Transnet Freight Rail
an Operating Division of TRANSNET SOC LTD
(Registration No. 1990/000900/30)

Branch Line Concessions

Request for Proposals (RFP)

Volume 1 - Instructions to Respondents and Bidders

Phase 1 Concession Opportunity – Douglas-Belmont Branch Line

RFP NUMBER: BLC/Douglas-Belmont/2015/01
ISSUE DATE: 16 February 2015
RESPONSE CLOSING TIME AND DATE: 10h00 on 03 March 2015 (see section 4)
PROPOSAL SUBMISSION TIME AND DATE: 10h00 -14h00 on 27 May 2015 (see section 6)
PROPOSAL SUBMISSION ADDRESS: TFR, Ground Floor Foyer, Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg

PROJECT OFFICER: Nothando Zako
E-MAIL ADDRESS: blconcession1@transnet.net
                nothando.zako@transnet.net
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## 1. Section 1 – Preliminary

### 1.1. Glossary of terms for RFP Volumes 1, 2, 4 and 5

<table>
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<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access Route</td>
<td>means that portion of the Core Network which the Concessionaire will be authorised to traverse, subject to the terms of the TOM Agreement, in order to access a marshalling yard (or hand-over point) on the Core Network to deliver and/or collect wagons, as more fully described in the Concession Agreement and Ancillary Agreements;</td>
</tr>
</tbody>
</table>
| Ancillary Agreements | means the suite of agreements to the Concession Agreement, being the:  
(a) Track Access Agreement;  
(b) Train Operations and Management Agreement;  
(c) Safety Interface Agreement(s); and  
(d) Land Lease Agreement (if any); |
| Alternative Proposal | has the meaning set out in section 6.4 of this RFP Volume 1; |
| B-BBEE | has the meaning ascribed to the definition of “broad-based black economic empowerment” in the B-BBEE Act; |
| B-BBEE Act | means the Broad-Based Black Economic Empowerment Act, 53 of 2003 and regulations promulgated thereunder, as may be amended from to time to time; |
| BEE | means Black Economic Empowerment referring to Government’s programme to affirm historically disadvantaged persons as more fully expressed in B-BBEE legislation and policies; |
| Bidder | means a Respondent who has submitted a Proposal and a Bid Bond; |
| Bid Bond | means the security to be submitted by a Respondent to Transnet pursuant to section 6.8 of this RFP Volume 1, in the form and substance set out in Part 3 (Bid Bond) of Annexure C (Proposal Forms) to this RFP Volume 1 (Proposal Returnables); |
| BLOM | means a business unit of TFR, established to provide the BLOM Services; |
| BLOM Services | means the services to be provided by the BLOM to the Concessionaire in respect of the Douglas Branch Line and the Access Route under the TOM Agreement, for the provision of services including –  
(a) train operating and management services; and  
(b) haulage services; |
<table>
<thead>
<tr>
<th><strong>Branch Line(s)</strong></th>
<th>means a rail line forming part of the Rail Network, which branches off and connects to the Core Network;</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Branch Line Cluster(s)</strong></td>
<td>means two or more Branch Lines capable of being operated as a single operating unit;</td>
</tr>
<tr>
<td><strong>Branch Line Network</strong></td>
<td>means a part of the Rail Network (excluding the Core Network) designated by Transnet from time to time as its Branch Line Network, as reflected in Figure 2 in Annexure A of this RFP Volume 1;</td>
</tr>
<tr>
<td><strong>Briefing Notes</strong></td>
<td>means a circular(s) of the kind referred to in section 6.12 of this RFP Volume 1;</td>
</tr>
<tr>
<td><strong>Commercial Close</strong></td>
<td>means the date on which the Concession Agreement and Ancillary Agreements are signed;</td>
</tr>
<tr>
<td><strong>Concession</strong></td>
<td>means the opportunity for a Concessionaire to provide rail transport services in respect of the Douglas Branch Line utilising the rail infrastructure of the Branch Line, where such party will, as set out in the Transaction Agreements, (i) operate rail transport services, (ii) maintain the rail infrastructure (and where necessary, design and construct or refurbish rail infrastructure), (iii) provide all funding necessary for operational expenditure and capital investment and renewals, (iv) generate income from the particular opportunity, and (v) undertake socio-economic and enterprise development initiatives to revitalise (rural and urban) economies along the Douglas Branch Line;</td>
</tr>
<tr>
<td><strong>Concession Agreement</strong></td>
<td>means a written agreement to be concluded between Transnet and a Concessionaire in respect of the Concession, the form of which is set out in RFP Volume 3 (Transaction Agreements);</td>
</tr>
<tr>
<td><strong>Concession Opportunity</strong></td>
<td>means the opportunity to (i) undertake the Concession, (ii) to lease the leased land contemplated in section 2.3.1 of this RFP Volume 1, and (iii) to submit a property offer for adjacent properties contemplated in section 2.3.4 of this RFP Volume 1;</td>
</tr>
<tr>
<td><strong>Concessionaire</strong></td>
<td>means the successful Bidder to whom Transnet awards the Concession and with whom a Concession Agreement and Ancillary Agreements are concluded;</td>
</tr>
<tr>
<td><strong>Concessions Programme</strong></td>
<td>means the process initiated by Transnet to procure the concession of its Branch Line Network;</td>
</tr>
<tr>
<td><strong>Confidential Information Provided</strong></td>
<td>has the meaning ascribed to it in section 1.2.12;</td>
</tr>
<tr>
<td><strong>Core Network</strong></td>
<td>means a part of the Rail Network (excluding the Branch Lines) designated by Transnet from time to time as its Core Network, as reflected in Figure 2 of Annexure A to this RFP Volume 1;</td>
</tr>
<tr>
<td><strong>Cover Letter Format</strong></td>
<td>means the form of the covering letter to a Proposal in the form and substance provided in Part 1 (Form of Cover Letter) of Annexure C (Proposal Forms) to this RFP Volume 1;</td>
</tr>
<tr>
<td><strong>Data Room Information</strong></td>
<td>has the meaning as set out in section 5.4.1 of this RFP Volume 1;</td>
</tr>
</tbody>
</table>
Douglas Branch Line means the Branch Line running between Douglas and Belmont, as described in Annexure A of this RFP Volume 1;

EOI means the Expression of Interest issued by Transnet in September 2010 as part of the current branch lines concessions process;

Financial Close means the first business day following the date on which all conditions precedent to the Concession Agreement are fulfilled or waived, as the case may be;

Government means the government of the Republic of South Africa;

Key Element(s) means, other than the BLOM Services, one or more of the seminal elements of the Concession to be undertaken by, or at the instance, of the Concessionaire, being maintenance of the assets to be concessioned comprising the identified land, improvements thereon and the physical rail infrastructure facilities (including the permanent way and stations), and where applicable refurbishment and/or upgrading of such physical rail infrastructure;

Mandatory Compliance Requirements has the meaning set out in section 7.2.1 of this RFP Volume 1;

Marshalling means the process of assembling or building trains into full train loads for transit, or disassembling full train loads for distribution;

Marshalling Yard means a depot or rail yard or such other place used for Marshalling;

Member means a Sponsor, Relevant Entity, and any other member identified by the Respondent as such;

Minimum Volume Requirements means the volumes transported by TFR on the branch line as reflected in RFP Volume 4, section 4.2.1 “Existing Volumes”;

PFMA means the Public Finance Management Act, 1 of 1999 and regulations promulgated thereunder, as may be amended from to time;

Phase 1 Concession Opportunities means the initial opportunity being offered by Transnet to interested parties to provide rail freight services on a concession basis in respect of Douglas–Belmont branch line;

Preferred Bidder means, in relation to the Concession, the Bidder(s), who is or are selected by Transnet, following the evaluation of Proposals, as the party(ies) with whom to pursue negotiations to conclude a Concession Agreement;

Proposal means the bid submitted by a Respondent in response to this RFP to undertake the Concession;

Proposal Submission Address means TFR, Ground Floor Foyer, Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg;

Proposal Submission Date means 10:00 -14:00 on 27 May 2015, being the last day on which a Proposal may be submitted;
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rail Network</td>
<td>means collectively the Core Network and the Branch Line Network, owned by Transnet within the Republic of South Africa;</td>
</tr>
<tr>
<td>Recipient</td>
<td>means a person (natural or juristic) who, in response to the advertisement for this RFP and having furnished its contact details in the prescribed manner to Transnet, receives this RFP Volume 1 from Transnet;</td>
</tr>
<tr>
<td>Relevant Entity</td>
<td>means any party (natural or juristic) referenced by a Respondent, in the Proposal, as the one who will undertake or is committed to providing one or more of the Key Elements. The BLOM is not and will not be construed as a Relevant Entity for purposes of the RFP;</td>
</tr>
<tr>
<td>Reserve Bidder</td>
<td>means a Bidder(s) who is or are awarded reserve bidder status by Transnet in respect of the Concession;</td>
</tr>
<tr>
<td>Respondent</td>
<td>means a Recipient, whether:</td>
</tr>
<tr>
<td></td>
<td>(a) as a single legal entity or person; or</td>
</tr>
<tr>
<td></td>
<td>(b) in a joint venture, consortium or similar arrangement of two or more parties,</td>
</tr>
<tr>
<td></td>
<td>who, having submitted a Response receives RFP Volumes 2 to 5 from Transnet;</td>
</tr>
<tr>
<td>Response</td>
<td>means the application to be submitted by a Recipient, no later than the Response Closing Date to receive RFP Volumes 2 to 5;</td>
</tr>
<tr>
<td>Response Closing Date</td>
<td>means 10:00 on 03 March 2015, being the last day on which a Response to this RFP Volume 1 may be submitted;</td>
</tr>
<tr>
<td>Returnable</td>
<td>means the documentation and information required to be submitted by Respondents in response to RFP Volume 2 (Proposal Returnables);</td>
</tr>
<tr>
<td>RFP</td>
<td>means this request for proposals issued by Transnet as more fully described in section 3 of this RFP Volume 1;</td>
</tr>
<tr>
<td>ROI</td>
<td>means the Registration of Interest issued by Transnet in June 2010 as part of the current branch lines concessions process;</td>
</tr>
<tr>
<td>RSR Act</td>
<td>means the Railway Safety Regulator established in terms of the RSR Act;</td>
</tr>
<tr>
<td>RSR</td>
<td>means the National Railway Safety Regulator Act, 16 of 2002, including any and all regulations promulgated pursuant thereto from time to time;</td>
</tr>
<tr>
<td>Safety Permit</td>
<td>has the meaning ascribed to it in the RSR Act;</td>
</tr>
<tr>
<td>SMME</td>
<td>means small medium and micro enterprises;</td>
</tr>
<tr>
<td>SELD</td>
<td>means socio-economic development initiatives towards job creation, skills development, enterprise development, community development, and investment in revitalising local economies to benefit the local communities where the branch lines are located;</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Sponsor</td>
<td>means any member of a Respondent, identified in the Proposal as either holding equity or committed to acquiring equity in the Concessionaire;</td>
</tr>
<tr>
<td>Standard Proposal</td>
<td>has the meaning set out in section 6.3 of this RFP Volume 1;</td>
</tr>
<tr>
<td>Targeted Groups</td>
<td>for purposes of this Concession, targeted groups shall refer to entities that are either black women-owned, black youth-owned, and/or businesses owned by people living with disabilities. Entities in this regard include trusts, organisations, or privately incorporated entities. For purposes of this Concession, the targeted groups shall be organisations whose beneficiaries are located in and around where the branch line is located, or within the province where the branch line is located.</td>
</tr>
<tr>
<td>TFR</td>
<td>means Transnet Freight Rail, an operating division of Transnet;</td>
</tr>
<tr>
<td>TOM Agreement</td>
<td>means the train operations management agreement comprising an Ancillary Agreement to be concluded between the Concessionaire and the BLOM for the provision of the BLOM Services to the Concessionaire by the BLOM;</td>
</tr>
<tr>
<td>Track Access</td>
<td>means the limited and controlled access to the Core Network, to be granted by Transnet to the Concessionaire (in terms of a track access agreement) to enable that Concessionaire to access a Marshalling Yard and/or wagon exchange point, from a Branch Line or Branch Line Cluster;</td>
</tr>
<tr>
<td>Transaction Agreements</td>
<td>means the Concession Agreement, the Ancillary Agreements and any other agreement(s) which the Concessionaire may conclude in respect of the Concession which Transnet considers material or significant to the Concession;</td>
</tr>
<tr>
<td>Transnet</td>
<td>means Transnet SOC Ltd (registration number 1990/000900/30) and any operating division thereof, as may be applicable from time to time.</td>
</tr>
</tbody>
</table>
1.2. Important notice

1.2.1. Information Provided

(a) Transnet provides the information which is contained in or sent with this RFP or which is made available in connection with any further enquiries (collectively “the Information Provided”), in good faith. This document (which expression shall include all other written information made available during the Concessions Programme procurement process) is being made available by Transnet to Respondents and potential Bidders on the condition that it is used solely for such procurement process and for no other purpose.

(b) No oral information pertaining to the Concession Opportunity or the Concessions Programme may be relied upon by any Respondent(s) or Bidder(s). Furthermore oral information does not and will not constitute Information Provided.

1.2.2. Transnet’s Obligation in relation to the Process, Liability to Costs

(c) All costs incurred by Recipients, Respondents, Bidders, Relevant Entities, or any other person in relation to any stage of the procurement and/or negotiation process in respect of the Concessions Programme are for such Recipient’s, Respondent’s, Bidder’s, Relevant Entity’s, or other person’s account alone. Transnet assumes no liability whatsoever in respect of such costs.

(d) Transnet is not obliged to accept any Proposal or Response to this RFP or to appoint a Preferred Bidder with or without a Reserve Bidder. Although this RFP describes the process, programme and anticipated timetable relating to the Concessions Programme and the current requirements of Transnet, Transnet reserves the right to terminate such programme, or to modify any of these matters from time to time without incurring any liability for costs to any person.

1.2.3. Format of Information Provided

This RFP and its appendices will be made available in hard copy and electronic format to Respondents on the basis that Volume 1 (Instructions to Bidders), Volume 2 (Proposal Returnables), Volume 4 (Concession Information Overview) and Volume 5 (Data Room Information) are in a read only format and Volume 3 (Transaction Agreements) with Annexures B and C of RFP Volume 1 in Microsoft word format.

1.2.4. Role of advisers to Transnet

(a) Transnet has engaged consultants in respect of the Concessions Programme, who are acting as advisers to Transnet to assist Transnet in the procurement process for the concessions of selected Branch Lines and/or Branch Line Clusters and accordingly, will not be responsible to any person other than Transnet in respect of the Concessions Programme. Neither the consultants nor any legal adviser to Transnet in relation to the Concessions Programme, shall provide any opinion to or for the benefit of any Recipient, Respondent, Bidder, Relevant Entity or any lender.

(b) Transnet has engaged the following advisors in respect of the Concessions Programme:

(i) Zambezi Capital (Pty) Ltd and Quartile Capital (Pty) Ltd consortium to provide lead transaction advisor, financial and socio-economic development modelling and analysis;
1.2.5. The RFP does not constitute an investment recommendation

This document is provided solely for the purpose set out in this notice and Section 3 below, and is not intended to form any part or basis of any investment decision by Recipients, Respondents or Bidders. The Recipients, Respondents, Bidders or any other party should not consider this document as an investment recommendation by Transnet or any of its officials, officers, employees or advisers. Each Recipient, Respondent, Bidder and any other party to whom this document (and other later documents) is made available must make his, her or its own independent assessment of the Concession Opportunity(ies) made available under the Concessions Programme after making such investigations and taking such professional advice as he, she or it deems necessary. Neither the receipt of this document or any related document by any person, nor any information contained in such documents or distributed with them or previously or subsequently communicated to any Recipient, Respondent or Bidder or any advisers thereof, is to be taken as constituting the giving of investment advice by Transnet or its officials, officers, employees or advisers.

