with the required High Value Tender processes, which included the following:

- The establishment of a Cross Functional Sourcing Team (consisting of representative from all Operating Divisions, Commercial, Integrated Supply Chain Management and Supplier Development).
- Presentation and approval of the Sourcing Strategy and RFP by the delegated authority.
- Transnet Internal Audit representatives included in the strategy and RFP reviewing, tender briefing session, all evaluations stages, Post Tender Negotiations and reviewing of the TEAR report before being presented to the delegated authority for approval.

1.5 DISCUSSION:

Prior to expiry of the current contract, a request for an extension was submitted to EXCO, BADC and Board for approval of the extension and approval of delegation of authority to the GCE to approve the issuing and award of the Network Services RFP. The Board approved a five (5) months extension of the Network Services contract with Neotel effective from 01 April until 31 August 2013. A further two (2) months extension from 01 September 2013 until 31 October 2013 was approved by the Board in August 2013 in order to give the Cross Functional Sourcing Team (CFST) time to finalise the Network Services RFP. As part of the two months extension approval, the Board also approved a twelve (12) months transition period to migrate provisioning of services from the current contract to the new contract. Refer to **Annexure D** for the two months extension letter which was duly signed by both parties.

1.6 Contract period of the new contract

Start Date: 01 November 2013

Expiry Date: 31 October 2016

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1.7 Tender Details and Tenders Received

RFP Number	GSM/13/04/0722
RFP Issue Date	Friday, 14 June 2013
RFP Closing Date	Tuesday, 13 August 2013
RFP Validity Period	120 days
Extended RFP Validity Period	0 days
Procurement Procedure	RFP - Open Market
Purchase price of RFP	R 5000.00
Date of Advertisement	14 June 2013
Place where Advertised	The Star, Citizen, Cape Argus, Natal Mercury, Sowetan, Daily Dispatch, EP Herald, Volksblad, Business Day, New Age, Sunday Times and City Press
Method of RFP Evaluation	**Method 1:** Stage 1 – Administrative Responsiveness Stage 2 – Substantive Responsiveness Stage 3 – Technical & Functionality (70% Threshold) Stage 4 – Consolidation Evaluation Price - 90% B-BBEE - 10% Stage 5 – Post Tender Negotiations (PTN)
Number of Bids Received	5
Number of Responsive Bids	4
Number of Non Responsive Bids	1
Scheduled Award Date	31 October 2013
Revised Scheduled Award Date	31 October 2013

1.8 Evaluation team

The CFST team identified potential evaluators and a request was sent to all OD's to make the people available to participate. The teams were confirmed before the tender closed and the details are discussed in this section. The table below details the individuals who evaluated the tenders per stage:

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Stage 1: Administrative Evaluations

Name of Evaluator	Moderator
Amukelani Mokoena	Gregg Daniels
Ntsutle Motaung	

Stage 2: Substantive Evaluations

Name of Evaluator	Moderator
Martin Lotz (Technical)	Yusuf Loonat
Alwyn Botha (Technical)	
Amukelani Mokoena	Gregg Daniels
Ntsutle Motaung	
Nkanyiso Ndlovu (SD)	Gomolemo Mahange
Mzamo Manzini (SD)	

Stage 3: Technical Evaluation

Name of Evaluator	Moderator
Yusuf Loonat	Eion Gibson (Gartner Africa)
Gerrie van der Westhuizen	Jack Matthews (Gartner Africa)
Brenda Mfihlo	
Justin Williams	
Hilton Martin	
Kevin Govender	

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Phillip Phiri	
Mogau Seema	
Trevi Jooste	
Riaan Oothuizen	
Karen Ferreira	
Veni Kannigan	
Ian du Preez	
Warren Pretorius	
Winston Rossouw	
Louis Hutton	
Thabo Nkopeng	
Sibusiso Mabaso	
Barbara Magongoa	

Stage 4: Commercial Evaluation

Name of Evaluator	Moderator
Vuyani Mbethe	Anthony Petrus
Tshepisho Mahloana	
Johan Veldman	

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Stage 4: B-BBEE Evaluation

Name of Evaluator	Moderator
Lerato Tseke & Nkanyiso Ndlovu	Gomolemo Mahange/Nkanyiso Ndlovu
Nthuseng Motloung & Mzamo Manzini	

TIA Team

Name	
Zandile Jele	Preetie Desai
Thamie Vorster	

1.9 Commercial Summary

A total of 19 vendors purchased the RFP documents, as listed below.

Number	Bidder
Bidder 1	Dimension Data
Bidder 2	Wipro Technologies South Africa (Pty) Ltd
Bidder 3	T-Systems
Bidder 4	Neotel (Pty) Ltd
Bidder 5	Business Connexion (Pty) Ltd
Bidder 6	Telkom Ltd
Bidder 7	Vodacom
Bidder 8	Price Waterhouse Coopers (PWC)
Bidder 9	HCL Axon (Pty) Ltd
Bidder 10	Huawei Technologies SA (Pty) Ltd
Bidder 11	BT Communications South Africa (Pty) Ltd
Bidder 12	Broadband Infraco (SOC)
Bidder 13	Datacentrix (Pty) Ltd
Bidder 14	Xuma Technologies
Bidder 15	AE Software Solutions
Bidder 16	Bytes Systems Integrated

Bidder 17	Cisco Systems
Bidder 18	Altech Autopage Cellular
Bidder 19	Nashua Communications

Refer to Annexure E for a list of bidders who purchased the Network Services RFP.

1.10 Briefing Session

A total of 20 prospective bidders attended the compulsory briefing sessions that was held on 27 June 2013. The 20th bidder was later removed from the bidders' roll as they failed to pay the full purchase price of R5000 for the bid document as they have only paid R500 when they were allowed into the compulsory briefing session as they claimed to have confused the Network Services RFP with the Financial Services RFP which was sold for R500. The Network Services and Financial Services RFPs were advertised through a joint advertisement in the interest of cost savings for Transnet SOC Limited.

The Network Services RFP briefing session was open to all potential bidders who have already purchased the RFP document as attendance was compulsory in order to be allowed to submit your RFP. This session was conducted to advise the prospective bidders about Transnet's network services requirements and how to complete various sections and templates of the RFP document.

A CFST meeting was held after the briefing session to discuss the outcome of the briefing sessions and for preparation and answering all questions that were posed by the prospective bidders during the session.

All questions that were raised at the briefing session and afterwards were answered by the relevant Transnet subject matter experts and forwarded to the Governance Department first for vetting before being sent out to all the bidders that purchased the RFP document.

1.11 Proposal

The following bidders submitted their proposals on or before the extended closing date of 13 August 2013 at 12:00. Refer to **Annexure F** for a list of all bidders that submitted RFPs. (No late submissions were received)

Number	Bidder
1	Neotel (Pty) Ltd, Midrand
2	Telkom SA SOC , Centurion
3	Dimension Data, Bryanston
4	Vodacom (Pty) Ltd, Midrand
5	T-Systems South Africa (Pty) Ltd, Midrand in collaboration with Broadband Infraco SOC Ltd, Woodmead

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1.12 Tender communication:

The process followed for tender clarifications and communications was as follows:

a) The bidders sent the questions to Transnet through a nominated Strategic Sourcing representative as stipulated on the RFP;

b) The Transnet subject matter experts drafted a response to the questions;

c) Questions and Answers from bidders were vetted by Governance;

d) Input from Governance was incorporated on the responses; and

e) Questions and Answers were sent out to all bidders who purchased the RFP.

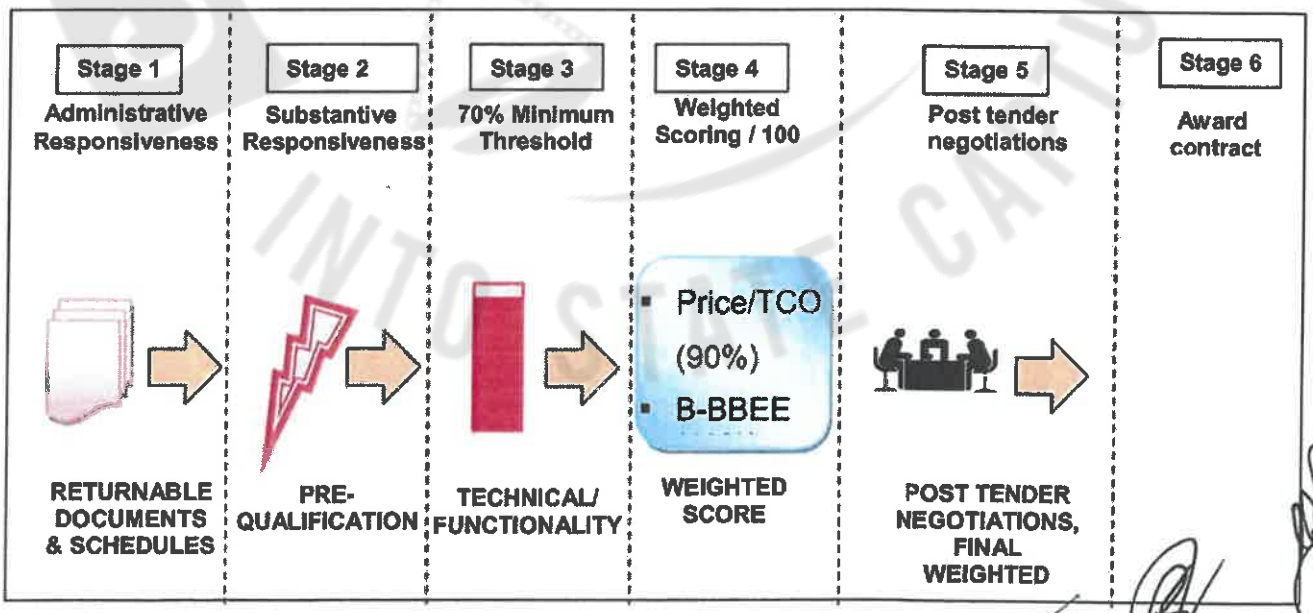
Adequate time was given to bidders to respond to the clarification questions per occurrence (**See Annexure G** for the TAC Secretariat Permission). A summary of the key clarification events and dates are listed below:

Authority to communicate	Authority to communicate granted by the Secretariat of the Transnet Acquisition Council (TAC) and communication vetted by Governance before issuing.
Date authority granted	01 July 2013 – Briefing Clarification.
Nature and outcome of authorized communication	A communication was sent to all bidders: Clarification questions and answers.
Authority to communicate	Authority to communicate granted by the Secretariat of the Transnet Acquisition Council (TAC) and communication vetted by Governance before issuing.
Date authority granted	21 August 2013 – Substantive Clarification with 4 of the 5 bidders
Nature and outcome of authorized communication	Bidder 2 to 5 were requested to indicate where the supporting information for the technical critical criteria can be found on their RFP submissions. The bidders responded by providing Annexure numbers of where the information can be found on the files
Authority to communicate	Authority to communicate granted by the Secretariat of the Transnet Acquisition Council (TAC) and communication vetted by Governance before issuing.
Date authority granted	09 September 2013 – Commercial Clarification with Dimension Data

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Nature and outcome of authorized communication	Before the test for Commercial responsiveness, the evaluation team picked up that Bidder 3 submitted four (4) different pricing sheets and then requested the Bidder to clarify which one should be used as Transnet can only consider one (1) pricing sheet. The Bidder responded that Transnet can use the price list for the AYAVA solution.
Authority to communicate	Authority to communicate granted by the Secretariat of the Transnet Acquisition Council (TAC) and communication vetted by Governance before issuing.
Date authority granted	10 September 2013 – Relationship clarification between T-Systems and Detecon Consulting
Nature and outcome of authorized communication	It was brought to Group Strategic Sourcing's attention that there is a possible conflict of interest between T-Systems and Detecon Consulting who did the Due Diligence project which was regarded as stage 1 of the Network Services RFP. In terms of the LOI, Detecon and its related parties were not allowed to tender for the Network Services RFP (stage 2) if they have participated in stage 1. T-Systems has since provided a signed Affidavit indicating that there was no information sharing between them and Detecon Consulting and that they will welcome any action which Transnet might take should it later emerge that there was information sharing between them and Detecon Consulting

2. RFP EVALUATION



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2.1 Stage One – Test for Administrative Responsiveness

A checklist of Returnable Documents that were requested from the bidders was included in the Network Services RFP. All five (5) bidders proceeded to Stage 2. **See Annexure H** for the administrative consolidated score sheets.

2.2 Stage Two – Test for Substantive Responsiveness to RFP

The test for substantive responsiveness was conducted based on criteria detailed in the RFP. This stage focused on compliance to technical critical criteria, commitment to SD pre-qualification, attendance of compulsory briefing session and submission of a priced offer. This stage of the evaluation was to ensure that only compliant tender submissions were evaluated.

Templates were used to capture the responsiveness of each tender submission. Governance and TIA was consulted to ensure that the process was consistent and fair to all bidders that submitted the RFP.

The substantive stage was conducted after the administrative evaluations followed by the technical evaluation as this RFP is not exempted from the PPPFA and the SD will be negotiated on stage 5 (Post Tender Negotiations), however SD was set as a pre-qualification.

One bidder (Bidder 4) failed to pass substantive evaluations as they failed to produce proof of five (5) years' experience on Wide Area Networks (WAN) services as requested on the technical critical criteria. TIA concurred that the submitted information failed to meet the stipulated minimum technical requirements.

Initially all 5 bidders proceeded to stage 3 and were evaluated on technical while the evaluation team was waiting for the four (4) bidders to provide evidence of their WAN experience and Contact Centre footprint experience as requested on the RFP.

After receiving the outstanding evidence, Bidder 4 was disqualified and the remaining four (4) bidders proceeded to stage 3 (Technical evaluation). See **Annexure I** for the consolidated substantive score sheet.

2.3 STAGE THREE – TECHNICAL THRESHOLD [70%]

Prior the commencement of evaluations of the tender, standard evaluation templates were developed and reviewed by the CFST team and TIA. Sessions were conducted to ensure that there is alignment on the Network Services strategy, evaluation templates and the scoring methodology.

During the development of the Strategy it was decided by the CFST that Transnet will request the bidders to respond to all technical questionnaires using the response templates that were issued with the Network Services RFP.

A summary of the technical evaluation results for Bidder 1, 2, 3 & 5 are indicated on the below table and the summary technical evaluation sheets are included as **Annexure J** of this report.

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	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 5
Technical Evaluation	Final Scores	Final Scores	Final Scores	Final Scores
Initial Technical Scores	76.30%	67.20%	74.00%	69.70%

After completion of Stage Four evaluations, a recommendation for approval of due diligence and negotiations was presented to Management for review and approval. During review of the submission, Management picked up a discrepancy around the moderation methodology that was used by the Cross Functional Evaluation Team (CFET) on functionality/technical evaluation which resulted in scoring discrepancies. Management established that the moderation methodology that was used by the CFET was not in line with the prescripts of the PPM and referred the submission back to the CFET for re-moderation. A re-moderation session was held on 04 October 2013 with all technical evaluators from all ODs and the results of that final moderation session are as indicated below:

	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 5
Technical Evaluation	Final Scores	Final Scores	Final Scores	Final Scores
Final Technical Scores	76.42%	66.80%	73.71%	69.93%

Based on the above technical re-moderation results, only Bidder 1 and 3 passed the technical threshold of 70%. Bidder 5 obtained a total technical score of 69.93% which was 0.07 less than the technical threshold of 70%. Transnet requested the National Treasury to provide guidance on whether the final technical scores can be rounded off to a whole number which Transnet believed the PPPFA allows for and which will allow the third bidder to also go through in support of an open and competitive tender process. The National Treasury provided confirmation that rounding-off on functionality/technical is indeed possible and this resulted in Bidder 5 also making the technical threshold of 70% on this RFP. The confirmation letter from the National Treasury is included as **Annexure K** of this TEAR report. The final rounded technical scores after obtaining Treasury's guidance is as follows:

	BIDDER 1	BIDDER 2	BIDDER 3	BIDDER 5
Technical Evaluation	Final Scores	Final Scores	Final Scores	Final Scores
Final Technical Scores	76%	67%	74%	70%

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2.4 Stage Four – Commercial Evaluation

The successful bidders on stage 1, 2, 3 and 4 were evaluated on Price and B-BBEE. The table below shows the weightings in line with the PPM.

Stage Four Evaluation – Final	Weighting
Price	90%
B-BBEE	10%
Total	**100%**

During the Commercial evaluations it became evident that the pricing that was offered by the three (3) shortlisted bidders made it difficult to conduct a "like for like" price comparison as it was subject to certain **assumptions** which would have a huge impact on pricing once unpacked. The below commercial evaluation results were based solely on the submitted pricing without taking into account assumptions which were stipulated by the various bidders which might result in major changes in pricing once discussed with the shortlisted bidders. Below is a summary of the first commercial evaluation results based on the pricing template that was submitted with the RFP without taking assumptions into account:

First Price Evaluation for Network Services RFP (Pre-Due Diligence)

Bidder Name	Price	Points
Bidder 1	R1 389 308 796.00	24.85
Bidder 3	R805 934 857.67	90.00
Bidder 5	R1 330 117 974.48	31.46

To ensure that Transnet is able to conduct a "like for like" comparison a second pricing assessment was done after the CFET met with the shortlisted bidders to clarify their assumptions and requested them to submit their revised commercial proposals. This said assessment was done in line with the Due Diligence and Negotiations approval which was granted by the GCE on 14 October 2013. The GCE approved Due Diligence and negotiations letters that were issued to the shortlisted bidders are included as **Annexure L** of this TEAR report.

Below are the revised commercial evaluation results after the final commercial proposals were received and evaluated by the commercial team. A summary of the initial and the final commercial evaluation results after Due Diligence is included as **Annexure M** of this report:

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Second Price Evaluation for Network Services RFP (Post Due Diligence)

Bidder Name	Price	Points
Bidder 1	R1 330 876 516.32	90.00
Bidder 3	R1 714 300 055.26	64.07
Bidder 5	R1 622 157 146.03	70.30

After receipt of the final commercial proposals from the bidders, Transnet did a normalization exercise on the received pricing in order to ensure that the bidders were quoting for similar services and there were no pricing omissions on the quoted service towers that can inflate the quoted pricing post contract award. Below are the results of the pricing results of the bidders after the normalization process.

Third Price Evaluation for Network Services RFP (Post Normalisation)

Bidder Name	Price	Points
Bidder 1	R1 363 407 228.40	90.00
Bidder 3	R1 584 967 883.26	75.37
Bidder 5	R1 736 894 366.39	65.35

After conclusion of the normalization process, a final clarification session was held with the three bidders to double check if they have not omitted anything on their pricing. Bidders 5 indicated during discussions that their Joint Venture partner might be able to negotiate optimization with its shareholders which will result in an overall reduction of R248 million on their tendered pricing. Bidder 1 and 3 also indicated minor possible price changes which would have resulted in slight adjustments in the final commercial proposals. Below is an indication of the pricing changes if the R248 million possible price reductions were to be taken into account on this project even though this is not possible since the final pricing has already been submitted.

Fourth Price Evaluation for Network Services RFP (Post Normalisation and after inclusion of the R248m possible price reduction for Bidder 5)

Bidder Name	Price	Points
Bidder 1	R1 363 407 228.40	90.00
Bidder 3	R1 584 967 883.26	75.37
Bidder 5	R1 488 894 366.39	81.72

2.5 Supplier Development (SD)

In addition to the Transnet request for the Bidders to submit a 30% commitment on SD initiatives, bidders were also requested to provide Transnet with their valid B-BBEE Verification Certificates for evaluation of their scorecards based on the 90/10 principle. Below is the summary of the B-BBEE evaluation results based on their current scorecards:

B-BBEE Evaluation

Bidder Name	BBBEE level	Points
Bidder 1	Level 4	5
Bidder 3	Level 3	8
Bidder 5	Level 3	8

Refer to **Annexure N** for the a detailed B-BBEE evaluation sheets

2.6 Stage Five – Due Diligence & Negotiations

All three shortlisted bidders were subjected to a Due Diligence process in order to clarify their bid submissions and verify their technical capability to execute on a contract of this magnitude. The CFET in consultation with Management took a decision that in the interest of time due to the eminent expiry of the Neotel contract, only Due Diligence will be conducted at this stage and Post Tender Negotiations (PTN) will only be conducted with the preferred bidder post signature of the Letter of Intent (LOI).

During Due Diligence the following activities were done by the Cross Functional Evaluation Team (CFET):

- Discussions with the individual shortlisted bidders were held to clarify all assumptions and the bidders were requested to submit their revised commercial proposals to the Transnet TAC Secretariat by no later than 24 October 2013 at 09h00;
- Individual interviews with the shortlisted bidders' key resources were conducted;
- Site visits to the shortlisted bidders' premises to inspect their Network Operations Centre (NOC), Data Centres/Hosting Facilities and Disaster Recovery (DR) sites were conducted;
- Telephonic interviews with the shortlisted bidders' key customers were conducted to determine their performance track-record on some of their current network services customers.

A Due Diligence report which is included as **Annexure O** of this TEAR report was compiled by the Cross Functional Evaluation Team (CFET) on conclusion of the Due Diligence process. Based on the Due Diligence report Bidder 1 and 3 obtained a green overall score as both scored above 70% while Bidder 5 received an amber score as their overall Due Diligence score was 68.94%.

2.7 Weighted Score

Below is the final ranking that forms the basis of the recommendation after the normalization of the received pricing. Based on the below consolidated weighted scoring results, Bidder 1 is the highest in terms of ranking and they are the recommended bidder for further contract negotiations as a preferred bidder.

Final Ranking for Network Services RFP (Post Due Diligence & Normalisation)

Criteria	Bidder 1	Bidder 3	Bidder 5
Price	90.00	75.37	65.35
B-BBEE	5	8	8
Total Score	**95.00**	**83.37**	**73.35**

The CFET team's recommendation is to award all service towers to a single service provider as opposed to awarding service towers separately based on the following reasons:

- The bidders have indicated that certain efficiencies that have been created through leveraging their relationship management structures will be diluted if service towers are awarded separately.
- Transnet does not currently possess the structure nor the level of maturity to fulfil an aggregator role to manage the integration between separate service providers should the service towers be awarded individually.
- Adopting of a split services model and appointing an aggregator usually results in a 10% premium of the value of individual service towers managed by the Aggregator (Gartner market insight).
- Awarding of service towers separately will increase the contract costs as bidders were requested to price as if they will be awarded all service towers in order to leverage on economies of scale and splitting the award of service towers might results in cost escalations on each service towers.
- Appointment of more than one service provider introduces additional complexity and could result in finger pointing impacting on service delivery.

3. CONTRACT BUDGET

The successful Bidder will be appointed for a period of three (3) years with an option to extend for two (2) years. The current Neotel contract spend per annum is approximately R550m. The new contract spend per annum prior to negotiations is estimated at R440m. The estimated contract spend over a period of three (3) years is R1, 3 billion. Based on the above spend estimations, there is already a cost saving of R110m per annum based on the new contract prices. All Transnet Operating divisions have sufficient budgets available for these respective Network Services requirements.

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4. PROJECT RISKS

The risks associated with this recommendation are as follows:

- Both Bidder 3 and 5 have both indicated that they may not be able to fully transition the Wide Area Network (WAN) services within the stipulated twelve (12) months transition period from the incumbent service provider. Should this materialise both bidders have indicated that they will enter into commercial agreements with the incumbent provider to continue with the services in so doing minimise possible service interruptions to Transnet.

- The Security risk for Transnet as a result of the past Security breach impacting Bidder 1 and 5 who are Transnet's current ICT service providers. The EIMS department indicated that the security requirements have increased significantly between the current contract and the requirements expressed in the RFP. This is from a technical requirements viewpoint, an SLA performance viewpoint as well as compliance to Security standards and certification (ISO 27001 and 27002 are explicitly mentioned. In addition to the above requirements the following measures have also been taken:
    - The Transnet has already implemented external monitoring of the network through Symantec MSS and is in the process of building further security intelligence monitoring capability and the service provider will be required to provide real-time security information from all devices on the network to the new security intelligence centre. Data will also be provided to Symantec MSS until such time as the security intelligence function is fully online.
    - The Next generation firewall implementation is currently underway through Neotel and the winning network provider would take over the management and first level monitoring of these devices to provide increased levels of protection on the network perimeter and key areas within the network. This will significantly enhance the current protection levels.
    - The transition from current service levels to the new service levels is a massive step change which will require fundamental re-organisation, recapitalization and certification of the vendor competency in the security area. It is critical that this is effectively managed through the transition period, and Transnet must obtain third party validation through the transition period that the objectives are being met.

5. RFP QUALITY ASSURANCE

Transnet's prescribed RFP process was followed as per the PPM and with the guidance of Transnet Internal Audit (TIA) and the iSCM Governance Department.

The following sequence of steps was followed:

Stage 1 - Administrative Evaluations conducted by Group Strategic Sourcing Team.

Stage 2 - Substantive Evaluations conducted by Group Strategic Sourcing, Group ICT Team and the Supplier Development Team.

Stage 3 - Technical Evaluations conducted by the ICT Representatives from all ODs.

Stage 4 - Commercial Evaluations conducted by the ISCM Commercial Team, Group ICT Representatives and B-BBEE by the Supplier Development Team. Final Weighed scoring consolidation was done by the Cross Functional Evaluation Team (CFET).

Stages 1, 2, 3, & 4 were conducted sequentially and to ensure that the principles of the gateways were adhered to, the following actions were taken:

a) Teams evaluated separately;

b) Moderation took place separately;

c) Gateway review sessions were held with the relevant team members and Transnet Internal Audit (TIA) to confirm shortlisting of bidders per threshold.

TIA representatives participated in the full process from the strategy development stage, through to the completion of the evaluations and recommendation for award.

Governance was consulted throughout the process to ensure compliance to Transnet's Supply Chain Policies.

HVT Gateway Reviews

Gateway review sessions were held with the relevant team members and Transnet Internal Audit (TIA) to confirm shortlisting of bidders was done following the evaluation process as outlined in the RFP.

TIA representatives participated in the full process from the strategy development stage, through to completion of the evaluations and development of a recommendation for approval of Due Diligence, negotiations and award. The High Value Tender (HVT) Gateway 1 and 2 reports provided by TIA indicates full compliance (green audit) to the Procurement process. The HVT Gateway 3 report indicated a need for improvement due to the rounding-off of technical scores and the possible conflict of interest issue between T-Systems and Detecon Consulting. The above mentioned issues have already been mitigated through the rounding-off permission that was received from the National Treasury and a written Affidavit from T-Systems confirming that there was no information sharing between them and Detecon Consulting. Refer to **Annexure P** for the full HVT Gateway 1, 2 and 3 reports.

A possible conflict of interest issue was also raised during tender evaluations between T-Systems and Detecon Consulting due to their involvement in the Due Diligence project (Phase 1 of this RFP). T-Systems

provided a signed Affidavit confirming that there was no information sharing between them and Detecon Consulting during compilation of their RFP submission. T-Systems was requested to further confirm on the Affidavit that should it later emerge that there was information sharing between them and Detecon Consulting, they will welcome whatever action Transnet might want to take against them. The T-Systems Affidavit is included as **Annexure S** the TEAR report.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Transnet Group iSCM
Tender Evaluation And Recommendation Report

6. RECOMMENDATION:

6.1 It is recommended that the GCE approve the following:

- Approve the procurement process and award of business to Neotel (Pty) Ltd;
- Sign the Letter of Intent (LOI) for the preferred bidder (See Annexure Q); and
- Sign the regret letters for the four (4) unsuccessful bidders (See Annexure R).

COMPILED BY:

Macdonald Maluleke
Commodity Manager (Group Strategic Sourcing)
Date: 30/10/2013

RECOMMENDED/~~NOT RECOMMENDED~~

Mandla Dube
Category Manager (Group Strategic Sourcing)
Date: 30/10/2013

RECOMMENDED/~~NOT RECOMMENDED~~

Gerrie van der Westhuizen
Executive Manager (Office of the Head: EIMS)
Date: 30/10/2013

RECOMMENDED/NOT RECOMMENDED

Fanie van der Walt
Executive Manager (Strategic Sourcing)
Date: 30/10/2013

RECOMMENDED/~~NOT RECOMMENDED~~

Peter Volmink
Executive Manager (Governance & Compliance)
Date: 30/10/13

RECOMMENDED/NOT RECOMMENDED

Mantsika Matooane
Group Executive (EIMS)
Date: 31/10/2013

RECOMMENDED/~~NOT RECOMMENDED~~

Garry Pita
Group Chief Supply Chain Officer
Date: 30/10/13

RECOMMENDED/~~NOT RECOMMENDED~~

Mohammed Mahomedy
Acting Group Chief Financial Officer
Date: 31.10.2013

APPROVED/NOT APPROVED

Sharla Pillay
Acting Group Chief Executive
Date:

ANNEXURE SC 5



Report classification	Satisfactory

TRANSNET

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Operating Division: Transnet Group Strategic Sourcing (GSS)
Name of project: High Value Tender Gateway Review Process
Tender number: GSM/13/04/0722
Tender description: Network Services
Period of review: 6/05/2013 – 14/06/2013
Issue date: 25/07/2013
Report Status: Final Acquisition Gateway Report

ERNST & YOUNG
Quality In Everything We Do

SC-045

Section 1: Executive summary

Context

Transnet's mandate is to contribute to lowering the cost of doing business in South Africa and to support South Africa's economic growth and the National Growth Plan (NGP) by delivering reliable cost effective freight services that satisfy customer demand. Transnet's new Market Demand Strategy (MDS) aims to drive their own growth strategy which aims to significantly contribute to the growth of the South African economy. Transnet aims to spend R300bn in capital investment over the next 7 years.

To support effective tendering processes to achieve this level of spend Transnet introduced a **High Value Tender gateway review process** for all tenders in excess of R50M The focus of the HVT Gateway Review Process is to ensure that the processes undertaken for these tenders are fair, transparent, equitable, competitive and cost-effective. As from 1 October 2012, TIA introduced an upgraded Gateway Reporting system applicable to all HVTs which included an assurance ranking for each Gateway in which TIA is involved.

A key objective of the High Value Tender (HVT) Gateway Review Process is to provide guidance and support during the HVT Gateway Review Process; and assurance against the PPM at each gateway on tenders above R50 million, and for a few specific strategic and high risk tenders below this threshold. This provides a platform for:

- Providing assurance to Transnet on the effectiveness of the processes followed for high value tenders
- Strengthening the overall control environment in relation to procurement/tenders
- Rolling out and sharing of best practice across all ODs relating to procurement processes
- Long term up-skilling of procurement staff
- Providing input into updating of procurement procedures and supporting controls after witnessing application of such procedures
- Fewer queries/challenges raised by DACs and/or bidders during high value tenders
- Reduction in timelines due to reduction in number of re-tenders

Background to the Tender

Tender identification:

- **SPP name:** Network Services
- **Tender name:** Network Services
- **Description of product or services:** Appointment of service provider(s) to provide Network Services to Transnet and its operating divisions (ODs) for a period of three (3) years with an option to extend for two (2) years
- **ETC:** R1.5 billion over a period of three (3) years. The above estimation is based on the current Neotel contract spend of R500 million per annum. Over a period of five (5) years is estimated at R2.5 billion.
- **SCS project leader :** Fanie van der Walt
- **OD project leader :** Macdonald Maluleke
- **TIA Process Owner:** Cindy Felix
- **TIA HVT lead :** Zandile Jele
- **Document author:** Zandile Jele

SC-046

Section 1: Executive summary (cont'd)

Background to the Tender (cont'd)

Transnet currently procures Network and Telecommunications services from Neotel (Pty) Ltd. Transnet entered into a 5 years Network and Communications Agreement with Neotel (Pty) Ltd as part of the sale agreement of Transtel to Neotel in 2008.

Transtel provided the Network and Communications services to all Transnet Operating Divisions (ODs) as a subsidiary of Transnet. Transnet has one of the largest privately owned fibre networks in the country (Rail & Pipeline fibre network) which Transnet have not been leveraging directly for Transnet's benefit as it relates to ICT service provision.

Transtel was sold to Neotel as a "going concern" which resulted in the transfer of employees to Neotel (as a result of the sale agreement). The agreement commenced on 1 April 2008 and has expired on 31March 2013. The Transnet Board of Directors subsequently approved a five (5) month extension of this contract to 31 August 2013 and requested that a new RFP be issued to the market and contract awarded during the extension period.

Transnet as part of its procurement framework decided to go out on open tender for Network Services to ensure competitive and fair procurement of its Network services Requirements due to the following:

- There have been significant technological changes in the IT telecoms space over the past 4 years which have resulted in the service offering that Transnet is receiving not being the best the market has to offer.
- The Telecommunication and technology market is going through a significant amount of convergence and consolidation (both in terms of market players and technology vendors). This presents Transnet with a unique opportunity to consolidate service providers at a discounted price e.g. fixed and mobile voice services.
- There is a need to ensure that Transnet benefits from the best market offerings to fulfil its Market Demand Strategy.
- Transnet needs to appoint a capable service provider to provide Network Services through an outsourced model as a result of Neotel (Pty) Ltd contract expiring on 31 August 2013. The envisaged contract will be valid for a period of 3 years with an option to extend for 2 years subject to acceptable performance of the appointed service provider(s) and Transnet's operational requirements in line with the new convergence strategy. The rationale for this was that although robust contract and service management practices will be applied, a three year contract provides management with increased flexibility to exit a contract that may not be meeting Transnet's MDS requirements.

Transnet's objective is to source all services through a Preferred Service Provider capable of servicing all Transnet ODs in locations around the country. The sourcing option that will be adopted for the RFP will be based on a single service provider being appointed as a primary service provider with possible multiple partners (consortium or a joint venture) that will augment their capacity and capability to provide services on all nine ICT service towers that have been identified by Information Management Services (IMS). The primary service provider who will contract with Transnet will act as an Aggregator and will assume the overall responsibility for service delivery on the contract. The RFP will allow flexibility for Transnet to award service towers to multiple service providers.

The Memorandum (dated 29 May 2013 for the approval of going to market on an open tender and approval of the Strategy document) was approved/signed-off by the appropriate DoA (Group Chief Executive (GCE)) on the 9th of June 2013.

Section 1: Executive summary (cont'd)

Audit Scope and approach

Real-time reviews of the High Value Tender processes are conducted against Transnet's Procurement Policies and Procedures Manual, (PPM) as well as the updated Tender Management Control framework. Key issues and lessons learnt during each gateway are shared with management and are used as input for the continuous improvement of the procurement process at Transnet. The overall scope of HVT is to provide guidance, review and observe all procurement processes followed through the following stages of the tender process:

- Demand stage: Demand review & development of specification/TDR , Business case development / SPP
- Acquisition stage
- Evaluation stage
- Negotiation
- Final contract validation/ Contract award stage
- Contract management stage (limited)
- Provide assurance at key/specific Gateways.

This review of the **Acquisition Stage for Network Services** tender (GSM/13/04/0722), will focus specifically on the following processes: Acquisition Stage, details the manner in which the goods or services are to be procured from the market.

It will entail some or all of the following key activities:

- The most appropriate procurement mechanism is agreed upon based on the specific requirements
- CFST to confirm **alignment to signed-off business case/SPP**
- **Development and finalisation of scorecards for stages of evaluation**
- **Go-to-market approval obtained**, advert drafted and placed
- Where appropriate, RFI drafted and appropriate potential bidders identified
- Technical specifications and commercial documentation to be finalised
- RFP drafted and sent to selected bidders
- Upon issue of the RFP, all communication between the bidders and Transnet will be dealt with by the RFP coordinator, including the clarification questions.

