

REC-78 A21 09.0

VOLUME I, BOOK I INVITATION TO TENDER

TENDER DOCUMENT FOR THE DESIGN, CONSTRUCTION, FINANCING, OPERATION AND MAINTENANCE OF A PORTION OF THE NATIONAL ROAD N3 FROM CEDARA TO HEIDELBERG AS A TOLL HIGHWAY TOGETHER WITH DEVELOPMENTS AND ASSOCIATED FACILITIES UNDER A CONCESSION CONTRACT.

1. INTRODUCTION

Tender proposals are hereby invited from pre-qualified Tenderers (the "Tenderers") for the design, construction, financing, operation and maintenance of a portion of National Route 3 from Cedara to Heidelberg as a Toll Highway, together with developments and associated facilities under a Concession Contract.

Volume 1 to Volume 4 constitute the Tender Documentation and describe, *inter alia*, the scope of the works and guidelines for the preparation of the tender proposal. These documents together with any other written communications signed by an authorised officer of the Chief Directorate: Roads, acting for and on behalf of the South African Roads Board (SARB), issued during the period for consideration, shall be regarded as mutually explanatory and shall be so read.

Any information provided in the Tender Documentation or otherwise is offered in good faith for the guidance of the Tenderers and no warranty or representation is given as to the accuracy or completeness of any such information. The SARB and its advisers shall not be liable for any error, misstatement or omission. None of the documents in the Tender Documentation shall constitute an offer to enter into a contract.

The Tender Documentation remains the property of the SARB. An amount of R1 000 per set (non-refundable) is payable on collection of the documents. Cheques must be made payable to the Director-General: Transport, National Road Fund.

A compulsory site inspection will be held on 25 and 26 July 1997 and Tenderers are requested to meet at the Forum Building (Fish Eagle Board Room, in courtyard of the building) at 08:30 on 25 July 1997 from where they will be taken by special transport to the said portion of the N3. Only four representatives per Tenderer will be allowed to travel with the transport so provided. Tenderers are requested to advise Mr N Alli at the address below of the names of the representatives attending by close of business on 18 July 1997. The overnight stop will be at Harrismith and the inspection will continue on 26 July 1997. The place and time of departure in Harrismith will be confirmed with the Tenderers. When reaching the southern end of the proposed toll road at Cedara, Tenderers will be taken to Durban International Airport where the meeting will be concluded. Proceedings are expected to be finished around 20:00 on 26 July 1997.

Tenderers are requested to make their own arrangements for their return journey and overnight accommodation. All transport and accommodation costs, other than the one-way journey to Durban International Airport, shall be borne by the Tenderers themselves. Tenderers are encouraged to make these arrangements without delay.

Please note that all initial enquiries in connection with the Tender Documentation must be received in writing by close of business on 15 August 1997. Enquiries sent by facsimile are to be confirmed by the original letter. Enquiries should be addressed to:

*Department of Transport
Chief Directorate: Roads
P O Box 415
PRETORIA
0001
SOUTH AFRICA*

*FACSIMILE + 27 (0) 12 325-1001
ATTENTION: MR N ALLI*

The SARB will respond in writing to any request for clarification. Written copies of the SARB's response will be sent to all Tenderers by 16 September 1997. Verbal replies or comments of any nature by representatives of the SARB will have no standing unless they have been confirmed in writing.

A further meeting may be held, if necessary, in which case Tenderers would be requested to meet at the Fish Eagle Board Room in the courtyard of the Forum Building, 159 Struben Street, Pretoria on a mutually agreed time and date. Should the meeting be required by pre-qualified Tenderers, all enquiries received from them will be dealt with at the meeting and will be confirmed in writing thereafter.

Only Tender proposals from pre-qualified Tenderers who attended the site inspection on 25 and 26 July 1997 shall be considered. Failure to sign the attendance forms prior to departing from the site inspection will be regarded as non-attendance.