1.2.6. No Transnet warranty as to completeness of information

Whilst reasonable care has been taken in preparing this document and other related documents, they do not purport to be comprehensive or to have been verified by Transnet, its officials, officers, employees or advisers or any other person. Neither Transnet nor any of its officials, officers, employees or advisers accepts any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated in any of the aforementioned document(s).

1.2.7. No Transnet warranty or representation on information

Save to the extent provided in Volume 3 (Transaction Agreements) no representation or warranty, express or implied, is or will be given by Transnet, or any of its officers, employees, servants, agents or advisers with respect to the information or opinions contained in this or any other document issued in relation to the Concessions Programme or on which any such document is based. Any liability in respect of such representations or warranties, howsoever arising is hereby expressly disclaimed.

1.2.8. Right to modify, amend or terminate the procurement process

Transnet reserves the right to amend, modify or withdraw this RFP, or to amend, modify or terminate any of the procedures or requirements of the Concession procurement phase (which terminates on the earlier of Transnet notification to that effect, or Commercial Close) at any time and from time to time, without prior written notice and without liability to compensate or reimburse any party or person.

1.2.9. No Solicitation of Transnet Staff

In an effort to maintain the integrity of the Concessions Programme procurement process, no Concessionaire, or any of its agents may make any offer(s) of employment to any Transnet officer, official or employee or staff who were directly engaged in the procurement of the Concession Opportunity for a period of 3 (three years) from Commercial Close.

1.2.10. Stipulations are for sole benefit of Transnet
Any requirement set out in this RFP regarding the content of a Response or Proposal is stipulated for the sole benefit of Transnet, and save as expressly stated to the contrary, may be waived by Transnet at its sole discretion at any stage in the Concession procurement process. Transnet reserves the right to adopt any non-proprietary Response or Proposal (or aspect thereof) made by any Bidder at any time and to include such Response or Proposal in any Concession procurement document which may or may not be made available to other Bidders.

1.2.11. No Gifts

If any Recipient, Respondent, Bidder, or any of their respective employees, advisers or agents gives or offers to give any gift to any public official of Government, or officer or employee of Transnet or consultant (adviser) to Transnet on the Concessions Programme either directly or through an intermediary then such Recipient, Respondent, Bidder and/or offending person, at the discretion of Transnet, may be disqualified forthwith from participating in the procurement and implementation of the Concessions Programme.

1.2.12. Confidentiality of Information

Subject to the Respondent Confidentiality Undertaking to be signed by each Respondent pursuant to Annexure B to this RFP, each Respondent and Recipient of this RFP agrees to keep confidential any information of a confidential nature provided to it pursuant to the Concession procurement process, so designated by Transnet (the "Confidential Information Provided"). The Confidential Information Provided may be made available to a Recipient’s, Respondent’s, Bidder’s, and/or a Relevant Entity’s, employees and professional advisers and financiers who are directly involved in the appraisal of such information (who must be made aware of the obligation of confidentiality) but shall not, either in the whole or in part, be copied, reproduced, distributed or otherwise made available to any other party in any circumstances without the prior written consent of Transnet, nor may it be used for any other purpose than that for which it is intended. These requirements do not apply to any information that is or becomes publicly available or is shown to have been made so available (otherwise than through a breach of a confidentiality obligation). Recipients, Respondents, Bidders, Relevant Entities and their constituent members, agents and advisers, may be required to sign confidentiality agreements (in such form as Transnet may require from time to time). All Confidential Information Provided (including all copies thereof) remains the property of Transnet and must be delivered to Transnet on demand. Further, by receiving this RFP each Respondent, Recipient, Bidder and Relevant Entity agrees to maintain its submission in response to this RFP confidential from third parties other than Transnet, its officials, officers, employees and advisers who are required to review the same for the purpose of the Concession procurement process.

1.2.13. Applicability of Laws

This RFP is issued, and all subsequent procurement documentation, if any, including amendments thereto and Briefing Notes will be issued subject to applicable legislation in South Africa. Recipients, Respondents, Bidders, Relevant Entities and all persons responding to this RFP and other subsequent procurement documentation are expected to comply with applicable legislation and laws, in participating in this procurement.
2. Section 2 – The Concession

2.1. Background and Objectives of the Concessions Programme

2.1.1. Background to Concessions Programme

(a) This Concessions Programme forms part of Transnet’s Private Sector Participation Plan (PSP), identified within the Transnet seven year Corporate Plan. Transnet is embarking on a process for the concessions of the Concession Opportunities with the support of, and in consultation with Government.

(b) This involves managing a competitive bid process in which Respondents are being invited to submit Proposals for the Concession Opportunities. This process will culminate in the selection of a Preferred Bidder(s), with or without a Reserve Bidder(s), with whom Transnet will negotiate and conclude a Concession Agreement.

(c) For more information on the background on the Concession Opportunity, please refer to Annexure A of this RFP Volume 1.

2.1.2. Concessions Objectives

The broad objectives of the Concessions procurement process, which encompass national transport policy as well as Transnet’s specific corporate objectives, include the engagement of the private sector on the revitalisation of the Branch Line Network wherever feasible, in order to:

(a) allow focus on Branch Line business opportunities;
(b) increase the traffic levels on the Branch Line Network;
(c) promote the inter-modal shift of freight from road to rail;
(d) lower the social and commercial costs of freight transportation;
(e) access private capital to prioritise investment in rail revitalisation and rural development;
(f) encourage entrepreneurship;
(g) apportion risk to where it can be best managed,
(h) stimulate employment and other economic opportunities in rural areas; and
(i) to promote and advance the participation of black people in the undertaking of the Concession.

2.2. Brief Description of Concession Principles

The Concessions Programme entails the procurement of one or more Concessionaires to establish and operate a rail transport service and to maintain rail infrastructure at their sole risk under a concessions arrangement on principles that are summarised in Annexure A of this RFP Volume 1. The specific terms of the Concession arrangements between Transnet and prospective Concessionaires are set out in RFP Volume 3 (Transaction Agreements).

2.3. Concession Opportunity

2.3.1. Respondents are invited to submit a Standard Proposal and an optional Alternative Proposal to Transnet in respect of the first phase of the Concessions Programme. The Concession
Opportunity on offer under this RFP is in respect of the Douglas Branch Line, which is described in Annexure A to this RFP Volume 1.

2.3.2. Transnet places emphasis on the successful bidder being a local entity, or led by a local entity, or a local entity with significant interest in the Concession Opportunity, with the result that Respondents and Bidders are advised that, where applicable –

(a) no single Bidder will be awarded more than two Concession Opportunities of the Branch Lines Concessions Programme;

(b) no party will be permitted to be a Sponsor holding 10% or more equity (directly or indirectly) in more than two Concessionaires in the Branch Lines Concessions Programme, where, for purposes of this section 2.3.2(b), Sponsor excludes sponsors who may be development finance institutions (DFIs), multi-lateral funds, infrastructure funds, or government developmental agencies; and

(c) no party will be permitted to undertake the management of more than two Concessionaires;

(d) no party will be permitted to undertake one or more Key Elements for more than two Concessionaires.

2.3.3. Concession Land

(a) All immovable property -

(i) on which the permanent way and rail reserve are situate and all improvements thereon ("the rail corridor land"); and

(ii) such other land parcels adjacent to, adjoining or in close proximity to the rail corridor (with improvements thereon, if any) as may be identified by Transnet to be availed as part of the Concession Opportunity to Bidders ("identified land parcels"),

comprise the land to be availed to a Concessionaire under the Concession Agreement ("the concession land").

(b) The extent of the concession land (comprised of the rail corridor land and the identified land parcels, if any) in respect of Douglas Branch Line is set out in RFP Volume 4 (Concession Information Overview) and RFP Volume 5 (Data Room).

(c) Respondents and Bidders are advised that it is compulsory for them as part of their Proposals to take responsibility for all concession land in respect of the Concession Opportunity. Any Proposal which proposes to accept and take responsibility for portions of the concession land may, at the sole discretion of Transnet, be rejected by Transnet.

(d) The concession land must be used for the rights it is zoned for unless otherwise agreed with Transnet.

2.3.4. Property Offers

(a) In addition to the concession land Transnet does, in respect of the Concession Opportunity, own immovable property adjoining or adjacent to concession land (the "adjacent properties").
Whilst the Concessions Programme is not geared to deal specifically with the letting or disposal of the adjacent properties, Respondents and Bidders who wish to lease any of the adjacent properties may indicate their interest to do so in the form of a property offer. A property offer:

(i) may only be submitted in respect of one or more adjacent properties to the Concession Opportunity for which a Respondent has submitted a Standard Proposal;

(ii) must be separate from a Standard Proposal in that it may not form a non-severable part of a Standard Proposal;

(iii) must set out:

(aa) the adjacent property(ies) sought to be leased;

(bb) the proposed use of the adjacent property(ies); and

(cc) the proposed leased terms in respect of lease rentals, duration of the lease and the identity of the tenant.

Respondents are advised that Transnet will, at its sole discretion, consider property offers and determine whether or not to award same as part of this Concessions Programme or subject them to another procurement or competitive process.

2.4. Nature of Offers Sought and Information Provided

2.4.1. Respondents and Bidders are therefore invited to submit for the Concession Opportunity, Proposals to:

(a) establish new rail freight services and/or new rail passenger services; and/or

(b) maintain, or where necessary or desired, upgrade or develop the rail infrastructure identified as forming part of the Concession Opportunity.

2.4.2. Respondents and Bidders must note that there is limited information on the commercial, technical and property features of the Concession Opportunity on offer. This information is provided in RFP Volume 4 (Concession Information Overview) and RFP Volume 5 (Data Room Information).

2.4.3. Transnet seeks to award a Concession to that Bidder who can demonstrate the necessary experience and financial capacity required to operate rail transport services successfully, and in particular, an operator who can demonstrate how they will develop the Concession Opportunity into a viable and re-energised rail operation. Proposals will be evaluated on a range of assessment criteria as outlined in section 7.2 of this RFP Volume 1 and in more detail in RFP Volume 2 (Proposal Returnables). The Bidder(s) who in Transnet’s determination, having regard to the evaluation criteria set out in section 7.2 of this RFP Volume 1, best addresses the objectives of the Concessions Programme will be qualified as a Preferred Bidder and invited to enter into negotiations to take up the Concession Opportunity under offer.

2.4.4. Respondents (and Bidders) may only submit a Proposal to undertake a Concession in respect of a complete Concession Opportunity as presented in the RFP. No Respondent or Bidder may submit a Proposal or an offer to undertake a Concession or any other rail transport service in respect of one or more parts of the Douglas Branch Line, or any
component(s) of the Douglas Branch Line which does not or do not on their own constitute a Concession Opportunity.

2.4.5. Respondents and Bidders are advised that some of the information and details contained in this RFP may differ from that provided in the EOI phase, as more information has since become available. The information in this RFP supersedes the information in the EOI.

2.4.6. An overview of the Concession Opportunity is contained in Annexure A of this RFP Volume 1. Details about the commercial, technical and property features of the Concession Opportunity on offer are provided in RFP Volume 4 (Concession Information Overview) and RFP Volume 5 (Data Room Information).
3. **Section 3: Purpose and Structure of RFP**

3.1. **General Purpose of the Request For Proposals**

3.1.1. This RFP is issued to invite submission of Proposals to undertake and deliver the Concession being offered.

3.1.2. It is the intention of Transnet, upon receipt of Proposals, to consider and evaluate the Proposals and select a Preferred Bidder(s) and, if appropriate, a Reserve Bidder(s), having regard to the extent to which each Proposal is likely to achieve the Concession Programme objectives applying the evaluation criteria set out in section 7.2 of this RFP Volume 1.

3.2. **The RFP as a Suite of Documents**

The RFP consists of a suite of documents comprised of the following Volumes:

3.2.1. Volume 1: Instructions to Respondents and Bidders

   (a) Annexure A: Background and Summary of Concession Opportunity
   (b) Annexure B: Response Application Form

3.2.2. Volume 2: Proposal Returnables

3.2.3. Volume 3: Transaction Agreements

3.2.4. Volume 4: Concession Information Overview

3.2.5. Volume 5: Data Room Information

3.3. **Purpose of this RFP Volume 1**

3.3.1. This RFP Volume 1 (Instructions to Respondents and Bidders) represents only a brief overview of the Concessions Programme. The purpose of this RFP Volume 1 (Instructions to Respondents and Bidders) is to provide information about the Branch Line Concessions process in relation to the Concession Opportunity, which is sufficient to allow Recipients to decide whether they wish to participate further in the procurement process by procuring the complete suite of RFP documents, being Volumes 2 to 5.

3.3.2. All Recipients wishing to participate further in the Concessions procurement process must submit a Response to Transnet, following the process indicated in section 4 of this RFP Volume 1.

3.4. **Purpose and Overview of RFP Volumes 2 to 5**

3.4.1. RFP Volumes 2 to 5 will be issued to Respondents after complying with the requirements of section 4 of this RFP Volume 1.

3.4.2. The contents of Volumes 2 to 5 have been briefly described below:

   (a) **Volume 2 – Proposal Returnables**

      This volume provides the detailed requirements for each Proposal, specifying the minimum information and documentation to be incorporated in a Proposal.

   (b) **Volume 3 – Transaction Agreements**
This volume contains the proposed form of the principal agreements which will be required to be entered into by the Concessionaire with Transnet, including:

(i) Concession Agreement and schedules thereto;
(ii) Ancillary Agreements, including:
   (aa) Track Access Agreement;
   (bb) Train Operations and Management Agreement
   (cc) Safety Interface Agreement(s); and
   (dd) Land Lease Agreement (if any).

(c) Volume 4 – Concession Information Overview

This volume describes the rail infrastructure and property assets of the Concession Opportunity and considers current and prospective rail operations and market characteristics in respect thereof.

(d) Volume 5 – Data Room Information

This volume contains a copy of the detailed Data Room Information which has been collated by Transnet to assist Respondents and Bidders with their due diligence process and would include but not be limited to:

(i) operational information;
(ii) legal contracts;
(iii) financial and performance data;
(iv) infrastructure records;
(v) rolling stock records; and

3.5. Governing Law

3.5.1. The procurement process of the Concessions Programme together with documentation, the Concession Agreement, Ancillary Agreements and any other contracts arising therefrom, if any, are and will be governed by and construed according to the laws of the Republic of South Africa.


3.5.3. The procurement process of the Concessions Programme will be carried out in accordance with applicable legislation, which includes, without limitation, the Constitution of the Republic of South Africa, 1996, the Preferential Procurement Policy Framework Act, 5 of 2000 and the Broad-Based Black Economic Empowerment Act, 53 of 2003.
4. Section 4: Submission Of Responses

4.1. Who May Submit a Response

Any person who is a Recipient or is in a consortium or joint venture or similar arrangement with a Recipient.

4.2. Submission of Responses

4.2.1. Recipients, in making their application for RFP Volumes 2 to 5, are required to complete and submit Annexure B, which contains the following parts:

(a) Part 1 - Respondent Information;

(b) Part 2 – Respondent Confidentiality Undertaking. Recipients must note, that in respect of the Respondent Confidentiality Undertaking, no amendments are permitted to the Respondent Confidentiality Undertaking save for the insertion of the parties names, their contact details and consequential changes arising from such insertions; and

(c) Part 3 – Proof of Payment of the non-refundable fee of R10 000,00 inclusive of Value Added Tax (VAT). In respect of the proof of payment of the non-refundable fee, Recipients are advised to email proof thereof to the Project Officer after having paid the fee into the following Transnet bank account:

(i) Account Name – Transnet Freight Rail
(ii) Bank - Standard Bank of South Africa Limited;
(iii) Branch Name - Braamfontein;
(iv) Branch Code - 00 – 48 - 05;
(v) Account Number - 203158598; and
(vi) Reference — BLC/DB/2015/01/[insert recipient reference number].