Scope exclusions

- TIA will provide assurance on process only and will not make any decisions regarding high risk/strategic tenders below the R50 million threshold. Any such decisions will be made by Governance and/or OD Sponsors
- Final recommendations on preferred bidder/s will not be made by TIA
- TIA will not be directly involved in negotiations – an oversight role will be played
- TIA will not review bid proposals during a tender process

Section 1: Executive summary (cont'd)

Basis of overall Gateway report classification

The Acquisition stage as outlined in the audit scope has one key control objective, namely; that the acquisition process details the manner in which the goods or services are to be procured from the market and that the manner is considered fair, equitable, transparent, cost effective and competitive.

The results of the gateway review indicate that the Acquisition stage of the tender was successfully concluded, and no residual risks existed which would have an impact on the next stages of the tender process.

TIA HVT provides reasonable assurance that the process followed for the Demand Review/Business Case Gateway was compliant to High Value Tender Methodology. This assurance is based on the fact that matters raised by TIA that could have had a potential impact on the efficiency of the process under review were resolved by GSS.

On the basis of the above, the process undertaken has been classified as "satisfactory".

Summary of key observations

The table below summarises the results of the gateway key activities:

Key Activities/Critical Controls	HVT Compliance Indicator	Finding / Comment
The correct acquisition process identified		Acquisition process was identified (Open market) as outlined in the approved memorandum and Strategy document (*refer to memorandum approved by the Group Chief Executive on 9 June 2013)*
RFP/RFI documents properly drafted		RFP document was drafted and aligned to the Strategy document
Correct teams in place with relevant skills to manage evaluation		The CFET has been identified, are the same members as the CFST and members' names and roles were completed on the Strategy document
The compilation of the evaluation criteria and scoring methodology		The evaluation criteria/methodology was developed at Strategy development stage, RFP is aligned to the Strategy document
Compilation of the negotiating strategy	n/a	n/a to this gateway
The correct tenderers /bidders have been identified. Advert has been placed		Tender advert was issued out to the market on the 14th of June 2013 *(copy of tender advert in file)*
Change control process	n/a	There were no changes on the stages of the procurement process

SC-049

ANNEXURE SC 6



Report classification	Satisfactory

TRANSNET

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Operating Division:	**Transnet Group Strategic Sourcing (GSS)**
Name of project:	**High Value Tender Gateway Review Process**
Tender number:	**GSM/13/04/0722**
Tender description:	**Network Services**
Period of review:	**6/05/2013 – 9/06/2013**
Issue date:	**25/07/2013**
Report Status:	**Final Demand Review Gateway Report**

ERNST & YOUNG

Quality In Everything We Do

SC-051

Section 1: Executive summary

Context

Transnet's mandate is to contribute to lowering the cost of doing business in South Africa and to support South Africa's economic growth and the National Growth Plan (NGP) by delivering reliable cost effective freight services that satisfy customer demand. Transnet's new Market Demand Strategy (MDS) aims to drive their own growth strategy which aims to significantly contribute to the growth of the South African economy. Transnet aims to spend R300bn in capital investment over the next 7 years.

To support effective tendering processes to achieve this level of spend Transnet introduced a High Value Tender gateway review process for all tenders in excess of R50M The focus of the HVT Gateway Review Process is to ensure that the processes undertaken for these tenders are fair, transparent, equitable, competitive and cost-effective. As from 1 October 2012, TIA introduced an upgraded Gateway Reporting system applicable to all HVTs which included an assurance ranking for each Gateway in which TIA is involved.

A key objective of the High Value Tender (HVT) Gateway Review Process is to provide guidance and support during the HVT Gateway Review Process; and assurance against the PPM at each gateway on tenders above R50 million, and for a few specific strategic and high risk tenders below this threshold. This provides a platform for:

- Providing assurance to Transnet on the effectiveness of the processes followed for high value tenders.
- Strengthening the overall control environment in relation to procurement/tenders.
- Rolling out and sharing of best practice across all ODs relating to procurement processes.
- Long term up-skilling of procurement staff.
- Providing input into updating of procurement procedures and supporting controls after witnessing application of such procedures.
- Fewer queries/challenges raised by DACs and/or bidders during high value tenders.
- Reduction in timelines due to reduction in number of re-tenders.

Background to the Tender

Tender identification:

- **SPP name:** Network Services
- **Tender name:** Network Services
- **Description of product or services:** Appointment of service provider(s) to provide Network Services to Transnet and its operating divisions (ODs) for a period of three (3) years with an option to extend for two (2) years
- **ETC:** R1.5 billion over a period of three (3) years. The above estimation is based on the current Neotel contract spend of R500 million per annum. Over a period of five (5) years it is estimated at R2.5 billion.
- **SCS project leader :** Fanie van der Walt
- **OD project leader :** Macdonald Maluleke
- **TIA Process Owner:** Cindy Felix
- **TIA HVT lead :** Zandile Jele
- **Document author:** Zandile Jele

Section 1: Executive summary (cont'd)

Background to the Tender cont'd

Transnet currently procures Network and Telecommunications services from Neotel (Pty) Ltd. Transnet dependencies dependent on Neotel as they are the sole provider. Transnet entered into a 5 years Network and Communications Agreement with Neotel (Pty) Ltd as part of the sale agreement of Transtel to Neotel in 2008.

Transtel provided the Network and Communications services to all Transnet Operating Divisions (ODs) as a subsidiary of Transnet. Transnet has one of the largest privately owned fibre networks in the country (Rail & Pipeline fibre network) which Transnet have not been leveraging directly for Transnet's benefit as it relates to ICT service provision.

Transtel was sold to Neotel as a "going concern" which resulted in the transfer of employees to Neotel (as a result of the sale agreement). The agreement commenced on 1 April 2008 and expired on 31 March 2013. The Transnet Board of Directors subsequently approved a five (5) month extension of this contract to 31 August 2013 and requested that a new RFP be issued to the market and contract awarded during the extension period.

Transnet as part of its procurement framework decided to go out on open tender for Network Services to ensure competitive and fair procurement of its Network services Requirements due to the following:

- There have been significant technological changes in the IT telecoms space over the past 4 years which have resulted in the service offering that Transnet is receiving not being the best the market has to offer.
- The Telecommunication and technology market is going through a significant amount of convergence and consolidation (both in terms of market players and technology vendors). This presents Transnet with a unique opportunity to consolidate service providers at a discounted price e.g. fixed and mobile voice services.
- There is a need to ensure that Transnet benefits from the best market offerings to fulfil its Market Demand Strategy.
- Transnet needs to appoint a capable service provider to provide Network Services through an outsourced model as a result of Neotel (Pty) Ltd contract expiring on 31 August 2013. The envisaged contract will be valid for a period of 3 years with an option to extend for 2 years subject to acceptable performance of the appointed service provider(s) and Transnet's operational requirements in line with the new convergence strategy. The rationale for this was that although robust contract and service management practices will be applied, a three year contract provides management with increased flexibility to exit a contract that may not be meeting Transnet's MDS requirements.

Transnet's objective is to source all services through a Preferred Service Provider capable of servicing all Transnet ODs in locations around the country. The sourcing option that will be adopted for the RFP will be based on a single service provider being appointed as a primary service provider with possible multiple partners (consortium or a joint venture) that will augment their capacity and capability to provide services on all nine ICT service towers that have been identified by Information Management Services (IMS). The primary service provider who will contract with Transnet will act as an Aggregator and will assume the overall responsibility for service delivery on the contract. The RFP will allow flexibility for Transnet to award service towers to multiple service providers.

Sourcing of telecommunication networks & services shall contribute to Transnet's objectives as follows:

- Reduce dependency on a single Service Provider.
- Provide transparency / clear ownership of network infrastructure.
- Provide more control to Transnet over Network service, quality, performance and price.
- Reduce and control cost for service delivery.

Section 1: Executive summary (cont'd)

Scope and approach

Real-time reviews of the High Value Tender processes are conducted against Transnet's Procurement Policies and Procedures Manual, (PPM) as well as the updated Tender Management Control framework. Key issues and lessons learnt during each gateway are shared with management, and are used as input for the continuous improvement of the procurement process at Transnet. The overall scope of HVT is to provide guidance, review and observe all procurement processes followed through the following stages of the tender process:

- Demand stage: Demand review & development of specification/TDR , Business case development / SPP
- Acquisition stage
- Evaluation stage
- Negotiation
- Final contract validation/Contract award stage
- Contract management stage (limited)
- Provide assurance at key/specific Gateways.

This review of the Network Services tender (GSM/13/04/0722), will focus specifically on the following processes:

- Demand Review Stage, which entails an engagement process to ensure that all stakeholders are fully aware and agree to the service /product that is to be procured, why it is to be procured, how it is to be procured and at what cost; and
- Strategic Procurement Plan (SPP) Development stage, which involves the drafting of the motivation to obtain managements' commitment and approval for the investment / procurement event. The SPP is premised on the rationale for the investment/procurement event, and includes factors such as:
  - **Strategic case** - how demand fits into overall Transnet business strategy
  - **Economic and financial case** - how value for Money will be optimised and assesses affordability of proposition
  - **Commercial case** – sets out the procurement route and assesses market capabilities and capacity. The commercial case typically sets out evaluation criteria and scoring mechanisms.
  - **Supplier Development(SD)** case – sets out the Supplier Development route
  - **Management case** – sets out how the procurement will be managed, including roles and responsibilities and implementation of the requirement

Scope exclusions

- TIA will provide assurance on process only and will not make any decisions regarding high risk/strategic tenders below the R50 million threshold. Any such decisions will be made by Governance and/or OD Sponsors
- Final recommendations on preferred bidder/s will not be made by TIA
- TIA will not be directly involved in negotiations – an oversight role will be played.
- TIA will not review bid proposals during a tender process.

Section 1: Executive summary (cont'd)

Basis of overall Gateway report classification

The Demand Review/Business Case stage as outlined in the audit scope has two key control objectives:

1. To ensure that all stakeholders are fully aware and agree to the service /product that is to be procured, why it is to be procured, how it is to be procured and the cost.
2. To obtain management commitment and approval for investment by providing a rationale for the investment. The business case provides a framework for planning and management of the procurement.
3. And that the manner in which the Demand Review/Business Case process is conducted is fair, equitable, transparent, cost effective and competitive.

The results of the gateway review indicate that the Demand Review/Business Case stage of the tender was successfully concluded, and no residual risks existed which would have an impact on the next stages of the tender process.

TIA HVT provides reasonable assurance that the process followed for the Demand Review/Business Case Gateway was compliant to High Value Tender Methodology. On the basis of the above, the process undertaken has been classified as "satisfactory".

Summary of key observations

The table below summarises the results of the gateway key activities:

Key Activities/Critical Controls	HVT Compliance Indicator	Finding / Comment
Budget		Current spend has been included in the strategy and memorandum (*refer to memorandum approved by the Group Chief Executive on 9 June 2013*).
Stakeholders identified and aware of their roles and responsibilities		Gartner was contracted to assist Transnet with the technical specification and evaluation sheets. All ODs representatives were involved in providing Gartner with specifications as per each ODs requirement (ODs were represented by the divisional Chief Information Officers – CIOs).
Demand has been adequately reviewed and options assessed		Demand options have been reviewed, assessed and outlined in the memorandum and Strategy.
Correct team in place with relevant skills to manage the procurement		Gartner was contracted to assist Transnet with the technical specification and evaluation sheets. All ODs representatives were involved in providing Gartner with specifications as per each ODs requirement (ODs were represented by the divisional Chief Information Officers – CIOs).
Specification agreed (degree of specification will depend on item being procured)		Specification was developed by Gartner with the assistance/inputs from all ODs agreed and signed off by technical lead.
Appropriate filters being used to determine SD opportunities		SD opportunities were identified and included in the Strategy document.
An adequate business case/SPP has been developed		A Strategy document has been developed by GSS and Gartner with the assistance/inputs from all ODs.
Adequate approval of business case		The Strategy document was approved by the delegated approving official (Group Chief Executive) in 9 June 2013 (*Memorandum dated 29 May 2013 in file*).
Change control process	n/a	There were no changes on the stages of the procurement process

ANNEXURE SC 7



Report classification	Requires Improvement

TRANSNET

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Operating Division:	**Transnet Group Strategic Sourcing (GSS)**
Name of project:	**High Value Tender Gateway Review Process**
Tender number:	**GSM/13/04/0722**
Tender description:	**Network Services**
Period of review:	**13/08/2013 to 15/10/2013**
Issue date:	**29/10/2013**
Report Status:	**Evaluation Gateway Report**

SC-057

Section 1: Executive summary

Context

Transnet's mandate is to contribute to lowering the cost of doing business in South Africa and to support South Africa's economic growth and the National Growth Plan (NGP) by delivering reliable cost effective freight services that satisfy customer demand. Transnet's new Market Demand Strategy (MDS) aims to drive their own growth strategy which aims to significantly contribute to the growth of the South African economy. Transnet intends spending over R300bn in capital investment over the next 7 years.

To support effective tendering processes to achieve this level of spend Transnet introduced a High Value Tender gateway review process for all tenders in excess of R50M. The focus of the HVT Gateway Review Process is to ensure that the processes undertaken for these tenders are fair, transparent, equitable, competitive and cost-effective. As from 1 October 2012, TIA introduced an upgraded Gateway Reporting system applicable to all HVTs which included an assurance ranking for each Gateway in which TIA is involved.

A key objective of the High Value Tender (HVT) Gateway Review Process is to provide guidance and support during the HVT Gateway Review Process and assurance against the PPM at each gateway on tenders above R50 million, and for a few specific strategic and high risk tenders below this threshold. This provides a platform for:

- Providing assurance to Transnet on the effectiveness of the processes followed for high value tenders.
- Strengthening the overall control environment in relation to procurement/tenders
- Rolling out and sharing of best practice across all ODs relating to procurement processes.
- Long term up-skilling of procurement staff.
- Providing input into updating of procurement procedures and supporting controls after witnessing application of such procedures.
- Fewer queries/challenges raised by DACs and/or bidders during high value tenders
- Reduction in timelines due to reduction in number of re-tenders.
- In addition we have been requested to review the accuracy of the computations and recommended outcome and this is set out in **Annexure A.**

Background to the Tender

Tender identification:

- **SPP name:** Network Services
- **Tender name:** Network Services
- **Description of product or services:** Appointment of service provider(s) to provide Network Services to Transnet and its Operating Divisions (ODs) for a period of three (3) years with an option to extend for two (2) years.
- **ETC:** R1.5 billion over a period of three (3) years. The above estimation is based on the current Neotel contract spend of R500 million per annum. Over a period of five (5) years it is estimated at R2.5 billion.
- **SCS project leader :** Fanie van der Walt
- **OD project leader :** Macdonald Maluleke
- **TIA Process Owner:** Preeti Desai
- **TIA HVT lead :** Zandile Jele
- **Document author:** Zandile Jele

SC-058

Section 1: Executive summary (cont'd)

Background to the Tender (cont'd)

Transnet currently procures Network and Telecommunications services from Neotel (Pty) Ltd. Transnet entered into a 5 year Network and Communications Agreement with Neotel (Pty) Ltd as part of the sale agreement of Transtel to Neotel in 2008. Transtel provided the Network and Communications services to all Transnet Operating Divisions (ODs) as a subsidiary of Transnet. Transnet has one of the largest privately owned fibre networks in the country (Rail & Pipeline fibre network) which Transnet has not been leveraging directly for its benefit as it relates to ICT service provision.

Transtel was sold to Neotel as a "going concern" which resulted in the transfer of employees to Neotel (as a result of the sale agreement). The agreement commenced on 1 April 2008 and has expired on 31 March 2013. The Transnet Board of Directors subsequently approved a five (5) month extension of this contract to 31 August 2013 and requested that a new RFP be issued to the market and contract awarded during the extension period.

Transnet as part of its procurement framework decided to go out on open tender for Network Services to ensure competitive and fair procurement of its Network services requirements due to the following:

- There have been significant technological changes in the IT telecoms space over the past 4 years which have resulted in the service offering that Transnet is receiving not being the best the market has to offer.
- The Telecommunication and Technology market is going through a significant amount of convergence and consolidation (both in terms of market players and technology vendors). This presents Transnet with a unique opportunity to consolidate service providers at a discounted price e.g. fixed and mobile voice services.
- There is a need to ensure that Transnet benefits from the best market offerings to fulfil its Market Demand Strategy.
- Transnet needs to appoint a capable service provider to provide Network Services through an outsourced model as a result of the Neotel (Pty) Ltd contract expiring on 31 August 2013. The envisaged contract will be valid for a period of 3 years with an option to extend for 2 years subject to acceptable performance of the appointed service provider(s) and Transnet's operational requirements in line with the new convergence strategy. The rationale for this was that although robust contract and service management practices will be applied, a three year contract provides management with increased flexibility to exit a contract that may not be meeting Transnet's MDS requirements.

Transnet's objective was to source all services through a preferred service provider capable of servicing all Transnet ODs in locations around the country. The sourcing option adopted for the RFP was based on a single service provider being appointed as a primary service provider with possible multiple partners (consortium or a joint venture) augmenting their capacity and capability to provide services to all nine ICT service towers that have been identified by Information Management Services (IMS). The primary service provider who will contract with Transnet will act as an aggregator and will assume the overall responsibility for service delivery on the contract. The RFP allowed flexibility for Transnet to award service towers to multiple service providers.

The Memorandum (dated 29 May 2013 for the approval of going to market on an open tender and approval of the Strategy document) was approved/signed-off by the appropriate DoA (*Group Chief Executive (GCE)* on the 9th of June 2013. Transnet issued the RFP to the market on the 14th of June 2013. The RFP was scheduled to close on the 16th of July 2013, however, Transnet received additional questions for clarification and decided to extend the closing date of this tender to the 13th of August 2013.

A compulsory pre-proposal RFP briefing was conducted on the 27th of June 2013 in Johannesburg and site inspection visits were held from the 2nd to the 10th of July 2013 in Johannesburg and Durban.

SC-059

Section 1: Executive summary (cont'd)

Audit Scope and approach

Real-time reviews of the High Value Tender processes are conducted against Transnet's Procurement Policies and Procedures Manual (PPM) as well as the updated Tender Management Control framework. Key issues and lessons learnt during each gateway are shared with management and are used as inputs for the continuous improvement of the procurement process at Transnet.

The overall scope of HVT is to provide guidance, review and observe all procurement processes followed through the following stages of the tender process:

- Demand stage: Demand review & development of specification/TDR , Business case development / SPP,
- Acquisition stage,
- Evaluation stage,
- Negotiation / Contract award stage,
- Contract management stage (limited),
- Provide assurance at key/specific Gateways.

This review of the **Evaluation Stage for the Network Services (GSM/13/04/0722)** tender, will focus specifically on the following processes:
Evaluation Stage, identifies the preferred bidder/s through agreed evaluation criteria set prior to the issue of the tender. It will entail some or all of the following key activities:

- Tenders opened by TAC Secretariat in presence of RFP coordinator,
- Administrative responsiveness test,
- Request for outstanding information/clarification,
- Identify and brief evaluation panel, confirm independence of panel,
- Confirm timeline for completion of evaluation,
- Identify stakeholders for sign-off of evaluation process and outcome,
- Undertake evaluation in accordance with Transnet agreed practices,
- All legal issues elevated to internal and external legal for opinions,
- Preferred bidder identified,
- Written motivation to AC.

Scope exclusions

- TIA will provide assurance on process only and will not make any decisions regarding high risk/strategic tenders. Any such decisions will be made by Governance and/or OD Sponsors,
- Final recommendations on preferred bidder/s will not be made by TIA,
- TIA will not be directly involved in negotiations – an oversight role only will be played,
- TIA will not review bid proposals during a tender process.

SC-060

Section 1: Executive summary (cont'd)

Basis of overall Gateway report classification

The Evaluation Stage as outlined in the audit scope has four key control objectives, namely:

1. That RFP responses are received and processed in accordance with the PPM;
2. That all participants in the Demand Review, Acquisition, Evaluation and Adjudication Stages complete a declaration of interest and confidentiality form;
3. That all communication to bidders during the Evaluation Stage is properly authorised and copies of all communications are kept on file;
4. That evaluations are carried out by the appropriate CFET, follow the pre-agreed evaluation methodology, criteria and weightings, and are supported by a recommendation document.
5. The manner in which the Evaluation process is conducted is fair, equitable, transparent, cost effective and competitive.

TIA HVT provides partial assurance that the process followed for the Evaluation Gateway was compliant with the High Value Tender Methodology. This assurance rating is based on the following:

- The TEAR report has been approved by the GCE without verification of the technical scores and confirmation of bidders who have passed the Technical Stage.
- TIA has identified inconsistencies on the scores reported in the consolidated and individual evaluator score sheets that could have an impact in the final technical scores (*this is due to evaluators signing incorrect evaluation score sheets*). Inconsistencies were subsequently resolved by GSS.
- GSS considered TIA's advice on the conflict of interest and rounding off of the final scores issues but felt that the risks were adequately mitigated.

On the basis of the above, the process undertaken has been classified as "requires improvement".

Summary of key observations

The table below summarises the results of the gateway key activities:

= HVT Compliant = Partially HVT Compliant = Not HVT Compliant

Areas probed	HVT compliance	Finding / Comment
Tenders have been received correctly		TIA was not part of the tender opening process but was provided with information by the TAC Secretariat and has noted that the tender receiving process was done correctly. All tender documentation received has been correctly received and stamped accordingly.
Conflicts of Interest		Declaration of interests and confidentiality agreements were completed and signed by all participants at all evaluations.
Evaluation team training		A briefing session outlining the evaluation process was conducted by GSS, prior to commencement of the evaluation to ensure that there is common understanding of the evaluation methodology.
Confidentiality of evaluation process		All the team members signed the confidentiality agreement forms, declaring that the 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. Also the evaluations took place at an assigned venue and were performed in isolation from the rest of the business.
Scoring based on evaluation criteria and scoring methodology		Evaluation process was aligned with the evaluation methodology and criteria outlined in the RFP. All individual score sheets were signed-off by all individuals involved in the evaluations once the evaluations and moderation were completed.
Final scorings		TIA identified inconsistencies on the scores reported in the consolidated score sheets and the underlying individual evaluator score sheets that could have an impact in the final technical scores (*this was due to the evaluators signing incorrect score sheets*). Inconsistencies were subsequently resolved by GSS.
Completed score sheets		Individual, consolidated, moderated and signed off score sheets have been finalised, signed off and provided to TIA.
Risk Mitigation		There was the conflict of interest and rounding off issues identified during the evaluation process that exposes Transnet to risks.
Presentation to appropriate Acquisition Council		TEAR report has been prepared by GSS and was approved by the GCE on the 14th of October 2013 (*on the 29th of May 2013, the Board approved the BADC to delegate authority to the GCE to approve the Network Services RFP, advertise, negotiate, award, contract and sign all relevant documentation in line with the approved strategy*).
AC process		Due to the Value of the tender, AC process is not applicable. TEAR report has been approved by the GCE on the 14th of October 2013 (*on the 29th of May 2013, the Board approved the BADC to delegate authority to the GCE to approve the Network Services RFP, advertise, negotiate, award, contract and sign all relevant documentation in line with the approved strategy*).

SC-061

ANNEXURE SC 8



EXCERPT FROM THE DRAFT MINUTES OF THE BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 13/5 HELD ON 29 AUGUST 2013 AT 13:00 IN THE THOMAS BAINES ROOM, VALLEY LODGE, MAGALIESBURG

"6.10 **Network Service Provider**

RESOLVED that the Board notes and approves the following:

- Notes the current status of the Network Services RFP; and
- Approve a 2 months extension of the Neotel Master Services Agreement plus the transition period required by the successful bidder, capped at a maximum of 12 months from 1 November 2013.

13/5/11"

COMMISSION OF INQUIRY INTO STATE CAPTURE

ANNEXURE SC 9



Date: 30 October 2013

Reference: LOI/GSM 13/04/0722

Neotel (Pty) Ltd
44 Old Pretoria Main Road
Halfway House
Midrand
1685

Attention: Sunil Joshi, Managing Director and Chief Executive Officer

Dear Mr. Joshi

RE : LETTER OF INTENT TO NEGOTIATE FOR THE PROVISION OF NETWORK SERVICES TO TRANSNET SOC LIMITED FOR A PERIOD OF THREE [3] YEARS WITH AN OPTION TO EXTEND FOR A FURTHER TWO [2] YEARS

Pursuant to Transnet's Request for Proposal [RFP Number GSM/13/04/0722], we wish to inform you that we are pleased to confirm that your company has been identified as a preferred bidder to enter into negotiations for the provision of Network Services [the Services] for a period of three [3] years with an option to extend for a further two [2] years to Transnet SOC Ltd, subject to the conditions precedent set out in section 1 below.

The Parties to this LOI are:

(1) **Transnet SOC Ltd** [**Transnet**], a State Owned Company and the procurer of the Services. [Registration Number 1990/000900/30]; together with

(2) **Neotel (Pty) Ltd** [**the Service Provider**] [Registration Number 2004/004619/07]

Transnet wishes to negotiate the MSA (Master Services Agreement) 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 a three year [3] contract [**the MSA**] between the Parties.

The Parties are desirous of successfully concluding negotiations and thereafter executing the MSA to enable the Service Provider to provide the Services detailed thereto.

In the interim there will be an extension to the existing contract (refer to Transnet Extension letter, dated 30 October 2013) for the provision of the current services until such time that the MSA as per the RFP is concluded. 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 extension of the current services and the negotiation of the MSA and these will remain in effect until the MSA is negotiated and signed by both Parties, or until 120 [One Hundred and Twenty] days have elapsed

from date of issue of this LOI, whichever event should occur first. Should the parties fail to reach agreement or conclude the MSA within 120 [One Hundred and Twenty] days, then Transnet reserves the right to approach the alternate preferred bidders.

NOW THEREFORE IT IS AGREED

1. Conditions Precedent

With reference to the Service Provider's offer [Reference GSM 13/04/0722], Transnet wishes to finalise the MSA, the Towers of Service contractual conditions and associated Pricing, the detail of the Supplier Development, which must be a minimum of 30% (Thirty percent) of the total contract value and B-BBEE 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 MSA to provide the Services over a period of three [3] years commencing from date of signature of the to be concluded Master Services Agreement.

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;

1.2.1 That the incumbent Service Provider provides the existing services under the current contract, until such time that the MSA is formally negotiated and subsequently concluded between the Parties, and

1.2.2 That the agreed Disengagement services are provided at an agreed cost per Tower of Service, until such time as the new contract services are fully transitioned as required by the MSA.

1.3 Transnet will discuss with the Service Provider and agree the terms and conditions of the MSA.

2. Interim Service Requirement

2.1. The Service Provider agrees to continue to provide the existing service as per the agreed extension of the current contract between the parties, after this LOI's confirmation date.

3. 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 Negotiations.

The contractual documents will be drafted by Transnet and be subject thereafter to final agreement between the 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 MSA within 120 [One Hundred and Twenty] days from date of signature hereof.

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

..... 2013 on behalf of:

Transnet SOC Ltd

WITNESSES

1 .....

2 .....

_____

NAME: Sharla Pillay

DESIGNATION: Acting Group Chief Executive

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

..... 2013 on behalf of:

Neotel (Pty) Ltd

WITNESSES

1 .....

2 .....

_____

NAME: Sunil Joshi

DESIGNATION: Managing Director and Chief Executive Officer

ANNEXURE SC 10

COMMISSION OF INQUIRY INTO STATE CAPTURE

TRANSNET

Date: 31 October 2013
Reference: GSM/13/04/0722

DIMENSION DATA
The Campus,
57 Sloane Street,
Bryanston
2021

Attention: Derek Wykes

Dear Sir,

RFP FOR THE PROVISION OF NETWORK SERVICES TO TRANSNET SOC LIMITED FOR A PERIOD OF THREE [3] YEARS WITH AN OPTION TO EXTEND FOR A FURTHER TWO [2] YEARS

Transnet expresses its appreciation for your valued participation in bidding for the above-mentioned requirement.

After extensive evaluation of all bids received and adjudication, we regret to advise that your company's bid was not successful.

The following bidder has been afforded "Preferred Bidder" status: Neotel (Pty) Ltd.

We regret that your company was unsuccessful on this occasion, and would indicate that this decision was based primarily on the under-mentioned factors:

- Pricing.

We thank you for your participation in this procurement process and would like to take this opportunity to encourage your future involvement in bidding for associated business opportunities which will be advertised by Transnet from time to time.

Yours sincerely

Name: Sharla Pillay
Designation: Acting Group Chief Executive
Date:

Transnet SOC Ltd
Registration Number
1990/000900/30

Carlton Centre
150 Commissioner
Street
Johannesburg
2001

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Directors: ME Mkwanazi (Chairman) B Molefe* (Group Chief Executive) MA Fanucchi Y Forbes HD Gazendam NP Mnxasana N Moola NR Njeke IM Sharma IB Skosana E Tshabalala DLJ Tshepe A Singh* (Group Chief Financial Officer)
*Executive

Group Company Secretary: ANC Ceba

www.transnet.net

ANNEXURE SC 11



TRANSNET

Date: 31 October 2013
Reference: GSM/13/04/0722

TELKOM SA SOC LIMITED
61 Oak Avenue, TechnoPark,
Highveld,
Centurion
0046

Attention: Sipho Ndlovu

Dear Sir,

RFP FOR THE PROVISION OF NETWORK SERVICES TO TRANSNET SOC LIMITED FOR A PERIOD OF THREE [3] YEARS WITH AN OPTION TO EXTEND FOR A FURTHER TWO [2] YEARS

Transnet expresses its appreciation for your valued participation in bidding for the above-mentioned requirement.

After extensive evaluation of all bids received and adjudication, we regret to advise that your company's bid was not successful.

The following bidder has been afforded "Preferred Bidder" status: Neotel (Pty) Ltd.

We regret that your company was unsuccessful on this occasion, and would indicate that this decision was based primarily on the under-mentioned factors:

- Failure to meet a technical threshold of 70% based on the evaluation criteria that was stipulated on the RFP.

We thank you for your participation in this procurement process and would like to take this opportunity to encourage your future involvement in bidding for associated business opportunities which will be advertised by Transnet from time to time.

Yours sincerely

_____

Name: Sharla Pillay
Designation: Acting Group Chief Executive
Date:

Transnet SOC Ltd
Registration Number
1990/000900/30

Carlton Centre
150 Commissioner
Street
Johannesburg
2001

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Directors: ME Mkwanazi (Chairman) B Molefe* (Group Chief Executive) MA Fanucchi Y Forbes HD Gazendam NP Mnxasana N Moola NR Njeke IM Sharma IB Sikosana E Tshabalala DLJ Tshepe A Singh* (Group Chief Financial Officer)
*Executive

Group Company Secretary: ANC Ceba

www.transnet.net

ANNEXURE SC 12



TRANSNET

Date: 31 October 2013
Reference: GSM/13/04/0722

T-SYSTEMS SA (PTY) LTD
International Business Gateway,
New Road,
Midrand
1685

Attention: Shaheen Vawda

Dear Sir,

RFP FOR THE PROVISION OF NETWORK SERVICES TO TRANSNET SOC LIMITED FOR A PERIOD OF THREE [3] YEARS WITH AN OPTION TO EXTEND FOR A FURTHER TWO [2] YEARS

Transnet expresses its appreciation for your valued participation in bidding for the above-mentioned requirement.

After extensive evaluation of all bids received and adjudication, we regret to advise that your company's bid was not successful.

The following bidder has been afforded "Preferred Bidder" status: Neotel (Pty) Ltd.

We regret that your company was unsuccessful on this occasion, and would indicate that this decision was based primarily on the under-mentioned factors:

- Pricing.

We thank you for your participation in this procurement process and would like to take this opportunity to encourage your future involvement in bidding for associated business opportunities which will be advertised by Transnet from time to time.

Yours sincerely

Name: Sharla Pillay
Designation: Acting Group Chief Executive
Date:

ANNEXURE SC 13



TRANSNET

Date: 31 October 2013
Reference: GSM/13/04/0722

VODACOM (PTY) LTD
082 Vodacom Boulevard,
Highveld,
Centurion
0046

Attention: Prudence Shuping

Dear Sir,

RFP FOR THE PROVISION OF NETWORK SERVICES TO TRANSNET SOC LIMITED FOR A PERIOD OF THREE [3] YEARS WITH AN OPTION TO EXTEND FOR A FURTHER TWO [2] YEARS

Transnet expresses its appreciation for your valued participation in bidding for the above-mentioned requirement.

After extensive evaluation of all bids received and adjudication, we regret to advise that your company's bid was not successful.

The following bidder has been afforded "Preferred Bidder" status: Neotel (Pty) Ltd.

We regret that your company was unsuccessful on this occasion, and would indicate that this decision was based primarily on the under-mentioned factors:

- Failure to meet the technical critical criteria that was stipulated on the RFP.

We thank you for your participation in this procurement process and would like to take this opportunity to encourage your future involvement in bidding for associated business opportunities which will be advertised by Transnet from time to time.

Yours sincerely

_____

Name: Sharla Pillay
Designation: Acting Group Chief Executive
Date:

ANNEXURE SC 14



30 October 2013

Mr Sunil Joshi
Managing Director and Chief Executive
Neotel (Pty) Ltd
44 Old Pretoria Main Road
Halfway House
Midrand 2186

Dear Sunil

NOTICE OF EXTENSION - MASTER SERVICES AGREEMENT BETWEEN TRANSNET AND NEOTEL DATED 11 DECEMBER 2007 ("MSA")

We refer to the above matter and to the agreed initial five (5) month extension ("Current Extension") and the subsequent two (2) month extension ("Further Extension") of the MSA between Transnet and Neotel, which expires on 31 October 2013.

Transnet hereby wishes to extend the current Master Services Agreement (MSA) on the following terms and conditions:

1. The MSA will be extended with effect from 1 November 2013 ("Third Extension") on a month by month basis, for a maximum period of six (6) months to allow for a transition of services.
2. The price for this Third Extension period will be a maximum of:
    2.1.1. For the period from 1 November 2013 to 30 April 2014, a flat rate of R41,983,543 million per month (excluding VAT) less 0.25% (quarter of a percent per month discount) on a month by month basis over the "Third Extension" period, regardless of usage by Transnet; and
    2.1.2. Transnet does however require additional discount as per the pricing indicated in the RFP process which will be negotiated between the parties.
3. The terms upon which the parties concluded the Current Extension and Further Extension shall apply to this Third Extension period;

TRANSNET

4. Any additional projects and/or services outside of the services referred to in the billing as at the end of March 2013, as referenced in paragraph 2 of the letter dated 31 May 2013 confirming the Further Extension (to the Current Extension) shall be excluded from the fees referred to herein; and
5. The monthly payments during the month by month Further Extension shall be made by Transnet on the last working day of every month for the services provided during the month in question, effective from 1 November 2013.
6. Transnet will give Neotel 30 days' notice should any or all of Towers of Services not be extended for the next monthly extension ("Third Extension").