Any firm, group, organisation and consortium outside the Republic of South Africa which does not have *domicilium citandi et executandi* at an address within the Republic of South Africa, or does not have an existing association with a South African firm or organisation must indicate this fact clearly in its tender proposal.

One original and six copies of the tender proposal submissions, in English, signed as stipulated in Paragraph 12 herein, shall be placed in the tender box in Room 2098B, Forum Building, corner Bosman and Struben Streets, Pretoria, South Africa not later than 11:00 on 12 December 1997 when receipt of the proposals will be recorded in public.



Advisers to the SARB for the evaluation are:

Financial Advisers:	Kagiso Financial Services (Pty) Ltd. Berliner Bank AG (London Branch)
Legal Advisers:	Philip Loots & Associates White & Case
Engineering Advisers:	Chief Directorate Roads of the Department of Transport of South Africa
Entrepreneurial Development and Training:	Chief Directorate Roads of the Department of Transport
Environmental:	Chief Directorate Roads of the Department of Transport

Kindly note that the SARB is under no obligation to accept any tender proposal.

2. *TENDER DOCUMENTATION*

The following documents form the Tender Documentation:

Volume 1: Invitation to Tender and Project Contracts

Volume 1: Book 1	Invitation to Tender
Volume 1: Book 2	Concession Contract
Volume 1: Book 3	Design and Construction Contract Term Sheet
Volume 1: Book 4	Operation and Maintenance Contract Term Sheet

Volume 2: Standard Specifications

Volume 2: Book 1	Engineering Requirements
Volume 2: Book 2	CSRA Standard Specification for Road and Bridge Works (1987)
Volume 2: Book 3	SARB Standard Specification for electrical and mechanical works
Volume 2: Book 4	SARB Standard Specification for building work
Volume 2: Book 5	SARB Standard Specification for toll collection equipment
Volume 2: Book 6	SARB Standard Specification for the operation and maintenance of toll plazas in South Africa

Volume 3: Information**Volume 3: Part 1: Existing Facilities:**

Volume 3: Part 1: Book 1 Cedara to New Warden I/C
Volume 3: Part 1: Book 2 Warden to Heidelberg South I/C

Volume 3: Part 2: New Construction**Volume 3: Part 2A: Keeversfontein to Warden**

**Volume 3: Part 2A: Book 1: Keeversfontein to Warden: General
 Project Description**

**Volume 3: Part 2A: Book 2: Keeversfontein to de Beers Pass -
 Materials Data**

Volume 3: Part 2A: Book 3: De Beers Pass - Materials Data

**Volume 3: Part 2A: Book 4: De Beers Pass to de Jagersrust-
 Materials Data**

**Volume 3: Part 2A: Book 5: De Jagersrust to Buckland Downs -
 Materials Data**

**Volume 3: Part 2A: Book 6: De Jagersrust to Buckland Downs -
 Materials Data (continued)**

**Volume 3: Part 2A: Book 7: Buckland Downs to Warden I/C -
 Materials Data**

**Volume 3: Part 2A: Book 8: Buckland Downs to Warden I/C -
 Materials Data (continued)**

**Volume 3: Part 2A: Book 9: Buckland Downs to Warden I/C -
 Materials Data (continued)**

Volume 3: Part 2B: Vaal River to Heidelberg

**Volume 3: Part 2B: Book 1: Vaal River to Heidelberg: General
 Project Description**

Volume 3: Part 2B: Book 2: Vaal River to Dasville - Materials Data

**Volume 3: Part 2B: Book 3: Dasville to Vlakfontein -
 Materials Data**

**Volume 3: Part 2B: Book 4: Vlakfontein to Heidelberg - Materials
 Data**

Volume 4: Toll Related Traffic and Financial Information

3.1 Who May Tender

The Invitation is open to all pre-qualified Tenderers. Only proposals that are submitted by pre-qualified Tenderers will be evaluated. Pre-qualified Tenderers may not submit a joint proposal with any other pre-qualified Tenderer.