4.2.2. Responses are to be submitted in hard copy and deposited in the TFR tender box, located at the main entrance, Ground Floor Foyer, Inyanda House 1, 21 Wellington Road, Parktown, Johannesburg and should be addressed as follows:

BRANCH LINE CONCESSIONS PROGRAMME
TENDER REFERENCE: BLC/DB/2015/01

NAME OF RESPONDENT:
The Project Officer
Branch Line Concession Programme
Tender Advice Centre
Inyanda House 1
Ground Floor Foyer
21 Wellington Road
Parktown, JOHANNESBURG
4.3. **Response Closing Date**

All Recipients are advised that no Responses may be submitted after the Response Closing Date. Late Responses may, at the sole discretion of Transnet be returned to Recipients, without being opened.

4.4. **Distribution of Volumes 2 to 5**

4.4.1. Transnet will endeavour to review each duly completed Response to Volume 1 within 5 business days (excluding Saturdays, Sundays and public holidays) of submission. Should the Response be found to be duly completed and in order, then the Respondent will be notified by Transnet of the availability of the RFP Volumes 2 to 5 for collection by the Respondent. Transnet is not obliged to accept any Response and may seek clarification on any Response.

4.4.2. RFP Volumes 2 to 5 may only be collected by appointment with the Project Officer during business hours between the 5\textsuperscript{th} (fifth) and 8\textsuperscript{th} (eighth) business day following the Response Closing Date.

4.4.3. This RFP and its appendices will be made available in hard copy and electronic format to Respondents on the basis that Volume 1 (Instructions to Bidders), Volume 2 (Proposal Returnables), Volume 4 (Concession Information Overview) and Volume 5 (Data Room Information) are in a read only format and Volume 3 (Transaction Agreements) in Microsoft word format together with Annexures B and C of RFP Volume 1.
5. **Section 5: Concession Procurement Process and Programme**

5.1. **Concession Procurement Process**

5.1.1. The procurement process is based, amongst other things, on the following considerations:

(a) an accelerated procurement strategy;

(b) Respondent/Bidder interaction at an early stage; and

(c) a curtailed negotiation phase with prompt Financial Close.

5.1.2. The Concession procurement process consists of one phase, Request for Proposals, which entails the following sub-phases:

(a) issuance of this RFP Volume 1;

(b) submission of Responses;

(c) issuance of RFP Volumes 2 to 5;

(d) submission of Proposals;

(e) evaluation of Proposals, subject to a best and final offer (BAFO) phase, at the discretion of Transnet;

(f) selection and announcement of Preferred Bidder(s), and possibly a Reserve Bidder(s); and

(g) negotiating with the Preferred Bidder(s) and/or Reserve Bidder to achieve Commercial Close followed by Financial Close.

5.2. **Concession Procurement Programme**

The following dates are indicative and may change. Any changes will be notified to Respondents.

<table>
<thead>
<tr>
<th>STAGE</th>
<th>KEY DATES AND ACTIVITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP Release - Volume 1</td>
<td>Week commencing 16 February 2015</td>
</tr>
<tr>
<td>Closing Date for RFP Volume 1</td>
<td>03 March 2015</td>
</tr>
<tr>
<td>Responses</td>
<td></td>
</tr>
<tr>
<td>Issuance of RFP Volumes 2 to 5</td>
<td>Available from 11th to 13th March 2015</td>
</tr>
<tr>
<td>Briefing for Respondents</td>
<td>19 March 2015</td>
</tr>
<tr>
<td>Site Visits</td>
<td>19th &amp; 20th March 2015</td>
</tr>
<tr>
<td>Proposal Submission Date</td>
<td>27 May 2015</td>
</tr>
<tr>
<td>Bidder Presentations</td>
<td>To Be Advised</td>
</tr>
</tbody>
</table>
### STAGE

<table>
<thead>
<tr>
<th>KEY DATES AND ACTIVITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal Evaluation and Selection Completed</td>
</tr>
<tr>
<td>Announcement of Preferred Bidder (includes reserve and unsuccessful)</td>
</tr>
<tr>
<td>Commercial Close</td>
</tr>
<tr>
<td>Financial Close and Effective Date for commencement of Concession</td>
</tr>
<tr>
<td>Operations commence</td>
</tr>
</tbody>
</table>

#### 5.3. Meetings and Site Visits

#### 5.3.1. Meetings

(a) **Compulsory Briefing Session for Respondents**

A compulsory briefing of the Concession Opportunities for Respondents will be organised and presented by Transnet, on the date and time set out in the table above in the line item referenced 'Briefing for Respondents'. Transnet will prepare an attendance register of all Respondents (or Respondent representatives) who attend the compulsory briefing session. Any Respondent or member thereof or a Relevant Entity of a Respondent who fails to attend the compulsory briefing session will be disqualified and will not be permitted to submit a Proposal.

(b) **Bidder Meetings at Transnet Election**

In order to ensure that the Proposal Submission Date deadline is met and to enable well thought through and thorough Proposals, the procurement process envisages on-going interactions at the instance of and election of Transnet with Respondents and/or Bidders, where such interactions will be structured in such a way so as to not prejudice the process or compromise the competitive position of any Respondent or Bidder, but that will enable transparency, fairness and a competitive outcome that will benefit Transnet in the Concessions Programme.

(c) **Proposal Presentations**

Bidders may be required at the invitation of Transnet, following submission of their Proposals to orally present their Proposals. The precise date and time of each Bidder Proposal presentations will be organised and advised by Transnet to each Bidder, and which are anticipated to take place in the period set out in the table above under the line item referenced 'Bidder Presentations'.

(d) **Further Meetings**

Transnet reserves the right to arrange further Bidder interviews to further clarify matters relating to submitted Proposals.

#### 5.3.2. Site Visits
(a) Transnet will arrange site visits for Respondents during the period set out in the table above under the line item referenced 'Site Visit' to afford Respondents opportunity to undertake due diligence investigations in respect of the Douglas Branch Line. Transnet will arrange and notify each Respondent of the dates for a site visit.

(b) The costs of and attendant on any and all site visits shall be borne by the Respondent undertaking the site visit. The rules and conditions applicable to all site visits will be furnished to all Respondents, including any forms which may need to be completed by persons attending a site visit on behalf of Respondents. Furthermore Respondents are responsible for arranging their own personal protective equipment (PPE).

(c) Each Respondent will not be permitted to have more than 5 people attending a site visit.

5.4. Due Diligence

5.4.1. Transnet has made certain information available, in respect of the Concession Opportunity in a data room (“Data Room Information”). The Data Room Information will be contained in RFP Volume 5 (Data Room Information).

5.4.2. Respondents will be granted an opportunity to conduct their own due diligence investigation in respect of the Concession Opportunity and the Data Room Information collated by Transnet in respect of the Concessions Programme. The Data Room Information will be provided to each Respondent in the form of an electronic flash drive containing the relevant information. Transnet will not be establishing a physical Data Room.

5.4.3. Transnet reserves the right, on timeous written request by a Respondent to that effect, to arrange site visits, in addition to those referenced in section 5.3.2(a) of this RFP Volume 1, to afford Respondents any additional opportunity to adequately undertake due diligence investigations for Proposal submission purposes. Each Respondent shall bear its own costs attendant of any such additional site visit(s) and shall arrange its own personal protective equipment (PPE).

5.4.4. Transnet may at its sole discretion afford a Preferred Bidder and/or Reserve Bidder an opportunity to undertake a supplementary due diligence investigation to enable it or them to satisfy themselves in relation to either, any significant developments post Proposal Submission Date or further information that may be availed to it or them by Transnet.
6. Section 6: Instructions to Respondents and Bidders

6.1. Who May Submit a Proposals

Respondents, who obtained RFP Volumes 2 to 5 in the manner as set out in this RFP Volume 1, may submit Proposals.

6.2. Submission of Proposals

6.2.1. Proposal Submission Date

Proposals must be submitted not later than the Proposal Submission Date.

6.2.2. Postponement of submission date

Transnet reserves the right to postpone the stipulated date of the Proposal Submission Date; however, Respondents should not pre-empt or rely on any postponements of the Proposal Submission Date as Transnet does not foresee any reasons for postponement at this stage.

6.2.3. Late Proposals

No Proposal will be received after the date and time referred to in section 6.2.1 or as extended in terms of section 6.2.2 above.

6.2.4. Proposal Submission Address

Proposals must be submitted only at the Proposal Submission Address.

6.2.5. Incomplete Proposals

Incomplete Proposals, namely Proposals that do not contain a response to each of the Proposal requirements (summarised below):

(a) Mandatory Compliance Requirements; and

(b) Comparative Evaluation Criteria, comprised of:

(i) Overall Vision and Approach;
(ii) Integrated and Optimised Operational Solution;
(iii) Infrastructure Management and Maintenance;
(iv) Human Resources;
(v) BBBEE Requirements and Supplier Development Requirements;
(vi) Transition Arrangements;
(vii) Safety;
(viii) Commercial Acceptability to Transnet; and
(ix) Financial Arrangements,

will be marked as incomplete, and may, at Transnet’s sole discretion, be rejected without further consideration.

6.2.6. Proposal Validity Period
(a) Proposals shall remain valid and open for acceptance for a period of 9 (nine) months from the Proposal submission date, plus any agreed extension of the Proposal validity period.

(b) Transnet may, in exceptional circumstances, request Bidders, the Preferred Bidder and/or Reserve Bidder, for an extension of the Proposal validity period, prior to the expiry of the original Proposal validity period. The request and the response thereto shall be made in writing. A Bidder agreeing to the request will not be permitted to modify its Proposal.

6.2.7. Format of Proposals

(a) Respondents (Bidders) are requested to submit their Proposals in a clearly structured way. All parts of the Proposal are to be clearly headed, pages must be numbered and a detailed content listing is to be provided. The Proposals should follow a consistent numbering system (volumes, sections, headings, paragraphs, sub-paragraphs, etc.) that allows for easy cross-referencing, both within the Proposal and to the RFP.

(b) All Proposals must be submitted in the format as prescribed which is PDF format except Volume 3 which must be in MS Word and the financial model which must be in Excel, and according to the following instructions:

(i) 1 (one) original printed and bound in a volume(s) and five (5) hard copies thereof in one or more lever arch files (clearly marked as ‘original’, and each copy marked as ‘copy 1’, ‘copy 2’ and so on until ‘copy 5’). Respondents (Bidders) are cautioned that any colour documents will have to be reproduced in colour in all the five (5) copies;

(ii) five (5) electronic copies of the original hard copy (clearly marked as ‘electronic copy 1’, ‘electronic copy 2’ and so on until ‘copy 5’); and

(iii) the Proposals must also be as complete and comprehensive as possible and be in English.

(c) The onus is on Respondents (Bidders) to submit all relevant information.

(d) Cross-referencing between sections of the Proposal is permitted, however any and all accuracy and adequacy of cross-referencing shall be at the risk of the Respondent (Bidder).

(e) A cover letter with contact details for the authorised person representing the lead member of the Respondent should be submitted, in the format provided in Part 1 (Form of Cover Letter) to Annexure C (Proposal Forms) of this RFP Volume 1.

(f) Each Proposal is to have an executive summary which summarises the salient aspects of the Proposal, as required in Returnable 2 of RFP Volume 2 (Proposal Returnables).

(g) More details on the format of the Proposals is contained in RFP Volume 2.

6.2.8. Format of Submissions

(a) Signing requirements of a single entity

(i) Where the Respondent (Bidder) is a single legal entity, the principal or persons duly authorised to legally bind the legal entity concerned shall sign the original Proposal. Each such person or persons shall be properly authorised to sign such documentation by way of a formal resolution by the board of directors, or its equivalent, of the organisation concerned. Copies of such an authorisation, authorising the signatory to the Proposal, resolution, properly dated, must accompany each Proposal in the format provided in Part 2 (Signatory’s Authority) to Annexure C (Proposal Forms) of this RFP Volume 1.
(ii) In addition, every signatory shall make a written declaration to the effect that all documentation signed by him or her is factually correct and true.

(b) Signing requirements of a consortium or joint venture

(i) Proposals submitted by a Respondent which is a consortium or joint venture shall be signed by the lead member so as to legally bind all the constituent members of the consortium. To this end, Respondents (Bidders) are referred to Part 1 (Form of Cover Letter) to Annexure C (Proposal Forms) of this RFP Volume 1.

(ii) Proof of the authorisation of the lead member to act on behalf of the Respondent consortium or a joint venture shall be included in the Proposal submitted in the format provided in Part 2 (Signatory’s Authority) to Annexure C (Proposal Forms) of this RFP Volume 1.

(iii) The lead member of the Respondent shall be the only authorised party to make legally binding statements and receive instruction for and on behalf of the Respondent (Bidder) and all its members, including Sponsors and Relevant Entities.

(iv) A copy of the agreement entered into by the consortium partners or the joint venture partners for the formation of the Respondent consortium or joint venture shall be submitted with the Proposal.

(c) Correspondence

All correspondence from the Respondent (Bidder) should be addressed to the Project Officer and must be signed by an authorised person or persons, legally binding the Respondent (Bidder). All such signatures must indicate the name(s) of the person(s) signing them, their position(s) and the name of their organisation.

6.3. Standard Proposal to be Submitted

6.3.1. Respondents who elect to submit Proposals are required to submit a Standard Proposal.

6.3.2. A Standard Proposal is comprised of the following elements:

(a) Mandatory Compliance Requirements; and

(b) Comparative Evaluation Criteria, comprised of:

(i) Overall Vision and Approach;

(ii) Integrated and Optimised Operational Solution;

(iii) Infrastructure Management and Maintenance;

(iv) Human Resources

(v) BBBEE Requirements and Supplier Development Requirements;

(vi) Transition Arrangements;

(vii) Safety;

(viii) Commercial Acceptability to Transnet; and
6.3.3. **Mandatory Compliance Requirements**

The Mandatory Compliance Requirements are briefly described in section 7.2.1 of this RFP Volume 1. More information will be contained in RFP Volume 2 (Proposal Returnables). These minimum requirements must be complied with by the Respondent or Bidder to be evaluated further. Transnet reserves the right to disqualify Respondents and Bidders who do not meet the Mandatory Compliance Requirements.

6.3.4. **Comparative Evaluation Criteria**

The Comparative Evaluation Criteria are briefly described in section 7.2.2 of this RFP Volume 1. More information on the Comparative Evaluation Criteria is contained in RFP Volume 2 (Proposal Returnables).

6.4. **Alternative Proposal**

6.4.1. In an alternate to a Standard Proposal, a Bidder which has submitted a Standard Proposal may submit an Alternative Proposal.

6.4.2. No Respondent is required to submit an Alternative Proposal. The submission of an Alternative Proposal is at the discretion of each Respondent.

6.4.3. Respondents may only submit an Alternative Proposal for the Concession Opportunity if they have submitted a Standard Proposal for the Concession Opportunity.

6.4.4. An Alternative Proposal is one which is alternate in its nature to the Standard Proposal, in which the Bidder proposes how each of the Concession Programme objectives (set out in primarily in section 2.1.2 of this RFP Volume 1) could be achieved if other requirements of the Concession procurement process were relaxed, other than the Mandatory Compliance Requirements. An Alternative Proposal must indicate the advantages and benefits it brings over and above the Standard Proposal and the extent and nature of any deviations or relaxation of the RFP Standard Proposal requirements. For the avoidance of doubt an Alternative Proposal has to meet the Mandatory Compliance Requirements.