Regards

_____

Sharla Pillay

Acting Group Chief Executive

ACCEPTED FOR AND ON BEHALF OF NEOTEL:

NAME: _____

SIGNATURE: _____

DATE: _____

Transnet SOC Ltd
Registration Number
1990/000900/30

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Street
Johannesburg
2001

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Directors: ME Mkwanazi (Chairman) B Molefe* (Group Chief Executive) MA Fanucchi Y Forbes HD Gazendam NP Mnxasana N Moola NR Njeke IM Sharma IB Skosana E Tshabalala DLJ Tshepe A Singh* (Group Chief Financial Officer)
*Executive

Group Company Secretary: ANC Ceba

ANNEXURE SC 15



Transnet SOC Ltd
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Number
1990/000900/30

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2001

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TRANSNET

www.transnet.net

MEMORANDUM

To: Sharla Pillay, Acting Group Chief Executive (GCE)

From: Mohammed Mahomedy, Acting Group Chief Financial Officer (GCFO)
Mantsika Matooane (Chief Information Officer)
Garry Pita, Group Chief Supply Chain Officer (GCSCO)

Date: 30 October 2013

Subject: **RFP No. GSM/13/04/0722 for Provision of Network Services – Request for approval to approve the process, award contract and issue a Letter of Intent (LOI) inviting Neotel to further negotiations as the preferred bidder of this RFP**

PURPOSE OF SUBMISSION:

1. To request the Group Chief Executive (GCE) to:

   - Approve the procurement process and award of business to Neotel (Pty) Ltd;
   - Sign the Letter of Intent (LOI) for the preferred bidder (See Annexure Q);
   - Sign letters of regret for the four (4) unsuccessful bidders (See Annexure R) and
   - Sign the letter to extend the current Neotel contract (Annexure T).

BACKGROUND:

2. The current five (5) year Neotel contract for Network Services was established through a sale agreement of Transtel to Neotel. This agreement was due to expire on 31 March 2013 and the Board subsequently approved five (5) and two (2) months extensions respectively and the current expiry date is 31 October 2013.

3. All Transnet Operating Divisions (ODs) make use of this contract for their Network Services requirements and the contract is managed at Group level by EIMS previously known as Group ICT.

4. The need for the Network Services RFP came about as a result of the imminent expiry of the Network Services agreement with Neotel (Pty) Ltd and the Transnet Board requested that management should test the open market for this requirement.

DISCUSSION

5. A Network Services sourcing strategy and RFP was prepared by the Cross Functional Sourcing Team (CFST) that consisted of technical representatives from all ODs. This sourcing strategy was recommended by the Executive Committee (EXCO) and Board Acquisitions and Disposal Committee (BADC) and approved by the Board of Directors (Board) in February 2013. The subsequent amendments on the sourcing strategy pertaining to the contract period and technical threshold were further approved by the BADC on 29 May 2013.

6. The Board delegated authority to approve the Sourcing Strategy, RFP, Advert and Award to the Group Chief Executive Officer subject to approval of the BADC and the BADC concurred with that recommendation. Refer to Annexure B of the attached TEAR report for the BADC resolution delegating authority to the GCE as indicated above.

7. An RFP was sent out to the market on 14 June 2013 and closed on 13 August 2013 after being extended twice as per requests from the bidders and approved by the GCE. A compulsory briefing session was held on 27 June 2013 and all nineteen (19) bidders who purchased the RFP document attended the briefing session. Only five (5) bidders responded to the RFP.

8. Bidders were evaluated against specific criteria as set out in the Request for Proposal (RFP) that was approved by the GCE on 09 June 2013. The table below indicates the number of bidders that passed at each of the evaluation stages.

Evaluations				
Stage 1	**Stage 2**	**Stage 3**	**Stage 4**	**Stage 5**
Administrative Responsiveness	Substantive Responsiveness	Technical Evaluation	Commercial Evaluation	Award incl. Post Tender Negotiations
5	4	3	3	1

9. It was concluded during the technical evaluation process that three (3) bidders namely Neotel (Bidder 1), Dimension Data (Bidder 3) and T-Systems (Bidder 5) passed stage 1 to 4 of the evaluation process.

10. The preliminary Network Services evaluation results in the form of a Tender Evaluation and Recommendation (TEAR) report were presented to Management for review on 01 October 2013. Management identified scoring discrepancies and requested that the Cross Functional Evaluation Team (CFET) should re-moderate areas where there were huge scoring discrepancies to be in line with Section 18.4.1(iii) of the PPM that stipulates that 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. A re-moderation session was held at Carlton Centre on 04 October 2013 where all the impacted service towers were re-moderated and agreed upon by the entire evaluation team including Transnet Internal Audit (TIA).

11. Transnet has also considered the issue of Vodacom acquiring Neotel, its assets and customer base as part of this RFP. Neotel has however indicated as part of the process

that this risk will be mitigated and should the Due Diligence being conducted by Vodacom prove to be positive for the sale and should the Competition Commission approve the sale Neotel will continue to fulfill its mandate as part of Vodacom and offer services under the agreed Terms and Conditions between Neotel and Transnet. Should the sale not be concluded Neotel has also committed to continue delivery of services to Transnet on the proposed services as described in their RFP response with the necessary commitment from their shareholders.

12. A recommendation for approval of Due Diligence and negotiations was submitted to the GCE for approval upon conclusion of commercial and B-BBEE evaluations. The GCE approved the Due Diligence and negotiations request on 14 October 2013 and a copy of the approved memorandum is included as Annexure C of the attached TEAR report. Due Diligence and negotiations letters were issued to the bidders on 14 October 2013 and the process commenced on 16 October 2013.

13. The Due Diligence process kicked off with discussions on the bid proposals with the individual shortlisted bidders to clarify their assumptions and enable them to submit their Best and Final Offers (BAFO) to Transnet. The process progressed to site visits to the three (3) shortlisted bidders' facilities to conduct interviews with some of their key resources and to conduct a facilities inspection to determine their technical capability to execute on the contract if successful on this RFP. The Due Diligence process culminated in conducting of telephonic interviews with two of the three references that were provided by each bidder to establish their performance track-record on the network related contracts which they have with their current customers. The above process was finalised on 23 October 2013 and a Due Diligence report that was compiled by the CFST is included as Annexure O of the Network Services TEAR report.

14. The Network Services TEAR report detailing the entire RFP process is included as **Appendix 1** of this memorandum. The High Value Tender (HVT) Gateway reports 1 and 2 provided by Transnet Internal Audit (TIA) as required by the HVT process indicates full compliance (green audit) to the Procurement process. The HVT Gateway 3 report indicated a need for improvement due to the rounding-off of technical scores and the possible conflict of interest issue between T-Systems and Detecon Consulting. The above mentioned issues have already been mitigated through the rounding-off permission that was received from the National Treasury and a written Affidavit from T-Systems confirming that there was never any information sharing between them and Detecon Consulting. Copies of the TIA Gateway Reviews reports are included as Annexure P of the attached TEAR report.

15. Table 2 below indicates project timelines for the remaining activities to the completion of this procurement event for the Network Services RFP:

Item	Activity	Planned Completion Date
1	Stage 1: (Administrative Evaluations & Moderation)	Finalised
2	Stage 2: (Substantive Evaluations & Moderation)	Finalised

3	Stage 3: (Technical Evaluations & Moderation)	Finalised
4	Stage 4: (Commercial Evaluations & Moderation)	Finalised
5	Issuing of presentations invites to the shortlisted bidders	Finalised
6	Presentations by the shortlisted bidders	Finalised
7	Submit recommendation for approval of Due Diligence and Negotiations to the GCE for approval	Finalised
8	Conduct Due Diligence to clarify assumptions and establish the shortlisted bidders' technical capability	Finalised
9	Request Best and Final Offers (BAFO) after Due Diligence	Finalised
10	Stage 5: Post Tender Negotiations with the preferred bidder	Deferred to post issuing of the LOI
11	Present a final recommendation for award together with LOI(s) to the GCE for approval	25 – 30 October 2013
12	Stage 6: Issue LOI(s) to the successful bidder	31 October 2013
13	Discuss transition plan with the preferred bidder	31 October 2013
14	Negotiate and sign Master Services Agreement (MSA) during the transition period including Supplier Development Plan	01 November 2013 to 28 February 2014

Table 2: Project Timelines

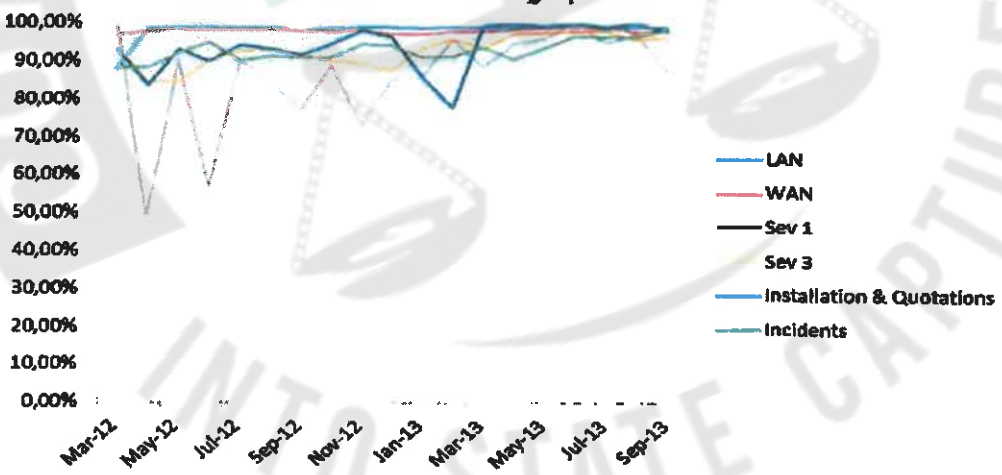
RISKS ASSOCIATED WITH THE CURRENT SERVICE PROVIDERS

16. Two of the bidders are current service providers to Transnet and risks linked to current services and mitigating actions are highlighted in the table below:

Bidder 1 – Neotel		Bidder 5 – T-Systems	
Risk	Mitigating actions	Risk	Mitigating actions
Security services not meeting requirements	• Security requirements have increased significantly between the current contract and the RFP; • Transnet has implemented external monitoring of the network; • Real time monitoring; • Implementation of next generation firewalls; • Supplier has committed to employ additional resources; • All findings linked to security incident has been cleared.	Security services not meeting requirements	• Security requirements have increased significantly between the current contract and the RFP; • Transnet has implemented external monitoring of the network; • Real time monitoring; • Implementation of next generation firewalls; • Supplier has committed to employ additional resources; • All findings linked to security incident has been cleared.
Lack of project	• Strong contractual support to	Lack of project	• Strong contractual support to

governance	force supplier to enact the appropriate governance with the support from bidders internal governance functions; • Transnet will require independent certification of competence of project delivery function; • SLA's will also be applicable on future project with service credits linked to the project budgets and timelines.	governance	force supplier to enact the appropriate governance with the support from bidders internal governance functions; • Transnet will require independent certification of competence of project delivery function; • SLA's will also be applicable on future project with service credits linked to the project budgets and timelines.
		Overall quality of service delivery	• Service credits are being charged; • Focus on continuous service improvement.
		Poor Financial Management	• Project launched to identify weaknesses and to improve current financial reporting; • Internal Audit initiated to validate the accuracy of current billing.

17. Considering the factors above management is confident that any risk linked to the recommend bidder can be mitigated, if not already done by implementing the new contract and more onerous service level agreements as included in the RFP process.
18. The proposed bidder's overall service delivery trends have also improved over the previous 18 months as is evident from the graph below:



APPROVALS AND DELEGATION:

19. The Group Chief Executive has already provided the following approvals:

- Approval of the Request for Proposal (RFP) and Advert to go out on an open tender;
- Approval to advertise and issue a RFP to the open market for provision of Network Services for a period of three (3) years with an option to extend for another two (2) years;
- Approval to conduct Due Diligence and Negotiations on the Network Services RFP.

20. In terms of clause 6.4(e) of the Delegation of Authority on the latest PPM effective from 01 October 2013, all recommendations for award exceeding R2 billion should be approved by the Board. This recommendation is forwarded to the GCE for approval as per delegation from the BADC dated 29 May 2013, a copy of which is included as Annexure B of the attached TEAR report.

FINANCIAL IMPLICATIONS:

21. The estimated contract value for a period of three (3) years is estimated at ~~R1,5 billion~~ R1,3 billion. Transnet does have an option to extend the contract for an additional 2 years, which would increase the cost with an estimated R1 billion.

22. A minimum savings target of 10% will be negotiated with the preferred bidder during post tender negotiations as part of Transnet's FY 2013/14 cost savings drive.

BUDGET IMPLICATIONS:

23. All Transnet OD's and Specialist Business Units (SBUs) have budgets available for their respective Network Services requirements.

COMMISSION OF INQUIRY INTO STATE CAPTURE

RECOMMENDATION:

24. To request the Group Chief Executive (GCE) to:

- Approve the procurement process and award of business to Neotel (Pty) Ltd;
- Sign the Letter of Intent (LOI) for the preferred (See Annexure Q);
- Sign letters of regret for the four (4) unsuccessful bidders (See Annexure R); and
- Sign the letter to extend the current Neotel contract (Annexure T).

COMPILED BY

Macdonald Maluleke
Commodity Manager: Group Strategic Sourcing
Date:

RECOMMENDED / ~~NOT RECOMMENDED~~

Fanie van der Walt
~~Executive Manager~~: Group Strategic Sourcing
Date: 31/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Peter Volmink
Executive Manager: Governance & Compliance
Date: 31 OCTOBER 2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Garry Pita
Group Chief Supply Chain Officer
Date: 31/10/13

RECOMMENDED / ~~NOT RECOMMENDED~~

Mohammed Mahomedy
Acting Group Chief Financial Officer
Date: 31. 10. 2013.

RECOMMENDED / ~~NOT RECOMMENDED~~

Mandla Dube
Category Manager: Group Strategic Sourcing
Date: 30/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Gerrie van der Westhuizen
Executive Manager: Office of the CIO
Date: 31/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Yusuf Loonat
Executive Manager: EIMS Service Delivery
Date: 31/10/2013

RECOMMENDED / ~~NOT RECOMMENDED~~

Mantsika Matooane
Chief Information Officer
Date: 31/10/2013

APPROVED / ~~NOT APPROVED~~

Sharla Pillay
Acting Group Chief Executive
Date: 31 October 2013

Please obtain letter from Neotel CEO to confirm that they will fulfill their mandate in the event of Vodacom acquiring Neotel (This should be part of Vodacom Due Diligence)

ANNEXURE SC 16

COMMISSION OF INQUIRY INTO STATE CAPTURE

Transnet SOC Ltd
Registration
Number
1990/000900/30

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TRANSNET

MEMORANDUM

www.transnet.net

To: Anoj Singh, Group Chief Financial Officer (GCFO)
Mantsika Matooane (Chief Information Officer)
Garry Pita, Group Chief Supply Chain Officer (GCSCO)

From: Brian Molefe, Group Chief Executive (GCE)

Date: 20 November 2013

Subject: **RFP No. GSM/13/04/0722 for Provision of Network Services – Request for approval to approve the process, award contract and issue a Letter of Intent (LOI)**

PURPOSE OF SUBMISSION:

1. To inform the Group Chief Financial Officer, Group Chief Information Officer and the Group Chief Supply Chain officer of my decisions to award the above mentioned business to T-Systems South Africa in terms of your request in your memorandum dated 31 October 2013.

BACKGROUND:

2. Your previous correspondence addressed to me dated 30 October 2013 with subject "RFP No. GSM/13/04/0722 for Provision of Network Services – Request for approval to approve the process, award contract and issue a Letter of Intent (LOI) inviting Neotel to further negotiations as the preferred bidder of this RFP" (Annexure A) and the TEAR report (Annexure B) which accompanied this letter refers.

3. This correspondence requested me to:
   a. Approve the procurement process and award of business to Neotel (Pty) Ltd;
   b. Sign the Letter of Intent (LOI) for the preferred bidder;
   c. Sign letters of regret for the four (4) unsuccessful bidders; and
   d. Sign the letter to extend the current Neotel contract.

PROCUREMENT PROCESS

4. In approving the procurement process the following must be taken into account by the Acquisition Council (AC), which in this case is the Transnet Board, which sub-delegated this responsibility to the Transnet GCE:
5. The Role of the AC is set out in par 20.2 of the PPM, October 2013, which is set out below:

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

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.

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."

FURTHER CONSIDERATIONS TAKEN INTO ACCOUNT RELATED TO THE APPOINTMENT OF NEOTEL, THE PREFERRED BIDDER IN TERMS OF THE TEAR REPORT:

6. I have given consideration to your recommendation as per your previous correspondence mentioned earlier as well as section 20.5 of the Procurement Procedures Manual which states that, should a dispute arise between the recommending officer(s) and the Acquisition Council (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.

7. I have the following specific concerns with your recommendation and responses to me, including the responses to me in the various meetings held with the recommending officers for re-motivation, which is discussed further in this document:
   a. Counterparty Risk and alienation of state assets;
   b. Concentration risk as Transnet is Neotel's largest client;
   c. BBBEE Partners
   d. Information Security incident; and
   e. CCTV camera exposures.

Counterparty Risk and alienation of state assets;

8. Government's intention with the sale of the Transnet Wide-Area Network (WAN) to Neotel was to create a second fixed line operator. I don't believe that Neotel met this mandate due to the fact that they have had very little market penetration and Neotel has recently announced that they have entered into negotiations to sell this network to Vodacom which could be perceived to be alienation of state assets.
9. Lastly, Transnet did not consider Vodacom's ability to manage the Neotel infrastructure and should the sale transaction of Neotel to Vodacom realize this will expose Transnet to unnecessary counterparty risk.

Concentration risk as Transnet is Neotel's largest client

10. Transnet is currently Neotel's biggest single client which exposes Transnet to unnecessary concentration risk.

BBBEE Partners

11. Neotel has not delivered against its BEE mandate which was part of the initial sale of state assets to Neotel and has in fact diluted black ownership of the company as is evident from the correspondence I received from Mr. Kennedy Memani, the Chairman of Nexus Connexion the BEE partner to Neotel. (Annexure C)

Information Security Incident

12. During 2011, Transnet Internal Audit (TIA) was requested by Management to perform a review on the Neotel Network Outsources IT Services. TIA issued a report highlighting certain weaknesses as it related to firewalls in October 2011.
13. Network traffic was analysed by Neotel on an ongoing basis, focusing on the highest volumes first to build required rules to resolve audit findings.
14. On 30 May 2012, Neotel indicated that they have found traffic on the network which were not known to them. Management made a decision not to block this traffic as it could potentially be related to operational systems and blocking this could result in business interruptions;
15. Group EIMS decided to do scanning of their own to identify the source of this unknown traffic;
16. On the 5 June 2012, the unknown traffic was identified as foreign traffic and IP addresses from 5 different countries were found on the Transnet network within a period of 24 hours;
17. Should skilled and determined third parties have made use of the vulnerabilities they may have been able to access servers and resources in the Transnet environment which may include servers containing:
    a. Financial information;
    b. Operational information; and
    c. Other sensitive / confidential information.
18. Although Transnet management and Neotel has implemented certain actions I am of the view that the activities specifically as it relates to Neotel was not adequate and exposed the organisation to unnecessary risk.

CCTV Network issues

19. TNPA identified that a number of their CCTV cameras in various ports were not operational or operating as intended as a result of potential poor workmanship and network issues. I am of the view that Neotel had a role to play as far as the network supporting these cameras are concerned and this concern is more reason for me to disagree with the recommendation made.

GCE'S CONCLUSION OF THESE CONCERNS

20. \Due to the above I have fundamental concerns in award a 3 year network contract to Neotel. This network is the heart of the Transnet business and I am of the view that awarding the business to Neotel will expose Transnet to unnecessary risk.

APPOINTMENT OF T-SYSTEMS SOUTH AFRICA

21. Post the close of the final offers being submitted T-Systems indicated that they unfortunately due to the strict timelines set by Transnet only managed to get confirmation from their shareholder on certain pricing elements and that they would be in a position to reduce the price submitted the week before by a further R248 million.

22. I approve that the R248 million be taken into consideration as part of T-Systems best and final offer as the commitment was made in writing to Transnet and shortly after the best and final offers have closed and I don't believe that any other bidders were prejudiced by this.
23. I further do not believe it is necessary to request another best and final offer from any of the vendors as all 3 preferred bidders were given the opportunity to confirm if the prices submitted are accurate and if they omitted anything.
24. As per the TEAR report, should this R248 million be taken into account and business not be awarded to Neotel due to the risks stated above, T-Systems would be the preferred bidder.
25. Management must ensure that more favourable prices are agreed with T-Systems to at least be at a similar level to the prices submitted by Neotel as part of the post tender negotiations.

APPROVAL:

26. Based on the explanations given above, I request that the Group Chief Financial Officer, Group Chief Information Officer and the Group Chief Supply Chain officer note the my decisions to award business to T-Systems South Africa in terms of section 20.5 of the Procurement Procedure Manual (PPM) and that I am overriding the recommendation made in the TEAR report.
27. Please find the following attached:
    a. Signed letter of intent to T-Systems South Africa (Annexure D)
    b. Signed letter of regrets to four (4) unsuccessful bidders (Annexure E); and
    c. Signed letter to extend the current Neotel contract (Annexure F).

APPROVED / ~~NOT APPROVED~~

Brian Molefe
Group Chief Executive
Date: 20.11.13.

ANNEXURE SC 17



delivering freight reliably

INTEGRATED SUPPLY CHAIN MANAGEMENT

TRANSNET PROCUREMENT PROCEDURES MANUAL [PPM]

Incorporating Procedures for General Procurement & Construction Procurement

COMMISSION OF INQUIRY INTO STATE CAPTURE

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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COMMISSION OF INQUIRY INTO STATE CAPTURE

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DOCUMENT CONTROL

Revision History:

Description	Effective Date	Version
Procedures Manual re-written to provide more comprehensive guidance and renamed Procurement Procedures Manual	26 May 2009	0
Procedures Manual re-written to align to approved Supply Chain Policy	01 October 2012	1
Procedures Manual re-written to align to revised Supply Chain Policy and the Preferential Procurement Policy Framework Act. Procedures relating to construction procurement incorporated into the PPM	01 October 2013	2

This document has been reviewed by the relevant governance structures and approved by the Board Acquisitions & Disposals Committee.

Issued by:

Garry Pita
Group Chief Supply Chain Officer
Date: 11/9/13

SECTION A:

BACKGROUND AND CONTEXT

Chapter 1: Introduction

Chapter 2: Definitions, Abbreviations and Acronyms

Chapter 3: Scope and Exclusions

Chapter 4: Applicable Legislation and Policies

Chapter 5: Code of Ethics

Chapter 6: Delegation of Authority for Procurement Processes

Procurement planning

Go to Market

Evaluation and Adjudication

Contract Management

Functions of Governance Structures

Appendices

CHAPTER 1 : INTRODUCTION

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

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

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

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

1.1 NATIONAL OBJECTIVES

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

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

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

1.2.2 Fairness and Transparency:

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

1.2.3 Social Equity:

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

1.2.4 Value for money:

- competitiveness; and
- cost effectiveness.

1.2.5 Due regard must be given to the importance of:

a) the promotion of Interdivisional Procurement as well as the moving of excess stock between Divisions; and

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

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

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

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

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

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

1.3 ISCM CONTROL OBJECTIVES

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

- To ensure only goods and services required by the organisation are acquired;
- To ensure that demand is appropriately defined and supply is structured/executed in accordance with the needs of the business;
- Tenders enable efficient/economical procurement from appropriate vendors considering legislative requirements;
- To ensure that policies and procedures exist for the Contract Management process and are standardised across Transnet;
- To employ and retain adequately skilled and sufficient contract management resources;
- To ensure that contract management is planned adequately and efficiently to enable Transnet to achieve its business objectives;
- To ensure that all goods and services are properly and efficiently delivered against the agreed standards and targets set out in the contract / SLA;
- To effectively and efficiently manage and maintain all supplier relationships;
- To ensure that all contracts are adequately retained and maintained on SAP or filed manually;
- To ensure that all contracts have been properly approved, finalised and archived.

- To ensure integrity of master data which will enable efficient, effective and economical procurement decision making;
- To ensure that there is appropriate source of supply to meet demand requirements timeously and that accurate and timeous payments are made to correct suppliers;
- Inventory is re-ordered promptly, at an appropriate level, to ensure availability when required. Material items are appropriately defined and set-up with correct specification. Inventory is appropriately safeguarded and secure; and
- To ensure fairness and diligence in the conduct and accounting of all scrap business practices that are adopted and is supported by duly documented, approved and accessible policies and procedures.

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 2 : DEFINITIONS, ABBREVIATIONS AND ACRONYMS

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

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

TERM	DEFINITION, ABBREVIATION OR ACRONYM
	form of business) external to Transnet.
Entity	Used in the Transnet context to describe an internal Transnet Operating Division, Specialist Unit, Transnet business or the various Group Functions comprising the Corporate Centre
Fronting	A deliberate circumvention or attempted circumvention of the BBBEE Act and the Codes. Fronting commonly involves reliance on data or claims of compliance based on misrepresentations of facts, whether made by the party claiming compliance or by any other person
Fruitless and Wasteful Expenditure	Expenditure that was made in vain and could have been avoided had reasonable care been taken. The paying of exorbitant prices which are not market related is also regarded as fruitless and wasteful expenditure
Goods	Any physical object or objects which has value, whether raw or processed, movable or immovable
Group	All Operating Divisions, Specialist Units, Businesses as well as the various different Group Functions comprising the Corporate Centre
Group Chief Executive [GCE]	The person in the Corporate Centre appointed as the Transnet Group Chief Executive, duly appointed by the Minister of Public Enterprises, or the person acting in his/her stead, at any given time, in terms of a proper mandate
Group Chief Financial Officer [GCFO]	The Group Chief Financial Officer in the Group Corporate Head Office, who reports directly to the GCE, or the person acting in his/her stead, at any given time, in terms of a proper mandate
Group Chief Supply Chain Officer [GCSCO]	The General Manager who heads up the Integrated Supply Chain Management function in the Corporate Head Office, or the person acting in his/her stead, at any given time, in terms of a proper mandate
High Value Tender Process [HVTP]	A process that is used in the procurement of high value goods/services. This process includes a number of gateway reviews during key steps of the tender process, in order to ensure that any flaws in the process are detected timeously
IC³ Supplier Development Matrix	A framework utilised to categorise SD opportunities on a matrix based on their value, extent of industrial leverage and strategic importance to Transnet. The matrix is adapted from the DPE Supplier Classification Matrix focused on Increased Competitiveness, Capability and Capacity
Imported content	That portion of the Bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry
Incoterms	(ICC Incoterms 2010) means, in relation to international trade (sale and purchase of Goods), the globally accepted purchase terms for Goods, used to indicate the costs to be incurred by the seller and the buyer and the point at which the risk of the Goods passes from the seller to the buyer See Appendix C for detailed definitions of all Incoterms
Integrated Supply Chain Management [ISCM]	The Integrated Supply Chain Management function as a whole including all Operating Divisions and Centres of Excellence

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Irregular Expenditure	Expenditure incurred in contravention of, or that is not in accordance with a requirement of any applicable legislation, including the PFMA
Letter of Award	Is issued when a Bidder is selected as the Successful Bidder. The letter of award informs the Successful Bidder unequivocally that he/she was awarded the business
Letter of Intent (LOI)	Is issued when a Bidder is selected as the Preferred Bidder. The LOI informs the Preferred Bidder of Transnet's intention to negotiate and conclude a contract with it
Local Content (LC)	The portion of the Bid price or quotation which is not included in the Imported Content, provided that local manufacture does take place
Manager	Means any employee in Transnet, by whatever designation he/she is known, who has been delegated certain specific powers in terms of a proper Delegation of Authority
Material Amendment	An amendment which increases the scope, cost or risk of a contract by more than 10% of the original contract value
Market Demand Strategy (MDS)	The Transnet strategy to invest in capital infrastructure in order to meet market demands for increased efficiency and effectiveness in delivery of Transnet's services
Non-Disclosure Agreement [NDA]	A confidentiality agreement between two or more parties
Open Bid	A public request to do business which has been properly advertised and to which any member of the public can submit a Bid
Operating Division [OD]	An operating division of Transnet, namely TFR, TPT, TNPA, TPL and TRE
Parcelling	When the full scope of work is known at a point in time and business is deliberately split into smaller portions to keep the transaction value within one's own Delegation of Authority, or to keep it below the threshold of an AC or a person with higher Delegation of Authority
Parent Company Guarantee	A guarantee by a parent company of a supplier's performance under its contract with a buyer, where the supplier is a subsidiary of the parent company.
Performance Bonds (PBs)	A performance bond from a bank guarantees performance under a contract from commencement to completion. The bank issuing the performance bond undertakes to pay a specified sum of money to the buyer if the supplier does not fulfil its contractual obligations.
Post Tender Negotiation [PTN]	Negotiations between Transnet and one or more shortlisted Bidders after the Bids have been evaluated, but before the business has been awarded
Preferred Bidder	Means a Bidder that has been identified through an evaluation process as the Bidder with whom Transnet intends to conclude a contract subject to the successful completion of contract negotiations
Prequalification Criteria	These are criteria that have to be met for a Bid to be deemed as responsive, e.g. registration with a specific professional body, specific accreditation, etc
Qualifying Small Enterprise [QSE]	An enterprise with a turnover between R5m and R35m, as defined by the DTI's Codes of Good Practice

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Quality (Functionality)	means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder
Rental or Lease	The use of Goods and/or moveable assets for a period and for consideration (compensation)
Request for Information [RFI]	An invitation to a broad base of potential suppliers to provide written information about their capabilities to meet a stated Transnet need. An RFI is primarily used in instances where Transnet is not clear about the precise specifications and/or scope of work required to meet its needs for specified Goods or Services. The information received through an RFI process is typically used to pre-qualify suppliers for consideration before an RFP for the Goods/Services is issued
Request for Quotation [RFQ]	Request for Quotation is used for transactions <R2m. However, CEOs may at their discretion lower the quotation limit
Request for Proposal [RFP]	Request for Proposal is used on the open Bid process i.e. for transactions > R2 million. However, CEOs may at their discretion lower the minimum threshold for open Bids
Request for ... [RFX]	A generic term which can be used interchangeably with either RFI, RFQ or RFP
Service	The provision of labour or work, including knowledge-based expertise, carried out by hand, or with the assistance of equipment and plant
SOC	State Owned Company
Supplier Development (SD)	Improving the socio-economic environment as required by the NGP by creating competitive local suppliers via Enterprise Development, the Competitive Supplier Development Programme and other initiatives such as Preferential Procurement. This results in a reduction in capital leakage and creates a supply base that can be competitive to market its Goods on the international market leading to increased exports.
Successful Bidder	Means a Bidder that has been identified as the Bidder to which business has been awarded
Tender Evaluation and Recommendation Report [TEAR]	A report that must be submitted by the evaluation team to the AC setting out an overview of the bid evaluation process, evaluation methodology, reasons for elimination of Bidders, a recommendation for the award of the tender as well as all supporting evaluation scorecards
Transnet Acquisition Council [TAC]	Acquisition Council catering for Corporate Head Office procurement and Centre-led transversal procurement
Transnet Capital Projects [TCP]	Transnet Capital Projects - a Specialist Unit of Transnet
Transnet Engineering [TE]	Transnet Engineering - an Operating Division of Transnet
Transnet Freight Rail [TFR]	Transnet Freight Rail - an Operating Division of Transnet

TERM	DEFINITION, ABBREVIATION OR ACRONYM
Transnet National Ports Authority [TNPA]	Transnet National Ports Authority - an Operating Division of Transnet
Transnet Pipelines [TPL]	Transnet Pipelines - an Operating Division of Transnet
Transnet Port Terminals [TPT]	Transnet Port Terminals - an Operating Division of Transnet
Transnet Properties(TP)	Transnet Properties – a Specialist Unit of Transnet
Transnet Corporate Centre [TCC]	The Head Office of Transnet SOC Ltd
Transnet SOC Ltd	Transnet SOC Ltd, Registration No. 1990/000900/30 incorporated in terms of the Companies Act 71 of 2008, as amended which includes all Operating Divisions, Specialist Units and/or subsidiaries
Unsolicited Bid	A unilateral request from a person or enterprise to do business with Transnet without Bids or quotations having been invited by Transnet
Working day	Any day other than a Saturday, Sunday or public holiday
Year	Any defined period of 12 (twelve) consecutive months
"Z" Clause	Refers to any additional clauses/special conditions mentioned in the Contract Data, Part 1 of the NEC3 Suite of Contracts

Notes:

- Words capitalised in the document have been defined in this Chapter.
- The terms "bid" and "bidder" in the context of this Procurement Procedures Manual are synonymous with the terms "tender" and "tenderer" respectively.

CHAPTER 3 : SCOPE AND EXCLUSIONS

The PPM is applicable to all acquisitions across the Transnet Group regardless of the value of the transaction, save for the exclusions mentioned in Table 1 below. The PPM has been aligned to the Construction Industry Development Board ("**CIDB**") Act and Standard for Uniformity in Construction Procurement (Standard for Uniformity) and applies to all construction procurement across Transnet as indicated in paragraph 3.4. below.

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

3.1 PROCUREMENT PROCEDURES

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

3.2 COMPLIANCE WITH THE PPM

Subject to paragraph 3.5 below, all procurement within Transnet must be conducted by supply chain officials within Transnet in accordance with the PPM.

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

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

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

3.3 PURCHASING PROCEDURES

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

3.3.1 Ferrous and non-ferrous scrap

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

3.4 CONSTRUCTION PROCUREMENT PROCEDURES

This PPM has been aligned to the Construction Industry Development Board ("CIDB") Act and Standard for Uniformity and applies to all construction-related acquisitions across Transnet. In relation to construction procurement, to the extent that there is any conflict between the PPM and legislation related to construction procurement, the legislation shall prevail.

Where different procedures apply to general procurement and construction procurement, the CIDB logo will appear next to the procedures relating to construction procurement only

Other formal procedural manuals, directives, circulars or practice notes relating to Construction Procurement may be issued from time to time and these should be read in conjunction with this Manual.

At the start of every Chapter following this Chapter there will be an indication regarding the applicability of the Chapter to construction procurement.

3.5 PPM EXCLUSIONS

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

TABLE 1

• Individuals (temporary staff), including contract workers employed by Transnet Human Resources. (However, the appointment of a recruitment agency, Consultant, consultancy firm or a firm providing a Service to Transnet must follow the **PPM**)
• Petty cash purchases, subject to such instructions as issued from time to time
• Inspection Services in connection with the procurement / sale of Goods / assets
• Media advertising (excluding campaigns involving professional advertising agencies)
• Income generating transactions (i.e. where Transnet's infrastructure, etc. is utilised to provide a Service; including instances where cross-divisional support is engaged for strategic or other reasons. However, procurement relating to such income-generating contracts must follow the PPM - see Chapter 9 *(Contract Options)*
• Water and electricity which is supplied to Transnet, including the provision of Services, as well as the relocation of such Services as a result of Transnet's activities (e.g. the relocation of power lines or water mains due to the construction of a new railway line)
• Rates and taxes and other levies raised by local authorities or provincial administrations, both of which are excluded from these procedures, by virtue of the fact that they can only be obtained from the particular local authority, but which are for purposes of good corporate governance, paid by means of blanket orders, or other approved methods
• Purchase of Goods at auctions
• Sale of Goods at auctions but excluding the appointment of auctioneers
• Letting and hiring of dwellings, and acquisition and alienation of houses or acquisition of land for houses in terms of prescribed housing policy
• Letting and hiring, and acquisition and disposal of all immovable assets. Refer to the Transnet Group Delegation of Authority, available on the Transnet Intranet.
• Sponsorships and donations, which are strictly governed by Delegated Powers

• Disposal of non-core businesses by the Transnet Restructuring Department. Such disposals are on the strict proviso that any employee of the Transnet Restructuring Department, a Transnet Board member or a senior Manager (or higher) in the Transnet Group or any of its divisions will be disqualified from the Bidding process for the said non-core businesses for a period of 18 months from the date of his/her exit from Transnet
• The disposal of all movable assets, e.g. the disposal of redundant PC equipment, cell phones, office equipment and furniture must be properly controlled in terms of the individual policies/procedures governing such disposals. These policies and procedures are available on the ISCM Transnet Intranet.
• The provision of degree or diploma certificates by tertiary institutions, attendance of training courses, seminars and conferences which are required on a once-off basis and are under R2 million in value, provided that such transactions are approved by the person with the required DoA. Such quotes must be sourced and processed by the end user department requiring the training.
• Any such exclusions which a Transnet Division may apply for through ISCM and which have been duly approved by the Transnet Group Chief Executive ("**GCE**") or the Transnet Group Chief Financial Officer ("**GCFO**") in accordance with guidelines which may be issued from time to time.