3.2 Foreign Tenderers

A foreign Tenderer is required to submit with its Tender a declaration stating that it is fully acquainted with all the laws, regulations and provisions prevailing in the Republic of South Africa in respect of the realisation of the toll highway project and that it will comply therewith.

3.3 Cost of Tendering

The Tenderer shall bear all costs associated with the preparation, submission and negotiation of its Tender. The Tenderers shall, in no circumstances, have any right to reimbursement of their tender costs.

3.4 Confidentiality

All information shall be kept confidential by the parties and their advisers and consultants. All data and details submitted by Tenderers will be kept strictly confidential by the SARB. Should it be deemed necessary to discuss any matter relating to any submission, with third parties, the necessary permission will be obtained from the Tenderer concerned.

3.5 Tenderer's Responsibilities

In addition to the compulsory site inspection, Tenderers are advised to visit and examine the site of the construction works and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a Concession Contract themselves, at their own responsibility and will be deemed to have done so. Such site visits shall be at the Tenderers' own expense.

The Tenderer and any of its personnel or agents will be granted permission by the SARB to enter upon its premises and lands for the purpose of such inspection, but only upon the express condition that the Tenderer, its personnel or agents, will release and indemnify the SARB and its personnel or agents from and against all liability in respect thereof and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however

caused, which, but for the grant of such permission would not have arisen.

3.6 **Decision of SARB Final**

The decision as to which Tenderer(s) and the SARB enters into negotiations with for this project rests solely with the SARB. The SARB reserves the right to amend, modify or terminate any of the procedures herein at any time without prior notice. The decision of the SARB is final and no reason(s) will be given as to the exclusion of a Tenderer. No claim may be brought against the SARB by any Tenderer not selected as the Preferred Tenderer or not appointed as Concessionaire.

4. ***PREPARATION OF TENDERS***

4.1 **Documentation forming the Tender:**

The Basic Tender is to be prepared and submitted in seven parts as detailed below, namely:

Basic Documents of Tender; (Section 5)
 Traffic and Toll Strategy (Section 6)
 Environment (Section 7)
 Entrepreneurial Development and Training (Section 8)
 Engineering (Section 9)
 Financial (Section 10)
 Legal (Section 11)
 Tender Submission Forms (TS Forms)(Annexure 3)

4.2 **Scope of Basic Tender**

The Basic Tender shall comprise the design, construction, financing, operation and maintenance of a portion of National Route 3 from Cedara to Heidelberg, together with Developments and Associated Facilities under a Concession Contract. Included are, inter alia, the following basic requirements, some of which are described in more detail in the General Scope of the Works in the Engineering Requirements (Volume 2 Book 1).

(a) The design, construction, upgrading and rehabilitation of the Highway section between the Vaal River and the existing dual carriageway at Laagerspoort (South of Heidelberg) during the first 3 years after the Effective Date.

(b) The design, construction and upgrading of Provincial Road P27-1 and other access roads between the Vaaldraai Interchange and De Hoek during the first three years after the Effective Date. This road will have a one year defects liability period whereafter it will be

- handed over to the responsible provincial authority.
- (c) **Pavement improvements to various portions of existing N3 Highway during the first 2 years after Effective Date, in order to comply with the Performance Specifications in the Engineering Requirements (Volume 2, Book 1).**
 - (d) **The phasing of the new construction between Keeversfontein and Warden (via De Beers Pass) so as to affect completion and commissioning of this section of the Highway before the Level of Service on the existing Highway via Van Reenens Pass, as prescribed in Paragraph 4.2 of Volume 2 Book 1, is reached.**
 - (e) **Improvements to the Highway, as envisaged by the Tenderer in compliance with the Engineering Requirements (Volume 2, Book 1) between Cedara and Heidelberg for the entire Concession Period - including both the existing N3 Highway between Keeversfontein and Warden, and the new portion of Highway via De Beers Pass (when constructed).**
 - (f) **The construction of new toll plazas as envisaged in the Tenderers Toll Strategy.**