6.4.5. No Alternative Proposal for a Concession Opportunity will be considered in the absence of a Standard Proposal for the Concession Opportunity.

6.4.6. An Alternative Proposal is not required to reference the Standard Proposal.

6.4.7. Transnet reserves the right, subject to applicable administrative law, to prefer a Bidder who has submitted an Alternative Proposal, or to terminate this procurement process and enter into post-tender negotiations with a Bidder(s) on its/their Alternate Proposal(s).

6.5. **Cost of Submitting Proposals**

6.5.1. Each Recipient, Respondent and Bidder shall bear all costs associated with the preparation and submission of its Proposal(s), including all its own costs attendant on any following stages of the procurement process.

6.5.2. Should the procurement process be terminated at any stage as a result of it being tainted by the corrupt activities of one or more of the Recipients, Respondents or Bidders whether in breach of the provisions of section 6.14 below or other applicable legal requirements, then Transnet shall have the
right to recover from the said Recipient, Respondent or Bidder whose conduct has tainted the process any other damages or costs to Transnet flowing from such termination.

6.6. **Change to Bidders Post Submission of Proposals**

6.6.1. Change in composition, control or structure of a Bidder, Preferred Bidder or Reserve Bidder, Sponsor and/or its Relevant Entity(ies) from that set out in their Proposal will not be permissible without Transnet’s prior written consent.

6.6.2. If there is a proposed change in composition, control or structure of a Bidder, Preferred Bidder, Reserve Bidder, Sponsor and/or its Relevant Entity(ies), then the Bidder, Preferred Bidder or Reserve Bidder must forthwith apply to Transnet for consent, prior to any change in their composition, control or structure from that set out in their Proposal.

6.6.3. If a change in the composition, control or structure of a Bidder, Preferred Bidder or Reserve Bidder, Sponsor and/or its Relevant Entity(ies) of the kind referred to in section 6.6.1 above occurs without the prior approval of Transnet, then such Bidder, Preferred Bidder, Reserve Bidder, Sponsor and/or Relevant Entity(ies) may, at Transnet’s sole discretion, be disqualified from further stages of the procurement process, or allowed to continue, subject to such conditions as Transnet may consider appropriate in light of the possible implications of the relevant change in composition, control or structure, on the matters on which evaluation under section 7 below is based.

6.6.4. If a change in the composition, control or structure of a Bidder, Preferred Bidder, Reserve Bidder, Sponsor and/or its Relevant Entity(ies) of the kind referred to in section 6.6.1 above occurs, Transnet may require the relevant Bidder, Preferred Bidder, Reserve Bidder, Sponsor and/or its Relevant Entity(ies) to supply further information in relation to the relevant change.

6.7. **Participation in more than one Respondent or Bidder**

No Respondents, Bidder, Sponsor, Relevant Entity or any other party (or entity) including an advisor or consultant may be a member of, or in any way participate or be involved, whether directly or indirectly, in more than one Respondent or Bidder during any stage of the Concession Opportunity procurement process. A failure to comply with this requirement may result in the disqualification of the Respondent, Bidder, Sponsor, Relevant Entity, or any other organisation, advisor or consultant involved. For the avoidance of doubt, this restriction does not apply to other concession opportunities.

6.8. **Bid Bond**

To mitigate the risk of Respondents and Bidders dropping out of the procurement process, Transnet requires that proposal security be submitted by each Respondent with its Proposal, in the form of a Bid Bond secured through a South African financial institution in the amount of R100,000,00 (one hundred thousand). The form of the Bid Bond to be provided by Respondents (Bidders) is contained in Part 3 (Bid Bond) of Annexure C to RFP Volume 1. Transnet may, at its election, require a further bid bond(s) (replacing the earlier bid bond(s)) to be submitted by the Preferred Bidder or Reserve Bidder for an amount no greater than R250,000 (two hundred and fifty thousand rand) to be determined by Transnet at any time prior to Financial Close.

6.9. **Liaison Structure**

6.9.1. Transnet has implemented a liaison structure whereby the Concessions Programme has been allocated a Project Officer. Respondents and Bidders are advised to address all correspondence relating to this Concessions Programme to the Project Officer as indicated below:

(a) Nothando Zako, Project Officer for the Transnet Branch Line Concessions Programme;

(b) 2nd Floor, Inyanda House 3, 13 Girton Road, Parktown, 2193;
6.9.2. All correspondence received will be responded to in writing to the respective Respondent or Bidder. All queries addressed to the Project Officer must be in writing and signed by the Respondent’s or Bidder’s contact person as indicated in the Response or Proposal, as the case may be. **All queries must be received two weeks prior to Proposal Submission Date and no queries will be accepted or replied to after such indicated date.**

6.9.3. Any clarification which may be required by Transnet in respect of a Proposal will be addressed by way of a clarification note(s) addressed to the Respondents or Bidder concerned. All clarification notes to each Respondents or Bidder will be sequentially numbered.

6.9.4. Respondents and Bidders, their respective agents and advisors and related parties may not contact the employees, advisors of Transnet, or any of their official(s) engaged in the Concessions Programme, with a view to offering, whether directly or indirectly, any one or more of them an employment opportunity with the Respondent or Bidder.

6.10. **Nature of Information Offered**

6.10.1. All materials and data which are submitted by Respondents or Bidders shall become the sole property of Transnet, with the exception of copyrighted material, trade secrets or other proprietary information clearly identified as such by Respondents or Bidders.

6.10.2. Transnet undertakes to keep confidential all information received from any Respondents or Bidders which is clearly identified as confidential in such Bidder’s or Respondent’s submission and/or Proposal(s) provide such information is not already in the public domain or in the hands of Transnet or required to be disclosed by Transnet in terms of legal or regulatory requirements on the condition that Respondents or Bidders shall be deemed by their submission of a Proposal to agree to indemnify Transnet and hold Transnet harmless from any claim or liability and defend any action brought or legal step taken against Transnet for its refusal to disclose materials marked confidential, trade secret or other proprietary information to any person seeking access thereto.

6.10.3. If any Bidder does not wish to furnish the deemed indemnity in section 6.10.2 above to Transnet, then that Respondent(s) or Bidder(s) must make a written statement to that effect in their Proposal, that in respect of their Proposal, the Respondent(s) or Bidder(s) shall have waived its right to non-disclosure and to authorise Transnet to provide a copy of the relevant materials/data or any part thereof to third parties on due request.

6.11. **Confidentiality Undertaking**

All Confidential Information Provided (including all copies thereof) remains the property of Transnet and must be delivered to Transnet on demand. Further, by receiving this RFP each Respondent, Bidder and each of its members agrees to maintain its submission in response to this RFP confidential from third parties other than Transnet and its officials, officers and advisers who are required to review the same for the purpose of the Concession procurement process.

6.12. **Briefing Notes**

6.12.1. Briefing Notes will be issued for any and all communications by Transnet to Respondents and Bidders and for any amendment(s) which may be effected to the RFP. Briefing Notes will be sequentially numbered. It will be the responsibility of each Respondent and Bidder to ensure that it refers to and takes account of such Briefing Note(s) in any submission(s) to Transnet, or its Proposal. A Briefing Note will only be issued in respect of a Respondent query if the response
thereto is, in Transnet’s determination, either of general application or has the effect of modifying the RFP.

6.12.2. Briefing Notes in the period commencing:

(a) from the RFP Volume 1 issue date to the Response Closing Date, will only be circulated to Recipients;

(b) on the date following the Response Closing Date up to Proposal Submission Date - will only be circulated (at the time when they are issued) to Respondents;

(c) on the day following the Proposal Submission Date to the selection of the Preferred Bidder, will be circulated to Bidders,

to the extent the participation of the Recipient, Respondent or Bidder is not terminated earlier.

6.13. Clarification Notes

Clarification Notes will be issued by Transnet to a Respondent or Bidder in reply to any written clarification submitted by that Respondent or Bidder. Clarification Notes will be sequentially numbered. In addition to issuing a Clarification Note if Transnet determines that any point(s) clarified to any Bidder should be clarified to other Bidders, Transnet will notify that Bidder to that effect in the relevant Clarification Note, and will subsequently issue a Briefing Note.


6.14.1. Transnet is committed to ethical and clean business practice and will not tolerate any impropriety in any respect and in particular with regard to the Concessions Programme.

6.14.2. If any Recipient, Respondent, Bidder, or any of their employees, shareholders, representatives, advisers or agents make or offers to make any gift or other gratuity to any public official of Government, or employee of Transnet, relevant authority, or consultant to Transnet on the Concessions Programme either directly or through an intermediary, Transnet reserves the right to terminate its relationship, without prejudice to any of Transnet’s rights in terms of this RFP or at law, with that Recipient or Respondents or Bidder or responsible party/entity.

6.14.3. Respondents and Bidders will be required at the time of submitting their Proposals to give an undertaking that all reasonable efforts have been made to avoid irregularities, bribery and corruption.

6.14.4. Transnet reserves the right to request Bidders to conclude an anti-bribery undertaking agreement with Transnet, at any time during the Concessions Programme procurement process, to contractually bind all participants to the undertakings referred to in this section 6.14.

6.14.5. Respondents, Members and their respective advisers, officers, employees and agents are prohibited from engaging in any collusive action, with respect to the Concession, which serves to limit competition amongst Bidders. The attention of Bidders is also drawn to section 4(1)(b)(iii) of the Competition Act, 89 of 1998, which prohibits "collusive tendering", and to Chapter 3 of the Competition Act, 89 of 1998. By responding to this RFP each Respondent, Relevant Entity, certifies that:

(a) its submission has been submitted independently, without consultation, communication, or agreement for restricting competition, with any other Respondent or to any other competitor;
(b) unless otherwise required by law, the relevant submission has not been knowingly disclosed by it and will not knowingly be disclosed by it prior to opening, directly or indirectly to any other Respondent or to any competitor; and

(c) no attempt has been made or will be made by it to induce any other person or firm to submit a response for the purpose of restricting competition.

6.15. **Grounds for Disqualification**

6.15.1. The following events, in addition to any other events contained in this RFP, constitute (without being exhaustive) those grounds upon which a Respondent or Bidder (or if appropriate in Transnet’s determination, any Member thereof) may be disqualified at any stage of the Concession procurement process –

(a) an infringement of the Respondent Confidentiality Undertaking by any Respondent (or Bidder), Member or any director, officer, agent, trustee or advisor of the Respondent (or Bidder) and/or Member; an infringement of the Respondent Confidentiality Undertaking by any Respondent (or Bidder), Member or any director, officer, agent, trustee or advisor of the Respondent (or Bidder) and/or Member;

(b) past, present, or future participation by any Respondent (or Bidder), Member or any director, officer, agent, trustee or advisor of the Respondent (or Bidder) and/or Member in any activity which may constitute corruption, bribery or impropriety, during the Project procurement process, or any other government procurement process;

(c) an infringement by any Respondent (or Bidder), Member or any director, officer, agent, trustee or advisor of the Respondent (or Bidder) and/or Member of any one or more of the provisions of section 6.6 (Change to Bidders Post Submission of Proposals), section 6.7 (Participation in more than one Respondent or Bidder), section 6.9.4 (Contact Policy), or section 6.14 (Corruption) or any portion of such section(s).

6.15.2. Any Respondent (or Bidder) and/or their constituent Member(s) that engages or communicates with any of the officials, agents or advisors to Transnet on any matter concerning the Concession Opportunity at any time during the Concession procurement process, without due authority of the Project Officer, shall be disqualified from further participation in the procurement process.

6.15.3. Respondents (or Bidders) are required to submit correct and true information. Failure to provide correct and true information constitutes a ground of disqualification.
7. Section 7: Evaluation Structure and Criteria

7.1. Evaluation Structure

Transnet has established a three-tier adjudication process comprised of the following two committees to undertake the evaluation of Proposals, namely –

7.1.1. Evaluation Panel, comprised of a cross functional team of Transnet representatives and selected members of the transaction adviser on the Concessions Programme. The Evaluation Panel may appoint one or more subcommittees to assist it in undertaking its work. The transaction adviser to the Concessions Programme will provide professional advice and input regarding the assessment and evaluation of Proposals. The Evaluation Panel will report to the TFR executive committee; and

7.1.2. the TFR executive committee will review the work of the Evaluation Panel, evaluate the Proposals (taking into account the work of the Evaluation Panel), and make recommendations to the Transnet board of directors (or a delegated authority of the board) in respect of the appointment of a Preferred Bidder(s) and a Reserved Bidder(s) if any in respect of the Concession Opportunity; and

7.1.3. the Transnet board of directors (or a committee of the board or a delegated authority of the board) will receive and consider the report of the TFR executive committee, and determine, subject to PFMA approval, which Bidder(s), if any, is/are awarded Preferred Bidder status and Reserve Bidder status, in respect of the Concession Opportunity.

7.2. Evaluation Criteria

Transnet will apply the 90/10 preference points system as contemplated in the PPPFA, where 90 points will be awarded for functionality (including SELD) and price. A maximum amount of 10 points, out of 100 points available will be allocated to the B-BBEE requirements as contemplated in the PPPFA.

The evaluation criteria are comprised of two principle categories, being the Mandatory Compliance Requirements and Comparative Evaluation Criteria.

7.2.1. Mandatory Compliance Requirements

The detail of the Mandatory Compliance Requirements is set out in section 1 of RFP Volume 2 (Proposal Returnables). The section below sets out some of the salient features of the Mandatory Compliance Requirements.

(a) Proposal Cover Letter

Respondents will be required to submit a covering letter to their Proposal in the form and substance provided in Part 1 (Form of Cover Letter) to Annexure C (Proposal Forms) of this RFP Volume 1.

(b) Respondents Details and Information on Respondents

Respondents will be required as provided for in Annexure C (Proposal Forms) Part 1 (Response Application Form) to provide certain information in respect of the Respondent, and if the Respondent is incorporated, then in respect of the Respondent and each shareholder (or equivalent) thereof, and if the Respondent is not incorporated, then in respect of each Sponsor and Relevant Entity thereof.
("Member"), pertaining to, inter alia, the form of enterprise, registration, share capital structure and resolution to submit the Proposal.

(c) Tax Clearance Certificate

Each Respondent will be required to submit an official valid tax clearance certificate from the South African Revenue Service, and if not incorporated, then each Sponsor and Relevant Entity will be required to do so, and if any of them is an external (foreign) entity not yet operating in South Africa, proof of "good standing" with the relevant taxation authority in the country of origin will be required. If the country does not issue such proof then they should provide it from their auditors. If the tax clearance certificate has expired within two weeks prior to the Proposal Submission Date, then the Respondent, or Member must submit the expired original tax clearance certificate and a stamped proof of application for a new tax clearance certificate.

(d) Bid Bond

Each Respondent will be required to submit a Bid Bond in an amount of R100 000,00 (one hundred thousand rand) valid for a period of nine (9) months from the Proposal Submission Date, to comply with section 6.8 of RFP Volume 1 in the form and substance contained in Part 3 (Bid Bond) of Annexure C (Proposal Forms) of RFP Volume 1.

(e) B-BBEE Rating Verification Certificates

Each Respondent will be required to provide, as at the Proposal Submission Date, a valid B-BBEE rating verification certificate issued by a verification agency accredited by the South African Accreditation System (SANAS) or a registered auditor approved by the Independent Regulatory Board of Auditors (IRBA).