3.6 APPLICATION

This version of the PPM applies to all new procurement processes which have been initiated on or after the commencement date of this document. Procurement processes initiated prior to the commencement date must be dealt with in accordance with the rules that were applicable at the time [i.e. the October 2012 version of the PPM in relation to general procurement and the Transnet Capital Projects ("TCP") Construction Procurement Policy, Processes, Procedures and Methods Manual (the Construction Manual), Revision 1 in relation to construction procurement].

CHAPTER 4 : APPLICABLE LEGISLATION AND POLICIES

4.1 CONSTRUCTION-RELATED LEGISLATION



In terms of legislation, Construction procurement must be in compliance with the requirements of the Construction Industry Development Board Act (CIDB Act), 38 of 2000 including the CIDB Regulations and Standard for Uniformity, as amended. With regard to Transnet's policies on Preferential Procurement and Supplier Development, these must be pursued in construction procurement but only to the extent allowed by the CIDB legislation. Construction Procurement methods to support Supplier Development are covered in the methods for evaluation.

4.2 GENERAL LEGISLATION

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

TABLE 2

LEGISLATION AND GOVERNMENT POLICY
• The Administrative Adjudication of Road Traffic Offences Act, 46 of 1998
• The Arbitration Act, 42 of 1965
• The Broad-Based Black Economic Empowerment Act, 53 of 2003 as amended, including the Department of Trade & Industry's Codes of Good Practice
• The Companies Act, 71 of 2008 as amended
• The Competition Act, 89 of 1998 as amended
• The Competitive Supplier Development Programme (CSDP)
• The Constitution of the Republic of South Africa Act, 108 of 1996
• The Construction Industry Development Board Act (CIDB Act), 38 of 2000 including the CIDB Regulations and Standard for Uniformity, as amended
• The Conventional Penalties Act, 15 of 1962
• The Copyright Act, 98 of 1978
• The Currency and Exchange Act, 9 of 1933
• The Designs Act, 195 of 1993
• The Electronic Communications and Transaction Act, 25 of 2002
• The Framework for the Operationalisation of Government's Procurement Policies in State Owned Enterprises (dated 31 July 2001)
• The Income Tax Act, 58 of 1962
• The Industrial Policy Action Plan II
• The King III Report on Corporate Governance
• The Local Procurement Accord

LEGISLATION AND GOVERNMENT POLICY
• The National Development Plan (NDP)
• The National Ports Act, 12 of 2005
• The National Railway Safety Regulator Act, 16 of 2002
• The New Growth Path (NGP)
• The Occupational Health and Safety Act, 85 of 1993
• The Patents Act, 57 of 1978
• The Preferential Procurement Policy Framework Act (PPPFA), 5 of 2000 as amended, Regulations of 2011 - effective 7 December 2012
• The Prevention and Combating of Corrupt Activities Act, 12 of 2004 as amended
• The Promotion of Access to Information Act (PAIA), 2 of 2000 as amended
• The Promotion of Administrative Justice Act, 3 of 2000
• Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000
• The Public Finance Management Act (PFMA), 1 of 1999 as amended (Transnet is not bound by the Supply Chain regulations issued in terms of this Act)
• The Promotion of Administrative Justice Act (PAJA), 3 of 2000 as amended
• The Second-Hand Goods Act, 6 of 2009
• The Standards Act, 8 of 2008
• The Trade Marks Act, 194 of 1993
• The Value Added Tax Act, 89 of 1991

4.3 POLICIES

4.3.1 General Overview of Transnet Policies

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

TABLE 3

TRANSNET POLICIES AND PROCEDURES	LOCATION
• Transnet Code of Ethics	Company Secretary Intranet portal
• Cell phone Policy	ICT Intranet Portal
• Contract Management Policy	Policies Intranet Portal
• Counterparty Risk Management Policy	Finance Intranet Portal
• PC Disposal Policy	ICT Intranet Portal
• Declaration of Interest and Related Party Disclosure Policy	Company Secretary Intranet portal
• Delegation of Authority Framework	Company Secretary Intranet portal
• Group Compliance Policy	Group Compliance

TRANSNET POLICIES AND PROCEDURES	LOCATION
	Intranet Portal
• Gifts Policy	Company Secretary Intranet portal
• Supply Chain Policy	ISCM Intranet portal
• Procure to Pay Procedures(P2P)	ISCM Intranet portal
• High Value Tender Process	ISCM Intranet portal
• Records Management Policy	Company Secretary Intranet portal
• Reverse Logistics Procedure	ISCM Intranet portal
• Scrap Policy	ISCM Intranet portal
• Supplier Development Plan	ISCM Intranet portal
• Transnet Broad-Based Black Economic Empowerment Policy	Group Compliance Intranet portal

4.3.2 Preferential Procurement

a) Strategic Intent

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

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

- allocating either 10 or 20 preference points in accordance with the PPPFA based on the B-BBEE status of an enterprise in terms of its valid B-BBEE scorecard;
- requesting an enterprise to commit to **improving or sustaining its B-BBEE performance** over the contract period in the following areas: ownership, management control, employment equity, preferential procurement and enterprise development (This will be referred to as a B-BBEE Improvement Plan);
- encouraging bidders to form Joint Ventures (JVs) with black owned entities, alternatively to sub contract a minimum percentage of the contract to black owned companies;
- stipulating that an Enterprise will not be awarded points for its B-BBEE status level if it has indicated in its Bid response that it intends sub-contracting more than 25% of the value of the contract to any other Enterprise that does not qualify for at least the points that such a Bidder qualifies for, unless the intended subcontractor is an EME that has the capability and ability to execute the sub-contract;
- stipulating that an Enterprise who has been awarded a contract may not sub-contract more than 25% of the value of the contract to any other Enterprise that does not have an equal or higher BBBEE status level than the Enterprise concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the sub-contract;

- stipulating that an Enterprise awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- Requiring winning bidders to take steps to ensure:
    - management and daily operational involvement by Black professionals and managers as prescribed in the different sector charters;
    - skills transfer and training; and
    - employment creation and employment equity.

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

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

b) Scope and applicability

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

(II) The approach shall apply to and impact on all levels (Rand value) and types of Bids. It will also apply to the acquisition or granting of any right for and on behalf of Transnet. The objective is to design innovative ways to promote Black Economic Empowerment. This will be dealt with in terms of the legislation and policies applicable to that area of Transnet's operation.

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

c) Objectives

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

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

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

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

d) Preferential procurement targets and reporting

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

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

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

4.3.3 Supplier Development – Strategic Intent

a) Background

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

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

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

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

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

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

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

b) Applicability

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

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

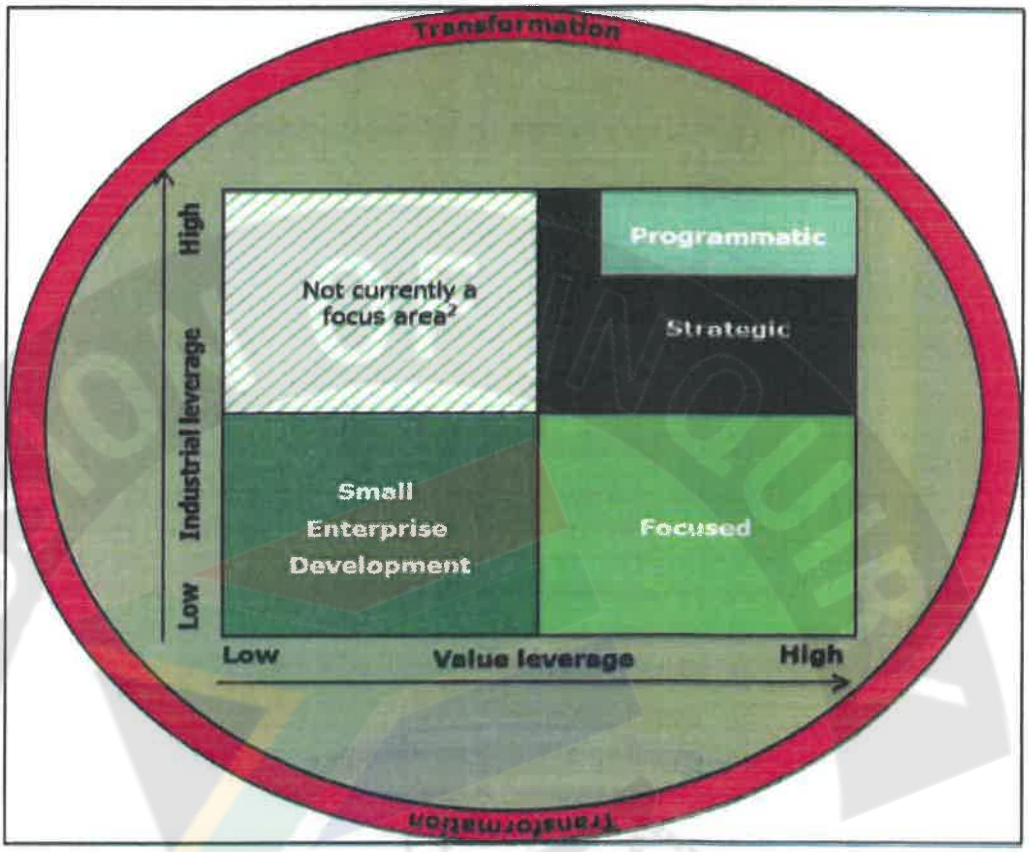


Figure [1] – IC³ SD Classification Matrix

The IC³ Supplier Development Classification Matrix (refer Figure [1] above) assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet.

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

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

4.3.4 Enterprise Development - Strategic Intent

a) Background

Enterprise Development (ED) is an element of the B-BBEE scorecard aimed at supporting government socio-economic initiatives and has a strong link with procurement. ED is achieved by leveraging government procurement and other government projects e.g. state owned companies procurement programs.

Enterprise development is defined as a program of developing Small and Medium enterprises, called beneficiaries, by investing time, money, and capital in order to contribute to the development, sustainability, financial independence, and operational independence of those beneficiaries. Enterprise Development Contributions consist of initiatives in favour of a beneficiary by a measured entity in these forms i.e. Monetary: money; Non-Monetary: time and capital; recoverable and non-recoverable.

There are two categories of beneficiaries i.e.

- Category A: Exempted Micro-Enterprises or Qualifying Small Enterprises which are 50% black owned or black woman owned.

- Category B: Any other entities that are 50% black owned or black woman owned, or 25% black owned or black woman owned with a B-BBEE Status of between Level One and Level Six.

When implementing Enterprise Development Transnet will achieve the following objectives:

- Enable or accelerate the development of a beneficiary;
- Achieve beneficiary sustainability;
- Achieve beneficiary financial independence; and
- Achieve beneficiary operational independence.

Transnet's ED approach will address both financial and non-financial ED initiatives which provide ED beneficiaries with, inter alia, support as listed below:

- Mentorship support
  - Business Development
  - Tendering skills support
  - Technical support
  - Business compliance
- Capacity Building
  - Building and finance (Shorter payment terms)
  - On site mentoring
  - Learnership through Transnet School of Academy

b) **Applicability**

Unless a particular Enterprise Development initiative involves the procurement of goods or services, Enterprise Development initiatives fall outside the ambit of the PPM.

CHAPTER 5 : CODE OF ETHICS

This Chapter is applicable in totality to construction procurement and general procurement activities. Please refer to paragraph 5.4. regarding the difference between bidders' prior involvement in general procurement and construction procurement.

5.1 SUPPLY CHAIN CODE OF ETHICS

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

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

5.1.2 All Transnet employees should uphold the following key values:

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

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

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

5.1.5 Former employees of Transnet shall not be restricted from doing business with Transnet unless they have been restricted from doing so in terms of paragraph 5.1.6 below. Due diligence should be exercised by evaluation teams to determine whether any undue influence/unfair advantage could have been possible between any Transnet employees and the former employee. This should be brought to the AC's attention, and should be stated clearly in submissions to the AC or to the delegated Manager for transactions falling below the AC's jurisdiction.

5.1.6 Former employees of Transnet who were dismissed following disciplinary action or who had resigned to circumvent disciplinary action following charges relating to dishonesty (e.g. bribery, corruption, theft, etc.) shall be formally excluded from future business dealings with Transnet. They will be blacklisted for a specific period and their names shall appear on Transnet's List of Excluded Bidders (see Chapter 23 on *Blacklisting*).

5.2 CONFIDENTIAL INFORMATION AND TRADE SECRETS

5.2.1 Employees have access to information related to Transnet's business strategies and contractual relationships with third parties. This information must be regarded as trade secrets. It includes intellectual property, know-how, processes, techniques, technical detail, methods of operating, cost and source of material, pricing and purchasing policies, systems design and development information. It also includes the contractual and financial arrangements between Transnet and its customers and suppliers. In this regard, all employees have a duty of trust and confidence and a duty to act at all times in the best interests of Transnet. The disclosure of trade secrets or any other confidential information could cause serious damage to Transnet, and possibly claims of damages for breach of contract against Transnet.

5.2.2 No employee may discuss or disclose prices which have been quoted or charged to Transnet.

5.2.3 No employee may disclose information which would, or could be perceived to place a Bidder in a better position than its competitors, or which would put Transnet at a disadvantage against Bidders or suppliers.

5.2.4 Where it is necessary to disclose confidential information to potential suppliers in order to solicit Bids, Non-Disclosure Agreements ("NDAs") must form part of the bid documentation. The NDAs must be signed by all Bidders.

5.3 INTELLECTUAL PROPERTY RIGHTS OF SUPPLIERS/TRANSNET

5.3.1 Transnet will acknowledge and respect suppliers' intellectual property (IP) rights. Transnet will also seek to promote fair competition.

5.3.2 It is recommended that in cases where the IP of suppliers is at stake, Transnet should hold clarification sessions with potential Bidders in order to clarify the position regarding IP rights. Furthermore, before concluding a contract, Transnet should ensure that all issues of IP are properly addressed in the contract and that both parties understand the nature of the agreement.

5.3.3 Depending on the merits of each case, one of the following approaches will be followed and must be stipulated upfront in the Request for Proposal ("RFP") document:-

a) Transnet may choose to pay the supplier outright for its IP in the Goods and purchase the Goods with its IP. In such instances, the supplier relinquishes its rights to the IP and Transnet acquires all rights to the Goods. This applies to all specifications, drawings and/or prototypes. Transnet will disclose this at RFP stage and all aspects pertaining to IP will be negotiated and captured in the contract between the parties. Transnet shall have the right to procure its

future requirements via an Open Bid process and the original designer/developer will be free to participate.

b) Transnet may choose to share the IP with the supplier where Goods were jointly developed by Transnet and the supplier. In this scenario, Transnet shares the IP and the royalties emanating from the development of the Goods. This must be clearly set out in the contract between the parties.

c) Where an existing patented article is required by Transnet, it is preferable that Transnet issue an Open Bid stating that the patented item or "anything similar" is required. Alternatively, Transnet may choose to confine the tender to the manufacturer concerned. In this instance the supplier remains the owner of the IP in respect of the article.

5.4 BIDDERS' PRIOR INVOLVEMENT IN PROCUREMENT

As a general rule, service providers or contractors that were involved in the preparation of a scope of work or in prior stages of a particular procurement project shall be precluded from submitting bid offers for that procurement project. This is due to the unfair advantage they may gain as a result of prior knowledge of the project. This rule applies unless there are grounds for confinement as indicated in paragraph 15.1.2 of the PPM. It does not apply to a 2-stage RFX process.

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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

This Chapter is applicable in totality to construction procurement and general procurement activities.

6.1. HOW DELEGATION OF AUTHORITY WORKS

Figure 2 below explains how authority is delegated from the Minister of Public Enterprise to the various structures and persons within Transnet via a series of sub-delegations:

How Delegation of Authority works within the context of Procurement

Step 1	The Transnet Board acquires it Delegation of Authority from its appointment as the accounting authority of Transnet by the Minister of Public Enterprises in terms section 49 of the PFMA
Step 2	The Transnet Board sub-delegates certain powers to: 1) The BADC 2) The Group Chief Executive (GCE)
Step 3	The GCE sub-delegates certain powers to: 1) The Group CFO 2) The CEOs of ODs and Specialist Units 3) Group EXCO members
Step 4	The CEO sub-delegates certain powers to his/her CPO
Step 5	The CPO sub-delegates certain powers to his/her Executive/Senior Managers in Procurement
Step 6	Executive / Senior Managers sub-delegate certain powers to Category Managers
Step 7	Category Managers sub-delegate certain powers to Commodity Managers
Step 8	Commodity Managers sub-delegate certain powers to Senior Buyers and buyers etc.

Figure [2] – Delegation of Authority

6.2. DELEGATION OF AUTHORITY FRAMEWORK

The Transnet Delegation of Authority (DoA) Framework sets out the powers delegated to certain officials (e.g. GCE, GCFO, OD CEO, etc) to perform specified tasks in relation to various areas of operation (e.g. finance, treasury, procurement, etc). The following powers, depicted in Table 4 below, are derived from the Transnet Delegation of Authority Framework effective 1 June 2013. **However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.**

TABLE 4

APPROVAL AUTHORITY	PROCUREMENT DELEGATION					
	Approval to approach the market			Management's intervention to address non-compliance with procurement policies & procedures	Enter into & signing of contracts & award of business (including scrap sales)	Procurement process (governance structure) approval
	Open tenders	Confined tenders	Consultants			
Transnet Board	>R 2 000m	>R 1000m	>R300m	>R 1000m	>R 2 000m	>R 2 000m
BADC	≤R 2 000m	≤R 1000m	≤R300m	≤R 1000m	≤R2 000m	≤R2 000m
Group EXCO	Nil	Nil	≤R200m	Nil	Nil	Nil
GCE	≤R1 000m	≤R250m	≤R200m	≤R50m	≤R1 000m	Nil
GCFO	≤R750 m	Nil	≤R50m	Nil	≤R750m	Nil
GCSCO	≤R525 m	Nil	Nil	Nil	≤R525m	Nil
OD CE (including TCP)	≤R450 m	Nil	≤R25m (per annum)	Nil	≤R450m	Nil
OD/SU Main AC	Nil	Nil	Nil	Nil	Nil	≤R450m
CEO/ HOD (budget owner) of Specialist Unit, excl. TCP	≤R75 m	Nil	Nil	Nil	≤R5m subject to the contract period not exceeding 5 Years	Nil
Group Exco Members (Specialist Units, excl.TCP)	Nil	Nil	≤R10m	Nil	≤R30m	Nil

6.3. POWERS VESTED IN TRANSNET OFFICIALS

It is important to bear in mind that not all powers vested in Transnet officials are contained in the DoA Framework. In the procurement context, certain powers are also vested in officials in terms of this PPM whilst other powers are inherent to the job function e.g. the day to day running of the procurement function. Figure 3 below explains the powers vested in Transnet officials in terms of the DoA Framework, the PPM and their job function, respectively:

Delegatee	From Whom	Delegation in terms of Transnet DoA Framework	Powers acquired in terms of the PPM	Delegation in terms of a "general blanket" delegation
GCE	Transnet Board	•Approve Confinements ≤R250m •Consultants ≤R200m •Condonations ≤ R50m •Going to market on open tender & sign contracts ≤ R1 000m	Final arbiter for appeals on blacklisting	Responsible for the day-to-day running of Transnet
GCFO	GCE	•Consultants ≤R50m •Going to market on open tender & sign contracts ≤ R750m	Approve decision to blacklist	N/A to procurement
OD CEOs	GCE	•Approve consultants ≤ R25m p.a •Going to market on open tenders & sign contracts ≤ R450m	Approve OD Approved Lists Appoint AC & Chair/ members Mediate disagreements between AC and line/procurement, etc.	Responsible for the day-to-day running of the operating division
CPO	OD CEO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CEO	Delegate powers to CFSTs, CFET & PTN teams, empower procurement to utilise quotation system & emergency purchases and initiate blacklisting proceedings	Responsible for the day-to-day running of the OD procurement function
Procurement	OD CPO	Going to market on open tenders & sign contracts depending on the value delegated by the OD CPO	Facilitate CFSTs, CFET & PTN teams Utilise quotation system and emergency purchases, issue open tenders and initiate blacklisting cases	Responsible for the day-to-day procurement tasks and functions

Figure [3] – Types of Delegated Authorities

6.4. DOA SUMMARY

Figures 4 to 10 below collectively represent a summary of the Delegations of Authority required for various procurement approval processes and thresholds effective 1 June 2013. However, please note that these monetary limits are amended from time to time. Employees are therefore required to familiarise themselves with the monetary limits contained in the current DoA Framework.

Procurement approval processes at Transnet

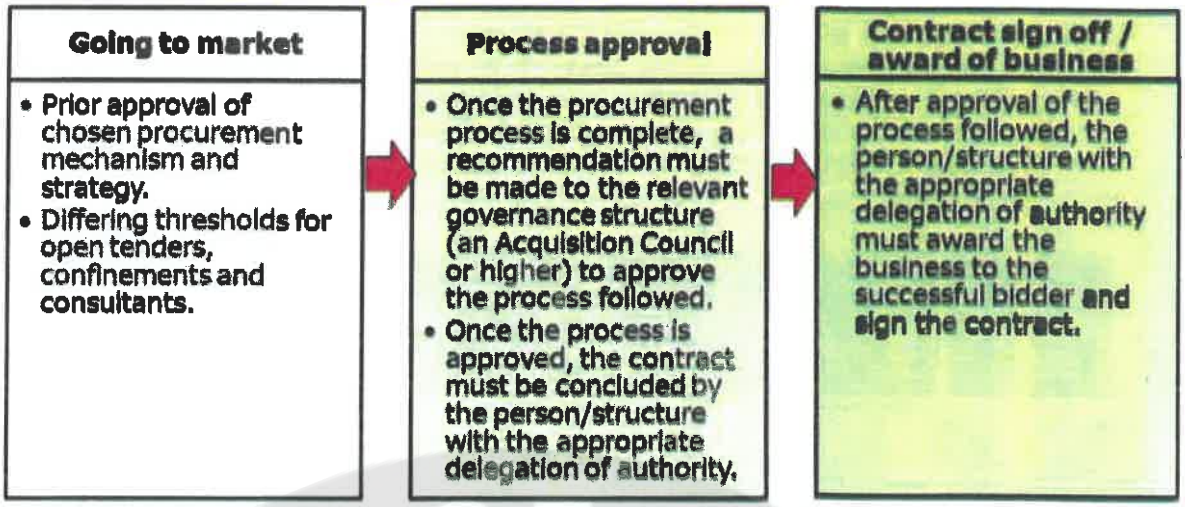
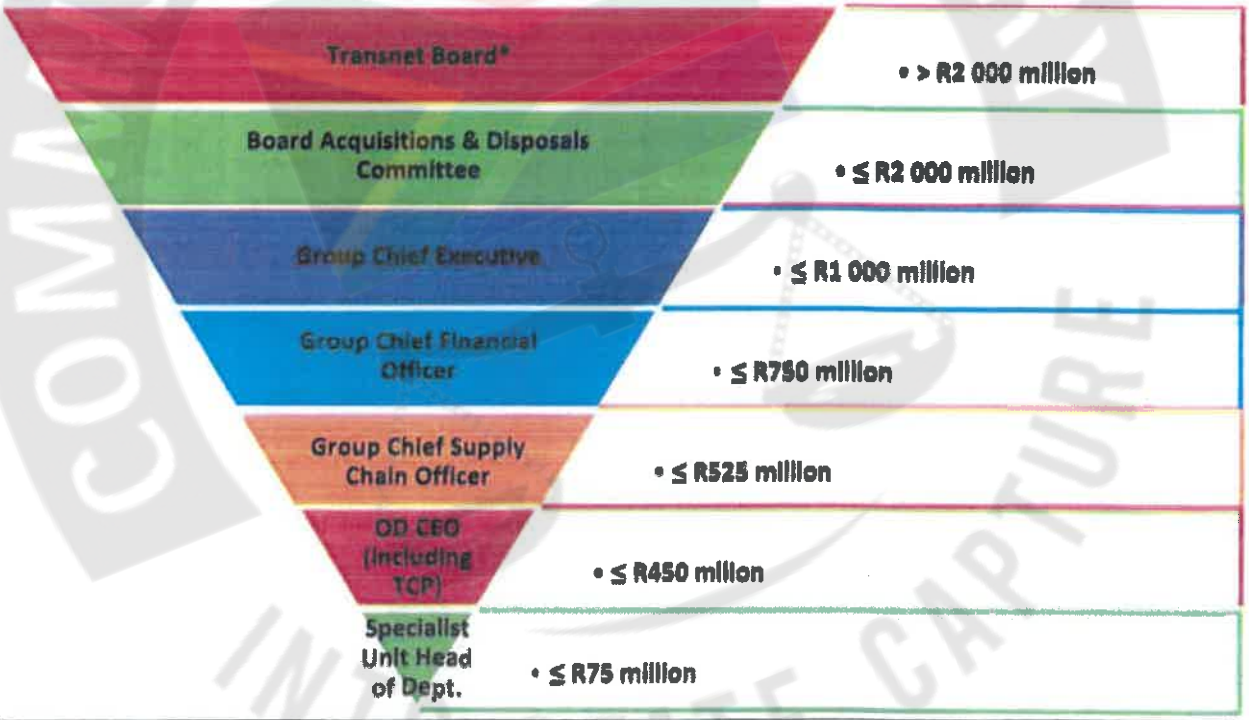


Figure [4] – Procurement approval processes

The thresholds applicable to the various approval steps are depicted in the diagrams below.

(a) Approval to approach the market for open tenders

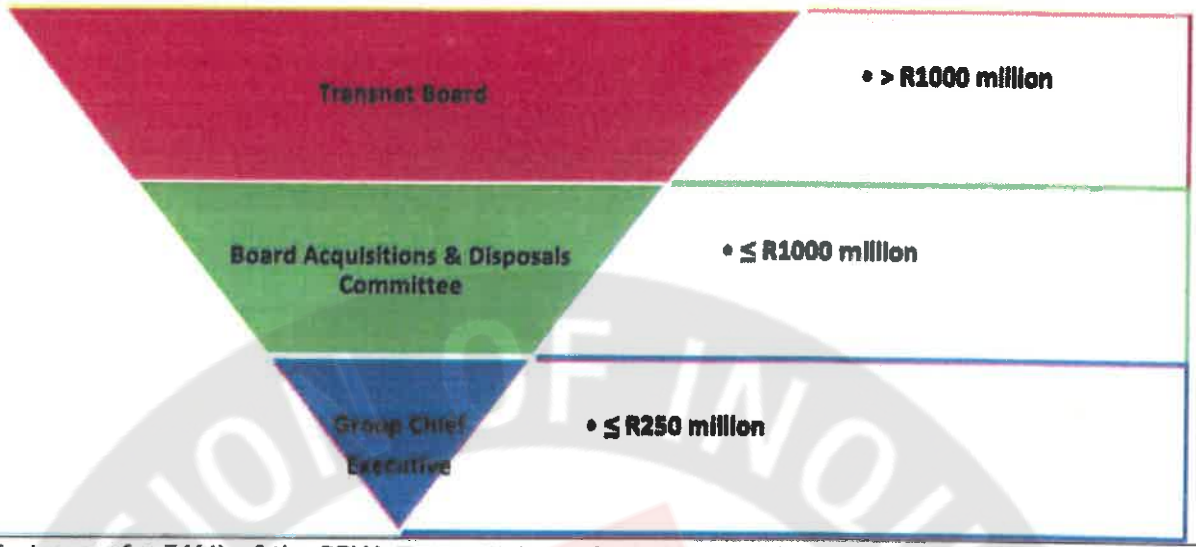
Approving the approach to market strategy involves approving the sourcing strategy as well as the critical aspects of what will be contained in the bid document i.e. the evaluation methodology and at a high level, the evaluation criteria and weightings.



*In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [5] – Approval to approach the market for open tenders

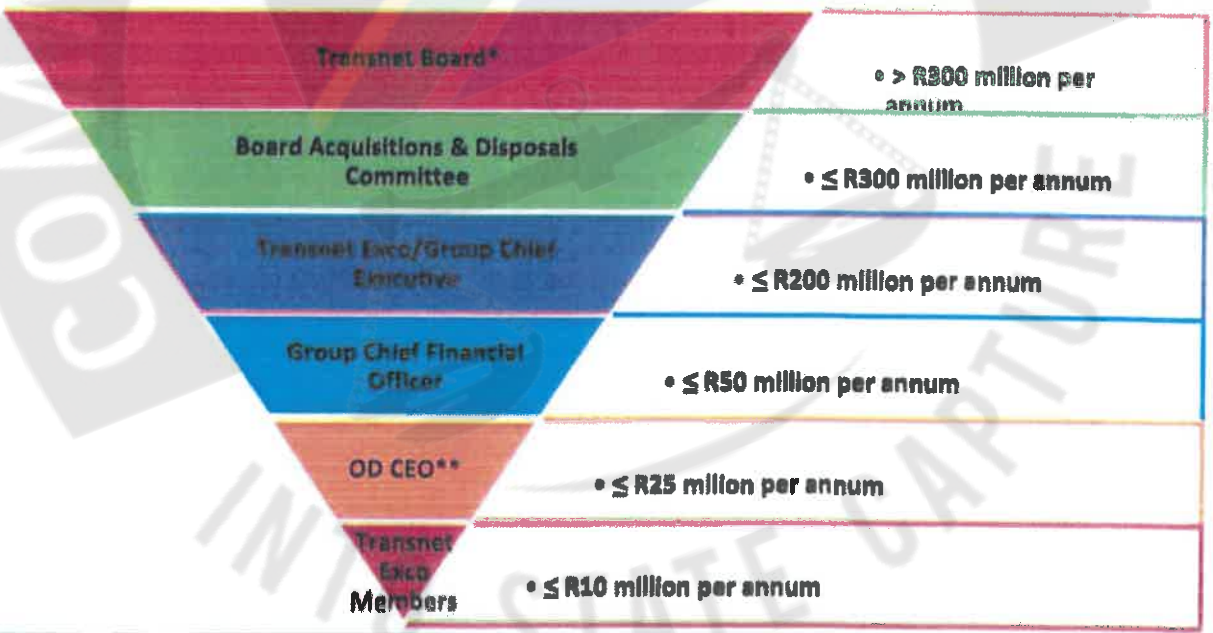
(b) Approval to approach the market for confined tenders



In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [6] – Approval to approach the market for confined tenders

(c) Appointment of consultants

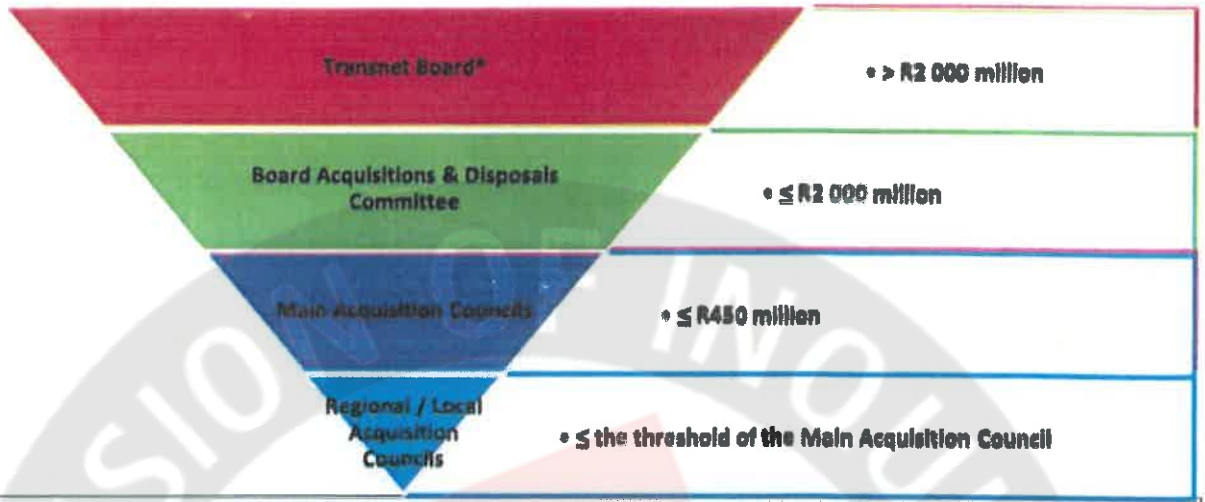


**NB: Approval limits are cumulative per annum
*In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [7] – Appointment of consultants

(d) Procurement Process Approval

Procurement process approval involves a validation of the entire procurement process followed before contract sign off can take place. Approval of the procurement process involves scrutiny of the fairness, transparency, legality and general commerciality of the tender award.