Compulsory Basic Tender Scenarios

- (g) **Scenario 1: The payment of a Lump Sum amount to the SARB on the Effective Date in respect of the debt relating to the existing N3 Toll Highway between Cedara and Villiers**
- (h) **Scenario 2: A scenario which involves the servicing, by the Concessionaire, of the SARB's loan Portfolio relating to the debt of the existing N3 Toll Highway between Cedara and Villiers. For the purpose of this scenario, it can be assumed that the State Guarantees from the SARB to investors, regarding the existing debt, will remain in place. However, this debt should be ranked more senior than any other debt raised by the Concessionaire.**
- (i) **Scenario 3: An additional Scenario of Basic Tender in which the SARB is given opportunity to participate in a strategic equity share holding and a pro-active involvement in the project.**
- (j) **Complete financial submissions for each of the above Scenarios to the Basic Tender.**

4.3 Alternative Tenders

Tenderers are invited and encouraged to submit Alternative Tenders. However, no Alternative Tender will be considered unless all three Scenarios of the Basic Tender are submitted.

Flexibility will be allowed in all areas, such as alternative contract models, management and financial structures; provided that the :

- **risk sharing between the SARB and the Tenderer and the benefits accruing from the project are equitable**
- **highway is improved, maintained and operated to acceptable standards.**
- **project must be self financing and the proposed treatment of the existing debt acceptable to the SARB.**
- **proposal is structured in terms of Paragraph 4.1 herein.**

5. ***BASIC DOCUMENTS OF TENDER***

The Basic Documents of Tender are as follows:

- A Covering Letter, containing the list of documents submitted separately for the Basic Tender and any Alternative Tenders and an Executive Summary of the proposal as its Annexure.
- Tender Security as required in Paragraph 16 and in the form in Annexure 4 hereto.
- Organisational structures as well as a joint venture agreement, if any, of the concession company.
- Tender Submission Forms (Annexure 3)

6. ***TRAFFIC AND TOLL STRATEGY***

Tenderers are to submit a comprehensive report including a -

- (i) Traffic Projection,
- (ii) Toll Strategy.

All methodologies, criteria and assumptions used are to be stated and fully motivated.

6.1 Traffic

The Traffic Projection Study shall include but not be limited to:

- (i) The Average Annual Daily Traffic (AADT) in the corridor - light and heavy vehicles.
- (ii) The toll eligible AADT i.e. all potential toll traffic - light and heavy vehicles.
- (iii) Vehicle attraction rates per vehicle class, per plaza.
- (iv) The average annual daily toll traffic per vehicle class, per plaza.
- (v) Annual traffic volumes per vehicle class, per plaza.
- (vi) Traffic growth rates per vehicle class, per plaza.

6.2 Toll Strategy

The toll strategy shall include the toll plazas locations, commissioning dates and the toll tariff structure.

6.2.1 Location of the Toll Plazas and Commissioning Dates.

The toll strategy shall include but not be limited to:

- (i) The location of new toll plazas - kilometre reference etc.
- (ii) Differentiation between mainline and ramp plazas.
- (iii) Plaza opening dates.

6.2.2 Toll Tariffs

The Base Date for determining toll tariffs, concessions and discounts shall be April every year. All tariffs, concessions and discounts shall include Value Added Tax (VAT). The Base Date for the toll tariff structure in the financial model, shall be December 1997.

All current concessions applicable at the existing Mooi River Toll Plazas are to be honoured.

Any changes to the current toll tariffs at the existing Mooi, Tugela and Wilge Toll Plazas are to be fully motivated.

Tenderers shall adopt the Standard Vehicle Classification system

currently used at South African Toll Plazas as described in Paragraph 2.8.3 in the Engineering Requirements.