(f) Conflict of Interest Declaration

Each Respondent and shareholder, or member thereof, as the case may be will be required to submit a formal declaration in respect of the absence of conflicts of interest. Such declaration is to be made in the form provided as Annexure A to Volume 2.

(g) Incorporation of the Respondent

Each Respondent will be required to furnish a written undertaking to Transnet that it is, or will be incorporated or established, prior to Commercial Close, as a ring-fenced entity registered and resident in South Africa for tax purposes.

(h) Financial Capacity

Respondents will be required to demonstrate that they are an established business (or consortium of established businesses) and have sufficient committed financial support from either or both their own financial resources or from their financiers, to allow them to take over establish their business to take the responsibility for the Douglas Branch Line assets and to meet the working capital and capital investment requirements of the proposed business. The documentation which will be required of Respondents as evidence of financial capacity is set out in section 1.2.8 of RFP Volume 2 (Proposal Returnables).

If after the Proposal Submission Date, Transnet determines that a Respondent (or Bidder) has failed to submit any document required in this section 7.2.1, Transnet will afford that
Respondent (or Bidder) three business days to submit the missing documents, failing which that Respondent (or Bidder) will be disqualified.

7.2.2. Comparative Evaluation Criteria

The detail of the Comparative Evaluation Criteria is set out in sections 2 to 10 (both inclusive) of RFP Volume 2 (Proposal Returnables). The section below sets out some of the salient features of the primary components of the Comparative Evaluation Criteria.

(a) Overall Vision and Approach – see Returnable 2 in RFP Volume 2

(i) This criterion contemplates the overall coherence and structure of the Proposal, and the overall likelihood that it will achieve the Concessions Programme objectives.

(ii) The Respondent's (Bidder's) vision for the Concession will have to be clearly described, be demonstrably robust and achievable, and include a commitment to developing and maintaining a cooperative and responsive relationship with Transnet and other key stakeholders. The precise information and documentation to be provided by Respondents is set out in section 2 of RFP Volume 2 (Proposal Returnables).

(iii) In evaluating the above, Transnet will consider the following:

(aa) the extent to which the offer is consistent with and aligned to Transnet's requirements and objectives for the Concession Opportunity;

(bb) the extent to which the Respondent's (Bidder's) vision is achievable in the context of the prevailing and forecasted market conditions;

(cc) the credibility, consistency, deliverability and cohesiveness of the Respondent's (Bidder's) business plan with regard to the information supplied under each section of RFP Volume 2 (Proposal Returnables).

(b) Integrated and Optimised Operational Solution - see Returnable 3 in RFP Volume 2

(i) Respondents (Bidders) will be required to provide details of their transport industry operating experience and capability, including any operator accreditations. The precise information to be provided by Respondents is set out in section 3 of RFP Volume 2 (Proposal Returnables).

(ii) Respondents (Bidders) will be required to indicate the extent to which the operational and technical solutions support the delivery of an integrated, sustainable and high quality freight system that will enhance the regional (local and/or provincial) economy, allow for future expansion, maximise empowerment opportunities and encourage business growth and increased (rail) mode share.

(iii) Respondents and Bidders will be required to indicate the extent to which the proposed operational solutions will encourage revenue and volume growth and will deliver efficient, reliable and high quality customer services, effective integration with the Core Network and the rest of the supply chain.

(iv) In respect of operations, the issues Transnet will consider include:
(aa) the feasibility of the operational plans proposed;

(bb) the range of services and service levels offered to customers;

(cc) the level of commitment to volume increases, and the plausibility of the rationale and Bidder's proposal supporting the increases;

(dd) the extent of innovation and general approach to business improvement; and

(ee) the nature and extent of requirements placed on Transnet under the Concession arrangements.

(c) Infrastructure Management and Maintenance - see Returnable 4 in RFP Volume 2

(i) Respondents (Bidders) will be required to provide details of their infrastructure management and maintenance experience and capability. The precise information to be provided by Respondents is set out in section 4 of RFP Volume 2 (Proposal Returnables).

(ii) Respondents (Bidders) will be required to indicate the extent to which the proposed infrastructure asset management regime will deliver consistently high levels of asset performance and optimise whole of life outcomes to ensure the assets are maintained to maximise the assets use over its whole life, not simply for the duration of the Concession.

(iii) Respondents (Bidders) will be required to indicate the extent to which the Respondent's approach to maintaining and managing the infrastructure asset base demonstrates an efficient and effective means of achieving or exceeding minimum condition requirements and ensures service continuity with minimum disruption to customers, and other stakeholders.

(iv) In respect of infrastructure, the issues Transnet will consider include:

(aa) the clarity and practicable nature of the asset management strategy;

(bb) the robustness of the asset management systems proposed;

(cc) the technical expertise and innovative approach presented by the Respondent in the infrastructure asset maintenance plan, to optimise operational output and utilisation of infrastructure assets and resources;

(dd) the robustness of the management practices and application of systems and technology that will be applied in the infrastructure environment;

(ee) the robustness of processes proposed to manage disruptions to customers and others; and

(ff) the extent of any network improvements proposed.

(d) Human Resources - see Returnable 5 in RFP Volume 2

(i) Respondents (Bidders) will be required to indicate the extent and manner in which they propose to staff their organisation to ensure, from a human resource perspective, delivery of their business plans, with specific emphasis
on the following functional areas of the business, namely operations, maintenance, safety, sales and marketing, and finance and administration.

(ii) Transnet will consider -

(aa) the robustness of the proposed human resource management practises;

(bb) the means by which the Respondent intends to address skills retention and succession planning; and

(cc) the number and nature of new jobs created directly by the establishment and conduct of the business of the Respondent.

(e) B-BBEE Requirements, and Socio-Economic and Local Development (SELD) Requirements - see Returnable 6 in RFP Volume 2

(i) In respect of B-BBEE Respondents (Bidders) will be required to:

(aa) furnish a valid B-BBEE verification certificates and demonstrate a commitment to B-BBEE objectives;

(bb) propose the equity participation of their BEE partner in the Respondent, taking into account that the targeted BEE partner’s equity ownership in the Concessionaire for the Concession Opportunity is 25%, and that the minimum BEE equity ownership requirement in the Concessionaire is 10%. If a Respondent (Bidder) fails to meet the minimum requirement of 10%, Transnet reserves the right not to award the Concession to that Bidder;

(cc) adhere to the requirement by Transnet that the BEE partner shall be from the local area where the branch line operates, or at the most within the province of the branch line, to ensure local participation is optimised in the Concession;

(ii) In respect of SELD Respondents (Bidders) will be required to demonstrate that their proposed project implementation framework is aligned with Transnet objectives of enhancing socio-economic development in areas surrounding the Douglas Branch Line. More specifically, Respondents (Bidders) will be required demonstrate how they plan to contribute to the following SELD components:

(aa) Local Economic Development (Rural or Regional Development) - The locality of the Respondents (Bidders) business or business interests in relation to operations will be a key factor for consideration. In order to incentivise the sourcing and participation of a local B-BBEE partner in the shareholding of the Concessionaire as indicated in (cc) above, Transnet will award a maximum of ten (10) additional evaluation points on a sliding scale;

(bb) Job creation through the Concession operations and the local economic development projects;

(cc) Skills development programmes to develop both technical and non-technical skills for the local communities;
(dd) Enterprise development programmes through the operations of the Concessionaire to develop both local, and other black enterprises; and

(ee) Community Development programmes to contribute to social development in other areas, such as (but not limited to) education and health.

Guidelines and further detail on SELD proposals are provided in section 6 of RFP Volume 2 (Proposal Returnables).

(f) Transition - see Returnable 7 in RFP Volume 2

(i) Respondents (Bidders) will be required to demonstrate cohesive and robust plans to implement a transition to the new Concession arrangements, with minimum risk of service disruption or other difficulties.

(ii) In respect of Transition, the issues Transnet will consider include:

(aa) the clarity and practicability of the proposed plan;

(bb) the expected risks associated with timely completion of conditions precedent in the Transaction Agreements; and

(cc) the extent of resources and experience planned to be committed to the transition process.

(g) Safety - see Returnable 8 in RFP Volume 2

(i) Respondents (Bidders) as network operator in terms of the National Railway Safety Regulator Act, 16 of 2002 will be required to demonstrate continuous safety improvement, a commitment to network security and the development, implementation and maintenance of a robust Safety Management System that will achieve the obtaining of a Safety Permit(s) and meet all contractual and legislative requirements.

(ii) In respect of Safety, the issues Transnet will consider include:

(aa) the Respondent’s understanding of the legislation and regulation applicable to South African rail operations;

(bb) the quality and deliverability of the Respondent’s plan to obtain a Safety Permit(s) by Financial Close;

(cc) the extent of completeness of the draft application for a Safety Permit(s); and

(dd) the extent of innovation and continual improvement processes embedded within the committed approach to safety.

(h) Commercial Acceptability to Transnet - see Returnable 9 in RFP Volume 2

(i) Respondents (Bidders) will be required to propose and indicate the extent to which the proposed governance, legal and commercial structures are robust, sustainable and appropriate.
(ii) Respondents (Bidders) will be required to indicate the extent to which the Proposal complies with the initial Concession Agreement and Ancillary Agreements and demonstrates the Respondent’s commitment to and likelihood of achieving Commercial Close and Financial Close in accordance with Concession Programme timeframe.

(iii) In respect of Commercial Acceptability, the issues Transnet will consider include:

(aa) the extent to which the structure facilitates the efficient and effective performance of the Concessionaire’s obligations under the Transaction Agreements;

(bb) certainty of the commercial and contractual arrangements including the completeness and the terms of the agreements/term sheets between the Concessionaire, its primary subcontractors, counter-parties and any other contractors (as appropriate);

(cc) appropriateness of commercial relationships and risk allocation, having regard to Transnet’s preferred position;

(dd) the nature, extent, risk allocation and value for money impact (if any) of any proposed departures from the Transaction Agreements;

(ee) the extent of any contractual execution risk including the risk of delay in achieving Commercial Close, Financial Close and transition; and

(ff) any correspondence or process of any kind between each Respondent and the competition authorities (which is to be documented in Proposals), if Respondents have reason to believe that competition issues may arise from any Proposal and have discussed their position with the South African competition authorities before submitting Proposals. Respondents are encouraged, at their cost, to make such enquiries.

(i) **Financial Arrangements** - see Returnable 10 in RFP Volume 2

(i) Respondents (Bidders) will be required to propose a funding solution and to indicate the extent to which the funding solution is robust, committed and provides certainty for the duration of the Concession term.

(ii) Respondents and Bidders will be required to indicate the financial sustainability of the Proposal, including the financial strength of the Respondent and its associates and the robustness of financial projections.

(iii) Respondents and Bidders will be required to indicate the extent to which the Respondent’s whole life-cycle, risk-adjusted cost / benefit, taking into account the financial risks and consequences to Transnet, demonstrates value for money.

(iv) The issues Transnet will consider include the following:

(aa) the nature of the commitments being provided by parent entities, shareholders and other financiers in support of the obligations of the Concessionaire under the transaction agreements;
7.3. Evaluation Process

7.3.1. Each Standard Proposal, and Alternate Proposal if any, will be scored in each category out of the following points allocated per category.

The functionality evaluation consist Technical, Commercial and SELD requirements indicated in the table below totalling 90 points of the 90/10 evaluation criteria and the remaining 10 points applicable to the B-BBEE evaluation requirement.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Category - Comparative Evaluation Criteria</th>
<th>Points</th>
</tr>
</thead>
</table>
| 1        | Technical (comprising the comparative evaluation criteria in sections –  
  • 7.2.2(b) (Integrated and Optimised Operational Solution);  
  • 7.2.2(c) (Infrastructure Management and Maintenance);  
  • 7.2.2(d) (Human Resources);  
  • 7.2.2(f) (Transition); and  
  • 7.2.2(g) (Safety)  
|          | Functionality Evaluation Requirement | 35     |

(bb) the financial strength of the consortium as a whole and of each equity participant and the capacity and commitment to meet the minimum capital and operating requirements;
(cc) proposed concession fee;
(dd) the volume of freight transported over the life of the Concession, including forecast revenue growth;
(ee) the level of haulage charges which the Respondent (Bidder) proposes to be charged by BLOM for its haulage services on the Douglas Branch Line and Access Route;
(ff) the level of access charges which the Respondent (Bidder) proposes to be charged by TFR in respect of the Access Route;
(gg) the degree of acceptance by the Bidder of the level of haulage charges to be charged by TFR for its haulage services on the Core Network;
(hh) the quantum of investment in infrastructure maintenance and renewal;
(ii) the cost to Transnet, or saving to the Bidder, of any proposed departures from the Transaction Agreements; and
(jj) the value of any risk adjustment deemed appropriate by Transnet.
2. Commercial (comprising the comparative evaluation criteria in sections –
   • 7.2.2(a) (Overall Vision and Approach);
   • 7.2.2(h) (Commercial Acceptability to Transnet);
   and
   • 7.2.2(i) (Financial Arrangements);

3. Socio-Economic Local Development (comprising the comparative evaluation criteria in section –
   • 7.2.2(e)(ii) (SELD Requirements)

<table>
<thead>
<tr>
<th>B-BBEE Evaluation Requirement</th>
</tr>
</thead>
</table>
| 4. Broad-based Black Economic Empowerment (comprising the comparative evaluation criteria in section –
  • 7.2.2(e)(i) (B-BBEE Requirements)

<table>
<thead>
<tr>
<th>Ownership Indicator</th>
<th>Required Responses</th>
<th>Compliance Target</th>
<th>Score out of 10</th>
</tr>
</thead>
</table>
| 1. The total % owned by black people (including Targeted Groups)
  • (Category weight = 50%) | The extent to which ownership in the hands of Black persons residing within the provincial boundaries of the location of the branch line as a % of the total ownership would be sustained or increased over the contract | A minimum of 10% at Response Closing Date, with a target of 25% (expressed as a % total BEE ownership of the Respondent) | < 10% = 0
|                       |                    |                  | 10% - 25% = 2 |
|                       |                    |                  | 25% - 30% = 4 |
|                       |                    |                  | 30% - 35% = 6 |
|                       |                    |                  | > 35% = 8     |
|                       |                    |                  | > 40% = 10    |

7.3.2. The minimum threshold for the Technical and Commercial evaluation categories is 70% each, meaning that if a Bidder fails in these two categories to score 24.5 points or more out of 35 points allocated for each category, its Proposal will not be evaluated any further and that Proposal will accordingly be disqualified. In both instances Transnet reserves the right to lower the threshold to a minimum of 65% should less than two (2) bidders qualify for the next stage of evaluation.

7.3.3. No more than 2 Bidder(s), in terms of ranking derived using the scores and weights herein outlined, will qualify for appointment as Preferred Bidder at any given time.