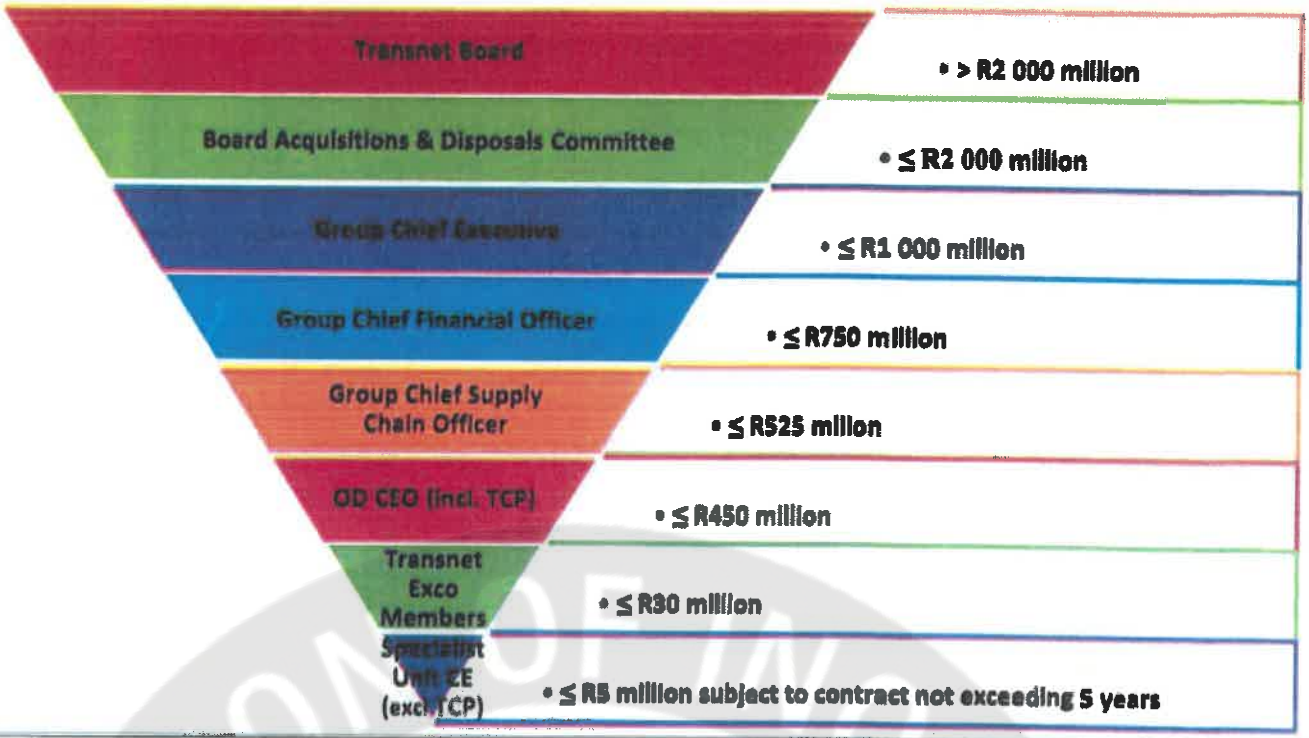


NOTE: Should any approval body not agree with the recommendation, the matter must be referred back to the recommending officer(s) for reconsideration or remotivation
Recommendations: The RAC, main AC and the BADC will support the recommendation for transactions above their thresholds. Local/Regional AC normally only consider transactions <R2m but OD CEOs may at their discretion increase these thresholds.
* In terms of s 54(2)(d) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion of the value of Transnet's asset base as per the 2013/2014 version of the Shareholder's compact) before proceeding with the acquisition

Figure [8] – Thresholds for governance structure approval of process

(e) Enter into and signing of contracts/agreements and award of business

Contract sign off approval involves the final award of business based on a Procurement Process Approval. This approval carries with it the power to sign and enter into contracts on behalf of Transnet for procurement transactions.



In terms of s 54(4) of the PFMA Transnet must obtain Ministerial approval for the acquisition of a significant asset (exceeding R3,9 billion as per the 2013/2014 Shareholder's Compact) before proceeding with the acquisition.

Figure [9] – Thresholds for contract sign off / award of business

(I) Contracts greater than R500 million

Prior to entering into a high value (greater than R500m) / highly complex contract (especially for Transnet's top 60% value opex items as dealt with by Transnet ISCM Strategic Sourcing commodity teams), any authorised official must first liaise with a multi-disciplinary team of experts at Transnet Corporate Office, who should each sign off on the following parts of any agreement/contract or other binding document:

- Group Legal Services - entire document
- Transnet GCFO to sign-off after sign-off from the finance departments (Group Finance/Reporting, Financial Planning, Tax and Treasury).
- Contracts less than R450m within the OD's limit of authority, require a similar process as set out above to be followed by the relevant OD.

(II) International Contracts/Agreements (all contracts)

Approval to enter into an agreement/contract or other binding document involving foreign currency (FX) exposure (including international agreements) may not be sub-delegated lower than to the Chief Procurement Officer (CPO) of an OD. Approval of the divisional CFO is required to enter into the contracts that may result in foreign currency exposure.

The duly authorised official must obtain prior written approval in respect of foreign exchange agreements above R50m from Group Legal, Group Treasury, Group Tax and Group Reporting, both where the contract will be concluded in foreign currency and especially in such cases where foreign contracts will be concluded in South African Rand, as this may expose Transnet to, *inter alia*, an embedded derivative. All FX agreements above R100m must apart from the above also obtain written approval from the GCFO.

(f) Management's intervention to address non-compliance with procurement policies and procedures (Condonations)

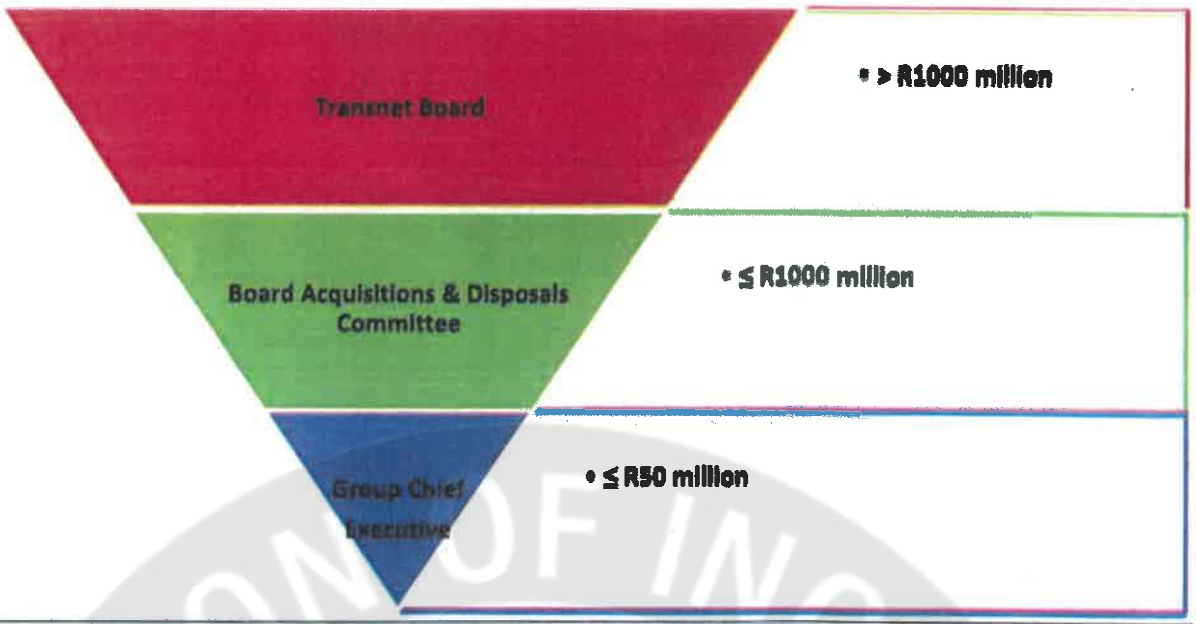


Figure [10] – Management's intervention to address non-compliance with procurement policies & procedures

SECTION A: 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

SECTION C: Go to Market

SECTION D: Evaluation and Adjudication

SECTION E: Contract Management

SECTION F: Functions of Governance Structures

Appendices

TYPICAL PROCUREMENT CYCLE

Figure 11 below depicts a typical procurement cycle. Comprehensive guidance on each of these steps is dealt with in the Chapters that follow:



Figure [11] – The Procurement Cycle

CHAPTER 7 : DEMAND PLANNING & DEMAND MANAGEMENT



This Chapter is equally applicable in construction procurement and general procurement activities. For all construction projects a procurement package plan (PPP) is required. A procurement package plan is a collection of procurement events from a project. This package plan requires approval prior to commencement of a go to market strategy.

7.1. PREFACE

7.1.1. Demand is a business requirement for Goods/Services raised by the business/OD and received by the procurement department for further processing, such as sourcing and payment. There are 2 areas of demand i.e. demand planning and demand management.

7.1.2. Demand Planning is the first step in the procurement process, where:

7.1.2.1. the business needs are assessed in order to ensure that the required Goods/Services are procured so as to meet the business requirements of Transnet;

7.1.2.2. specifications are precisely determined;

7.1.2.3. requirements are linked to budget; and

7.1.2.4. the supplying industry has been analysed and constraints identified and assessed.

7.1.3. Demand planning is a medium term and cross functional planning process supported by a series of meetings that promote alignment, decision making and coordinated action towards achievement of financial budgets and organizational strategy.

7.1.4. Demand management is about understanding the factors that drive demand for Goods/Services and about using this knowledge to identify and implement new and innovative ways to eliminate, reduce or serve demand more efficiently and to support robust demand planning – and in so doing optimise value and quality by enabling suppliers to have a forward looking view of requirements expected of them and adequately plan production and by enabling the procurement department to adequately prepare itself and work more efficiently and effectively. Demand management therefore involves the reviewing, monitoring and improving of demand.

7.1.5. Demand review is a strategic decision process ensuring that all stakeholders are fully aware and agree to the Goods/Services that are to be procured, why it is to be procured, how it is to be procured, and the cost.

7.1.6. Demand monitoring is a tactical process ensuring that only the required quantity and Quality of Goods/Services are sourced from the right suppliers.

7.1.7. Demand improvement is a strategic and a tactical process ensuring that the quality of demand improves continuously as the demand management

process matures, with initiatives such as reducing the demand and rationalising the Goods/Service portfolio.

7.1.8. Therefore, the purpose of demand planning and management is to ensure that the resources required to fulfil the requirements identified in Transnet's Corporate Plan are delivered at the correct price, time and place and that the delivered quantity and quality will satisfy those requirements.

7.1.9. The intention of demand planning is to:

7.1.9.1. to have a clear view of the demand requirements for major strategic commodities;

7.1.9.2. to ensure that end-users and the procurement department are brought closer together in order to enhance efficiency and achieve value for money; and

7.1.9.3. to foster an improved working relationship of openness between Transnet and its suppliers and/or service providers.

7.2. DEMAND LEVERS

A demand consists of various demand levers that are managed by the demand planning and management process. These levers are:

TABLE 5

SOURCE	The origin of the demand such as the initiating department or OD
REASON	The motivation for the demand such as why these Goods/Services need to be sourced
QUANTITY	Review the number/scope of the Goods/Services required
SPECIFICATION	Opportunity to simplify/standardise specifications
TIMEFRAME	Reduce demand frequency
COST	The indicative cost of the Goods/Services that need to be sourced
PREFERRED SUPPLIER	The preferred supplier (if any) for the requested Goods/Services Other potential suppliers who could also be in a position to supply the same Goods/Services

7.3. ROLE OF PROCUREMENT IN MANAGING DEMAND

Procurement needs to manage the demand for Goods/Services by:

- analysing demand levers and sourcing data that will enable a more accurate view/prediction of demand;;
- identifying opportunities for improvement of the entire demand management function;
- short-listing and prioritising improvement initiatives;
- developing and implementing an action plan for identified initiatives;
- monitoring the progress of improvement of the initiatives; and
- conducting regular assessment of the effectiveness and relevance of improvement initiatives.

7.4. DEMAND PROCESS

Figure 12 below gives an outline of the main steps in the demand management process.

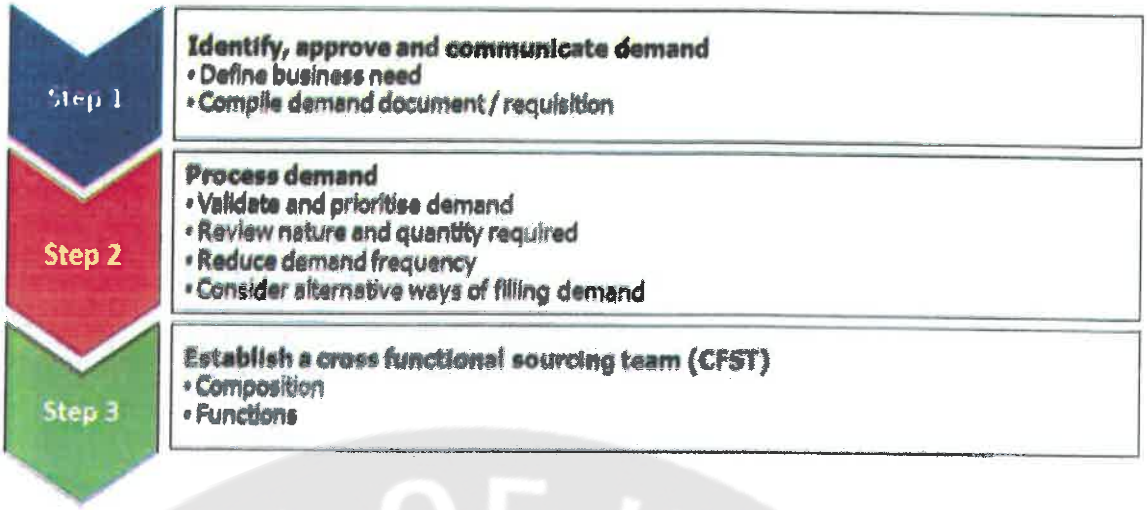


Figure [12] – Demand Steps

For sourcing events falling within the threshold for High Value Tenders, refer to the "High Value Tender Process (HVTP)" available on the ISCM Transnet Intranet.

OPERATIONS (end users) are responsible for completing STEP 1



7.4.1. STEP 1 : Identify, approve and communicate demand

a) Definition of business need

The end users in the business (operations) need to follow the steps outlined below, in order to ensure that there is a clearly defined need in the business:-

(I) conduct a needs analysis to establish requirements relating to the business, taking into account all required capital acquisitions, planned maintenance, and other operational needs – this will be informed by both future requirements (based upon Transnet's Corporate Plan); as well as market demand forecasts (based upon Transnet's current client base demand and/or commitments made by Transnet's sales department);

(II) establish and consolidate the reasons for the need;

(III) ratify the need irrespective of whether it is a CAPEX or OPEX acquisition and apply for and obtain budget approval; and

(IV) draw up an annual procurement plan.

b) Compilation of demand document (per transaction)

The end users in the business (operations) are responsible to provide procurement with a detailed demand requisition. This should provide a clear description of the function, required specifications, drawings, and where applicable it should:-

(i) indicate the quantities required;
(ii) indicate the frequencies required;
(iii) indicate the quality required;
(iv) indicate the unit of measure;
(v) indicate packaging, if applicable;
(vi) attach the relevant specification/drawing, where applicable;
(vii) provide previous price or estimated costs and budgetary requirements;
(viii) indicate the expected delivery date(s) and delivery address(es);
(ix) indicate any logistical and/or storage requirements;
(x) any material obsolescence risks; and
(xi) suggest potential source/s of supply and a brief analysis of the supplier industry landscape, if available.

The demand document should first be approved at an operational level. Once that is completed, it should be submitted to procurement. Operations should submit this document timeously, and allow sufficient time to acquire the Goods/Services, given lead times and governance processes.

PROCUREMENT is responsible for completing STEP 2 and STEP 3

Step 2

Process demand
Validate and prioritise demand
Review nature and quantity required
Reduce demand frequency
Consider alternative ways of filling demand

7.4.2. STEP 2 : Processing Demand

a) **Validate and prioritise demand**

Procurement shall establish the following:
(i) Is the demand document/requisition duly approved by operations?
(ii) Is this a critical demand? ("Critical" is defined as having an impact on the Service provided by Transnet or the profit made by Transnet).
(iii) What would be the impact on operations if the procurement did not occur?

b) **Review nature and quantity required**

Procurement shall establish and review the following:
(i) Establish whether this is a requirement for Goods or a Service?
(ii) If Goods are required, whether the demand will be on-going or once-off?
(iii) If Goods are required, determine how many types of items and quantity of each item are required in total by operations at present

time and going forward? What are the options (if any) for reducing volume?

(iv) If a Service is required, determine for what length of time the Service is required? (Indicate length of Transnet's previous use (if any) of the specific Service). Could this be reduced or extended?

(v) Determine the estimated value of the sourcing event (if not provided by operations) to establish which sourcing process must be followed:

- if below R2 million, or lower threshold set by the OD CEO for Open Bids, use the quotation system (see Chapter 14);
- if over R2 million use an "open RFX", approach (see Chapter 14); and
- if within the threshold for High Value Tenders, use the High Value Tender process (see ISCM Transnet Intranet portal).

c) Reduce demand frequency

Procurement shall establish and review the following:-

(i) If the Goods to be purchased will require additional purchases going forward, is it reasonable for an "as- and-when call off" contract to be established? State reasons either for or against an "as-and-when call off" contract.

(ii) If a Service is required, what is the length of the anticipated contract? Explain rationale for this time period.

d) Consider alternative ways of fulfilling demand

Procurement shall establish and review the following whether:-

(i) the required Goods can be re-engineered or reclaimed from existing assets or Goods;

(ii) any other OD can manufacture the required Goods or provide the required Service;

(iii) the Goods are currently available in another OD with spare capacity;

(iv) this is a stock item; or

(v) this item is available on a current contract– even if it is potentially at another OD.

Step 3

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 must be determined

a) Rationale for the formation of a CFST

Demand management shall be a cross-functional exercise with a view to ensuring that end users, procurement and all stakeholders are brought together in order to enhance efficiency and achieve value.

b) **Composition of the CFST**

Procurement shall establish a CFST, consisting of at least the following roles: Procurement, operations (end users/technical), SD (including B-BBEE) and risk/compliance. Other possible representatives are finance, treasury, maintenance, logistics/warehousing, disposal and legal or governance.

In instances where the sourcing event is uncomplicated and the risk to Transnet is low, the CFST can be comprised of only procurement and Quality (technical) representatives.

Procurement must ensure that the CFST consists of the relevant expertise; and that the size of the team is not of such a nature that it cannot function effectively. Nonetheless, in all instances, procurement and operations must reach agreement on the composition of the CFST.

In order for the CFST to be effective, consistent attendance by the same members is required for continuity.

c) **Functions of the CFST**

(i) Determining specifications:-

"Specification" is the terminology used to describe the requirement for goods.

If Goods are being sourced, consider whether there is any opportunity to purchase standard "off-the-shelf" Goods.

If there are technical specifications:-

- these must be compiled with a view to promoting the broadest possible competition, whilst still assuring that critical elements of performance or other requirements are achieved;
- ascertain whether similar (albeit not identical) Goods are currently in use elsewhere in Transnet, which could enable standardisation;
- interrogate the specification, i.e. determine whether it is possible to provide a functional/performance-based specification rather than a detailed specification;
- determine whether the specification has been over-engineered; and
- verify that the specification is not biased in favour of a particular brand or type of Goods.
- If a functional specification is the chosen option, the following must be observed and described in detail:
- functions and characteristics;
- desired performance and/or result parameters, based on both inputs and outputs;
- method statement templates on how outputs will be reached; and
- inclusion of relevant KPIs.

If a detailed specification will be issued, ensure that the latest specification is used, and that the quality standards (e.g. SANS, ISO) are included where applicable. In addition, ensure that the drawings are up to date and that detailed descriptions of manufacturing processes, workmanship and/or materials are indicated.

The following must be observed and indicated in the RFX in respect of functional as well as detailed specifications:

- the location(s) of required provision;
- details of qualifications required where appropriate;
- details of the conditions in which the Goods must operate;
- environmental and safety features;
- packaging, marking and labelling requirements;
- inspection or testing requirements;
- documentation required, i.e. manuals, user guides, licenses, test certificates, etc.;
- size/dimensions;
- integration with other Goods/Services;
- security requirements;
- health, safety, electrical, environmental requirements;
- training requirements, if applicable;
- timing considerations; and
- interfaces with other systems.

(ii) Determining Terms of Reference

"Terms of Reference" (ToR) is the terminology used to describe the requirement for services.

The following must be observed and indicated in respect of the ToR:

- project title;
- background;
- objective of the project
- expected outcomes/deliverables;
- competency and expertise requirements;
- timeframes;
- reporting requirements;
- whether a site inspection or information session are required with date, time and venue stated;
- available documentation; and
- minimum requirements.

(iii) Reduce portfolio or range complexity:

- Options for rationalisation of the range of Goods/Services must be considered.
- Implications for users if choice options are reduced must be considered.

(iv) Identify and mitigate risks:

- All risks to Transnet associated with the demand must be identified and addressed in the eventual RFX;
- It should be ascertained whether suitable skills are available within procurement to address the demand and its management process.

(v) Establish the evaluation methodology to be employed – See Chapter 13 on Determining bid Evaluation Criteria.

(vi) Establish evaluation criteria and weightings – See Chapter 13 on Determining Evaluation Criteria. Clear evaluation criteria must be established, as bids may only be evaluated according to the criteria stipulated in the bid documents.

(vii) Oversee preparation and sign off of the bid documentation – See Chapter 16 on Bid Preparation.

(viii) Determine who should serve on the evaluation committee – See Chapter 18 on Evaluation.

(ix) Handover the sourcing event to procurement

7.5. CHECKLIST FOR DEMAND PLANNING & MANAGEMENT

The following checklist could be used as a template to identify the progress with respect to the Demand Management process:

TABLE 6

Demand Planning & Management Focus	Responsible
Is there a business case and approval of the demand?	Business
Has the demand been identified in the annual Procurement Plan? (The Procurement plan forms the basis of demand management)	Business & Procurement
Is there a budget allocated for this demand?	Business
Is there an approval as per the associated DoA?	Business
Have the options of fulfilling the demand (such as existing contracts and critical items) been assessed?	Business & Procurement
What is the outcome of reviewing the quantity required (i.e. are the Goods/Services required on an on-going or once-off basis)?	Procurement
Has the possibility of reducing the demand frequency, such as further purchasing or call-off, been assessed?	Business & Procurement
Have the options of alternate ways of fulfilling this demand, such as whether other Transnet ODs could manufacture these Goods, been assessed?	Procurement
Have the options of re-use been assessed? (e.g. re-engineered	Business & Procurement

Demand Planning & Management Focus	Responsible
Goods from existing Goods or whether the Goods are available from other Transnet ODs) Have the 3 Rs (Reduce-Reuse-Recycle) been considered?	
Has the possibility of standardising the Goods and its specifications, such as off-the-shelf and customised, been assessed?	Business
Has the opportunity of reducing the Goods portfolio, such costing and risk implications associated with it, been identified?	Procurement
Have the strategic risks associated with this demand, such as strategic nature of this demand been identified?	Business
Has internal availability been assessed, i.e. • Can the needed Goods be re-engineered / reclaimed from existing assets/Goods? • Can any OD of Transnet manufacture the required Goods or provide the required Service? • Are these Goods currently available in another OD with spare capacity? • Is this a stock item? • Is this item available on a current contract?	Business & Procurement Business & Procurement Business & Procurement Business & Procurement Business & Procurement
Was the CFST properly constituted?	Procurement
Have the risks associated with the CFST working on this demand, such as capacity and capability not available within the Transnet been identified?	Procurement
Does the CFST represent all the necessary disciplines for identifying the risks associated with the event?	Procurement
Did the CFST members sign confidentiality agreements and declarations of interest?	CFST
Did the CFST properly interrogate the specification?	CFST
Were all risks identified and included in the RFX?	CFST
Has it been considered whether this should be a transversal event in the interests of Transnet as a whole?	CFST
Has an 'As-and When' contract option been investigated, in order to cater for future demand?	CFST
Was the appropriate evaluation method chosen?	CFST
Were thresholds set for SD and Quality/Functionality?	CFST
Were proper evaluation criteria set for: • SD • Functionality • Preference • Price / TCO?	CFST
Were appropriate weightings allocated to each criterion?	CFST

7.6. SOURCING STRATEGY

Once a CFST has been established, the next step is to determine the sourcing strategy. The methodology for determining a sourcing strategy is depicted in the figure below. Please refer to the Strategic Sourcing Standard Operating Procedures (SOP) which provides detailed guidance on the strategic sourcing process. The SOP can be downloaded from the ISCM Transnet Intranet.

METHODOLOGY FOR DEVELOPING A SOURCING STRATEGY

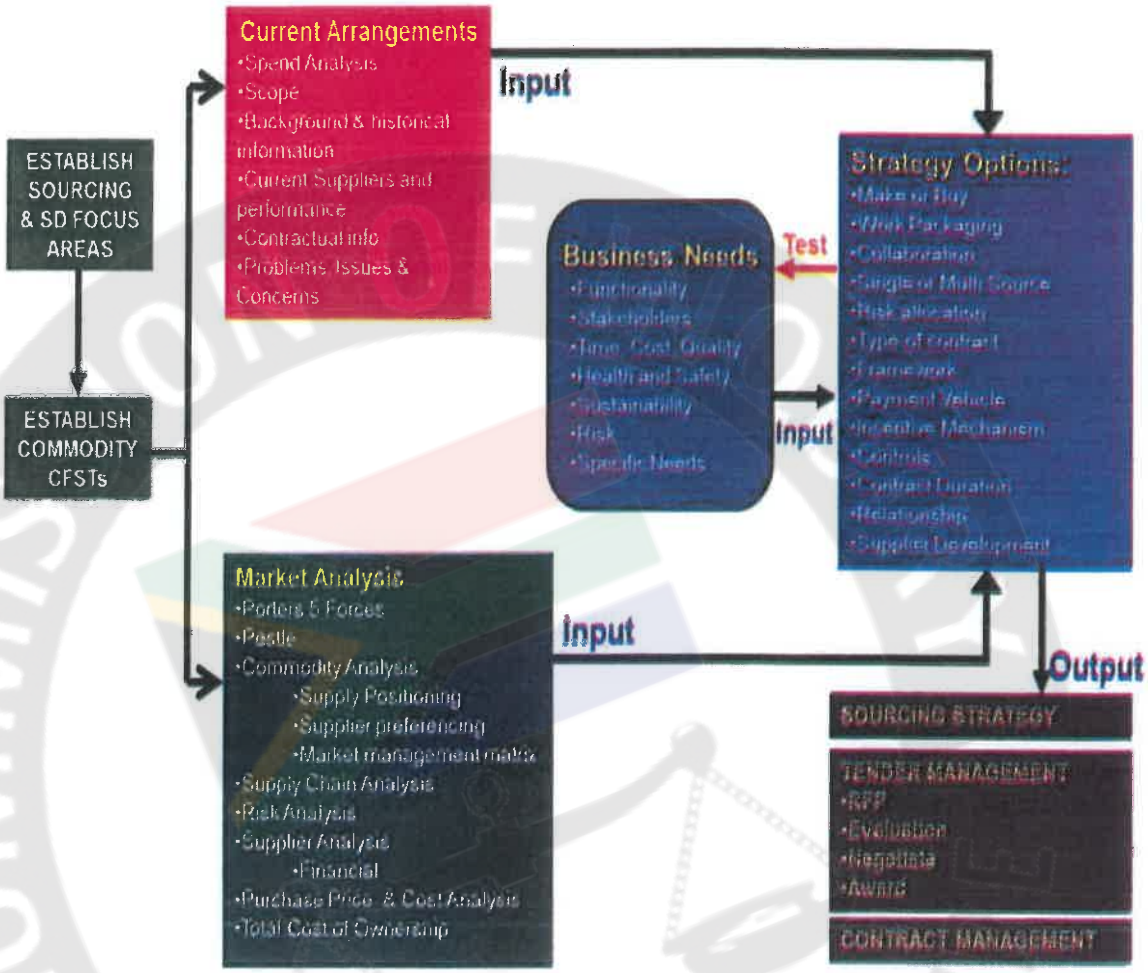


Figure [13] – Methodology for developing a sourcing strategy

CHAPTER 8 : INTERNAL PROCUREMENT/INTERDIVISIONAL SUPPORT



This Chapter is equally applicable in construction procurement and general procurement activities.

8.1 INTERDIVISIONAL RELATIONSHIPS

Transnet Entities are required to develop trust and a sound interdivisional working relationship with one another in the interest of Transnet. To achieve this, such entities **must** be afforded the right of first refusal in the procurement of Goods and Services.

8.2 STRATEGIC SPECIALIST UNITS

The following Specialist Units have been identified as strategically important to the Transnet Group:

TABLE 7

Division / Specialist Unit	Goods and/or Services Provided
Transnet Engineering ("TE", a specialist core Division)	TE is responsible for: • heavy engineering including locomotive, wagon and coach repairs, upgrades and maintenance • component manufacture, locomotive manufacture and assembly • port equipment, and is being positioned for maintenance and repairs thereof
Transnet Capital Projects ("TCP")	TCP is responsible for: • multi-disciplinary design Services • project management and construction management Services Construction projects >R300 million **must** be carried out by TCP. In the case of construction related projects <R300 million, the following rules apply: • The project may be carried out by the OD itself if the OD has the necessary in-house resources according to the requirements of the NEC3 suite of contracts and the CIDB Standard for Uniformity in Construction Procurement; and • If the OD decides not to run the project itself, TCP must be given the first right of refusal before the external market can be approached
Transnet Fuel Solutions (TFS, previously known as HSA)	TFS is responsible for: • Transnet-wide fuel acquisition, distribution and management
Transnet Freight Rail ("TFR") School of Rail	TFR School of Rail is responsible for: • training tailored exclusively for core businesses, e.g.

Division / Specialist Unit	Goods and/or Services Provided
	School of Rail, train drivers, train control officers, • software training in general, etc.
Transnet National Ports Authority ("TNPA") School of Ports	TNPA School of Ports is responsible for: • Facilitation of knowledge transfer as the provider of marine training programmes in South Africa • Planning to position itself as Africa's training leader in Marine Operations, Port Management and Port Engineering.
Transnet Property (TP)	TP is responsible for: • Property management • Facilities management • Property development • Property valuations • Property surveying

8.3 ABILITY OF TRANSNET ODS TO PERFORM

Before considering which procurement mechanism would be most appropriate, it is important that the end-user and procurement department consider whether another Transnet OD is able to provide the required Goods or Services.

8.4 COMPULSORY UTILISATION OF SPECIALIST UNITS

The Specialist Units mentioned above must be utilised by other Transnet Entities for required Goods and Services falling within their scope. The external market may not be approached for Goods and Services falling within the strategic Specialist Units' or Division's core-competency areas. This would also include specialist services that are required which may be performed by a particular internal functional area e.g. Group Treasury and Group Tax. The only exception to this rule is if the Specialised Unit indicates in writing that they do not have the ability or capacity to provide the required Goods or Services.

8.5 INTERDIVISIONAL SUPPORT

Internal contracts (Memoranda of Understanding) between ODs and Specialist Units are dealt with in the terms of the Delegation of Authority Framework. Such contracts do not require AC approval. However, any external contracts which may be required by the internal Specialist Unit are subject to these procedures and require AC approval.

8.6 MEMORANDA OF UNDERSTANDING

The business relationship between Transnet Divisions and Specialist Units must be governed by an overarching Memorandum of Understanding (MOU) between the parties. The MOU must be signed by the CEs of the relevant ODs or Specialist Units and Service Level Agreements should be signed where appropriate.

8.7 DISPUTES

Any disputes must be resolved in terms of the agreed MOU. If the OD CEs are unable to resolve the dispute, the matter must be escalated to the GCE who shall make a final decision on the matter.

8.8 SERVICE LEVEL AGREEMENT

ODs will need to enter into a project-specific agreement (SLA) in relation to each individual project. This agreement will set out in details the rights, duties and obligations of each OD in that specific project. Contracts between divisions such as SLAs and project specific agreements may be entered into between OD CEs in terms of paragraph 5.5.4 of the DoA Framework.

8.9 INTERDIVISIONAL PRICING

Transnet entities undertaking work on behalf of other entities should reciprocate by pricing and carrying out their Services in a way that promotes and develops a culture of interdivisional support. The pricing must be based on appropriate market analysis to benchmark fair and reasonable prices. Should there be a dispute regarding pricing, the matter is to be escalated to the CEs of the relevant Divisions for resolution. Should the CEs not reach consensus, the matter must be escalated to the GCE who shall make a final decision on the matter.

8.10 NON-CORE BUSINESSES

Non-core businesses which have already exited Transnet, such as Freightdynamics and Autopax (Pty) Ltd will enjoy no interdivisional support.

8.11 AC INVOLVEMENT

Interdivisional transactions between Transnet Entities and Specialist Units fall outside the scope of the AC. However, in any case where the external market is approached, normal procurement procedures must be followed, and if relevant, the AC must approve the transaction.

CHAPTER 9 : CONTRACT OPTIONS

This Chapter applies to both general procurement and construction procurement. Table 9 below provides a summary of the types of contracts available for construction-related procurement.

9.1 CHOICE OF CONTRACT

This chapter contains a list of contractual choices and options available. The following factors, amongst others, will assist in determining the appropriate type of contract:

- the duration of the contract;
- the type of Goods, Services or Works to be acquired;
- the frequency of demand; and
- the availability of the Goods or Services.

Table 8 below outlines the various contract options for general procurement and provides a guideline as to when those options may best be utilised. Table 9 provides a summary of the types of contracts available for construction-related procurement.

TABLE 8

Ref	Contract Options	Description	Characteristics	Best Suited For
1	"As and When" contracts	Short or medium-term contracts entered into for a fixed period against which call-offs are made as and when required by the customer	• Shorter contract periods (1-2 Years) • Estimated quantities • Specific period/volume/value ceiling or a combination.	• Continuous but unpredictable 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 certificates. 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:

BEE Status	Qualification	Recognition level	Twenty Preference Points based on scorecard for transactions below R1 million	Ten Preference Points based on scorecard for transactions above R1 million
Level **One** Contributor	≥100 points on the Generic Scorecard	135%	20	10
Level **Two** Contributor	≥85 but <100 points on the Generic Scorecard	125%	18	9
Level **Three** Contributor	≥75 but <85 on the Generic Scorecard	110%	16	8
Level **Four** Contributor	≥65 but <75 on the Generic Scorecard	100%	12	5
Level **Five** Contributor	≥55 but <65 on the Generic Scorecard	80%	8	4
Level **Six** Contributor	≥45 but <55 on the Generic Scorecard	60%	6	3
Level **Seven** Contributor	≥40 but <45 on the Generic Scorecard	50%	4	2
Level **Eight** Contributor	≥30 but <40 on the Generic Scorecard	10%	2	1
Non-Compliant Contributor	<30 on the Generic Scorecard	0%	0	0

Figure [14] – B-BBEE Scorecard

10.3.8 B-BBEE points must be claimed by Bidders utilising the B-BBEE Preference Points Claim Form. This Claim Form must be listed as a returnable document. Please refer to the ISCM Intranet Portal for a copy of the B-BBEE Preference Points Claim Form.

10.3.9 Bidders who do not submit B-BBEE Status Level Verification Certificates or are non-compliant contributors to B-BBEE do not qualify for preference points for BBBEE but should not be disqualified from the bidding process. They will score zero (0) points out of 10 or 20 for B-BBEE.

10.4 B-BBEE IMPROVEMENT PLAN

10.4.1 Transnet encourages its suppliers to constantly strive to improve their B-BBEE rating. Transnet may request that prospective bidders submit a B-BBEE Improvement Plan with their bid submission. Bidders will be requested to indicate the extent to which their ownership, management control, employment equity, preferential procurement, skills development and enterprise development will be maintained or improved over the contract period. The B-BBEE Improvement Plan

will not be requested as a mandatory or essential returnable document but as an additional document. The B-BBEE Improvement Plan will not be evaluated and bidders will not be disqualified for failure to submit the Plan.

10.4.2 Should the preferred bidder/s submit a B-BBEE Improvement Plan, the final details of the Improvement Plan will be negotiated at contract negotiation phase. Even if an Improvement Plan is not requested at the bid stage or the preferred bidder does not submit a Plan at bid stage, preferred bidders may be requested to submit a B-BBEE Improvement plan at contract negotiation stage, where appropriate. In instances where the Improvement plan has been negotiated and agreed upon, the contract concluded with the successful bidder will incorporate its B-BBEE Improvement commitments as a material term of the contract.

10.4.3 In addition, the contract with the Successful Bidder must contain a penalty clause which stipulates the penalties that will be imposed by Transnet, should the Bidder fail to meet the preference targets in the contract. Please refer to paragraph 22.3.9 regarding penalties.