Tariff information shall be per vehicle class per plaza and shall include but not be limited to:

- (i) The level of toll tariffs
- (ii) The level of concessions
- (iii) The level of discounts
- (iv) Light / heavy vehicle tariff ratio's
- (v) Tariff adjustment mechanism

7. ENVIRONMENT

The environmental proposal of the Concessionaire shall take into account all relevant impacts of his Tender over the Concession Period and shall be in compliance with the Engineering Requirements (Volume 2 Book 1).

8. ENTREPRENEURIAL DEVELOPMENT AND TRAINING

Form 10 of the TS-Forms in Annexure 3 will be evaluated under this category. In addition, Tenderers are to submit their proposed strategy with clear commitment regarding, inter alia, the following:

- Participation of emerging entrepreneurs in the Joint Venture.
- Human Resource Development, including type and extent of training.
- Involvement of small, medium and micro enterprises (SMME's) in procurement, letting and subletting of construction, maintenance and operations during the Concession Period.
- Socio-economic development.

9. ENGINEERING

9.1 General

Tenderers shall provide a conceptual design and, where appropriate, preliminary design details of all Engineering aspects relating to the project. In addition, an Engineering Matrix (E-matrix), similar to the cost matrix in Annexure 1 herein, shall be provided to identify Improvements to the Highway per Section (as defined in Table 1, Annexure 1) for the relevant years of the Concession Contract. These sections may be further subdivided, provided that the numerical number assigned to each Section in Annexure 1, Table 1, herein, remains the same.

9.2 New Construction and Initial Improvements to the Highway

The conceptual design shall be submitted, *inter alia*, under the following categories with A2 size drawings where indicated.

- Brief description of the works.
- Vertical and horizontal alignment with relevant geometric characteristics including road reserve boundaries. The Tenderer is at liberty to refine the proposed alignment for new construction, but shall, as far as possible, stay within the specified Road Reserve - A2 size drawings.
- Typical cross-sections over relevant portions of the Highway - A2 size drawings.
- Mass haul diagram indicating material resources - A2 size drawings.
- Pavement details, including type and description of layers or treatment in diagram format (cross section) over the relevant portion of the Highway - A2 size drawings.
- Drainage details including position, type, size and design flow capacity of drainage structures as refined by the Tenderers- A2 size drawings.
- Details for major structures including position, type, size and design flow capacity (where applicable) as refined by the Tenderers - A2 size drawings
- Interchanges, intersections and accesses - A2 size drawings
- Utilities which will have a material impact on the new construction and initial improvements to the Highway - A2 size drawings.
- Plaza positions and lay-outs indicating lanes and lane configurations - A2 size drawings.
- Key features of accommodation of traffic during initial construction.
- Environmental impact with adequate cross-reference to Paragraph 7.

9.3 Engineering Matrix

The following information shall be included in the Engineering Matrix to indicate the development/improvement of the geometric cross-sections and pavement for each section (or sub-section) of the Highway during the Concession Period.

- Average Annual Daily Traffic including heavy/light vehicle ratio.
- Traffic loading on North and South Bound lanes/carriageways - Equivalent 80 kN Axle Loads.
- Cross section development, including addition of shoulders, climbing-/ passing-/crawler lanes, median barriers and second carriageways (duelling) in diagram format with side notes. This information is not required for Entity 2 and 3 as described in the Engineering Requirements.

- Pavement improvements, including type and description of layers or treatment in diagram (cross-section) format. Pavement improvements shall include pavement reconstruction, upgrading, rehabilitation, special maintenance and periodic maintenance.
- Toll plaza expansion, including addition of toll lanes and lane configurations only.
- Interchange/intersection upgrades where anticipated.

The Engineering Matrix is to be submitted in A4 format as indicated in Annexure 2

9.4 Cost Matrix

The Cost Matrix and breakdown of Cost Components as described in Annexure 1 is to be filled out (completed) by Tenderers in A4 format as indicated. Expenditures reflected in the Cost Matrix shall, where applicable, correspond/correlate with Highway Improvements in the Engineering Matrix, as well as with the cost structure in the financial model.