7.3.4. Additional points are allocated on a sliding scale as per the table provided below in order to encourage the participation of a B-BBEE partner(s) from within the provincial borders of the location of the branch line and subject to the provisions in 7.2.2(e).
<table>
<thead>
<tr>
<th></th>
<th>period</th>
<th>A minimum of 10% at Response Closing Date, with a target of 30% (expressed as a % of the total BEE share of the Respondent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>The total % owned by black women as defined in Targeted Groups</td>
<td>&lt; 10% = 0</td>
</tr>
<tr>
<td></td>
<td>• (Category weight = 16.6%)</td>
<td>≥10.1%-15% = 3</td>
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<tr>
<td></td>
<td></td>
<td>≥15.1%-20% = 5</td>
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<tr>
<td></td>
<td></td>
<td>≥20.1%-25% = 7</td>
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<tr>
<td></td>
<td></td>
<td>≥25.1%-30% = 9</td>
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<tr>
<td></td>
<td></td>
<td>&gt; 30% = 10</td>
</tr>
<tr>
<td>3.</td>
<td>The total % owned by Black youth as defined in Targeted Groups</td>
<td>&lt; 10% = 0</td>
</tr>
<tr>
<td></td>
<td>• (Category weight = 16.6%)</td>
<td>≥10.1%-15% = 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>≥15.1%-20% = 5</td>
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<tr>
<td></td>
<td></td>
<td>≥20.1%-25% = 7</td>
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<tr>
<td></td>
<td></td>
<td>≥25.1%-30% = 9</td>
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<td></td>
<td></td>
<td>&gt; 30% = 10</td>
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<tr>
<td>4.</td>
<td>The total % owned by people living with disabilities as defined in Targeted Groups</td>
<td>&lt; 10% = 0</td>
</tr>
<tr>
<td></td>
<td>• (Category Weighting = 16.6 %)</td>
<td>≥10.1%-15% = 3</td>
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<tr>
<td></td>
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<td>≥15.1%-20% = 5</td>
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<td>≥20.1%-25% = 7</td>
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<td></td>
<td></td>
<td>≥25.1%-30% = 9</td>
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<tr>
<td></td>
<td></td>
<td>&gt; 30% = 10</td>
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</tbody>
</table>

7.3.5. Transnet reserves the right to award the Concession to a Preferred Bidder who’s Proposal represents the best overall value to Transnet in achieving the objectives as specified in this RFP.

7.4. Decision of the board of directors of Transnet

The decision(s) as to which Bidder(s) the board of directors of Transnet (or delegated authority) selects as Preferred Bidder(s) and/or Reserve Bidder(s) for the Concession Opportunity, rest solely with the board of directors of Transnet (or delegated authority). The decision of the board of directors of Transnet (or delegated authority) will be final.
ANNEXURE A: BACKGROUND AND SUMMARY OF CONCESSION OPPORTUNITY - DOUGLAS-BELMONT BRANCH LINE

Terms defined in section 1.1 (Glossary of Terms) of RFP Volume 1 (Instructions to Respondents and Bidders) are accorded the same meanings in this Annexure A to RFP Volume 1. The attention of Respondents and Bidders is drawn to Section 1.2 (Important Notice) of RFP Volume 1 (Instructions to Respondents and Bidders)

1. Introduction

1.1 Background and Context

1.1.1 The South African national government has identified the transport sector as one of the significant drivers of the economy. Transport plays a critical role in enabling mobility and access to economic and social activities. Most industries rely on the efficient movement of freight from origins such as farms, mines and manufacturing plants, to destinations within and outside of the Republic of South Africa. The Branch Lines are currently a relatively underutilised part of the country’s transport infrastructure and it is expected that their revitalisation could unlock economic potential both regionally and nationally.

1.1.2 This represents an important challenge for Government, Transnet and the private sector to collaborate on the revitalisation of the Branch Line network wherever feasible, in order to promote an inter-modal shift from road to rail, to lower the social and commercial costs of freight transportation, and to stimulate economic opportunities in regional and rural areas.

1.1.3 The Branch Lines comprise 7,278 kilometres or 35 percent of the 20,953 route kilometres of the total Rail Network. 3,928 km of these Branch Lines are currently operational, while the remaining 3,350 km are closed lines. All of the Branch Lines are feeder lines to the country’s Core Network. The Core Network is owned by Transnet and freight operations are undertaken by Transnet Freight Rail (TFR), a division of Transnet, while the majority of passenger operations are undertaken by Passenger Rail Agency of South Africa, which is a government-owned and operated entity. Much of the freight that originates on Branch Lines undergoes consolidation at marshalling yards as it progresses to and on the Core Network for transportation to end markets. The majority of passenger operations are concentrated on the larger metropolitan areas of Johannesburg, Pretoria, Port Elizabeth, Durban, and Cape Town.

1.1.4 The Branch Lines are characterised by multiple origin-destination pairs, wagonloads, multiple sidings, low axle limits (between 11.5 tons/axle and 20.0 tons/axle) and diesel traction. South Africa’s rail gauge is predominantly “Cape Gauge” (1065mm), with the exception of a few Narrow Gauge (610mm) lines. The concessioned Gautrain network, which is standard gauge (1438mm), is separate from the rest of the South African rail network.

1.1.5 Currently there is no “open access” policy, and although some private entities and foreign railway entities have negotiated arrangements with Transnet, these arrangements tend to be very limited and
confined to discrete areas associated with private sidings attached to manufacturing or mining facilities or for foreign railways to access the interchange yards.

1.1.6 The chart in Figure 1 below shows the publicly owned and operated rail network, with the Core Network, active Branch Lines and closed Branch Lines separately identified.

![Figure 1: Transnet’s Branch Line and Core Network Length](image)
1.2 Objectives of the Concession Process

1.2.1 As part of its Private Sector Participation (PSP) Plan, identified within its Market Demand Strategy and seven year Corporate Plan, Transnet is now embarking on a process for the concessioning of select Branch Lines with the support of, and in consultation with Government. This involves managing a competitive bid process in which interested parties are being invited to bid for the exclusive long-term right of use over the specified Branch Line or Branch Line Cluster assets, coupled with rights of use of associated properties (in certain instances), against the assumption of the responsibility for maintaining the Branch Line or Branch Line Cluster infrastructure. This process will culminate in the selection of a preferred bidder in respect of a Branch Line or a cluster of Branch Lines and with whom Transnet will negotiate and conclude a Concession Agreement.

1.2.2 The broad objectives of the concessioning process, which encompass national transport policy as well as Transnet’s specific corporate objectives, include the engagement of the private sector on the revitalisation of the Branch Line network wherever feasible, in order to:

1.2.2.1 allow focus on Branch Line business opportunities;

1.2.2.2 promote the inter-modal shift of freight from road to rail;

1.2.2.3 lower the social and commercial costs of freight transportation;

1.2.2.4 encourage entrepreneurship;
1.2.2.5 apportion risk to where it can be best managed;

1.2.2.6 stimulate employment and other socio-economic opportunities in rural areas;

1.2.2.7 promote Socio-Economic and Local Development (SELD); and

1.2.2.8 support the growth strategy of Government.

1.2.3 In each Concession Agreement, Transnet will retain ownership of the Branch Line land and rail infrastructure (assets) and grant to the Concessionaire a long-term right of use in respect of such assets for a concession fee. Transnet will require at least specified volumes of freight to be carried, and these should be above the existing and projected volumes by TFR, subject to a cap/ceiling at least for the initial phase (first three years) of the Concession, given the current physical or operational constraints.

1.2.4 Each Concessionaire will be required to make the necessary capital investments (where applicable), which would include maintaining the railway and other infrastructure assets to Transnet’s standards throughout the concession period. For train operations and management, the Concessionaire will be obliged to use the services of Transnet Branch Line Operations and Management entity (BLOM), a division within TFR.

1.2.5 Transnet also seeks to align the Concession opportunities to national plans and policies on economic development. These include the principles and objectives of plans such as the New Growth Path, as well as the 12 National Outcomes. The main objective of integrating socio-economic development into the concession opportunity would therefore ensure that the concession contributes to local economic development, rural development, and other prioritised social development aspects that are crucial to delivering on the developmental agenda of national government.

1.3 **Governing Principles**

1.3.1 Transnet encourages Respondents who are suitably qualified and experienced in the provision of freight services to register and to submit Responses for the Branch Line Concession opportunities being offered in this phase of the Concessioning process.

1.3.2 Transnet seeks to award Concessions to those Respondents who can demonstrate the necessary experience and financial capacity required to manage freight services successfully, and in particular, who can demonstrate how they will develop the Branch Line Concession into a viable, re-energised rail operation.

1.3.3 RFP submissions will be evaluated on a range of assessment criteria as outlined in section 7 of this RFP - Volume 1. The Respondent with the highest evaluation score will be invited to enter into negotiations as a preferred bidder to take up the particular Concession under offer.
2. The Concession Opportunity – Phase 1

2.1 The Branch Line (BL) being offered for concessioning in this Concessioning Programme is;

2.1.1 the Douglas-Belmont Branch Line

The opportunity is indicated in the circled area on the map shown in Figure 3 below:

Figure 3: Active Branch Lines/Clusters offered for Concessioning in Phase 1

2.2 The Douglas-Belmont Branch Line is recognised as a grain clusters.

2.3 It should be noted that certain property assets along the Branch Line permanent way will form part of the Concession, while there may also be other property assets associated with some of the Branch Lines that will be made available for leasing at an additional cost to the concession fee.

2.4 Details about the commercial, socio-economic, technical and property features of the Branch Line under offer are provided in Volumes 4 and 5 of the RFP. Some of the details contained in the RFP may differ from that previously provided in the EOI phase. As indicated in section 1 above, Volumes 2 through 5 of the RFP will only be made available to registered Respondents, who have completed and returned the relevant documentation as stipulated in section 4 of this Volume 1 of the RFP and paid the non-refundable fee of R10 000 inclusive of VAT.
3. **Overview of Business Dimensions – Douglas Rail Line**

3.1 The Douglas Rail Line is located in the Northern Cape Province and consists of a single Branch Line running from Douglas to a termination point at the entrance to the Belmont station over a total length of approximately 85 km. The main commodity type that is moved along this Branch Line is grain.

3.2 Transnet completed the upgrading of the rail track from an 11.5t to an 18.5t per axle loading in 2014. Prior to the upgrade only half loaded wagons were hauled on the Douglas rail line. These wagons were then ‘topped up’ at Modderrivier on the main line en route to the Beaconsfield Marshalling Yard at Kimberley on the main line, from where they were dispatched to the final destination.

3.3 The upgrade allows for improved efficiencies and cycle times as it eliminates the need to top up wagons at Modderrivier. Should the Belmont yard be upgraded as well it would eliminate the need for locomotives and crew exchange to take place at Beaconsfield.

The layout of the Douglas Rail Line is outlined in Figure 4 below:

![Figure 4: Douglas Rail Line Map](image)

3.4 The Concessionaire will be required, as a minimum, to maintain the frequency and level of freight services presently being provided by Transnet on the Douglas Rail Line. The branch line service will originate on the branch line and terminate at the Beaconsfield Marshalling Yard located at Kimberley, where after Transnet will continue to provide all train marshalling and haulage services for the Concessionaire from the Beaconsfield Marshalling Yard to the destination point on the Core Network. Transnet will then return empty wagons to the Beaconsfield Marshalling Yard for collection by the BLOM on behalf of the Concessionaire.
4. Contractual Framework

4.1 Basis for Concessioning – The Branch Line Concessioning Model

4.1.1 The Branch Line Concessioning model may be summarised as a contractual arrangement between Transnet, as the network owner, and Concessionaire, as network custodian responsible for operations thereon and maintenance thereof. The concessioning model recognises that Transnet will remain responsible for delivering freight haulage services on the Core Network (long-haul) and that the Concessionaire will be responsible for the provision of freight haulage services, where the attendant rail operations will be executed on its behalf by BLOM, on the Branch Line and, where applicable, on the Access Route (short-haul). The Concessionaire would only be entitled (through BLOM) to traverse the Access Route in order to gain access to designated Marshalling Yard(s).

The figure below illustrates the interface between Branch Line operations and Core Network.

![Figure 5: Concessioning Model – Branch Line Operations and Core Interface](image)

4.2 Overview of Concession Arrangements

4.2.1 Overview of Commercial Objectives

4.2.1.1 Transnet intends to grant the Concession on best practice principles and to ensure that the following are undertaken on standards acceptable to Transnet at the risk of and for the account of the Concessionaire without recourse to Transnet for funding or resources:

a) the short-haul freight rail service to be offered by the Concessionaire;
b) the maintenance of the rail infrastructure; and

c) the requisite access to the Core Network by the Concessionaire.

4.2.2 **Overview of Proposed Concession Arrangement**

4.2.2.1 Transnet proposes to partner and contract with the Concessionaire for the Concession Opportunity, where such Concessionaire will not only provide a freight service, maintain rail infrastructure and have controlled and limited access rights to a portion of the Core Network, but also finance the design, maintenance, and refurbishment and, where necessary, undertake any required upgrading works, all at the Concessionaire’s own risk.

4.2.2.2 The arrangements will, subject to the terms of the Transaction Agreements, be implemented on the basis that –

a) Transnet grants to the Concessionaire (at the risk of the Concessionaire) for purposes of undertaking the **Concession**, rights of use and enjoyment in and to the rail infrastructure, where:

i. the Branch Line component of the rail infrastructure will be made available on a concession basis, for which a concession fee will be payable by the Concessionaire; and

ii. the Core Network component (being the Access Route) of the rail infrastructure will be made available on a controlled and limited access basis, for which an access fee will be payable by the Concessionaire;

b) the Concessionaire will be obliged to use the services of BLOM for train operations and management purposes, in terms of the TOM Agreement;

c) the Concessionaire is expected to finance and undertake the required design, refurbishment and upgrading works in consultation with all stakeholders, including Transnet, the Rail Safety Regulator, provincial authorities, relevant local authorities and environmental authorities;

d) the Concessionaire will finance and undertake the operation of a freight rail service, and undertake maintenance of the Branch Line component of the rail infrastructure;

e) if Transnet, in response to a property offer made by a Bidder as envisaged in section 2.3.4 of RFP Volume 1, accepts such property offer, then Transnet would (as lessor) conclude a lease with the Concessionaire (as tenant) in respect of that adjacent property(ies), where the tenant would pay rent to the lessor for the duration of the lease (whose term will be same as the concession term);

f) upon expiration (or early termination) of the Concession and the lease agreement, if any, Transnet will take control of the rail infrastructure, the leased land (if any) and all improvements thereon, if any, with no further compensation to the Concessionaire;

g) there would be no general access by the Concessionaire onto the Core Network, where the respective operations of the Concessionaire and Transnet in relation to the Branch Line and the Access Route would be clearly defined;
h) any access by the Concessionaire to the Core Network (being the Access Route) would be controlled and limited to traversing the Core Network up to the Marshalling Yard and entering a Marshalling Yard, or similar natural hand-over point; and

i) the Marshalling Yard(s) or similar natural hand-over point(s) would be controlled and operated by Transnet, assuming that these are located on the Core Network.

### 4.2.3 Proposed Arrangements in respect of Assets

#### 4.2.3.1 The assets that will be the subject of the Concession Agreement may be categorised into three subcategories, namely:

a) railway land, which would be:

   i. the land on which the rail road is constructed (in respect of active or partially active lines);
   
   ii. the land on which the rail road was constructed but has since been removed (in respect of closed or partially Closed Lines);
   
   iii. the rail reserve, inclusive of the service roads but excluding any private sidings;
   
   iv. designated train station, exchange yards and marshalling yards on the Branch Lines; and
   
   v. any other land parcels identified by Transnet as forming part of the land to be concessioned (see section 2.3.3 of RFP Volume 1);

b) rail infrastructure, which would be:

   i. all fixed improvements on the railway land, including the rail-road, ballast, sleepers, bridges, viaducts, culverts, signalling and communication infrastructure; and

c) moveable rail assets, which would be:

   i. all those assets on the railway land or used in the maintenance or operation of the rail infrastructure which are not fixed to the land or improvement in question and which Transnet has offered to Concessionaire on lease or for sale.

   ii. retained by Transnet and removed at Transnet's expense from the railway land, save where a Concessionaire in its bid proposal indicates that it wishes to acquire or make use of such moveable assets, and Transnet agrees to transfer same to the Concessionaire.

