

ANNEXURE "MSM 13"

MEMORANDUM

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To: Mr. Brian Molefe, Group Chief Executive
From: Mr. Shabonga Gama, Chief Executive, Transnet Freight Rail
Date: 06 June 2012

SUBJECT: REQUEST TO APPROVE THE SHORT LISTING OF THE TENDERERS THAT HAVE MET THE SUPPLIER DEVELOPMENT (SD) THRESHOLD OF 60% AND TO ISSUE LETTERS TO UNSUCCESSFUL TENDERERS THAT DID NOT MEET THE SD THRESHOLD FOR STAGE 1 OF THE EVALUATION PROCESS

PURPOSE:

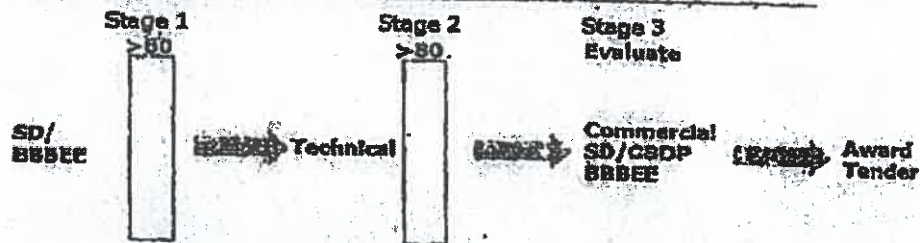
1. The purpose of this memo is to;

- Provide an update to the Transnet Group Chief Executive (GCE) on the progress on the tender evaluation process as indicated in the memo to the GCE dated 20 April 2012.
- Request for the GCE to approve the short listing of the tenderers that have met the SD threshold of 60% and to approve the issuing of letters to unsuccessful tenderers that did not meet the SD threshold for stage 1 of the evaluation process.

BACKGROUND:

2. BFP No HOAC-HO-7801 for the supply of 95 new Electric Locomotives for the General Freight Business (GFB) closed on the 17 April 2012. Nine (9) proposals were received from tenderers. The evaluation process was based on a 3 stage methodology as indicated below;

Three stage methodology (SD/BBEE & Technical thresholds)



- Prior to the stage 1 evaluations, the Cross Functional Evaluation Team (CFET) completed a responsiveness test on all bids received.
 - The stage 1 evaluation started with a B-BBEE process and was followed with the SD evaluation.
 - A pre-determined threshold of 60% was set for SD/B-BBEE which also included Further Recognition Criteria (FRC) evaluation. Tenderers SD/B-BBEE submissions needed to equal or exceed the 60% threshold for the submission to qualify for next stage of the evaluation process.
3. Tenderers were required to furnish proof of their B-BBEE status to Transnet SOC Ltd; failure to do so would result in a score of zero being allocated for B-BBEE. Furthermore, B-BBEE

Accreditation Certificates have been issued by verification agencies which are either 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.

4. B-BBEE rating certificates in respect of JV partners and / or subcontractor(s), as well as a breakdown of the distribution of the B-BBEE status were to be furnished with the tenderers' submissions to enable fair evaluation of all submissions received. Incorporated Joint Ventures also had to provide a consolidated B-BBEE certificate for the legal entity. Unincorporated Joint Ventures were required to submit B-BBEE certificates for all of the consortium partners. As such the foreign companies would not have provided a B-BBEE certificate and therefore would not score any B-BBEE points.

DISCUSSION:

5. Whilst conducting the administrative responsiveness test, the SD Cross Functional Evaluation Team (CFET) noted that some tenderers did not submit annexures as required in the RFP and that some tenderers appeared not to understand the requirements of the annexures. Approval to communicate was sought from the Secretariat and all tenderers were provided with the opportunity to clarify the issues raised.
6. The Transnet SD CFET then commenced with B-BBEE evaluations; based on the criteria included in the RFP and the BADC submission, tenderers were to be evaluated on SD criteria in stage 1; SD specifics accounted for 80% whilst B-BBEE and FRC accounting for 10% each. SD information was extracted from the tenderers as well as the relevant annexures and whilst evaluating the SD/B-BBEE based on the criteria it emerged that there was a local supplier with an invalid B-BBEE certificate (not rated by a SANAS accredited verification agent or an IRBA-registered auditor) and a foreign supplier who did not have a local office. It then followed that this methodology (if it included the B-BBEE certificate and FRC) would have been unfair to both the local supplier and foreign suppliers.
7. In light of the above, the SD CFET proposed two options for stage 1 of the evaluation process;
- a) Option 1 - As part of stage 1 of the SD evaluation and as per the RFP and the BADC submission, the SD evaluation includes B-BBEE and FRC. The effect of this is that foreign tenderers that do not have local representation are prejudiced and will score zero on B-BBEE. This option does not support the B-BBEE Codes of Good Practice clause which allows for such foreign companies, if registered locally (as start-up enterprises) to be deemed to have a B-BBEE status of "Level 4 contributor" in the 1st year of operation only. Based on option 1, the following three (3) tenderers met the minimum SD threshold of 60%.
1. Siemens
 2. Bombardier
 3. SSMM Consortium
- b) Option 2 - As part of stage 1 of the SD evaluation evaluate only SD specifics (exclude B-BBEE and FRC) in stage 1 and evaluate B-BBEE and FRC in stage 3. Given the nature of the RFP which attracted foreign companies, such companies could not be fairly evaluated on their B-BBEE status and FRC in stage 1. As per the RFP, stage 3 caters for the evaluation of B-BBEE and FRC. Based on option 2, the following five (5) tenderers met the minimum SD specific threshold of 60%.
1. Siemens
 2. Bombardier
 3. CSR Zhuzhou
 4. Nelesco 85
 5. SSMM Consortium
8. It must be noted that the intention of SD is to address the NGP objectives which is explicitly stated in the RFP as "Transnet's expectation was that a minimum SD target of 60% (sixty per

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cent) of the respondent's bid value be offered as part of the Supplier Development (SD) Bid Document to be submitted" i.e. excluding B-BBEE and FRC. The RFP, in stage 1 also refers to B-BBEE and FRC which is in conflict with the initial spirit of SD. As indicated in the RFP, FRC is 'forward looking' and would be based on the current information as reflected in the current BBEE certificate. As such, foreign companies and South African companies not providing SANAS/IRBA accredited B-BBEE certificates will be prejudiced. The SD CFET supported by the Transnet Internal Audit high tender review representatives opted to use option 2 based on the unfairness of discounting foreign companies with no SA representation that will score zero on B-BBEE in option 1.

6.1 The above recommendation entails the following risks:

- a) If any of the tenderers challenge the process and request for a review of the evaluation, Transnet may be perceived to have deviated from the evaluation in the RFP thereby allowing two (2) more tenderers to stage 2.
- b) If IFR exercises option 1, the other tenderers could claim that a literal interpretation of the RFP criteria is contrary to the stated spirit of SD.

6.2 The SD CFET is of the opinion that this risk is mitigated by the fact that;

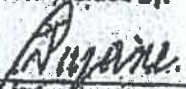
- a) all the tenderers were subjected to the evaluation criteria,
- b) the criteria were applied consistently and,
- c) no tenderer is prejudiced based on their (foreign) location as all the tenderers are evaluated based on what they can deliver in line with the SD evaluation.

RECOMMENDATION

9) It is recommended that the GCE:

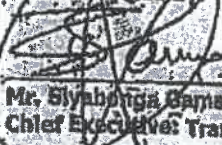
- Approves the short listing of the five (5) tenderers that have met the minimum SD evaluation threshold of 60% as evaluated in option 2 above.
- Approves the issuing of letters to unsuccessful tenderers due to their bids not meeting the minimum SD evaluation threshold for stage 1 which is based on option 2 above

Recommended by:


 Mr. Thamsanqa Jiyane
 Chief Procurement Officer: Transnet Freight Rail

08 JUNE 2012
 Date

Recommended by:


 Mr. Siyabonga Barna
 Chief Executive: Transnet Freight Rail

2012.06.08
 Date

Approved by:


 Mr. Brian Molefe
 Group Chief Executive: Transnet SOC Limited

8.6.12.
 Date