10.4.4 Furthermore, failure to achieve the Improvement Plan targets will result in breach of contract and provide Transnet with cause to terminate/cancel the contract. Milestones in terms of achievement of Improvement Plan targets per year must be stipulated in suppliers' contracts so that penalty/breach of contract clauses may be invoked if required.

10.4.5 Monitoring and evaluation will be conducted by the SD department as a standard requirement to ensure tracking and successful delivery of the commitments. Refer to the ISCM Intranet portal for the template for a B-BBEE Improvement Plan.

CHAPTER 11 : LOCAL CONTENT

Should construction procurement include a minimum local content threshold, either in terms of the designation of a sector or in non designated sectors, the requirements of this Chapter and any Instruction Notes issued by National Treasury must be adhered to.

11.1 INTRODUCTION

11.1.1 Increased Local Production and Content ("LC") forms an integral component of **Transnet's** Supply Chain Strategy. This is aligned to Government's vision as articulated in IPAP 2 and the NGP as well as Transnet's Supply Chain Policy. Transnet Entities are therefore required to actively promote local content and production in their bidding processes.

11.2 DESIGNATED SECTORS

11.2.1 The PPPFA Regulations, 2011 which came into effect on 7 December 2011, prescribe how Local Production and Content is to be measured in public sector Bids. In accordance with Regulation 9(1), when issuing bids involving "designated sectors" Transnet must advertise such bids with a specific Bid condition that only locally produced goods, services or works which meet a **stipulated minimum threshold** for Local Production and Content will be considered.

11.2.2 Designated sectors are those sectors which have been designated by the Department of Trade and Industry ("DTI") for Local Production and Content. National Treasury has issued Instruction Notes in terms of how to implement the designation of the sectors for Local Content. The Instruction Notes issued by National Treasury on designated sectors must always be strictly adhered to when tenders related to designated sectors are issued. The following table indicates the designated sectors and minimum threshold for local content as determined by the Department of Trade and Industry and National Treasury:

COMMISSION OF INQUIRY INTO STATE CAPTURE

TABLE 13

Sector	Minimum threshold for local content
Buses (Bus Body)	70% – 80%
Textile, Clothing, Leather and Footwear	100%
Steel Power Pylons & substations	100%
Canned / Processed Vegetables	80%
Furniture Products	
Office Furniture	85%
School Furniture	100%
Base and mattress	90%
Rail Rolling Stock	
Diesel locomotives	55%
Electric locomotives	60%
Electric Multiple Units (EMUs)	65%
Wagons	80%
Set Top Boxes (STB)	30%
Electrical and Telecom Cable Products	90%
Solar Water Heater Components	70%

11.2.3 Further to the overall designations mentioned in the table above, please refer to the Instruction Notes issued by NT as certain sectors have designated sub-sectors/components in addition to the overall thresholds.

11.2.4 Please refer to National Treasury's website for an up-to-date list of designated sectors on: http://www.treasury.gov.za/divisions/sf/sc/PracticeNotes/default.aspx.

11.3 NON DESIGNATED SECTORS

11.3.1 Organs of state are allowed to impose similar conditions for local content when issuing tenders in sectors that have not been designated by DTI, but this must be done in accordance with specific directives issued by National Treasury. National Treasury is still in the process of finalizing such directives. Please note that until such time as the directives are issued, bid documents should not include a minimum threshold for local content in respect of non-designated sectors. Paragraphs 11.3.2 and 11.3.3 will apply once National Treasury issues such directives.

11.3.2 When issuing bids in sectors that have not been specifically designated for Local Production and Content ("non designated sectors"), Transnet will actively promote Local Production and Content where possible. Therefore, before approaching the

market, Transnet Entities are required to conduct proper market analysis to determine on a case by case basis whether opportunities for Local Production and Content exist. Where opportunities do exist, this must be reflected in the procurement strategy. Furthermore, in accordance with Regulation 9(3), the RFP must reflect the minimum threshold for LC that must be met by bidders to qualify for further consideration. Bidders who fail to achieve the set minimum thresholds will be disqualified from the bidding process.

11.3.3 In this regard Transnet must consciously look for ways to incorporate local content in its tenders, where appropriate, particularly where the tender falls within one of the sectors clusters identified in IPAP II. These sector clusters are as follows in terms of the IPAP 2012/2013 – 2014/2015:

a) **Cluster 1 Qualitatively New Areas of Focus**
   - Metal fabrication, capital and transport equipment sectors;
   - Oil and gas sectors;
   - 'Green' and energy saving industries;
   - Agro-processing linked to food pricing and security; and
   - Boatbuilding.

b) **Cluster 2 Scaled up and Broadened Interventions in Existing IPAP Sectors**
   - Automotive products and components;
   - Plastics, pharmaceuticals and chemicals;
   - Biofuels;
   - Forestry, paper, pulp and furniture;
   - Strengthening of links between cultural industries and tourism; and
   - Business processing.

c) **Cluster 3 Sectors with Potential for Long Term Advanced Capabilities**
   - Nuclear;
   - Advanced Materials; and
   - Aerospace.

11.4 DEFINITION OF LC

11.4.1 Local Content is defined as that portion of the Bid price which is not included in the Imported Content, provided that local manufacture actually does take place. Local Production and Content is therefore determined as a percentage of the Bid price. For example, if the stipulated minimum threshold for Local Production and Content is 60%, this means that 60% of the Bid price must be spent on Local Production and Content (i.e. everything that is not included in Imported Content.) "Imported Content" has a specific meaning in the regulations: It means "*that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry.*"

11.5 EVALUATION OF LC

11.5.1 The calculation of LC can therefore be expressed in the following simple formula:

Bid price-value of Imported Content (cost of components, parts & materials)
= value of Local Production & Content

The value of the Local Content must be reflected as a percentage of the bid price to determine whether it meets the stipulated minimum threshold.

11.5.2 National Treasury requires that the value of Local Production and Content be calculated according to the following formula:

$$LC = \left(1 - \frac{x}{y}\right) \times 100$$

Where

x Imported content

y Bid price excluding VAT

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the South African Reserve Bank at 12:00p.m on the date, one week (7 calendar days) prior to the closing date of the Bid.

11.6 LC VS SD

It is important to note that LC does not form part of SD evaluation and must be evaluated as the first threshold in the evaluation process. The evaluation of LC must not overlap or be duplicated in the evaluation of "local capability and capacity building" which forms part of the SD evaluation. LC is purely concerned with the percentage of the bid price that will be spent locally. "Local capability and capacity building" on the other hand also takes non monetary measurements into account, such as the number of local suppliers to be utilised, etc.

11.7 NATIONAL TREASURY LC REQUIREMENTS

It is a requirement of National Treasury that the Declaration Certificate for Local Content (SBD 6.2) form part of the RFP, whenever a minimum threshold for LC is required. In such instances, SBD 6.2 must be listed as a compulsory returnable document. Please refer to the ISCM Intranet portal for a full suite of RFX templates to be used for bids involving Local Content and Production including a copy of SBD 6.2.

Note: LC will always be the first threshold – i.e. LC will always be evaluated as a first step, to determine whether bids comply with the minimum stipulated threshold for that particular designated sector or non designated sector where Transnet intends to set a minimum threshold for LC. Bidders that do not meet the set minimum threshold for LC must be rejected at this stage.

CHAPTER 12 : DETERMINING SD APPROACH AND DESIRED SD OUTCOMES

This Chapter is applicable to both general procurement and construction procurement.

SD (including CSDP and/or B-BBEE) should form an integral part of the procurement strategy in every procurement transaction. The nature and extent of the SD opportunities will depend on the nature of the transaction.

Increased Competitiveness, Capability and Capacity (IC^3) matrix:

Transnet's SD approach is to leverage the MDS infrastructure programme to foster economic growth and promote transformation

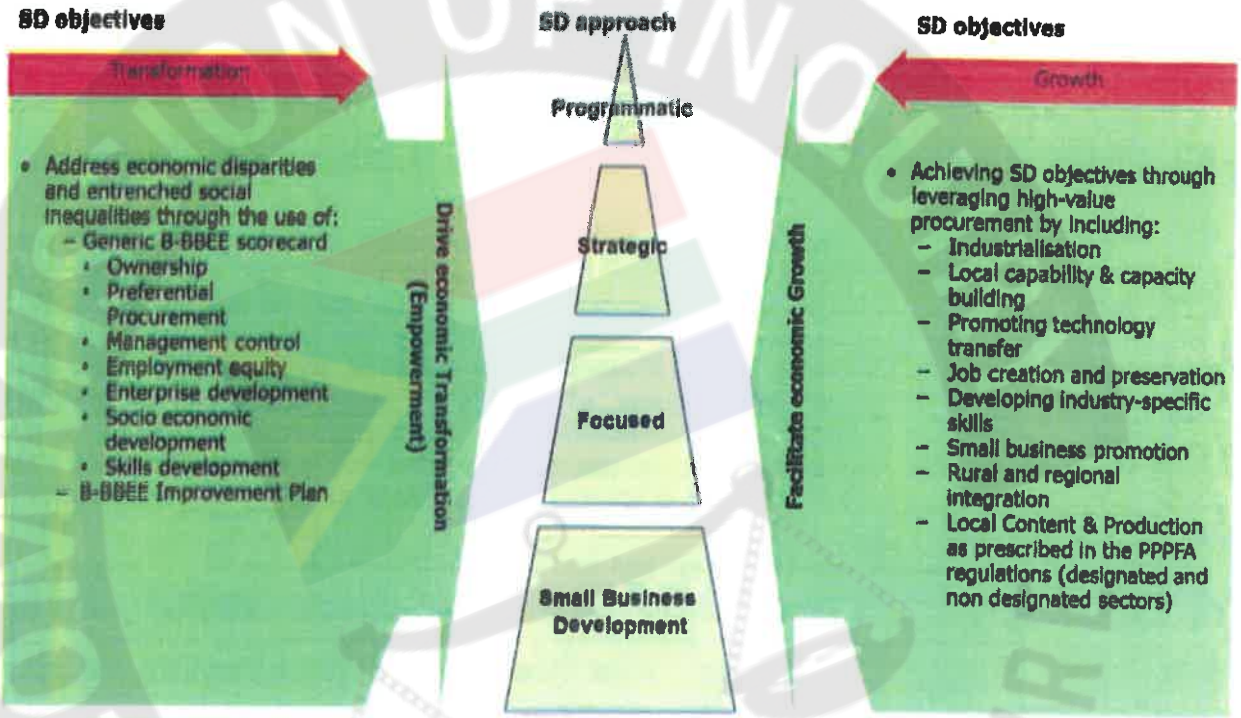


Figure [15] – SD Approach

The Figure referred to above, categorises SD opportunities based on their value, extent of industrial leverage and strategic importance to Transnet.

12.1 SD CATEGORIES

All transactions involving SD should be evaluated against the IC^3 Supplier Development Matrix. The IC^3 Supplier Development Classification Matrix assists in categorising opportunities according to their industrial leverage, value leverage and strategic importance to Transnet. Once opportunities are identified it will be possible to identify the tools that should be implemented to maximise the full SD potential from these opportunities.

The categories of SD identified in the Matrix are as follows:

12.1.1 Programmatic

Programmatic initiatives follow a longer than normal planning horizon and generally exceed the funding capacity of Transnet's balance sheet. They are identified either in IPAP II or through Transnet as a strategic fleet. Collaboration between the SOC and Government is achieved through focused task teams whereby infrastructural development and industrialisation are attained through joint support and in some cases public spending.

Investment is focused in plant, technology and skills in both intermediate and advanced capabilities to develop competitive advantage. An example is the Transnet locomotives fleet.

12.1.2 Strategic

Strategic initiatives follow a 3 to 5 Year planning horizon, involving investment in technology and/or skills in intermediate capabilities to achieve local capability and capacity building. This ensures that multinational corporations, original equipment manufacturers (OEMs) and service providers develop a certain percentage of their Goods locally. Strategic initiatives can therefore be used to achieve local capability and capacity building objectives by increasing the competitiveness, capability and efficiency of local suppliers. Strategic initiatives can sometimes focus on advanced capabilities but will in most cases require government support to develop local capability.

12.1.3 Focused

Focused initiatives include all medium to high value transactions with limited industrial leverage and medium to low strategic importance. These initiatives address short to medium term contracts that can be leveraged to encourage supplier and product development. The focus on investment in technology or skills enhances existing local industrial capability and/or the ability to supply strategic Services. Emphasis will largely be placed on benefiting previously disadvantaged individuals. The overall result improves the socio-economic environment by creating competitive local suppliers. It furthers the objectives of empowerment, transformation, regional development and rural upliftment.

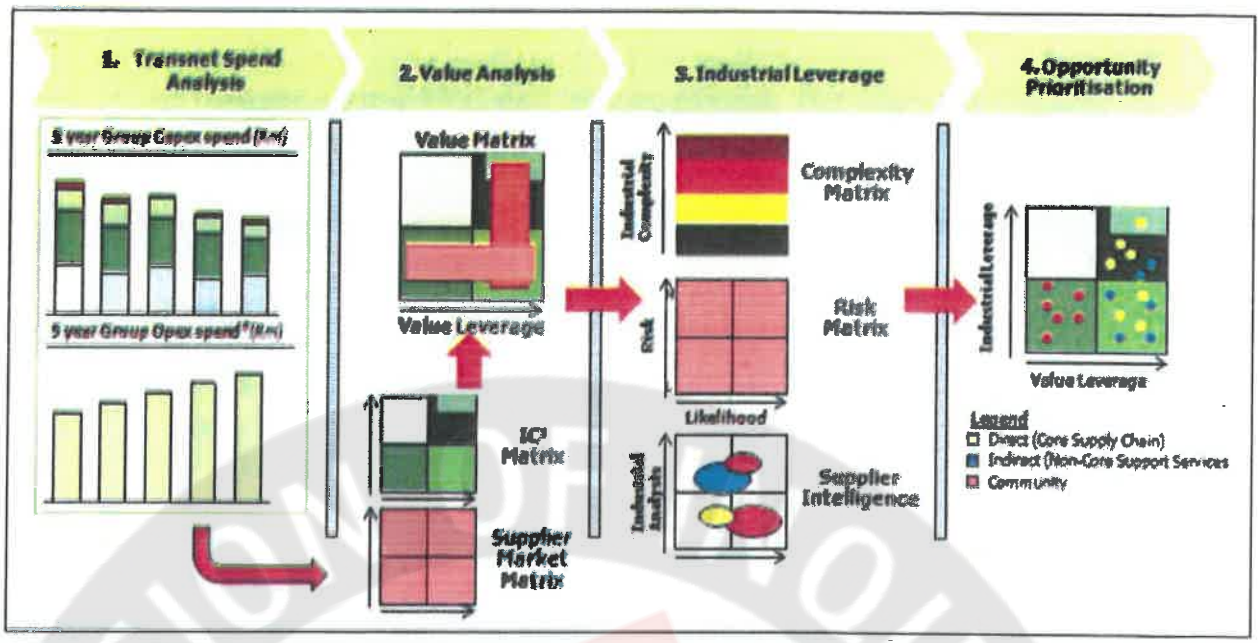
12.1.4 Small Enterprise Development

Small Enterprise Development transactions are typically of low value and have no industrial leverage as it is characterised by low complexity Goods and high competition. These initiatives concentrate on increasing the capability of small local suppliers and are targeted toward previously disadvantaged individuals and communities, providing basic skills development and improving local employment and quality job creation. It includes a wide range of financial and non-financial Services that help entrepreneurs to start new businesses and to grow existing ones.

12.2 CATEGORISATION OF TRANSACTIONS INTO THE RIGHT SD QUANDRANT

Transnet has designed a focused four-step process for identifying high value generating SD opportunities (see *Figure [16]* below). The process takes Transnet's CAPEX and OPEX spend and then filters specific commodities by value to identify significant spend items. Significant spend items are likely to have the most leverage for SD opportunities. The industrial leverage analysis provides a view on the risk and the complexity of the commodity to understand the risk to the supplier and to Transnet. The process needs to be conducted in its entirety in order to determine the true nature of the opportunity as there are various elements which impact on the categorisation of opportunities. Each transaction must be analysed on a "case

by case" basis, taking cognisance of the nature and complexity that is involved in that particular SD activity.



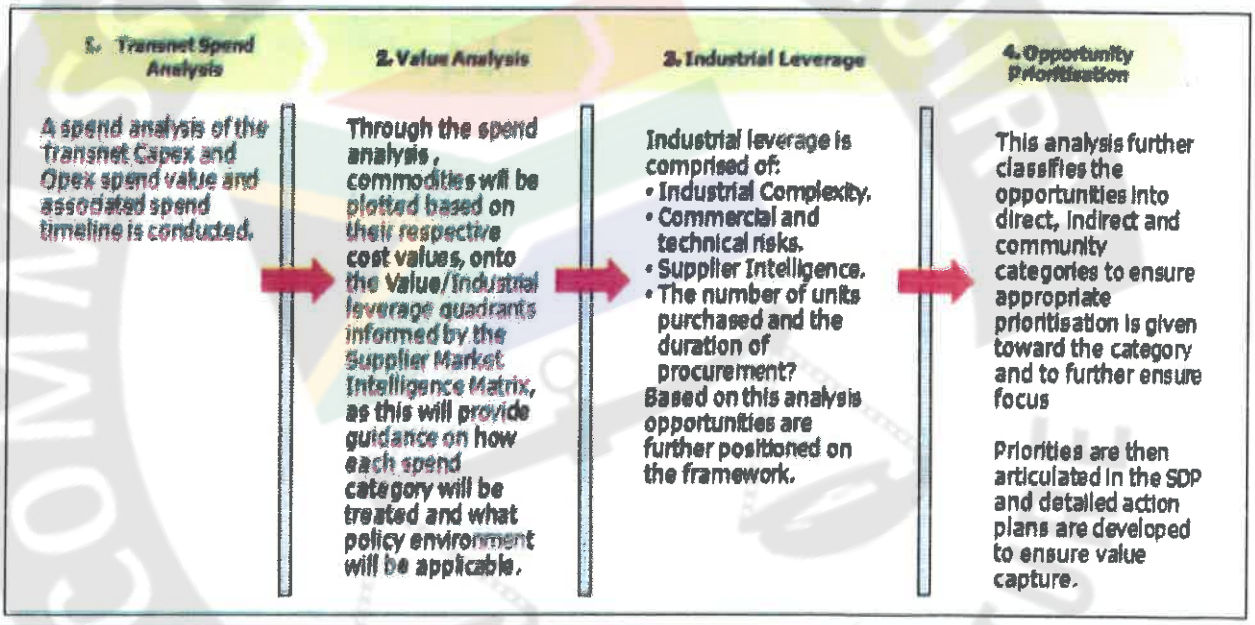


Figure [16] – 4 Step Process

This process is briefly described above, but a detailed description can be obtained in the Transnet Supplier Development Plan.

12.3 SUPPLIER DEVELOPMENT (SD) MECHANISMS

If a specific commodity has been earmarked as a SD commodity, SD should be included either as a threshold or prequalification criteria or both if it is justified that further value will be extracted using a combination of these two mechanisms. A rigid "one size fits all" approach cannot be implemented as each procurement transaction will need to be evaluated on its own merits based on the nature of the transaction with specific focus areas. The assistance and guidance of the SD COE must always be sought when developing SD criteria.

Depending on the supplier market and what is feasible and achievable on a specific bid, SD criteria will differ on a case by case basis. For example, in one case local manufacture, local assembly, industrialisation may be feasible, whilst in another the focus may fall on skills transfer, job creation/preservation and skills development (*Figure [17]* below).

The IC³ framework developed by the DPE was adopted to assist in the prioritisation of SD opportunities and includes transformation

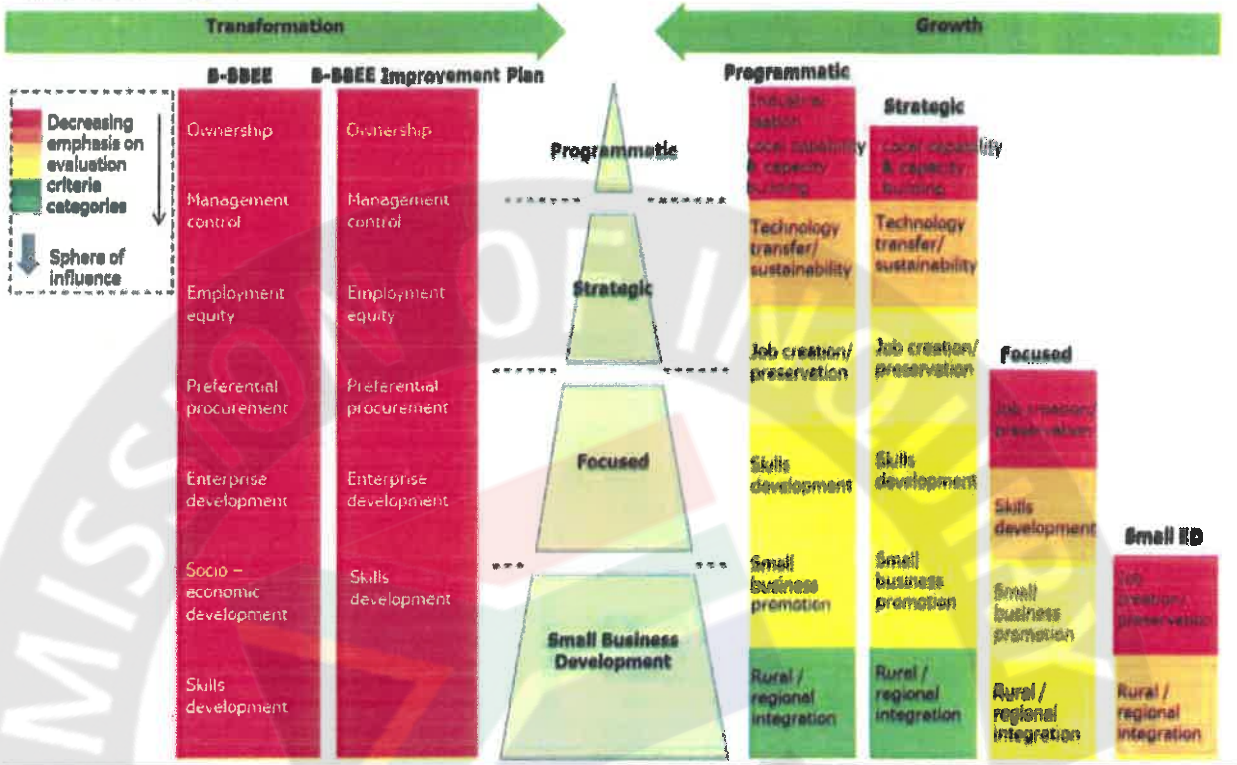


Figure [17] – SD Criteria

The table below serves as a guideline to determine the opportunities for SD and transformation based on the value of a particular transaction and the duration of the contract:

TABLE 14

Transaction value and contract duration	SD	B-BBEE Improvement Plan	BBBEE certificate
• R0 – R1 million • Contract duration more than one (1) year	Applicable through the B-BBEE scorecard	Applicable	Applicable

• Greater than R1million – but less than R2million • Contract **duration (Once-off and less than one year)**	**Applicable through the B-BBEE scorecard**	**Not Applicable**	**Applicable**
• Greater than R2 million • Contract **duration more than** one (1) year	**Applicable as per paragraphs 12.3.1, 12.3.2 and 12.3.3 below**	**Applicable**	**Applicable**

The SD criteria that were developed during the planning phase, should be broken down into specific measurable components and incorporated in the bid documents. This is shown in the table below:

TABLE 15

SD criteria	Measurable areas	Further explanation
Industrialisation	• Value of investment in plant • Reduction in import leakage • Potential increase in export content	• Quantification of the monetary value invested in machinery, equipment, buildings • A percentage indication of the increase in locally supplied Goods and therefore the resultant decrease in imports as a result of the contract • The % increase in exports that will result from increased industrial capability developed in relation to the award of the contract
Capability & capacity building	• % Local parts • Value of local parts in relation to the bill of materials • Value spent on local suppliers • Number of local suppliers in the supply chain of the Bidder	• Planned use of local parts as a percentage of the total contracted items • Planned monetary value of the parts utilised in the bill of materials (as a percentage of the total spend) • Planned percentage monetary value spend on procurement of Goods and Services procured from SA suppliers • Number of South African suppliers that are to be utilised in the fulfilment of the contract
Technology transfer and sustainability	• Technology transfer including: 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.

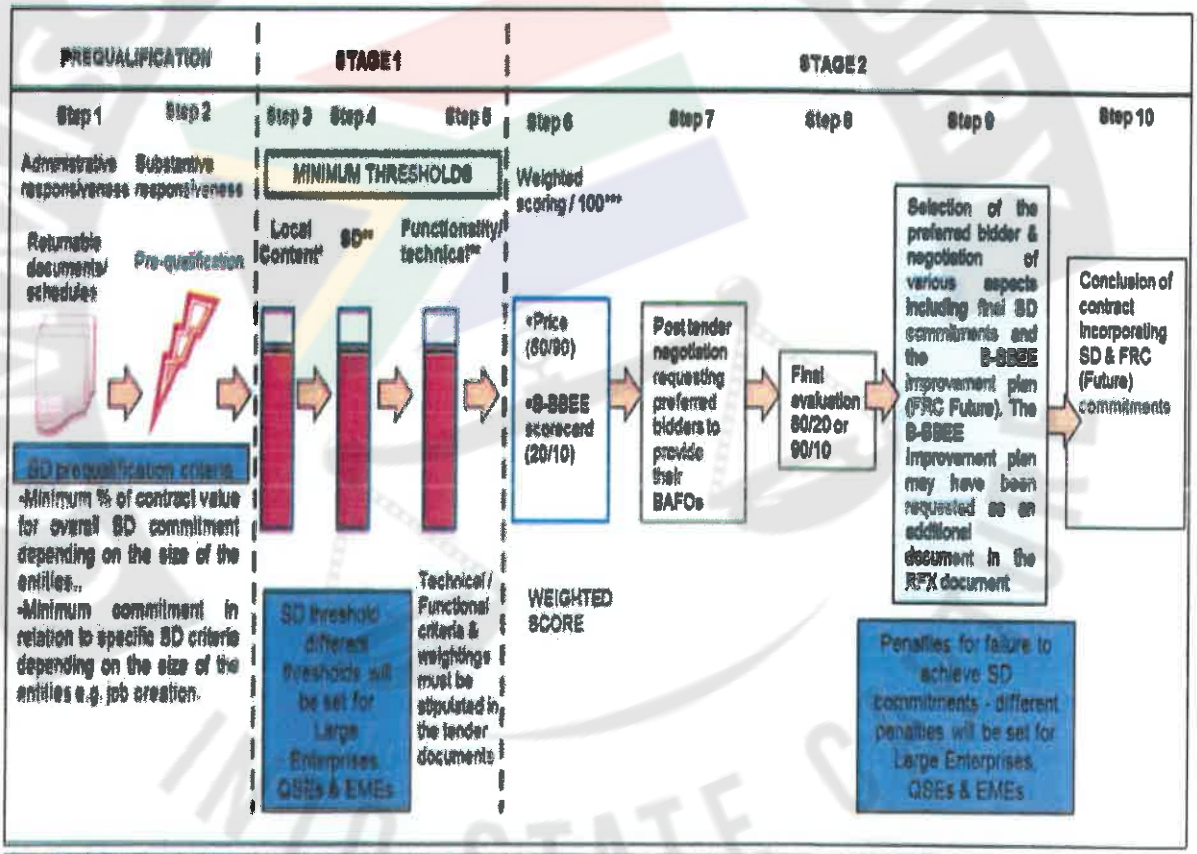
Monitoring and evaluation will be conducted by the SD department as a standard requirement to ensure tracking and successful delivery of the commitments.

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 evaluation process where minimum thresholds are set for Local Content (where applicable – designated sectors), SD and Quality/Functionality. Only those bidders that meet (or exceed) the relevant minimum thresholds, advance to the next evaluation phase (step 6 in diagram below, where Price/TCO, and B-BBEE scorecard are scored using either the 80/20 or 90/10 preference point system depending on the value of the transaction. Figure 18 below depicts the evaluation methodology:



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

** Indicative threshold , not prescribed (if applicable)

*** Point system dependent on value of transaction

Figure [18]: Transnet's evaluation methodology

13.2 STAGES OF THE EVALUATION METHODOLOGY

13.2.1 Prequalification

Bidders are required to meet the requirements of the administrative responsiveness and substantive responsiveness tests in order to be considered further. Administrative responsiveness will be tested based on returnable documents submitted and signatures on the Bid documents. Substantive responsiveness will be tested against whether a Bid conforms to all the terms, conditions, scope and/or specifications of the bid documents without material deviation or qualification. This will include an assessment of whether all pre-qualification eligibility criteria set, either Functionality or SD related, have been met.

13.2.2 Stage 1

A minimum threshold must be set for Local content, SD and Quality/Functionality (where applicable). These are separate thresholds, and the Bidder must meet the minimum criteria for all of these in order to proceed to stage two.

13.2.3 Stage 2

The bidders who meet the minimum threshold for Local content, SD and/or Quality (Stage 1) will then be evaluated against each other using only price and B-BBEE scorecard based on the applicable preference point system. In terms of the preference point system, proposals will be evaluated on price which will be allocated 80 or 90 points and preference which will be allocated 20 or 10 points, dependent on the value of the Goods. The 80/20 preference point system applies where the acquisition of the Goods, Services or Works will be less than R1 000 000.00. The 90/10 preference point system applies where the acquisition of the Goods will exceed R1 000 000.00.

13.3 CHOOSING APPROPRIATE EVALUATION CRITERIA

13.3.1 General principles

Evaluation criteria must be:

- **Unambiguous.** The bid documents must provide a complete explanation of the scope of work as well as the criteria and sub-criteria that will be used in the evaluation of bids. Care should be taken to ensure that the RFP does not contain any contradictory clauses. Where drawings are included as part of the RFP, such drawings must be completely aligned to the written description of the Goods or Services required.
- **Rational and justifiable.** Evaluation criteria must be rationally linked to the projected procurement outcomes.
- **Quantifiable.** If a criterion cannot be measured, it should not be included as an evaluation criterion.
- **Predetermined.** Evaluation criteria must be stated upfront in the RFP document. No evaluation criteria should be used in the evaluation process that were not stipulated in the RFP document.
- **Objective.** Evaluation criteria should not be written with a specific product in mind, but should rather describe functional (as opposed to product specific) characteristics.

13.3.2 Functional criteria

Should functionality be included in a bid as a threshold, the bid documents must clearly state the minimum score to be achieved if bidders are to be further evaluated on price and preference. Only those bidders who achieve the minimum threshold for functionality must be further evaluated for price and preference. Functionality may only be included as a threshold but not as an evaluation criterion.

Please note that not all bids have to include functionality as a threshold. Bids involving low value and low technical requirements (e.g. bottled water) do not have to include functionality and should be decided on the basis of price and preference only.

Functional/Quality criteria must be determined taking into account the needs and expectations of the end user with regard to functional outcomes of Goods or Service, i.e. conformance to stated requirements. It is important to note that only necessary quality/technical criteria must be included as evaluation criteria. Quality evaluation criteria must not be drafted in an exclusionary manner e.g. requesting 10 years experience in an industry when actually 5 years experience would suffice. In developing Quality criteria, it is necessary to consider how these items are to be measured, verified and evaluated in Bid submissions.

a) Quality criteria may include criteria such as[2]:-

(i) technical merit;
(ii) aesthetic and functional characteristics;
(iii) safety characteristics;
(iv) environmental characteristics (including green economy, energy conservation and climate control);
(v) quality control practices;
(vi) reliability;
(vii) durability;
(viii) method statement (including organization, logistics and support resources) relevant to the scope of work;
(ix) qualifications and demonstrated experience of key staff in relation to the scope of work;
(x) demonstrated experience of the Bidder with regard to specific aspects of the project/comparable projects;
(xi) running costs;
(xii) after sales Service and technical assistance;
(xiii) delivery date;
(xiv) delivery period or period of completion;
(xv) inspection or testing requirements;
(xvi) integration with other Goods / Services; and
(xvii) training requirements.

b) Additional Quality considerations in construction procurement is as follows:

[2] *This section on quality is largely based on clause 4.3 of the CIDB Standard For Uniformity in Construction Procurement*

cidb

Quality criteria shall not include:

(I) social considerations, such as the composition of workforces in terms of race, gender;

(II) or disability; or

(iii) matters relating to the basic capability or capacity of the tendering entity to execute the contract.

c) Where Functionality/Quality is of critical importance, at least 2 persons of the CFST who are conversant with the technical aspects of the bid shall set the evaluation criteria and weightings. These persons shall also determine the prompts or qualitative indicators for judgment, with fixed scores assigned to each prompt. Quality must be scored in terms of such prompts for judgment, individually and then averaged, subject to moderation.

d) It should also be determined whether a due diligence exercise, interviews, site visits and presentations should form part of the scoring, and if so, the relative weights assigned to each of these must be determined. These aspects must be clearly dealt with in the RFP. It is important to note that due diligence, interviews, site visits and presentations should only form part of the scoring if there are aspects of the bid that cannot be evaluated based on the responses to the RFP document or if the due diligence, interviews, site visits and/or presentations are required to validate the responses to the RFP document. If interviews, presentations or site visits are required in order to assess Quality, this should be stated in the RFP. The specific purpose and outcomes of the interviews, presentations or site visits and the associated scoring should also be included. It is permissible to set two separate thresholds for functionality in this regard i.e. one threshold for the desktop assessment and another for the interview, site visit or presentation.

e) The evaluation of bids shall be based only on the information contained in Bid submissions, and where relevant from a due diligence exercise, interviews, presentations and site visits.

13.3.3 Price criteria

a) Price will be evaluated strictly in terms of the prescripts of the PPPFA. When dealing with more complex bids, the evaluation of price must involve an evaluation of the Total Cost of Ownership (TCO). In such cases, Bidders must be requested to provide all information relevant to the evaluation of TCO. It is recommended that Bidders be provided with a comprehensive pricing schedule to ensure that they all follow a standardised approach with pricing. This will facilitate uniformity in the evaluation of price. The evaluation of TCO includes, but is not limited to, factors such as:

- Installation costs;
- Warranties;
- Service and maintenance costs;
- Operating supplies;
- Storage costs;
- Commercial discounts;
- Incoterms;
- Price adjustment conditions; and

- Exchange rate fluctuations.

b) When calculating prices, only discounts which have been made unconditionally must be taken into account during evaluation. However, where a discount is made conditionally, such discount must, despite not being taken into account for evaluation purposes, be implemented when payment is effected.

13.3.4 Preference criteria

All Bids should be evaluated against the applicable preference point system as prescribed in the Preferential Procurement Regulations, 2011. The preference criteria, as set out in Chapter 10, should be included in the bid document.

13.3.5 Supplier development (SD) criteria

If a specific commodity has been earmarked as a SD commodity, then SD should be included in the bid either as a threshold or prequalification criteria or a combination of these 2 mechanisms. The SD criteria, as developed in Chapter 12, should be included in the bid document.