10. FINANCIAL

10.1 Concession Period

The concession period is 30 years for the Basic Tender or as otherwise proposed by the Tenderers for the Alternative Tenders.

10.2 Financial Proposal

The Tenderer is required to submit a base case financial proposal. Draft loan term sheets and a shareholders' agreement must be presented stating, *inter alia*; the following information:

Equity details must include the amount of funds that each shareholder is prepared to commit and the timing of such contribution.

Debt details must include the following information for each facility: type; amount; currency; maturity; grace period for interest and/or principal; repayment schedule; margin and all associated fees; conditions precedent to drawdown; covenants; events of default and security requirements.

All relevant details must be incorporated in the financial model.

Alternative financial plans may be submitted.

10.3 Financial Commitment

The Tenderer is expected to submit committed base case financial offers. Letters of commitment stating the terms and conditions of the financing facilities must be included by the providers of funds.

10.4 Contingency Fund

The Tenderer shall include a contingency amount of R30m in the financial model to cover costs of the SARB. The application of this amount shall be at the sole control, request and discretion of the SARB.

10.5 Financial Model

The Tenderer is required to submit a financial model that should demonstrate the financial implications of the construction and operation of the Project. The model must be provided in a hard copy printout and on a computer disk compatible with Lotus 1-2-3, Version 5 for Windows. Additionally, the model should incorporate switches to run Alternative Tender Scenario's and be flexible enough to run a variety of sensitivities such as; capex +/- 10%, interest rates +/- 1%, opex +/- 10%, inflation +/- 2%, maturity of senior debt +/- 3 years, different toll tariffs, different traffic assumptions, different grace periods for principal repayment, redemption, etc., for each of the different scenarios submitted. A further switch should be incorporated in respect to the computation of the ratios that will treat subordinate debt as either equity or debt. A full list of assumptions incorporated in the model must be provided together with clear detailed instructions on how to operate the switches and how to run the various sensitivities.

A clearly identified single sheet hard copy, summarising all the key output ratios requested, together with other key data including, total funding required, total initial construction cost, total equity contribution and total ongoing maintenance costs is to be provided for the Basic Tender Scenarios and Alternative Tender.

The base date for the financial model is December 1997. All computations are for periods running from January to December.

The financial model should include:

- Macroeconomic Assumptions;
- Financing Assumptions Schedule identifying all sources of finance, conditions, terms, etc.;

- **Capital Expenditure forecasts, in real and nominal terms, determined according to the cost breakdown in the implementation programme, including any capitalisation of interest during construction;**
- **Revenue Schedules in real and nominal terms including details of traffic and tariff rate forecasts;**
- **Operating and Maintenance Cost Schedules in real and nominal terms, including a breakdown of major cost components indicating the per unit cost, differentiating between those dependent on the traffic and those not;**
- **Periodic Renewal and Capital Expansion Cost Schedule in real and nominal terms including a breakdown of the major cost components;**
- **Debt Schedules for each credit facility including drawdown schedule, interest paid, fees and repayment schedules;**
- **Depreciation details;**
- **Capital Allowances;**
- **All relevant levies and taxes in accordance with existing legislation. Details of all assumptions relating to taxation must be provided;**
- **Annual corporate tax computations;**
- **Forecast balance sheets, profit and loss, and cash flow statements.**

In the event that the Tenderer proposes any revenue sharing mechanisms, these should be clearly indicated in the financial model.

