

Transnet Bidder / Supplier Integrity Pact

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## **INTEGRITY PACT**

Between

### **TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

and

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Registration Number: \_\_\_\_\_

("Bidder" / "Supplier")

Transnet Bidder / Supplier Integrity Pact

**Transnet SOC Ltd**  
Registration Number  
1990/000900/30

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Group Company Secretary: ANC Ceba

[www.transnet.net](http://www.transnet.net)

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## **PREAMBLE**

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor. The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with the undertakings contained within this Integrity Pact, should they want to be registered as a Transnet vendor.

### **1. Objectives**

Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:

1.1 Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and

1.2 Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

### **2. Commitments of Transnet**

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder,

either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.

2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the Transnet Bidder / Supplier Integrity Pact registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.

2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process.

2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

### **3. Obligations of the Bidder / Supplier**

3.1 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:

3.1.1 The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process.

3.1.2 The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

3.1.3 The acceptance and giving of gifts may be permitted provided that:

- a) the gift does not exceed R750 (seven hundred and fifty Rand) in retail value;
- b) a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;

- c) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;
- d) a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and
- e) Transnet Bidder / Supplier Integrity Pact
- f) a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.

3.1.4 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.

3.1.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.

3.1.5 The Bidder / Supplier will not commit any criminal offence under the relevant anticorruption laws of South Africa or any other country. Furthermore, the Bidder /Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

3.1.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.

3.1.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.

3.1.8 The Bidder / Supplier shall furnish Transnet with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of conduct.

3.1.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

#### **4 Disqualification from Bidding Process**

4.1 If the Bidder / Supplier has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.

4.2 If the Bidder / Supplier has committed a transgression through a violation of section 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.

4.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

#### **5 Grounds for Blacklisting**

5.1 A Bidder / Supplier may be blacklisted where it has submitted a bid, or concluded a contract in the capacity of agent or subcontractor or has been associated with such a Bid or contract and the Bidder / Supplier has:

- a) withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

- b) after being notified of the acceptance of its Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming a part of the bid documents;
- c) carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) offered, promised or given a bribe in relation to the obtaining or execution of the
- e) contract;
- f) acted in a fraudulent or improper manner or in bad faith towards Transnet or any
- g) Government Department or towards any public body, enterprise or person;
- h) made any incorrect statement in a certificate or other communication with regard to the Local Content of its Goods or its B-BBEE status and is unable to prove to the
- i) satisfaction of Transnet that:
  - (i) it made the statement in good faith honestly believing it to be correct;
  - and
- j) before making such statement it took all reasonable steps to satisfy itself of its correctness;
- k) caused Transnet damage, or to incur costs in order to meet the contractor's;
- l) requirements and such costs could not be recovered from the contractor; and
- m) litigated against Transnet in bad faith.

5.2 As soon as Transnet detects misconduct by a Bidder / Supplier falling within one of the grounds for blacklisting, the matter must immediately be reported to the Procurement Division. The Procurement Division will review the motivation for blacklisting. If possible grounds for blacklisting exist; a forensic audit may be conducted to establish whether the grounds for blacklisting are valid.

5.3 Should the forensic report establish that possible grounds for blacklisting exist; the matter will be referred to the Transnet Legal Department for further action. The Transnet Legal Department will inform the Bidder / Supplier, its directors and all associate entities by registered mail of the intention to blacklist. The letter will also indicate whether Transnet intends to cancel any existing contracts with the Bidder / Supplier.

5.4 The Bidder / Supplier will be afforded a period of 14 (fourteen) working days within which to make representation as to why they should not be blacklisted or why existing contracts should not be cancelled. After the 14 (fourteen) day period, the Transnet Legal Department will consider and deal with the responses (if any) from the Bidder / Supplier.

## **6 Previous Transgressions**

6.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.

6.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer Annexure "A").

## **7 Sanctions for Violations**

Transnet shall also take all or any one of the following actions, wherever required to:

7.1 Immediately exclude the Bidder / Supplier from the bidding process or call off the precontract negotiations without giving any compensation the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue.

7.2 Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier.

7.3 Recover all sums already paid by Transnet.

7.4 Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest.

7.5 Cancel all or any other contracts with the Bidder / Supplier.

7.6 Exclude the Bidder / Supplier from entering into any bid with Transnet in future.

## **8 Conflicts of Interest**

8.1 A conflict of interest includes, inter alia, a situation in which:

8.1.1 A Transnet employee has a personal financial interest in a bidding / supplying entity;

8.1.2 A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the

employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism;

8.1.3 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:

- a) Private gain or advancement; or
- b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form. Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.

8.2 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:

- a) must disclose the interest and its general nature, in the Request for Proposal ("RFX")
- b) declaration form; or
- c) must notify Transnet immediately in writing once the circumstances has arisen.

8.3 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

## **9 Monitoring**

9.1 Transnet will be responsible for appointing an independent Monitor to:

- a) Conduct random monitoring of compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for less than R100,000.000 (one hundred million Rand) in value;
- b) Monitor compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for greater than R100, 000,000.00 (one hundred million Rand) in value; and
- c) Investigate any allegation of violation of any provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier, irrespective of value.

9.2 The Monitor will be subjected to Transnet's Terms of Conditions of Contract for the Provision of Services to Transnet, as well as to Transnet's Supplier Code of Conduct.

## **10 Examination of Financial Records, Documentation and/or Electronic Data**

10.1 For the purpose of Monitoring, as stipulated above, the Monitor shall be entitled to:

- a) Examine the financial records, documentation and or electronic data of the Bidder / Supplier / Transnet. The Bidder / Supplier / Transnet shall provide all requested information / documentation / data to the Monitor and shall extend all help possible for the purpose of such examination.

## **11 Dispute Resolution**

11.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted
- b) without proper grounds;
- c) **Perjury:** where a supplier make a false statement either in giving evidence or on an affidavit;
- d) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- e) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

## **12 General**

12.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.

12.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.

12.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.

12.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.

12.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed. The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

**SIGNED ON BEHALF OF EACH PARTY AS FOLLOWS:**

**TRANSNET**

**Signed at:** \_\_\_\_\_ **on** \_\_\_\_\_ **201**\_\_

**Signature:** \_\_\_\_\_

**(duly authorised)**

**Full name and surname:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**BIDDER / SUPPLIER**

**Signed at:** \_\_\_\_\_ **on**

\_\_\_\_\_ **201**\_\_

**Signature:** \_\_\_\_\_

**(duly authorised)**

**Full name and surname:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Annexure A**

**PREVIOUS TRANSGRESSIONS / BREACH OF LAW**

**FOR A PERIOD OF:** \_\_\_\_\_

**NAME OF ENTITY:** \_\_\_\_\_

**I/We** \_\_\_\_\_

do hereby certify that I/we have/have not been found guilty during the preceding 5 (five) years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. Where found guilty of such a serious breach, please disclose:

**NATURE OF BREACH:**

\_\_\_\_\_  
\_\_\_\_\_

**DATE OF BREACH:** \_\_\_\_\_

Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

**SIGNED at** \_\_\_\_\_ **on this** \_\_\_\_\_ **day**

**of** \_\_\_\_\_ **20** \_\_\_\_\_

**SIGNATURE OF WITNESS:** \_\_\_\_\_

**NAME OF WITNESS:** \_\_\_\_\_

**SIGNATURE OF RESPONDENT:** \_\_\_\_\_