13.3.6 Evaluation of counter party risk

Depending on the type of Goods/Services being procured, it may be important that the counter party risk of Bidders be assessed based on one or all of the following:

- their audited financial statements;
- key financial ratios. For example: Current Ratio, Turnover/Contract Value, Interest cover, Gearing and financial performance of bidder relative to peers;
- perform media searches of bidders to identify any key risks that have not been disclosed in bid submissions. For example: Poor financial results which impacts the going concern of the customer / supplier;
- review analyst reports and gauge overall market sentiment of bidders;
- review geographical, political and economic risks based on the location of the bidder;
- review the bidders business continuity plans; and or
- Perform a review of the security / collateral by reviewing parent company guarantees and/or performance bonds (if applicable).

Depending on the importance of the financial stability of the successful Bidder/s, financial stability may either be included as a pre-qualification criterion or a due diligence exercise may be performed on the preferred bidders at the end of the evaluation process prior to recommendation. It is important to note that the evaluation of financial stability will not feature in every bid, particularly those which seek to advance Start-up and emerging enterprises. Financial stability may also be evaluated at the discretion of the AC in terms of paragraph 20.3.

13.4 DETERMINING THE PREQUALIFICATION CRITERIA & THRESHOLDS

13.4.1 Prequalification criteria

Prequalification criteria may be set in respect of Functionality, SD and financial stability. Such criteria must be determined with circumspection as bidders may not be considered further should they fail to meet any of the set prequalification criteria. Furthermore, prequalification criteria must not be set in an exclusionary manner and must prescribe the

minimum requirements that Transnet requires particularly with regard to Functionality and financial stability.

13.4.2 Thresholds

While the Local Content threshold in designated sectors is prescribed, the determination of thresholds for Functionality and SD must be considered on a case by case basis as each procurement event will differ. It is important that these thresholds be determined upfront and included in the RFX document. Once included in the RFX document one cannot deviate from that and the evaluation has to be done strictly in accordance with what was stated in the RFX document.

Ideally, the thresholds set must be based on Transnet's minimum requirements i.e. the minimum Transnet requires in order to satisfy its needs/objectives. It, however, sometimes transpires that despite this exercise, all the responses received do not meet the set threshold/s. Transnet may decide that if no Bidders pass the SD and/or Functionality threshold, it will reserve the right to lower the threshold by a certain pre-determined percentage. The decision to utilise such a disclaimer must be carefully considered. The disclaimer must be clearly specified in the RFP, provided it is in Transnet's best interests to do so and there is concurrence between the end user and Procurement. In addition, with regard to the SD threshold, concurrence is also required from the SD Department. The use of this disclaimer is designed to mitigate the risk of a bid requiring cancellation even though there was an adequate response from the market.

The weighting of the Functionality/Quality threshold as a whole, as well as the sub-requirements within this threshold, need to be carefully determined to ensure that the end product/service is optimal and fit for purpose.

Similarly, as indicated in Chapter 12, the setting of the SD threshold must be based on market analysis of the SD opportunities in a particular sector.

13.5 WHEN TO DETERMINE THE EVALUATION METHODOLOGY

All of the above should be carefully considered by the CFST and included in the sourcing strategy, the RFX and RFX sign-off template prior to issuing the RFX to the market, as neither the evaluation criteria, nor the weightings may be changed during the evaluation phase.

13.6 CIDB EVALUATION METHODOLOGY

cidb

13.6.1 The CIDB register of contractors shall be applied in all construction works contracts. The manner in which the CIDB register of contractors is to be applied is established in the CIDB Regulations which are issued in terms of the CIDB Act and the CIDB Standard for Uniformity in Construction Procurement.

Determining the correct CIDB grading:

- Step 1: Identify preferably one, but not more than two class(es) of construction works that best describes the works to be performed.
- Step 2: Estimate the tender value including value added tax and identify the tender value range designation within which this value falls. Where the estimated value is not more than 20 percent above the lower limit of a tender value range, base the contractor grading designation on the tender value range immediately below the tender value range within which the estimate falls.

- **NOTE:** Invitations to tenderers should indicate as accurately as possible the registration requirements and not be misleading; hence the requirement in the regulations to base the estimate on the lower designation in borderline circumstances.
- In certain cases, where the contract for construction works takes place over several years (term contract), the contractor grading designation may be based on the annual estimated value of the contract.
- Step 3: Determine the approximate contractor grading designation and, where applicable, the alternative designation, based on the class(es) of construction works selected in Step 1 and the tender value range identified in Step 2. Where the employer has a targeted development programme in place that provides the necessary support to enable the contractor to successfully execute the contract, contractors who are registered as potentially emerging contractors in one designation lower than required, may also be permitted to submit tender offers.
- Step 4: State the requirements for contractor grading designation in the Tender Data in the form of eligibility criteria in using the wording prescribed in the Standard for Uniformity in Construction Procurement.

13.6.2 Pre-qualification criteria may be used as eligibility criterion in the bid. The framing of quality criteria as eligibility criteria is a simple, yet effective, means of ensuring that only those bidders who are likely to deliver the required quality submit bids and compete for the award of a contract.

Example 1: An engineering and construction works contract may contain the following eligibility criteria:

Where the works required involves the removal and disposal of asbestos cement sheeting, the eligibility criteria should state that the contractor must be a Registered Asbestos Contractor with the Department of Labour.

Example 2: A professional service contract may contain the following eligibility criteria:

The eligibility criteria for bidders are that they complete the Competent Persons Declaration and have in their full time employ a person satisfying the relevant requirements for a competent person for the required service.

13.6.3 As indicated above, only CIDB Method 2 is to be utilised within Transnet until further notice. Method 2 is explained in more detail below:

CIDB Method 2: Financial offer and preferences

Firstly, Quality/Technical is to be evaluated as a prequalification criterion.

a) Reduce each responsive tender offer to a comparative offer. A comparative offer is defined under F.1.3.3 of the CIDB Standard Conditions of Tender as contained in Annex F of the Standard for Uniformity in Construction Procurement.
b) Score bid evaluation points for financial offer.
c) Confirm that tenderers are eligible for the preferences claimed and if so, score bid evaluation points for preferencing
d) Calculate total bid evaluation points.
e) Rank bid offers from the highest number of bid evaluation points to the lowest.
f) Recommend bidder with the highest number of bid evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

CHAPTER 14 : MAIN PROCUREMENT MECHANISMS

This Chapter applies to both general and construction procurement. Additional CIDB procurement mechanisms are detailed in paragraph 14.8 below.

14.1 FACTORS TO CONSIDER WHEN SELECTING THE APPROPRIATE PROCUREMENT MECHANISM

Sourcing/procurement strategies are closely linked to the strategic importance and value of the Goods/Services. The first step is to classify Goods/Services on a risk/value matrix. In order to determine the importance of Goods/Services to Transnet as well as the appropriate procurement mechanism to be used, the commodity should be plotted on the four quadrant matrix below:

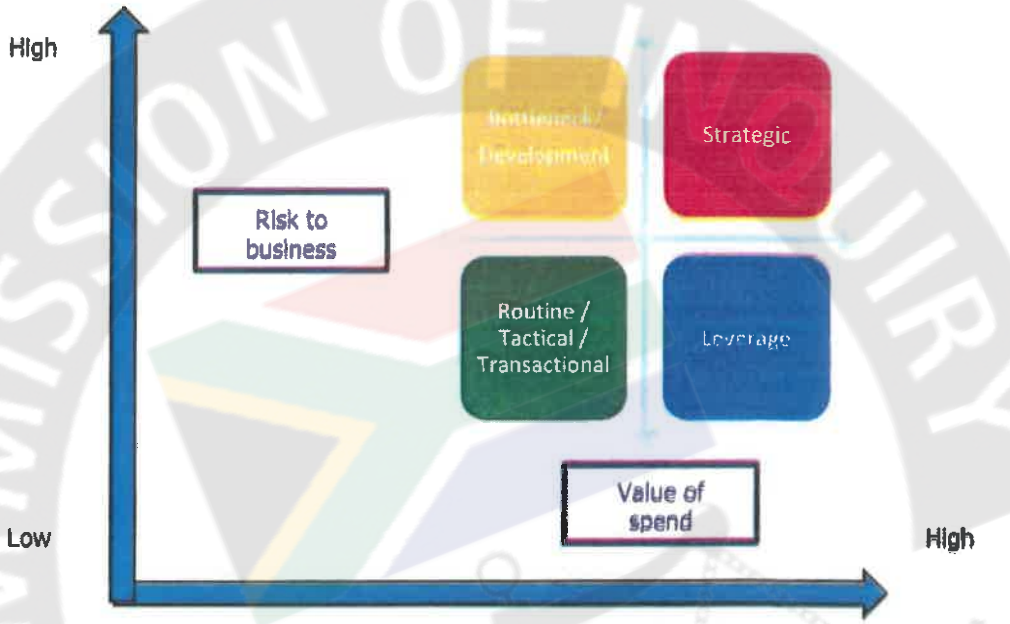


Figure [19] – Risk / Value Matrix

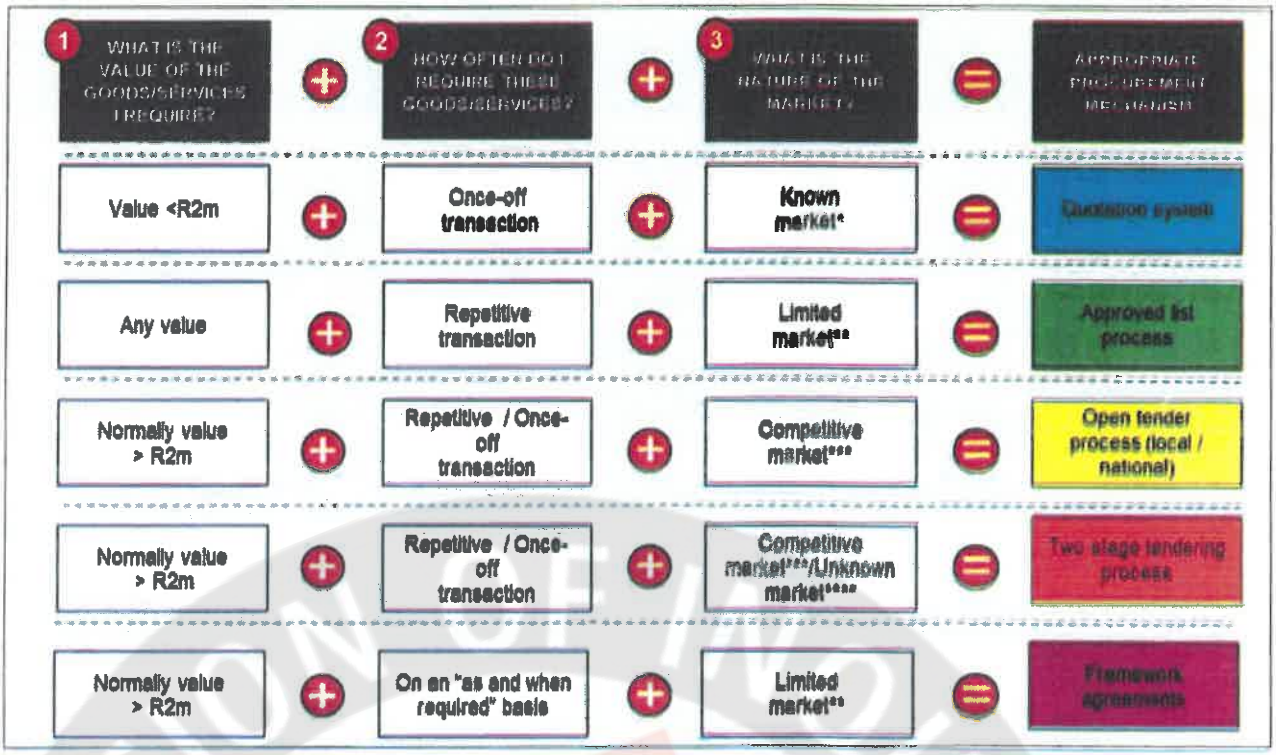
The following guidelines will assist in determining the correct procurement mechanism to use depending on where in the matrix particular the Goods/Services are placed:

TABLE 16

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
Routine/ Tactical Transactional	• Low risk; low spend • Non-critical items • Many suppliers in the market • Objective is to minimise spending significant time and effort on obtaining these Goods / Services through 'as	• Open Bid • Quotation system (only when non repetitive and under R2 million)	• "As and when" contract for short and medium term • Transversal contract

Type	Characteristics	Appropriate procurement mechanism/s	Possible contract options
	and when' contracts		
Leverage	• Low risk; high spend • Non-critical items • Many suppliers in the market • Objective is to leverage economies of scale	• Open Bid	• Transversal contract • "As and when" contract for short and medium term
Bottleneck/ Development	• High risk; low spend • Limited suppliers • These are items that Transnet must have but which are difficult to obtain • Critical items • Includes specialised equipment, instrumentation or software from proprietary suppliers • Objective is to secure supply	• Two stage bidding system • Approved list • Confinement • Framework Agreement	• "As and when" contract for medium term • Fixed quantity
Strategic	• High risk; high spend • These are items that are critical to Transnet's business	• Open Bid • Two stage bidding system • Approved list • Confinement • Framework Agreement	• Medium to long term contract • Transversal contract

Depending on the circumstances of each requirement for the procurement of Goods or Services, any one of the following main procurement mechanisms or procurement paths may be utilised:



* Known market - suppliers are listed on the vendor database
** Limited market - only a restricted number of suppliers exist eg. Original Equipment Manufacturers, limited suppliers or a sole supplier
*** Competitive market - many suppliers exist in the market
**** Unknown market - there is no clear specification of requirements and/or the availability of the goods/services is unknown

Figure [20] – Procurement Mechanisms

14.2 PROHIBITED PRACTICES

14.2.1 As a general rule, the quotation / bidding system must not be used merely to obtain market related prices for budget or benchmarking purposes.

14.2.2 In cases where it is absolutely necessary to obtain test bids for budget purposes only, the request to the market must clearly and unambiguously state that the request for a quote is for budget purposes only and that no business will be awarded against this invitation. Care should, however, be exercised that such budget pricing exercise is not abused merely to give certain contenders advance notification of a new project in the pipeline. It would be advisable to rather obtain test quotes from more than one, or even better, all the known suppliers so as not to run the risk of being perceived to have given only one contender advance notification.

14.2.3 When the full scope of work is known at a point in time, requirements may not be deliberately split into parts or items of lesser value in order to keep the transaction value within a particular Delegation of Authority level or to keep it below the threshold of an AC or a person with higher Delegation of Authority. This is considered to be Parcelling and will be regarded in a serious light as it amounts to non compliance with procurement procedures.

14.2.4 Specifications should be functional and fit for purpose, rather than brand- or product-specific. Specifications must not include any exclusionary terms. Compiling a specification around one supplier's product is unfair and not allowed. Where it is necessary to specify a particular brand or product, the RFX document must request the particular brand/product "or similar".

14.3 THE QUOTATION SYSTEM - REQUEST FOR QUOTATION ("RFQ") / CIDB QUOTATION PROCEDURE

- Only used for transactions below R2 million in value
- The Goods or Services must be required on a non-repetitive basis
- The market should be known
- A minimum of three quotes must be obtained, where possible

14.3.1 Definition

The quotation system is a procurement system used for transactions below R2 million that are required on a non-repetitive basis.

14.3.2 When to use the quotation system

b) The quotation system is intended for non-frequent purchases of fairly low value. It should not be used on a continual / repetitive basis for the same commodity i.e. instances where the same commodity is purchased (sometimes even from the same supplier), but on different purchase orders/requisitions. This will be regarded as Parcelling.

c) The quotation system is best suited in the following circumstances where:

(i) transactions are valued at less than R2 million;

(ii) the purchase is not required on a repetitive basis. Where the same purchase is regularly made, consider a fixed term as-and-when-required contract. If market prices of the commodity are volatile and it is impossible to obtain firm prices for a specific period (even with price review mechanisms included), consider a short term as-and-when-required contract. Such a contract may be concluded following either an open tender process or a quotation process;

(iii) the value of the transaction would make it impossible, impractical or economically unviable to call for Open Bids; or

(iv) there are opportunities to develop suppliers in order to achieve transformational objectives. This mechanism is considered to be the best avenue to facilitate entry to the market for emerging small B-BBEE companies.

14.3.3 Advantages and disadvantages of the quotation system

Advantages	Disadvantages
Quick turn-around times in the case of non-repetitive purchases	• This procurement mechanism is not the most cost-effective as the benefit of volume discount is lost • Turnaround time is longer when using the quotation system as opposed to an 'as and when' contract, in the case of repetitive purchases • Risk of limiting competition to only certain service providers

14.3.4 The authority to obtain quotes

CEOs may at their own discretion decide to allocate different levels of authority to different Managers in terms of their Delegation of Authority. The CEO [and ultimately the Chief Procurement Officer ("**CPO**")] will delegate specific powers to specific Managers in the procurement function to invite quotations up to a certain value and secondly for the award of the business resulting from the quotation system.

Furthermore, the CEO of a Division may at his/her own discretion and within the Transnet DoA framework, introduce OD specific control mechanisms for these "low" value transactions (e.g. Petty Cash policies, etc).

Depending on the value of transactions falling within the quotation system, appropriate control measures must be implemented from low value quotes to high value quotes:

TABLE 17

Transaction value	Mechanism for obtaining quote	No. of quotes
Less than R5 000.00	Fax/email quotes	1
R5 000.00 – R50 000.00	Fax/email quotes	2
Greater than R50 000.00 – R250 000.00	Fax/email quotes	3
Greater than R250 000.00 – R1000 000.00	Short form RFQ request (receipt of bids at the tender box)	3 or more
Greater than R1000 000.00 – R2 000 000.00	Formal RFQ process (receipt of bids at the tender box)	3 or more

14.3.5 Number of quotes to be requested

a) As a general rule, a minimum of three quotations should be requested. However, a buyer may request more than three quotes if necessary.

b) Where it is impossible to request three quotes e.g. patented articles, OEM spares etc., one or two quotes will suffice. However, a submission must be prepared with the reasons for not being able to request at least three quotations. This must be approved by the CPO or his/her delegate, depending on the value of the transaction and the delegated authority of the procurement

official. Since OEM spares and components will in all probability be required on a regular basis, consideration should be given to either the framing of an Approved List, or the conclusion of an "As-and-when required" term contract.

c) It is important to note that once a request for quotations has been made to prospective Bidders, a buyer cannot subsequently request further quotes if only some Bidders approached have responded to the request by the closing date. This rule applies even where a Bidder has responded to the RFQ with a "no quote".

14.3.6 Transnet Vendor Portal

a) An automated Transnet wide Vendor Portal (TVP) has been created for all potential suppliers wishing to do business with Transnet to register and update their company profiles. The web address is https://vendorportal.transnet.net.

b) Potential suppliers should provide full details of the Goods/Services on offer, their tax clearance certificate, their BBBEE level, including % Black ownership and area of operation. Suppliers will be classified accordingly on the TVP.

c) Buyers who wish to obtain quotations must proceed to search the TVP and/or the OD's own vendor database for potential Bidders.

d) The TVP should ultimately have the functionality to invite quotes from potential suppliers on a rotational system to ensure an equitable spread of opportunities among all potential suppliers.

14.3.7 Process

a) As indicated above, the buyer will request quotes from at least 3 or more potential Bidders on the TVP where possible.

b) For relatively low value, simple Goods/Services, the RFQ should ideally be open for 3 to 4 Working Days in order to afford Bidders a reasonable opportunity to respond. For higher value, more complex Goods/Services, the RFQ should be open for a minimum of seven Working Days.

c) The bids must be received in a controlled environment, e.g. a dedicated email address, dedicated fax number or a tender box.

d) As a general rule, quotations are to be evaluated on the basis of price and B-BBEE. Where there are opportunities to include SD either as a threshold or prequalification criterion or a combination of both, SD should also be included in the bid. In the event that technical evaluation is also necessary, the technical evaluation criteria must be pre-determined and included in the RFQ document. The highest scoring Bidder is to be selected as the Successful Bidder unless there is objective criteria justify the award to another bidder.

e) In instances where quotes are invited from potential new bidders, the prices quoted should, where possible, be benchmarked against previous prices paid, to ensure that Transnet obtains optimal value for money, whilst achieving its social obligation.

f) As indicated in paragraph 14.3.6 (d) above, quotations should be invited from potential bidders on the TVP on a rotational basis so as to ensure an equitable spread of opportunity among all potential suppliers.

g) Please refer to paragraph 17.2.1 (d) regarding matters that were anticipated to fall below the AC's threshold but when quotes are received they are over R2 million in value. Furthermore, please refer to paragraph 22.5.7 (a) regarding contract amendments in this regard.

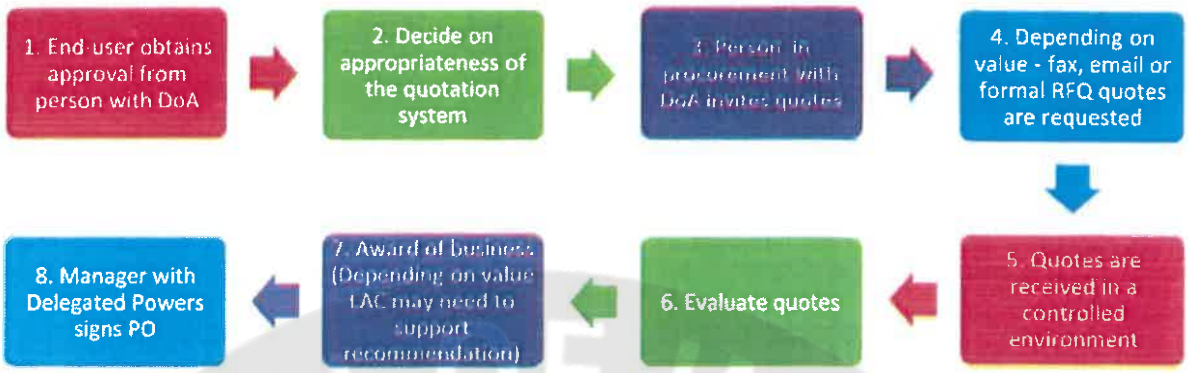


Figure [21] – Quotation Process

14.4 THE OPEN BID PROCESS (RFP)/CIDB OPEN PROCEDURE

- Generally used for transactions greater than R2 million in value
- There must be a competitive market and a clear detailed specification available to which many prospective Bidders are able to respond
- Bids may be advertised in local, national and / or international media as well as the Transnet website depending on the market
- Note that for construction procurement, the advertisement must, in addition be placed on the CIDB web site using the CIDB's I-Tender@cidb service at least 10 working days before the closing date for tenders and at least 5 working days before any compulsory site meeting.

14.4.1 Definition

The Open Bid Process (RFP) is a competitive process where the general public is approached with an invitation to bid that is published in the media. All interested parties are granted an equal opportunity to bid for Transnet's business. Once the bid has closed, the winning Bid is selected by means of a transparent evaluation, recommendation and adjudication process.

14.4.2 When to use the open bid process

The Open Bid system is the procurement/disposal mechanism best suited to the following circumstances:

a) the monetary value of the purchases is in excess of R2 million;

b) even if the bid value is less than R2 million, an Open Bid should be issued if the market is not known or the Goods or Services are required on a repetitive basis;

c) the market is competitive (i.e. many potential suppliers are able to provide the required Goods/Services);

d) there are clear and unambiguous specifications to ensure that all potential suppliers bid for the same product;

e) there is enough time available;

f) the value of the transaction must warrant the cost, time and effort taken to use an Open Bid process; and

g) in cases where Transnet's needs / specifications etc. are still too vague to issue a formal bid, the two-stage Bid system (RFI) should be followed.

14.4.3 Advantages and disadvantages of the open bid process

Advantages	Disadvantages
The Open Bid system is regarded as the procurement mechanism which best ensures open and fair competition.	The Open Bid process is time consuming. In order to ensure that Goods / Services are delivered to the business when they are needed, the need for the Goods / Services needs to be anticipated well in advance. Requires significant resources (cost, time, etc.)

14.4.4 Process

a) Before any bid document may be issued to the market, the person with the necessary delegated authority must provide written authority to approach the market. This must include approval of the evaluation methodology, evaluation criteria and the availability of funds. The evaluation team is also to be decided on at this point.

b) The bid document should be compiled according to the guidelines set out in Chapter 16 *(Bid Preparation)*.

c) Bids may be advertised in local, national and / or international media as well as the Transnet internet website depending on the market and value of the bid. Note that for construction procurement, the advertisement must, in addition be placed on the CIDB web site using the CIDB's I-Tender@cidb service at least 10 working days before the closing date for tenders and at least 5 working days before any compulsory site meeting.

d) Bids should be kept open for a reasonable period. Refer to paragraph 16.3 for more detail.

e) Bids are to be finalised as soon as possible after the closing date of the bid.

See process below to be followed in the case of an Open Bid process

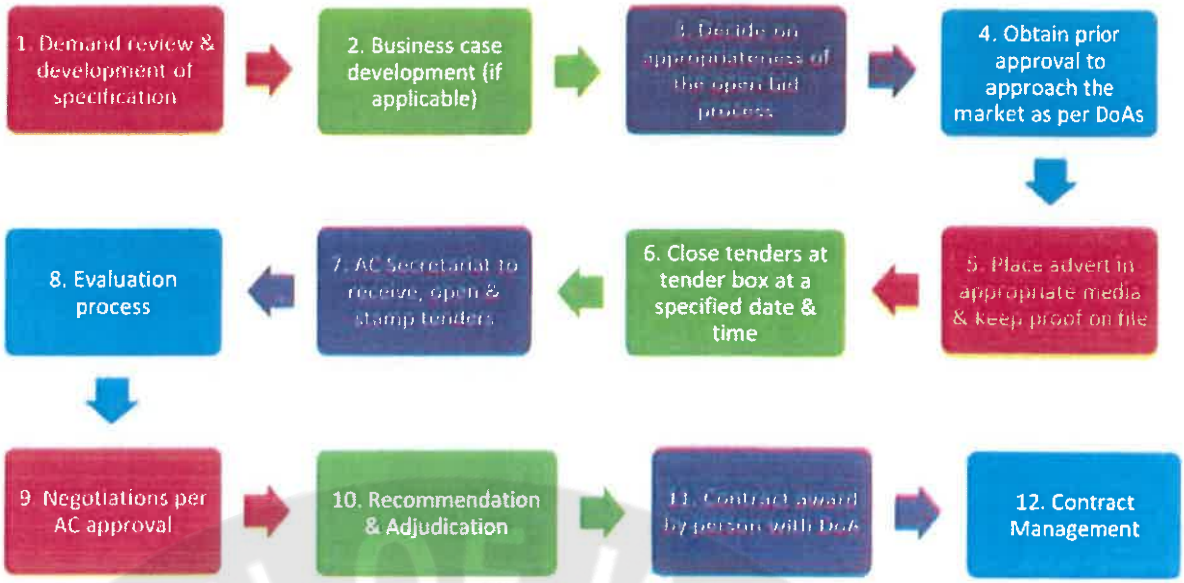


Figure [22] – Open Bid Process

14.5 APPROVED LIST PURCHASES

14.5.1 Definition

An approved list is essentially a "standing authority to confine" and may be framed and utilised either where:

- **Goods or Services are required according to unique specifications, on a continual ("as and when required") basis and from a limited number of suppliers; or**
- **In a competitive market there is a need to prequalify suppliers, as well as to limit the need to continuously evaluate large numbers of bids.**

14.5.2 General principles

a) **In order to qualify for inclusion on any approved list a supplier must be able to supply Goods or Services of the quantity and quality required. Furthermore, if so required, the supplier must have submitted samples or delivered Goods which have satisfactorily passed Transnet's quality tests.**

b) **Approved supplier status cannot be acquired merely by being on a Division's Vendor Master or on a B-BBEE Manager's List of EMEs or QSEs for specific Goods or Services. Approved supplier status can only be obtained after following the process stipulated below.**

c) **Specifications must be drawn up to promote fair competition.**

d) **ODs and Specialist Units must attempt as far as possible to procure off-the-shelf Goods as opposed to drawing up their own specifications.**

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.

(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 SCM.

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.

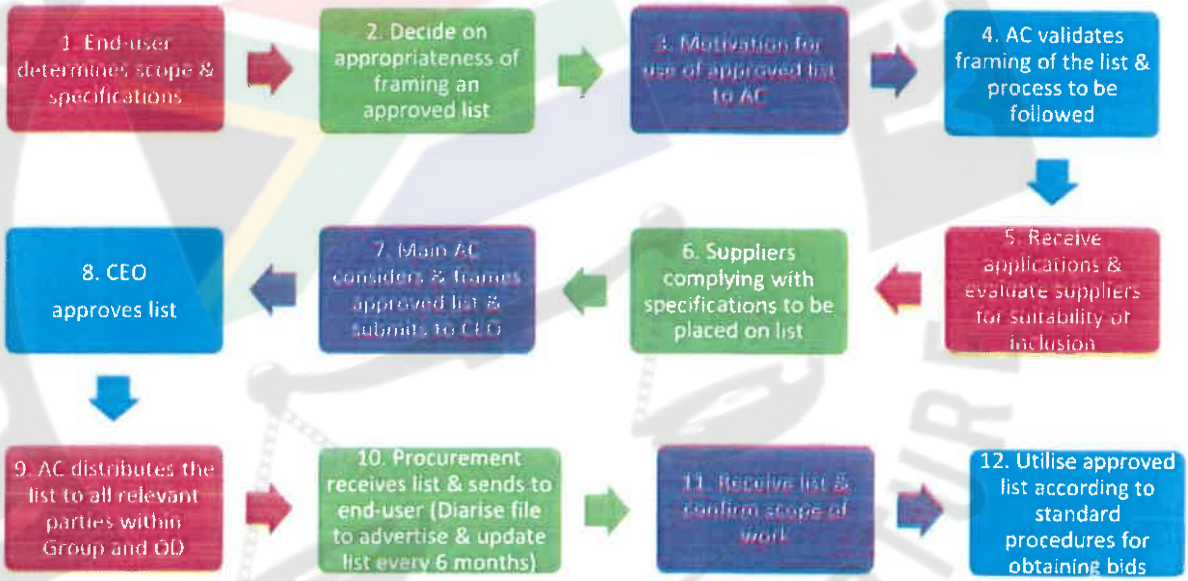


Figure [23] – Process to frame Approved List

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.

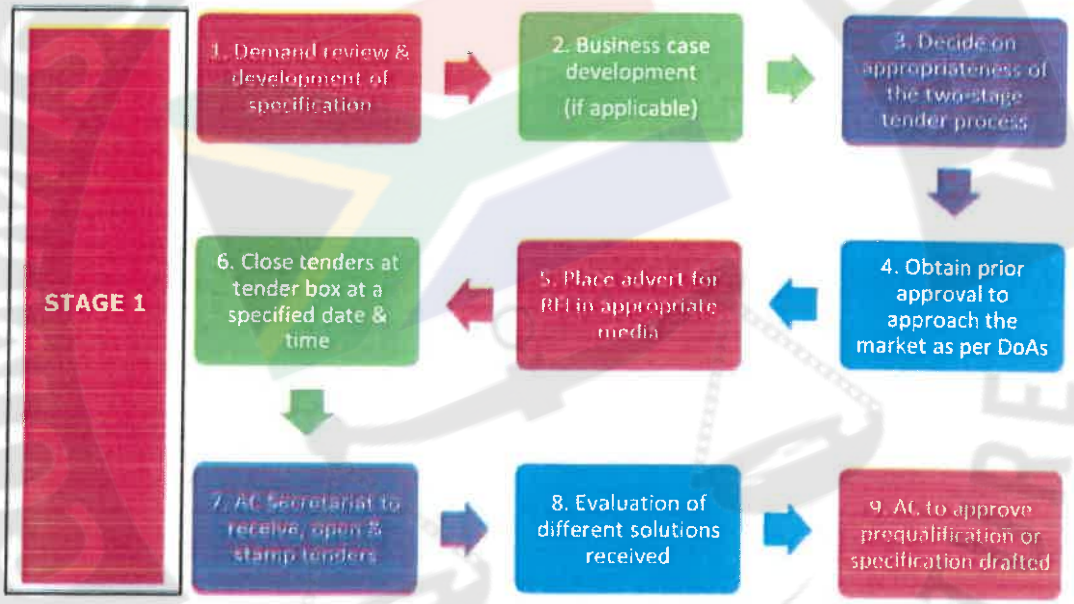




Figure [24] – Two stage bidding process

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

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**

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.

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.

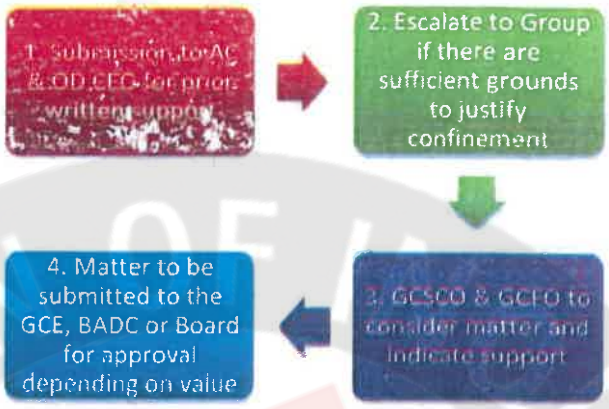


Figure [25] – The Confinement process

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.

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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:

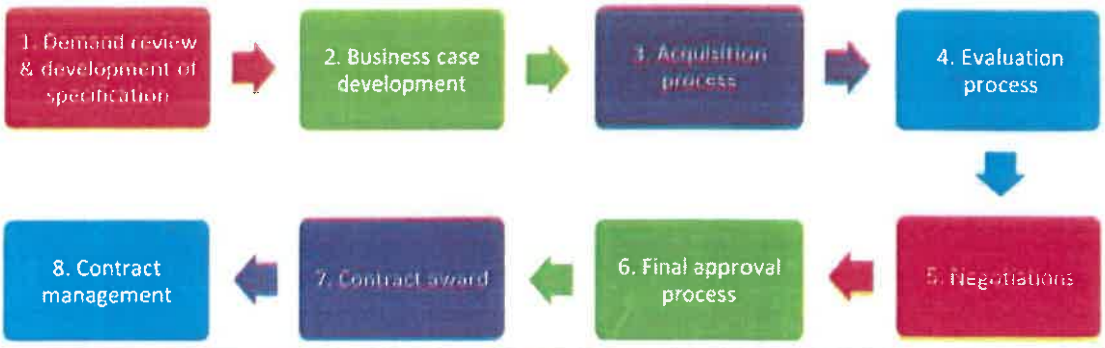


Figure [26] – The HVT process

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.

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

- where one or more Transnet Entity become aware that another Entity has already concluded a contract for the Goods /Services required by it and wish to utilise the existing contract ('piggybacking').

15.5.1 Principles

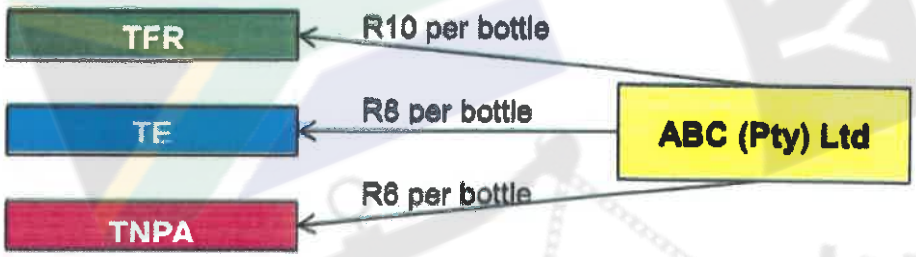
Consolidation of existing contracts is potentially problematic from a governance and operational perspective. For this reason, Transnet must endeavour to approach the market with a consolidated demand signal clearly outlined in a single RFP, rather than having each Entity approach the market in a piecemeal fashion and thereafter seeking to consolidate a number of different contracts. Therefore, when an Entity identifies the need to acquire goods/services that are common to more than one entity, it is imperative that they first ascertain whether it is feasible and advantageous to approach the market with the consolidated requirements of all Entities that require the goods / services.