#### 4.2.4 Principal Obligations of Transnet

#### 4.2.4.1 The anticipation is that Transnet would have four principal obligations to deliver under the Concession Agreement, being –

a) to make the railway land for the Branch Line available to the Concessionaire – to be regulated in the Concession Agreement;

b) to make the rail infrastructure for the Branch Line available to the Concessionaire – to be regulated in the Concession Agreement;
c) to provide train operations and management services through BLOM – to be regulated in the TOM Agreement; and

d) to permit the Concessionaire to traverse the Access Route through BLOM and to provide controlled and limited access by the Concessionaire to the Marshalling Yard(s) or other natural hand-over point(s) on the Core Network – to be regulated respectively in the Track Access Agreement.

4.2.4.2 Transnet will make available the railway land and the rail infrastructure to the Concessionaire on the following basis –

a) the railway land and rail infrastructure would be made available to the Concessionaire on the basis that the Concessionaire is the network operator of the Branch Line. This would not detract from Transnet's rights to access the railway land and rail infrastructure for inspection purposes to satisfy itself that the Concessionaire is fulfilling its concession obligations;

b) no open access requirement is being placed on the Concessionaire in respect of permitting any other operator(s) to access the Branch Line, which will remain subject to legislative or regulatory regulation;

c) the Concessionaire would be obliged, notwithstanding the foregoing, to grant reasonable access to the Branch Line (subject to its operating schedule and safety requirements and other terms and conditions recorded in a separate track access agreement) to –

i. those persons to whom Transnet has already granted (prior to the concession) rights of access to the Branch Line, or to traverse the Branch Line with their own (or Transnet) rolling stock; and

ii. those persons, whether governmental or non-governmental who require access to reach rural communities in order to provide or roll out on a social welfare or humanitarian basis essential services, products or goods;

d) the Concessionaire would have to avail its freight service(s) to the world at large, and not limit its rail transport service for its own freight requirements or a closed list of customers to the exclusion of others. Put differently the Concessionaire may not subvert the public nature of the railway land and rail infrastructure through privatising some. This may not necessarily restrict a Concessionaire from entering into contracts with customers whose demands actually take up a significant proportion of the Concessionaire's capacity.

4.2.5 **Principal Obligations of Concessionaire**

4.2.5.1 The Concessionaire will have four principal obligations to deliver under the Concession agreement, being –

a) to look after the rail infrastructure by doing one, more or all of the following –

i) designing and undertaking (or procuring the undertaking) of any requisite upgrade works to the rail infrastructure, whether to meet its own bid proposal requirements, or rail safety regulatory requirements.

The considerations and assumptions regarding the upgrading of rail infrastructure are –
aa. the base line condition will be determined by Transnet and disclosed in the RFP;

bb. Respondents will be given opportunity during its bid proposal formulation period to undertake a due diligence investigation on the condition of the rail infrastructure;

c. if a Respondent identifies any issues which are inconsistent with Transnet's assessment of condition, these issues should be clearly recorded in the Proposal and will be resolved by Transnet and the Preferred Bidder, should the Respondent be selected as Preferred Bidder;

dd. the agreed condition of the rail infrastructure would be recorded in a schedule to the Concession Agreement, comprising the agreed base line, which the Concessionaire will be obliged, as a minimum, to maintain at all times for the Concession term;

ee. the nature, extent and timing of any upgrading works to the rail infrastructure as identified by the Concessionaire would be recorded, in a schedule to the Concession Agreement;

ff. any proposed changes in technical specification to any part of the rail infrastructure, including alignment and gauge would require the prior approval of Transnet;

gg. any upgrading works as identified, either at commencement of the Concession term or later, would have to be undertaken by an entity approved by Transnet and at the cost of the Concessionaire;

hh. any initial upgrade to the rail infrastructure identified by Transnet will be undertaken by Transnet, either prior to the commencement of the Concession, or during the initial phase of the Concession.

ii) planning and undertaking (or procuring the undertaking) of any requisite maintenance works (planned and unplanned) to the rail infrastructure, whether to meet its own Bid proposal requirements, or Rail Safety Regulator requirements, would be at the Concessionaire's own cost.

The principal underlying considerations are that–

aa. any and all maintenance work to the rail infrastructure be undertaken by any person(s) who are duly certified to carry out such work (whether certified by a recognised industry association, or by Transnet), alternatively are acceptable to Transnet;

bb. the Concessionaire will, under the Concession Agreement, furnish its annual planned maintenance programme and report on its implementation of such programme, including any unplanned maintenance work undertaken during the reporting period in question;

cc. Transnet would be entitled at periodic intervals not less frequent than one year to undertake an inspection of all or any part of the rail infrastructure to satisfy itself that (i) the agreed base line condition is being maintained, and (ii) that the Concessionaire is adequately carrying out its planned maintenance (and unplanned maintenance programme) as reported, or as required under the Concession Agreement.

b) to undertake, at its risk and cost, one or more freight rail services;
c) to procure the operation of a safe, reliable and efficient rail service to meet contracted performance requirements and other objectives of the Concessioning Programme; and

d) to furnish a form of financial security (Performance Bond) to Transnet to underpin the Concessionaire’s maintenance obligations and other obligations under the Concession Agreement.

4.2.6 Transition of Customers

4.2.6.1 The proposed approach for dealing with the transition of Transnet customers at the start of each Concession is described below.

a) If the Transnet customer is not a national customer, then where appropriate Transnet will either –

i) assign that contract to the relevant Concessionaire, subject to the consent of the relevant customer; or

ii) establish back-to-back arrangements with the Concessionaire in terms of a service contract, or to subcontract the Concessionaire to haul the customer freight on the Branch Line concerned and Access Route, where applicable.

b) As and when each customer contract, which was not assigned by Transnet to the Concessionaire, expires, then the customer would have the election to contract with either Transnet or the Concessionaire, or both Transnet (for long-haul) and the Concessionaire (for short-haul) for its freight service requirements, subject to the Concessionaire or Transnet (as applicable) having the required track access and haulage services rights.

c) New customers would also have the election to either contract with Transnet, or the Concessionaire, or both Transnet (for long-haul) and the Concessionaire (for short-haul) for their respective freight service requirements, subject to the Concessionaire or Transnet (as applicable) having the required track access and haulage services rights.

d) The Concessionaires would be required to offer their freight rail services on similar or common terms as between the Concessionaire on the one hand, and as between the Concessionaire and Transnet on the other hand, to ensure some uniformity of terms of carriage on Transnet rail infrastructure. The uniformity contemplated would not extend to pricing of services, as each Concessionaire would be given the latitude to price accordingly for its services.

e) The Concessionaire may use TFR’s Standard Conditions of Carriage as a guide to base their terms of carriage.

4.2.7 Funding

4.2.7.1 The anticipation is that substantial funding for the Concessions will be provided on a limited-recourse (or project finance) basis, made available by lenders (other than the shareholders or related parties of the Concessionaire), who will look primarily to the cash flows generated from the Concession (that is, the primarily freight transport revenue to be made by the Concessionaire for the delivery of the freight rail service) to service that debt. Since the cash flows generated by the Concession will depend on the sustained delivery by the Concessionaire of the agreed services at the prescribed
performance levels, poor performance by the Concessionaire will put the servicing of such debt at risk.

4.2.7.2 In the alternative, funding for the Concession could be procured on a corporate finance basis, where the lenders would primarily look to the balance sheet of the Concessionaire or its parent company or shareholder(s) for repayment of the debt.

4.2.7.3 In either instance (project or corporate finance) it is assumed that –

a) none of the concession assets (being the railway land and the rail infrastructure) would be capable of being pledged as security by the Concessionaire for its obligations to its lenders;

b) lenders would be entitled to take as security on terms acceptable to Transnet –

i. cession and pledge over the assets of the Concessionaire;

ii. cession and pledge of shares in the issued share capital of the Concessionaire;

iii. cession and pledge of the Concessionaire’s rights in and to the Concession Agreement, a land lease agreement (if any) and any other agreement concluded by the Concessionaire pursuant to the Concession;

iv. Transnet will not provide any funding (direct or indirect) or guarantees to the Concessionaire; and

v. Transnet will not take any equity stake in the Concessionaire.

4.2.8 Risk Allocation

4.2.8.1 The general approach to risk allocation is that risk is allocated to the party best placed to manage or mitigate against that risk.

4.2.8.2 The Concessionaire will assume all forms of Concession life-cycle risk (including design, construction (where required), financing, operation, environmental and maintenance risks).

4.3 Suite of Transaction Agreements

4.3.1 The detail of all the contractual arrangements contemplated in this section 4 of Annexure A of RFP Volume 1 are set out in the Transaction Agreements, which are –

a) Concession Agreement; and

b) the Ancillary Agreements, being –

i. Track Access Agreement;

ii. Train Operations and Management Agreement;

iii. Safety Interface Agreement(s); and

iv. Land Lease Agreement (if any).
4.3.2 The Transaction Agreements are contained in RFP Volume 3 (Transaction Agreements). If there is any conflict or inconsistency between the summary terms of the concession arrangement set out in this section 4 of the Annexure A to RFP Volume 1 and any one or more of the Transaction Agreements, the terms of the Transaction Agreements will prevail. It being recorded that the sole purpose of this section 4 of Annexure A to RFP Volume 1 was to afford Recipients a summary overview of the concession contractual arrangements and some of the principals and assumptions underlying same, without changing the terms of the Transaction Agreements.
ANNEXURE B: RESPONSE APPLICATION FORM

Part 1 – Respondent Information

INSTRUCTIONS FOR COMPLETION OF THE RESPONSE APPLICATION FORM

1. **Introduction**
   
   This Response Application Form, is comprised of 3 (three) section, namely:

   1.1. Respondent Information (form for completion, contained in this document);

   1.2. Respondent Confidentiality Undertaking (contained in a separate document); and

   1.3. Proof of Payment. Recipients are referred to section 4.2.1(c) of RFP Volume1.

2. **Respondent Information**

   Respondents are required to provide the following information, the –

   2.1. name of the Respondent, indicating whether or not same is incorporated, and if so the country in which it is incorporated, the date and nature of its legal formation/registration. Please also provide, if available, the physical address, postal address, e-mail address, telephone and telefax numbers of the Respondent –

   **RESPONDENT INFORMATION**

<table>
<thead>
<tr>
<th>Name of Respondent</th>
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<tbody>
<tr>
<td>Type of Entity</td>
<td>(e.g. Limited Liability Company / Joint Venture / Consortium / Other)</td>
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<tr>
<td>Company Registration No</td>
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<td>Date and country of registration</td>
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<td>Registered address of the Entity</td>
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<td>Website address (if any)</td>
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   **HEAD OFFICE**

   | Street address | |
   | Postal address | |
   | Telephone No | |
   | Facsimile No | |
   | E-mail | |

   **CONTACT PERSONS**

   | Name (s) | |
   | Telephone (s) | |
   | Facsimile No (s) | |
   | E-mail | |

   2.2. name and contact details of the contact person for the Respondent for purposes of this RFP. The contact details are to include the physical address, postal address, e-mail address, telephone, cell phone and telefax numbers of the Respondent –
2.3. **name of the lead member (organisation) of the Respondent, should the Respondent be a consortium or joint venture, and please provide the physical address, postal address, e-mail address, telephone and telefax numbers of such lead member –**

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<th>RESPONDENT CONTACT PERSON (For Administration Purposes)</th>
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<td>Company Registration No</td>
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<td>Date and country of registration</td>
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<td>Registered address of the Entity</td>
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2.4. **name of the lead person (individual) responsible for the submission of a Response by the Respondent, the name of his/her employer and designation within such employer. Please also provide such person’s physical address, postal address, e-mail address, telephone, cell phone and telefax numbers.**

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<th>RESPONDENT CONTACT PERSON</th>
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<td>Name (s)</td>
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<td>Employer</td>
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2.5. Please state the names of all Sponsors and Relevant Entities and consultants, if any to be involved in the Concession and their respective roles and responsibilities.

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<thead>
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<th>NAME: SPONSOR</th>
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2.6. If the Respondent is an incorporated company, it is required to identify all of its shareholders and their respective shareholding in the company, as at Response Closing Date.

<table>
<thead>
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2.7. If the Respondent is an incorporated company, listed on any securities exchange, it is required to identify its majority shareholder or largest shareholder, as at Response Closing Date.

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2.8. If more than one company or entity is to be involved in the Concession, please detail the organisational structure of the consortium, which document is to be appended by the Respondent to its Response, marked as such, at the end of the Annexure B: Part I (Respondent Information). Respondents must indicate the largest and/or majority shareholder(s) in the consortium or entity, as at Response Closing Date.

3. **Respondent Confidentiality Undertaking**

Please find enclosed the signed Respondent Confidentiality Undertaking, as Annexure B – Part II, which has been signed by the following persons/entities:

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4. **Proof of Payment**

Please find enclosed the proof of payment, as Annexure B – Part III.
Dear Sirs

TRANSNET BLC PROGRAMME - CONFIDENTIALITY UNDERTAKING

1. **Introduction**

1.1. Transnet SOC Limited ("Transnet"), in pursuance of its procurement process on the proposed award of a concession in respect of its branch lines concessions programme issued, during February 2015, a Request For Proposals ("RFP"), Volume 1 to which the form of this confidentiality undertaking letter (the "Letter") is attached as Annexure B Part II (Respondent Confidentiality Undertaking).

1.2. The remaining Volumes 2 to 5 of the RFP (which will be availed to Recipients who apply therefor pursuant to section 2 of RFP Volume 1) contain certain confidential and proprietary information which will be disclosed and availed by Transnet to Respondents.

1.3. We recognise and acknowledge that –

1.3.1. all Respondents (including their members, sponsors, consultants and advisers, if any) are required to treat all information in RFP Volumes 2 to 5 as confidential ("Confidential Information");

1.3.2. the Confidential Information is being made available to us solely for the purpose of and to the extent required by us as a Respondent to appraise the Concession opportunity, formulate and submit a Proposal, to clarify any aspect of our Proposal at the request of Transnet, and if appointed as Preferred Bidder, to negotiate the conclusion of a Concession;

1.3.3. the Confidential Information will not be disclosed to us for any purpose other than that recorded in paragraph 1.3.2 above that such information would not have been made available to us but for the undertakings as to confidentiality contained in this Letter.

1.4. Terms defined in RFP Volume 1 are accorded the same meanings in this Letter.

2. **The Undertakings**

2.1. Subject to paragraph 3 below, we will:

2.1.1. treat all Confidential Information as secret and confidential;
2.1.2. only disclose the Confidential Information to our directors, officers, employees, agents and/or professional advisers, who strictly need to receive and consider the Confidential Information for the purposes of the Proposal and Concession opportunity, and who have, prior to receiving such information, agreed with us in writing to be bound by the terms of this Letter as if they were a party to it;

2.1.3. not disclose the Confidential Information to anyone, other than the persons referred to in paragraph 2.1.2 above; and

2.1.4. not use the Confidential Information for any purpose other than that recorded in paragraph 1.3.2 above.

2.2. We undertake that our directors, officers, employees, agents and/or professional advisors (referred to in paragraph 2.1.2 above) are bound by the confidentiality undertaking of similar nature to the one contained herein, which restrict them from disclosing any Confidential Information contrary to the undertakings and covenants made by us, in this Letter and that they are aware of -

2.2.1. the confidential nature of the Confidential information that will be made available to them from time to time as part of the procurement process; and

2.2.2. our obligations of confidentiality contained in this Letter.

2.3. We will promptly notify Transnet if we become aware of any breach of confidence by any person, firm or corporation to whom we have divulged all or any part of the Confidential Information or who becomes aware of it in an unauthorised way, and will give Transnet reasonable assistance in connection with any proceedings which Transnet may institute against such person, firm or corporation for breach of confidence or otherwise.

3. Exceptions

3.1. We will be under no obligation to keep confidential any Confidential Information that we demonstrate -

3.1.1. was known to us at the time of its disclosure to us by Transnet and was not acquired in any way directly or indirectly from Transnet or any of our, directors, officers, agents, employees or professional advisers and provided that such information is not known to be subject to any other duty of confidentiality owed to Transnet or any other person; or

3.1.2. is in, or has, after disclosure to or acquisition by us, entered the public domain other than by reason of a breach of the undertakings given pursuant to this Letter or any breach by any other person of any obligation of confidentiality owed by that person.

3.2. We will be entitled to disclose any Confidential Information if and to the extent that we are required to do so by any law or by any court or regulatory agency or authority, provided that, except to the extent prohibited by law or regulation, we notify Transnet as soon as possible upon becoming aware of any such requirement and give Transnet reasonable assistance in connection with any legally available steps which Transnet may take to resist or narrow such requirements.

4. Returning Confidential Information

4.1. Following termination of our participation in the procurement process as a Respondent or a Bidder and upon receipt of a written request from Transnet we will -
4.1.1. return to Transnet or destroy all documents and all other materials containing or reflecting any Confidential Information, together with any copies, which are in our possession or control or in the possession or control of any of our directors, officers, agents, employees or professional advisers and which are in a form capable of delivery or destruction; and

4.1.2. expunge all Confidential Information from any computer, word processor or similar device into which it was programmed by us or on our behalf or by our professional advisers or on their behalf.

4.2. We acknowledge that neither the return of any Confidential Information nor the expunging of any of the same from our records will release us from our obligations under this Letter.

5. Indemnity

If this Letter has been breached by us or our directors, officers, agents, employees, or professional advisers then we will fully indemnify, protect, defend and hold harmless Transnet, or any of its directors, officers, agents, employees, or professional advisers (“Indemnified Persons”) from and against any and all actions, claims, demands, proceedings, liabilities or judgments and any and all losses, damages, costs, charges and expenses of whatever nature and in whichever jurisdiction which may be instituted, made or alleged against, or which are suffered or incurred by any Indemnified Person and which relate to or arise directly or indirectly from any such breach.

6. Duration

The obligations undertaken by us under this Letter will continue indefinitely after signature of this Letter for as long as the Confidential Information remains confidential without publication thereof into the public domain by us, or any of our directors, officers, agents, employees, or professional advisers.

7. Relief

In the event of any breach by us (or any of our directors, officers, agents, employees, or professional advisers) of the undertakings in this Letter, we recognise that Transnet, in addition to any other remedies which may be available to Transnet at law, will be entitled as set out in RFP Volume 1 to terminate our participation as a Respondent or a Bidder in the procurement process.

8. Waiver

No failure or delay in exercising any right, power or privilege under this Letter will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise.

9. Severable

The provisions of this Letter shall be severable in the event that any of the provisions are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

10. Governing Law

This Letter will be governed by and construed in accordance with the laws of South Africa.

Yours faithfully,
[insert name and address of the person / company / entity giving the undertakings and the name, designation and address of the signatory]

____________________________________
who warrants that he/she is duly authorised hereto

________________________
Date

____________________________________
who warrants that he/she is duly authorised hereto

________________________
Date
ANNEXURE B: RESPONSE APPLICATION FORM

Part 3 – Proof of Payment
(to be supplied by Respondent)

Recipients are referred to section 4.2.1(c) of RFP Volume1
PART 1 – Form of Cover Letter

[Insert appropriate letterhead]

---------------------------------------

[Insert name and address of person / company / entity giving the undertakings]

TRANSNET BLC PROGRAMME – DOUGLAS-BELMONT BRANCH LINE

1. We, the [insert name of Respondent (Bidder)], led by [insert name of lead member] are pleased to submit the Proposal enclosed with this letter, as our Proposal in response Proposal to the Request for Proposals (“RFP”) issued by Transnet SOC Ltd (“Transnet”) during February 2015 for the proposed concession of the Douglas-Belmont branch line.

2. As appears more fully in the enclosed Proposal, the [insert name of Respondent (Bidder)] is comprised of the following entities –
   2.1 [insert names of members of the Respondents]

3. The following documents are submitted separately:
   - 3.1 Bid Bond;
   - 3.2 Standard Proposal; and
   - 3.3 Alternative Proposal(s) (if applicable).

4. Having examined the content of the Proposal, I/We, the undersigned confirm and warrant that the all statements made and information supplied in the Proposal are both true and correct.

5. I/We acknowledge that this letter and all parts of our Proposal and other documents that constitute my/our Proposal, bind all our members in respect of all of the representations and/or undertakings made as part of the Proposal, and I/we hereby confirm that we have authority to bind our members.

6. I/We acknowledge and accept your authority to carry out, directly or through your advisors, any investigation you may deem necessary to verify the truthfulness of the statements and documents submitted and to obtain clarification of my/our legal and/or technical and/or financial ability to provide the services contemplated in the scope of the RFP, and our ability to duly comply with the requirements of the RFP documentation, which we are responding to. To this end, we authorise, by our signature hereto, to obtain information from any person, or institution pertaining to our consortium and/or our Proposal, including that which relates to the members of the [insert name of Respondent (Bidder)], to the extent relevant and required for the conduct of due diligence and/or evaluation of our Proposal, from whomsoever may be in possession of thereof.

7. I/We agree that the terms contained in the RFP will be binding upon us and the members of our consortium/joint venture.

8. We further agree and/or undertake and/or represent that by signing of this letter that:
   - 8.1 each member the [insert name of Respondent (Bidder)] is fully acquainted with all the legal provisions prevailing in South Africa in respect of the realisation of the Concession Opportunity and that it will comply therewith;
8.2 our Proposal has been submitted independently, without consultation, communication, or agreement for restricting competition, with any other Respondent (Bidder) or to any other competitor/potential competitor;

8.3 unless otherwise required by law, in which case we would notify Transnet in writing, our Proposal has not been knowingly disclosed and will not, knowingly be disclosed prior to opening, directly or indirectly to any other Respondent (Bidder), member of another Respondent (Bidder) or to any competitor/potential competitor;

8.4 no attempt has been made or will be made by us or any member of the [insert name of Respondent (Bidder)] to induce any other person or firm not to submit a Proposal for the purpose of restricting competition;

8.5 save as discussed in writing to Transnet, the Proposal in response to the RFP is true;

8.6 save for any disclosures in writing to Transnet, the each member has –

8.6.1 not passed a resolution nor is the subject of an order by the court for its winding-up;

8.6.2 not been convicted of a criminal offence relating to the conduct of its business or profession;

8.6.3 not committed an act of grave misconduct in the course of its business or profession;

8.6.4 fulfilled obligations relating to the payment of taxes under the laws of the Republic of South Africa; and

8.6.5 not made any misrepresentation in providing any of the information required in relation to the proposed concession of the Douglas-Belmont branch line.

9. I/We understand and accept that our Proposal shall constitute a binding and irrevocable offer by the [insert name of Respondent (Bidder)] to Transnet to the Concession until acceptance or rejection thereof by Transnet within 9 (nine) months of the date of submission hereof.

10. I/We understand that Transnet is not bound to accept any Proposal, which it may receive and that Transnet will not defray any expenses incurred by me/us in the preparation of our Proposal.

11. I/We acknowledge that this letter and all parts of the Bid Bond, Standard Proposal and/or Alternative Proposal and other documentation, which constitute our Proposal duly bind all our members as well.

12. I/We choose domicilium citandi and executandi at

……………………………………………………………………………………………………
……………………………………………………………………………………………………

in the Republic of South Africa.

Yours faithfully

……………………………………………………………………………………………………
……………………………………………………………………………………………………

(SIGNATURE)

DATED THIS ………………… DAY OF …………………… 2015

ON BEHALF OF …………………..………………………………. [BLOCK CAPITALS]

ADDRESS ………………………………………………………………………………………………………
……………………………………………………………………………………………………
……………………………………………………………………………………………………
WITNESS:.............................................. (SIGNATURE)

NAME: .................................................. [BLOCK CAPITALS]

ADDRESS ...........................................................................................................
............................................................................................................................
............................................................................................................................

OCCUPATION .........................................................................................................
ANNEXURE C: PROPOSAL FORMS

Part 2 – Signatory’s Authority

COMPANY LETTERHEAD

By the resolution of the Board of Directors\(^2\) at a meeting held at …………………………… on …………………………………. 2015 whose signature appears below……………………………………………… has been duly authorised to sign and thereby bind [insert name of the Respondent (Bidder)] and its members in relation to all documents in connection with the proposed concession of the Douglas-Belmont branch line. A copy of the resolution authorising the signatory to sign the relevant documents is attached herewith.

On behalf of

…………………………………………………………………………………………………….[BLOCK LETTERS]

SIGNED FOR AND ON BEHALF OF COMPANY………………………………………………

IN HIS CAPACITY AS……………………………………………………………………

DATE…………………………………………………………………………………

SPECIMEN SIGNATURE OF SIGNATORY………………………………………………

WITNESS:

1…………………………………………………………………………………

2…………………………………………………………………………………

\(^2\) if not a company, then similar or appropriate authority.
ANNEXURE C: PROPOSAL FORMS

Part 3 – Bid Bond

Proposal Security to be provided in favour of:

Transnet SOC Ltd
[Insert address]
SOUTH AFRICA

WHEREAS < name of Respondent (Bidder) > (henceforth “the Bidder”) having registered to receive a full set of the Request for Proposals documentation (henceforth “the RFP”) from Transnet SOC Ltd (henceforth “Transnet”) in response to an invitation by Transnet, the Bidder intends to submit a proposal (henceforth “the Proposal”) in response to the RFP issued for the proposed concessioning of the Douglas-Belmont branch line, where the successful bidder, as concessionaire, will be granted the opportunity by Transnet to (i) operate rail transport services, (ii) maintain the rail infrastructure (and where necessary, design and construct or refurbish rail infrastructure), (iii) provide all funding necessary for operational expenditure and capital investment, (iv) generate income from the particular opportunity, and (v) undertake socio-economic and enterprise development initiatives to revitalise (rural and urban) economies along the Douglas-Belmont branch line (henceforth “the Concession”);

AND WHEREAS the Bidder proposes to submit a Proposal to undertake the Concession;

AND WHEREAS Transnet requires the Bidder to provide security in the form of an on demand bank guarantee in the amount of ZAR 100 000,00 (one hundred thousand rand) (henceforth "the Bid Bond") to Transnet to secure admission to the evaluation phase of the RFP process and compliance therewith in submitting a Proposal;

AND WHEREAS we < name of bank > (henceforth "the Bank") have agreed to provide Transnet with such Bid Bond;

NOW THEREFORE:

1. The Bank, duly represented by < name of duly authorised representative > being duly authorised to sign this Bid Bond and incur obligations in the name of the Bank under and in terms of a resolution or delegated authority of the board of directors of the Bank, [a certified copy of which is annexed hereto], hereby irrevocably and unconditionally guarantee and undertake on behalf of the Bank to pay Transnet and without objection or argument, amounts up to ZAR 100 000,00 (one hundred thousand rand) in aggregate, upon the first written demand to the Bank, situated at < address of bank > and addressed for the attention of < insert name of bank official > declaring that any one, more or all of the following events have occurred –

1.1. the Bidder or any member thereof making any misrepresentation(s) in the Proposal, or any submission furnished in response to the RFP; and/or

1.2. the Bidder, or any of its members, or any of their advisors, officers, employees or agents engaging in any collusive action with respect to the RFP or Concession procurement process;

1.3. the Bidder, or any of its members, or any of their advisors, officers, employees or agents engaging in illegal or fraudulent activities in relation to RFP or Concession procurement process; and/or

1.4. failure by the Bidder, if selected as the preferred bidder, to conclude a concession agreement with Transnet on substantially the same terms and conditions as contained in the Proposal; and/or

1.5. the Bidder, on account of its conduct (by act or omission) being terminated, on terms set out in the RFP, by Transnet from further participation in the Concession procurement process; and/or
1.6. the Bidder withdrawing its Proposal prior to the expiry of 9 (nine) months from <insert date of submission of the Proposal> [or such extended period as may have been determined by Transnet, or agreed between Transnet and the Bidder], and requiring an amount not exceeding the maximum amount of this Bid Bond to be due and payable by the Bank to Transnet.

2. The Bid Bond shall expire –

2.1. at 12:00 pm on the last day of the 9th (ninth) month following <insert date of submission of the Proposal> [or such extended period as may have been determined by Transnet, or agreed between Transnet and the Bidder]; or

2.2. upon the selection by Transnet of the Bidder as the preferred or reserve bidder and the Bidder being so selected, submitting an on demand bank guarantee to Transnet, if so requested by Transnet, in respect of its negotiations with Transnet to conclude a concession agreement and ancillary agreements for the Concession; or

2.3. upon acceptance by Transnet of the maximum amount of this Bid Bond, whichever is the earlier, and shall remain valid notwithstanding the insolvency, winding-up, liquidation, judicial management, dissolution or deregistration whether provisionally or finally of the Bidder.

3. The demand for payment together with this Bid Bond shall constitute prima facie proof of the Bank’s indebtedness hereunder for the purposes of any proceedings including but not limited to provisional sentence proceedings instituted against the Bank in any court of law having jurisdiction.

4. The Bid Bond shall -

4.1. exist independently of any contract (or any amendment, variation or novation thereof) between the Bidder and Transnet;

4.2. be returned to the Bank on its expiry as contemplated in paragraph 2 above;

4.3. not be ceded or assigned by Transnet, or otherwise dealt with in any manner whatsoever which has or may have the effect of transferring or encumbering or alienating any of the rights of Transnet hereunder; and

4.4. be governed by the Laws of the Republic of South Africa.

Signed at __________________________ on this ___________ day of ___________________ 2015

Name of Bank Representative

Signature(s) of Bank Representative duly authorised hereto

Name of Bank

________________________

Address

________________________

Date
ANNEXURE C: PROPOSAL FORMS

Part 4 – Form of Certificate for Bid Bond

To: [insert name and address of Bond Provider]

Attention:

From: Transnet SOC Ltd

Dated:

Dear Sirs

Re: Bond No. [ ] Issued by you and Dated (the "Bond")

1 Terms defined in the Bond and in the Request for Proposals ("RFP") shall have the same meaning when used in this certificate.

2 We confirm that the Principal has failed to satisfy its obligations in full in accordance with the terms of the RFP.

3 [We hereby declare that any one, more or all of the following events have occurred –

   3.1 the Bidder or any member thereof has made misrepresentation(s) in the Proposal, or any submission furnished in response to the RFP; and/or

   3.2 the Bidder, or any of its members, or any of their advisors, officers, employees or agents have engaged in any collusive action with respect to the RFP or Concession procurement process;

   3.3 the Bidder, or any of its members, or any of their advisors, officers, employees or agents have engaged in illegal or fraudulent activities in relation to RFP or Concession procurement process; and/or

   3.4 the Bidder has failed, when selected as the preferred bidder, to conclude a concession agreement with Transnet on substantially the same terms and conditions as contained in its Proposal; and/or

   3.5 the Bidder, on account of its conduct (by act or omission) being terminated, on terms set out in the RFP, by Transnet from further participation in the Concession procurement process; and/or

   3.6 the Bidder has withdrawn its Proposal prior to the expiry of 9 (nine) months from, < insert date of submission of the Proposal > [or such extended period as may have been determined by Transnet, or agreed between Transnet and the Bidder];

4 We hereby demand in accordance with clause 1 of the Bid Bond that you pay the sum of [.....] in immediately available funds to the following bank account -

   Account Name:
   Account Bank:
   Account Number:

Yours faithfully

Director/Officer
for and on behalf of
Transnet SOC Ltd