Transnet can gain significantly from consolidating its demand. Due to economies of scale, it will be in a better position to negotiate price and contractual advantages. In addition, it will lessen the administrative burden on Transnet to manage a multiplicity of contracts.

15.5.2 Triggers for consolidation

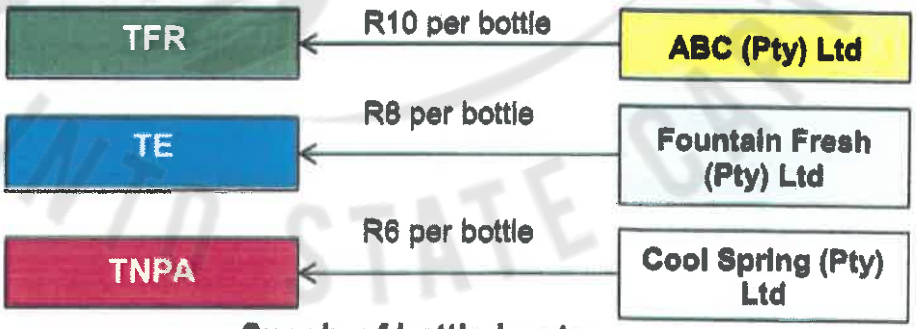
One of the following circumstances should trigger the need for consolidation of existing contracts:

a) The same commodities or categories of commodities are being purchased by more than one entity from the same supplier but with differing prices and contract terms. For example:



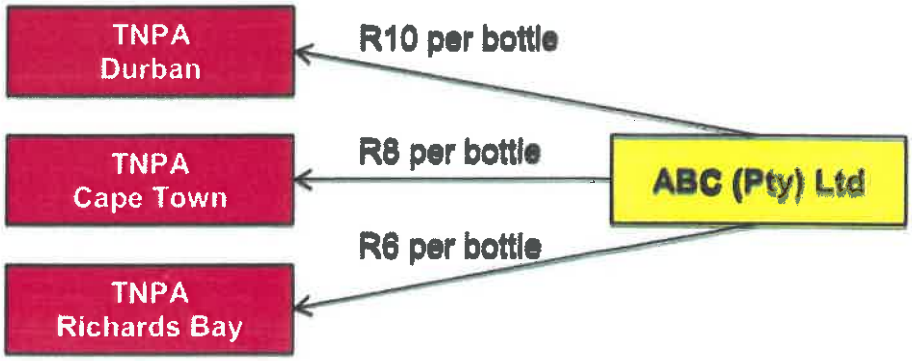
Supply of bottled water

b) The same commodities or categories of commodities are being purchased by more than one entity from different suppliers with differing prices and contract terms. For example:



Supply of bottled water

c) The same commodities are being purchased by one OD from the same or different suppliers, with significant price variations. For example:



Supply of bottled water

15.5.3 Factors to consider when consolidating

The following factors need to be considered when consolidating existing contracts:

a) The probable increase in volumes required from the preferred suppliers (expressed in %) if contracts were to be consolidated;

b) Whether the existing contracts allow volume changes, and what the contract terms and conditions regarding volume changes are;

c) Price differentials between various contracts;

d) Other key contractual differences (e.g. specifications, delivery, payments, volume discounts etc.);

e) Whether the contracts allow for cancellation 'without cause';

f) The expiry dates of the various contracts;

g) The cost of termination (penalty for breach); and

h) Current contract management and monitoring.

The merits of each case should be evaluated based on the factors above in order to determine the feasibility of consolidation. Once the feasibility of contract consolidation has been determined, a decision will be made on whether to renegotiate one of the existing contracts or issue a new bid.

The cost of termination of existing contracts must be calculated and then weighed against potential benefits of consolidation in terms of cost and Quality. It is important to note that existing contract periods must be adhered to where financially viable. Paying high penalties due to the cancellation of existing contracts should be avoided as far as possible.

Where it is clear that there is no financial benefit for Transnet to renegotiate the existing contracts then the process to be followed would be to issue a new bid for the consolidated spend, when the existing contract(s) terminate.

15.5.4 Deciding on which contract to consolidate

Once a decision has been made to consolidate, the next issue is to determine which contract is the most favourable for consolidation. In arriving at this decision, the following factors must be considered:

a) Identify the contract that entails the biggest spend or usage;

b) The OD and/or region contributing the largest volume;

c) Whether one supplier can meet all Transnet's requirements;

d) The perception regarding potential market challenges (type of commodity and potential suppliers);

e) The competitive landscape of these Goods and Services; and

f) New suppliers in the market.

15.5.5 Process for consolidation of a number of existing contracts

a) Where it is considered feasible to consolidate spend to one of the existing contracts, all other contracts must be terminated. The most favourable existing contract would be increased to include other Transnet Entities' requirements after negotiation. The Transnet Entity originally managing that contract will be responsible to initiate the approval process for the increase of contract value.

b) Where the increase in value is below 10% of the original contract value, the matter must be submitted to the relevant Entity AC for noting.

c) If the increase in contract value is above 10%, the matter must be submitted to the relevant Transnet Entity's AC for approval.

d) Once the relevant Transnet Entity has approved the increase, the matter must be submitted to the other Transnet Entities' ACs for information.

e) Where consolidation would result in a substantial increase in the scope and value of the contract (more than 50% of the original estimated contract value as approved by the AC), it would be peremptory to embark upon a new bid process for the consolidated spend.

f) Inclusion of entities into the consolidated contract may be on a staggered basis. For example, where a current Transnet Entity's contract expires 3 months after the consolidated contract commences, that contract can be allowed to run its full period. Thereafter, the entity will be included in the new transversal agreement, with a sliding-scale volume discount structure being coupled to the pricing.

g) Contract "owners" must notify all Transnet users of the new transversal contracts that are in place to ensure maximum advantage for Transnet. However, please note that this mechanism is to be regarded as almost an interim measure. Ideally all entities must be approached during the demand planning stage already to obtain their estimated requirements beforehand for inclusion in the consolidated RFX document.

h) Note that the process to be followed for the normal increase of contract values and cancellation of contracts will still apply.

15.5.6 "Piggybacking"

a) "Piggybacking" arises when an existing contract has been identified, which one Transnet Entity has concluded for specific goods/services, and which another entity would like to utilise for their requirements.

b) The Transnet Entity who wishes to "piggyback" off an existing contract should obtain prior approval from the AC of the Transnet Entity that concluded the contract. Once approval from that AC is obtained, the supplier should be approached to indicate whether he/she is able to meet the increased volume as well as any price discounts that may be offered.

c) Where the increase in value is below 10% of the original contract value, the matter must be re-submitted to the relevant AC for noting. If the increase in contract value is above 10%, the matter must be re-submitted to the relevant Entity AC for final approval.

d) Once the relevant Entity has approved the increase, the matter must be submitted to the other ACs of Entities who want to make use of this contract for information.

e) The respective Transnet Entities must make satisfactory arrangements between themselves regarding the apportionment or recovery of costs for goods / services, if applicable.

f) Where consolidation would result in a substantial increase in the scope and value of the contract (more than 50%), it would be prudent to embark upon a new bid process for the consolidated spend.

15.6 ACQUISITIONS ASSOCIATED WITH INCOME GENERATING CONTRACTS

15.6.1 Although income generating contracts are in principle excluded from this Procurement Procedure Manual, all associated expenditure contracts necessary to fulfil such contracts (i.e. procurement contracts to acquire the necessary Goods or Services), falls within the ambit of the PPM.

15.6.2 For example, TFR negotiates an income generating contract to transport fuel from the Port of Durban to Zimbabwe. This would be a pure income generating contract and although it might require approval from the TFR Exco or even Transnet Board of Directors, it would fall outside the scope of the PPM and AC approval would not be necessary.

15.6.3 However, if TFR needs to purchase 2 additional locomotives and 90 rail tank wagons to provide this Service (fulfil the contract); such associated expenditure / procurement contracts would fall within the ambit of the PPM and would also require AC approval.

15.6.4 The only exception to this rule would be in circumstances where a Transnet Division or Specialist Unit needs to respond to an external bid invitation (e.g. TRE responding to a bid invitation issued by PRASA for the supply of suburban coaches). In such instances Transnet would need to prepare its bid for the income generating contract taking into consideration any goods/services that it would need to acquire in order to respond to the bid. The limited time available to respond to such bid invitation would not allow the Transnet Division or Specialist Unit to invite bids in the normal manner for goods/services required.

15.6.5 In such cases, irrespective of the monetary value of such transaction(s), the CEO, BADC or the Board may authorise such "confined" requests for bids from potential suppliers and/or approve the selection of possible joint venture partners/subcontractors, etc., without AC approval, provided that the matter(s) be reported for the AC's information as soon as possible after the Transnet OD has lodged its bid. When obtaining bids in respect of goods and services required in order to respond to an external bid invitation, the Transnet Entity must clearly state that the award of any business pursuant to such bids cannot be guaranteed and is conditional on the Transnet Entity being selected as the Successful Bidder.

15.6.6 Such transaction(s) need not be submitted for approval again, should the Transnet Entity be selected as the Successful Bidder, as this could lead to delays in the execution of such external income generating contract.

15.6.7 On completion of the project, the AC should be informed of the outcome in detail, e.g. how the selected subcontractors/JV Partners performed, whether the project was completed on time, what income was derived from the income generating contract after all outsourced parts have been accounted for, etc.

SECTION A — Background and Context

SECTION B — Procurement planning

SECTION C: GO TO MARKET

Chapter 16: Bid Preparation

Chapter 17: Bid Administration

SECTION D — Evaluation and Adjudication

SECTION E — Contract Management

SECTION F — Functions of Governance Structures

Appendices

CHAPTER 16 : BID PREPARATION

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.

(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.

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.

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:

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.

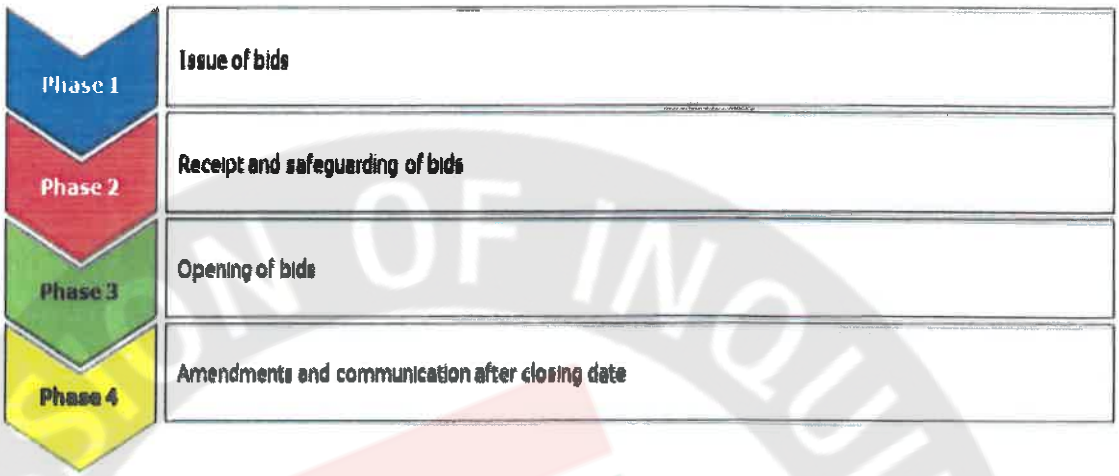


Figure [27] – Four phases of bid administration



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

- 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.

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;

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 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.

17.1.8 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

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;

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.

Phase 2

Receipt and safeguarding of bids

17.2 PHASE 2: RECEIPT AND SAFEGUARDING OF BIDS

The RFX document should clearly indicate what must be stated on the outside of the sealed envelope containing the Bid. Refer to paragraph 16.5.1v) 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.

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.



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.

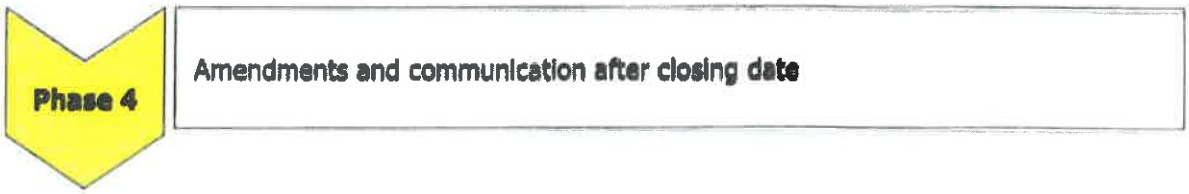
b) Where Bidders are required to insert prices on price lists supplied by Transnet and prices have not been inserted in all the relevant spaces on the forms or have not been deleted by Bidders, such spaces shall be stamped "no price" by the employee who opens the Bids. All pages indicating prices, delivery 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

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.



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;

(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.

SECTION A Background and Context

SECTION B Procurement planning

SECTION C Go to Market

SECTION D: EVALUATION AND ADJUDICATION

Chapter 18: Evaluation and Recommendation

Chapter 19: Post Tender Negotiations (PTN)

Chapter 20: Adjudication

SECTION E Contract Management

SECTION F Functions of Governance Structures

Appendices

CHAPTER 18 : EVALUATION AND RECOMMENDATION

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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

Step 1

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

Step 2

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).

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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;

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.

Step 3

Test for substantive responsiveness

Evaluation committee confirms results of initial administrative test for responsiveness conducted by procurement and conducts test for substantive responsiveness

18.3 TEST FOR SUBSTANTIVE RESPONSIVENESS

The evaluation committee is required to confirm the result of the administrative test for responsiveness undertaken by Procurement.

A Bid is substantively responsive if it conforms to all the terms, conditions, scope and/or specifications of the bid documents without material deviation or qualification. A Bid is regarded as substantively responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bid documents. Any such deviations must be quantified as far as possible. These deviations must be considered during the evaluation and comparison of Bids.

Before evaluating the Bids, members of the evaluation team are required to:

18.3.1 Verify the names of the entities appearing on the bid documents against the correspondence (copy of the bid register) received from the AC Secretariat (i.e. check that only those Bids received through the 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:

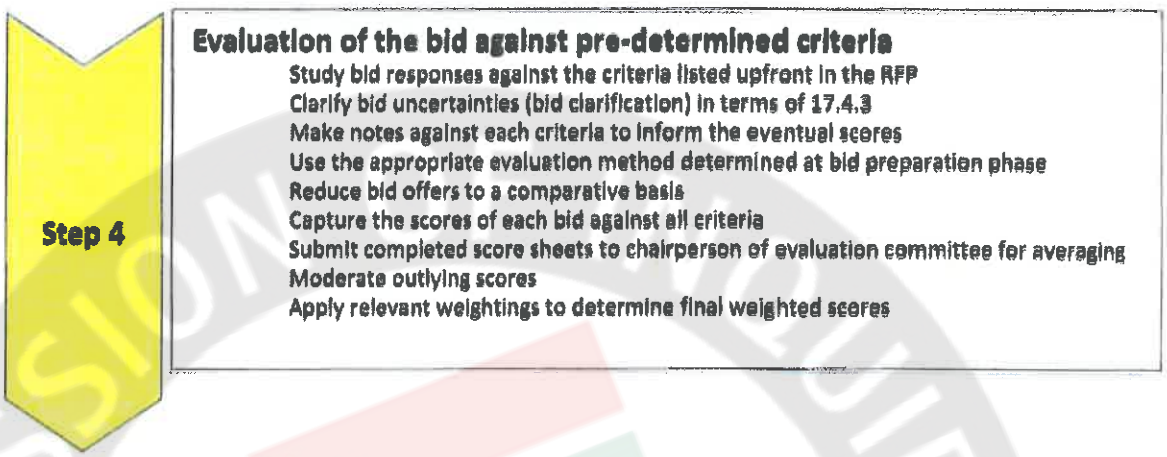
(i) does not contain pricing or response to any other crucial aspect stated in the RFP document;

(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.

Step 5

Final evaluation

Eliminate bidders who did not make both the thresholds
Populate the relevant automated scorecard, based on the evaluation methodology

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)

$Ps = 80\left(1 - \frac{Pt - Pmin}{Pmin}\right)$	$Ps = 90\left(1 - \frac{Pt - Pmin}{Pmin}\right)$
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	62%	QUALIFIED
BIDDER D	61%	QUALIFIED
BIDDER E	89%	QUALIFIED
BIDDER F	42%	QUALIFIED
BIDDER G	36%	DISQUALIFIED
BIDDER H	35%	DISQUALIFIED
BIDDER I	20%	DISQUALIFIED

Technical threshold	60%

Name of Bidder	Bidder's score	
BIDDER A	80%	QUALIFIED
BIDDER B	75%	QUALIFIED
BIDDER C	90%	QUALIFIED
BIDDER D	99%	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	80.81	Level 1	10	90.81	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	8	28.32	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

cidb

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: $NQ = W2 \times SO / MS$

	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*

$90 \times (1 - (\frac{P - Pm}{Pm})) = 90 \times (1-(\frac{1\,050\,000 - 1\,000\,000}{1\,000\,000}) = 90 \times (1-0.05) = 90 \times 0,95 = 85,50$ points,

- *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

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.

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.).

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 19 : POST TENDER NEGOTIATION

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.

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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 20 : BID ADJUDICATION



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

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.

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 B Procurement planning

SECTION C Go to Market

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SECTION E: CONTRACT MANAGEMENT

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Appendices

COMMISSION OF INQUIRY INTO STATE CAPTURE

CHAPTER 21 : AWARD OF BUSINESS AND CONTRACTING PROCESS



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.

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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.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

cidb

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**

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:

- 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

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

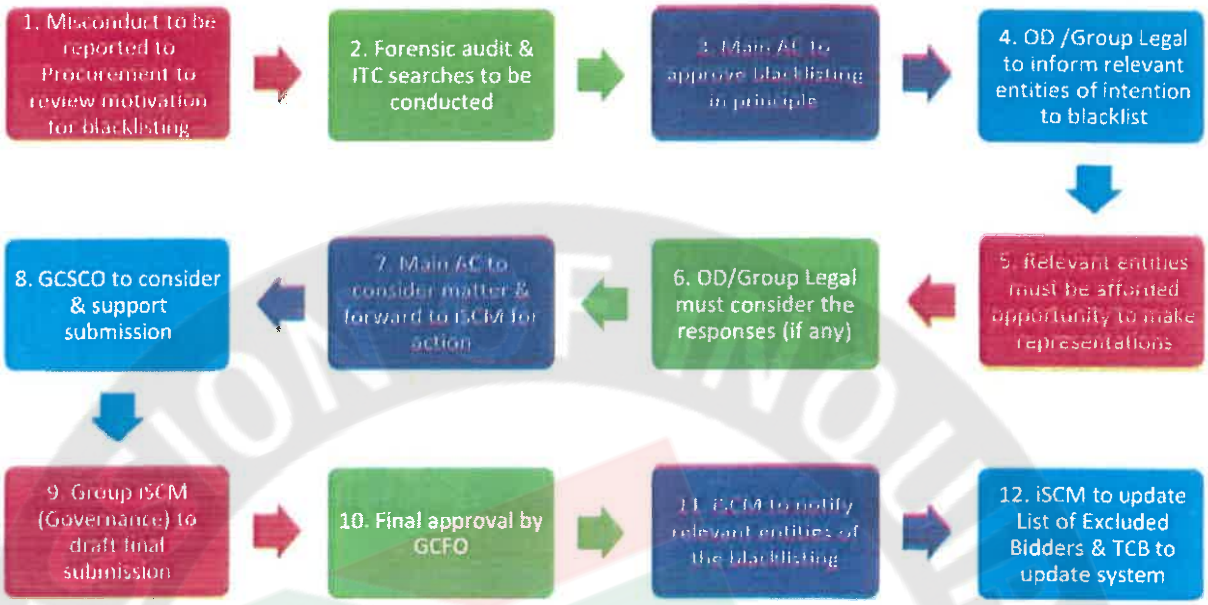


Figure [35] – The blacklisting process

SECTION A Background and Context

SECTION B Procurement planning

SECTION C Go to Market

SECTION D Evaluation and Adjudication

SECTION E Contract Management

SECTION F: GOVERNANCE STRUCTURES

Chapter 24: Functions of Governance Structures and Departments

Appendices

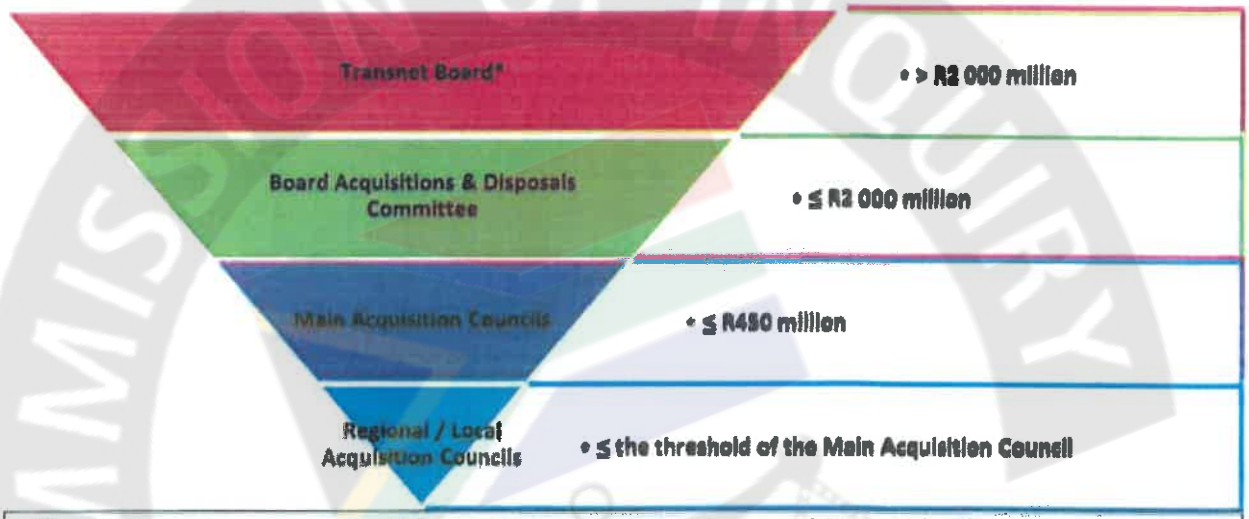
CHAPTER 24 : FUNCTIONS OF GOVERNANCE STRUCTURES AND DEPARTMENTS

cidb

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:

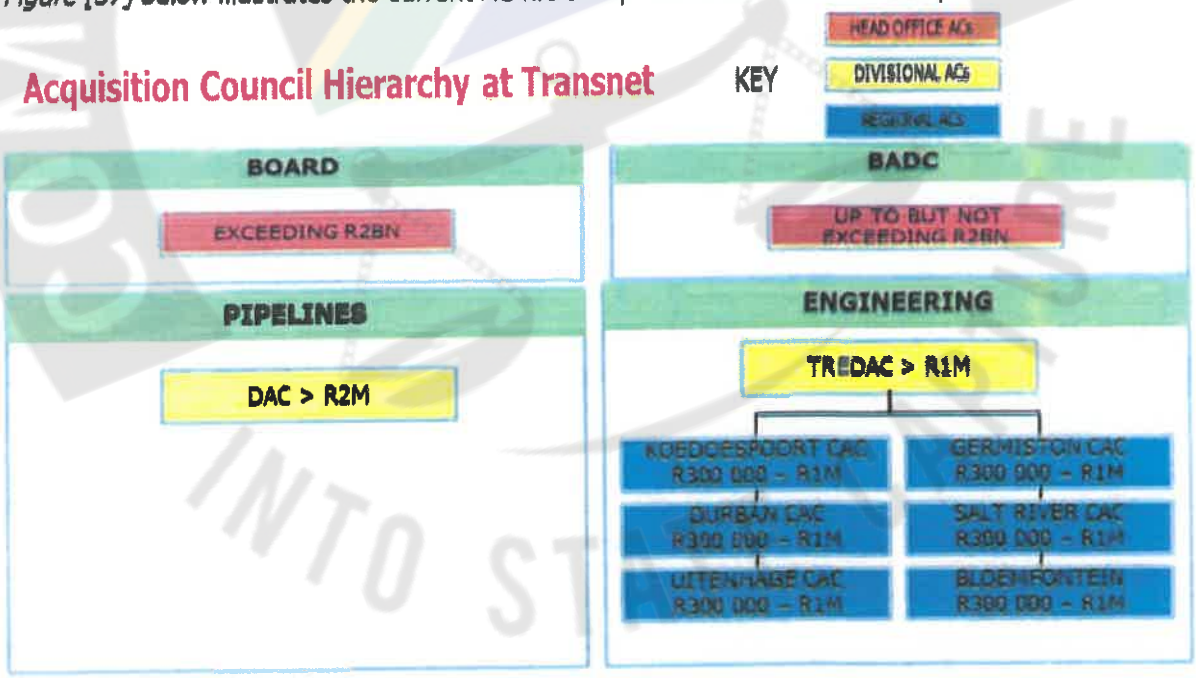
24.2.1 Extension of the validity period of bids;

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.



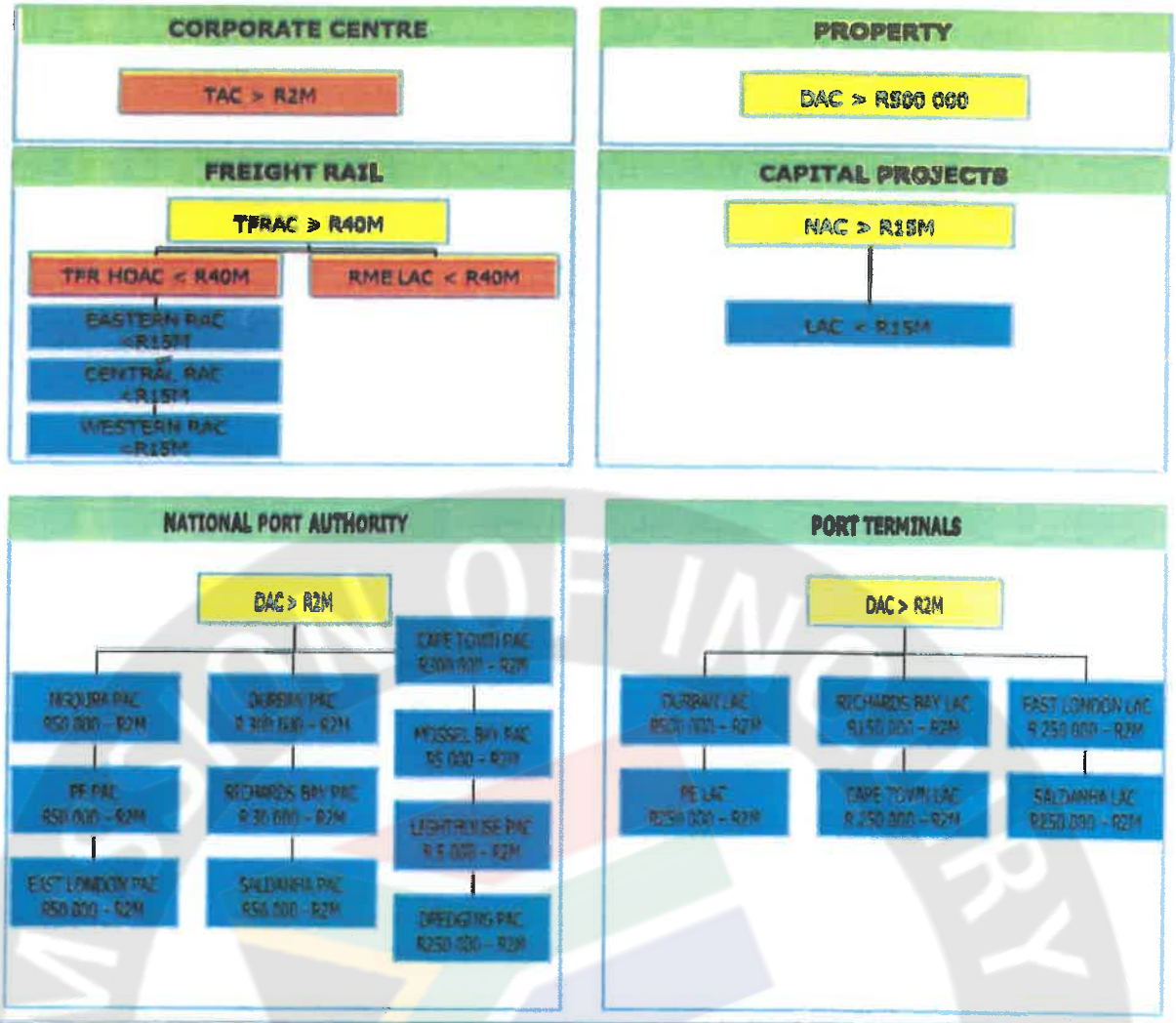


Figure [37] – Acquisition Council Hierarchy at Transnet

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);

(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

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.

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

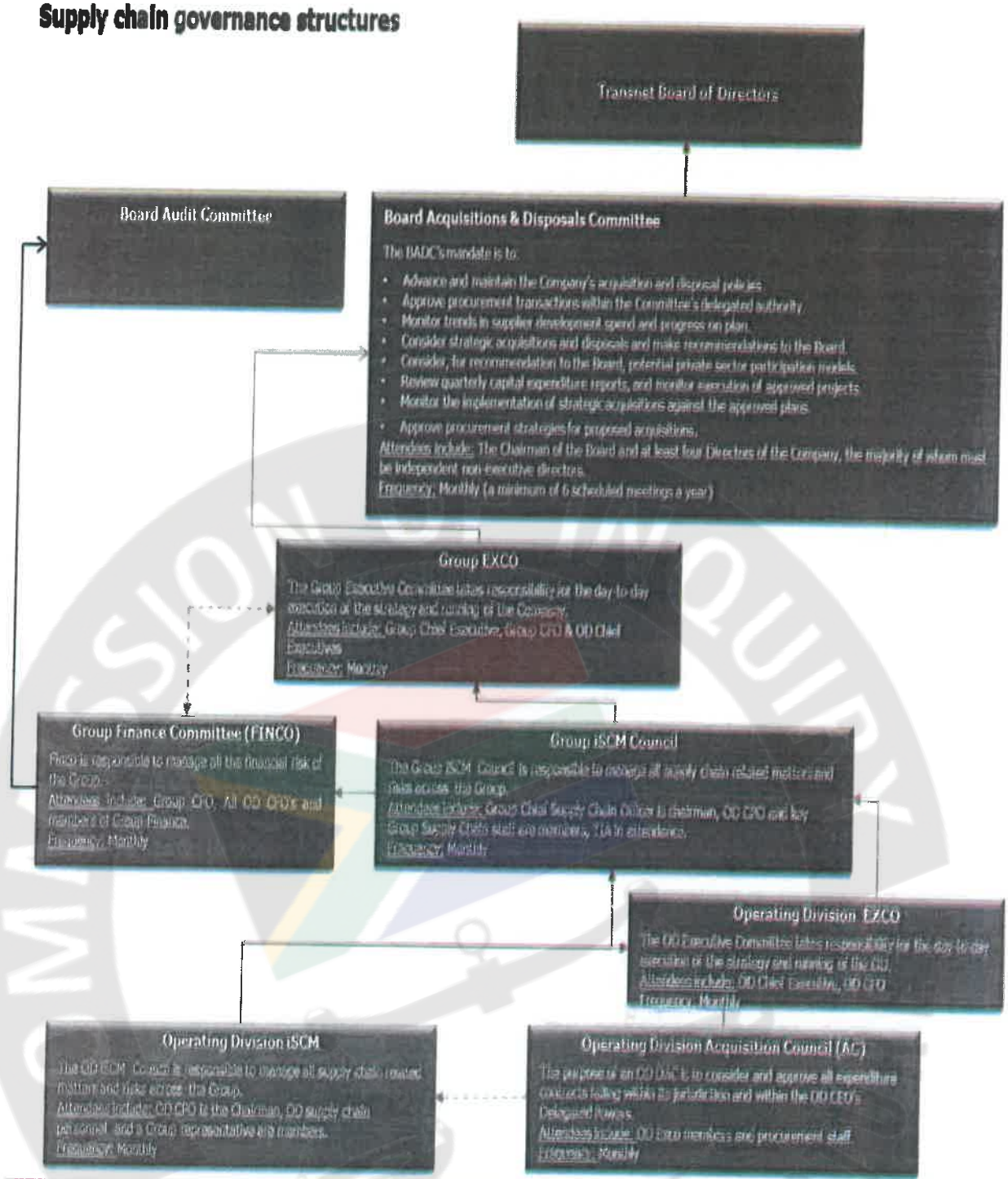


Figure [38] – iSCM Governance hierarchy

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]*):

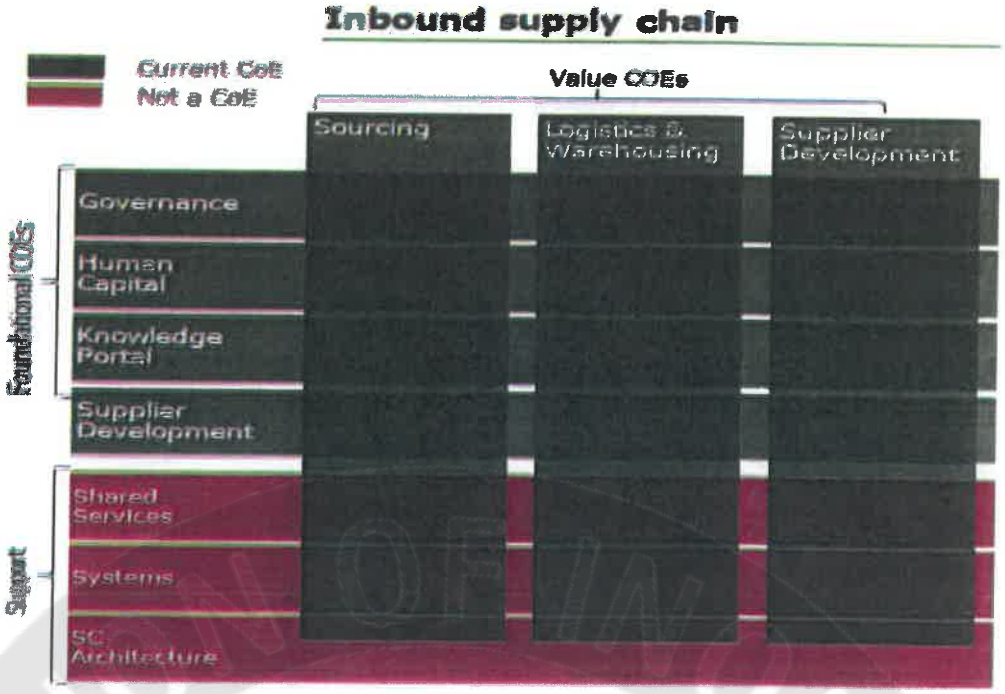


Figure [39] – Centres of Excellence

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.