The model must produce, *inter alia*, the following financial information:

- **Net Present Value (NPV) of real revenues at a discount rate of 8%;**
- **Project internal rate of return (IRR) before financing and tax in both real and nominal terms;**
- **the minimum debt to equity ratio;**
- **the minimum debt service cover ratios (DSCR), including and excluding cash;**
- **the minimum loan life cover ratio (LLCR);**
- **the minimum project life cover ratio (PLCR);**
- **real return on equity.**

The ratio's described above must be computed as follows:

Debt Service Cover Ratio (DSCR) (excluding cash) is the ratio of (1) below to (2) below:

- (1) **Project receipts (including interest income) less all operating costs, additional capital expenditure for both upgrading and maintenance, insurance costs, and taxes for the period (excluding STC);**

- (2) **The amount of interest expenses paid and the amount of debt repaid**

during the period.

Debt Service Cover Ratio (DSCR) (including cash) is the ratio of (1) above plus all cash balances (including reserve control accounts) at the end of the previous period to (2) above.

Loan Life Cover Ratio (LLCR) is the ratio of all cash balances (including reserve control accounts) at the end of the previous period plus the NPV of (1) above for each period up to final maturity of the debt to the NPV of (2) above for each period up to final maturity of the debt.

Project Life Cover Ratio (PLCR) means the ratio of all cash balances (including reserve control accounts) at the end of the previous period plus the NPV of (1) above for each period up to final maturity of the concession to the NPV of (2) above for each period up to final maturity of the concession.

Return on Equity is the IRR of the equity cash flows. The cash flows are made up from all equity drawdowns, dividend payments and any possible release of equity at the end of the concession.

Pre-tax, pre-financing Project IRR, both nominal and real is the IRR of the net cashflows of the project before any funding costs or tax payments. Net cashflows are calculated from the total revenues, less the capital expenditure and operating costs over the life of the concession.

Debt/Equity ratio is the ratio of Equity to Debt plus Equity. Debt should be considered to be all outstanding interest bearing debt, including on balance sheet leasing payments. Equity is equal to share capital and subordinated loans contributed by the shareholders.

The discount rate to be used for the calculation of LLCR and PLCR is the weighted average cost of Debt.

Failure to comply with the financial modeling requirements could result in the Tender being declared non-compliant and being rejected by the SARB.

10.6 Public Sector Contribution

The public sector contribution to the project is the granting to the Concessionaire of the concession rights for the design, construction, future improvements, maintenance and operation of the N3 Toll Highway (as described in the Engineering Requirements Volume 2 Book 1). The SARB will secure the N3 Toll Highway reserve on which the successful Tenderer is required to construct the Toll Highway, including the existing road where it falls within the Toll Highway reserve. The SARB reserves the right to

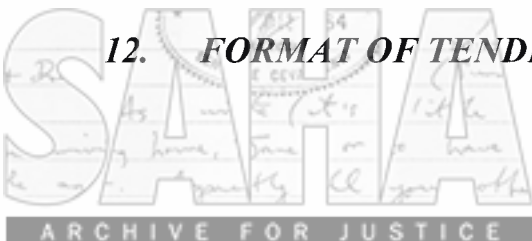
approve all contracts between the Concessionaire and other parties with respect to the use of the Toll Highway reserve.

In return, the Concessionaire must clearly show its position with regard to the treatment of existing debt and the generated revenues as requested in Paragraph 4.2 (g) to (i) inclusive herein. Also included herein must be its views on being a strategic equity shareholder with the SARB, and the proportion envisaged by the Tenderer.

11. LEGAL

- 11.1 Concession Contract:** Tenderers are required to confirm acceptance of the terms and conditions and form of the Concession Contract according to Volume 1: Book 2 of the Tender Documentation. Tenderers are requested to provide, in detail, proposed black lined amendments showing additions and deletions with reasons for such proposed amendments.
- 11.2 Design and Construction Contract Term Sheet:** Tenderers are required to confirm acceptance of the terms and conditions and form of the design and construction contract according to Volume 1: Book 3 of the Tender Documentation. Tenderers are requested to provide, in detail, proposed black lined amendments showing additions and deletions with reasons for such proposed amendments.
- 11.3 Operation and Maintenance Contract Term Sheet:** Tenderers are required to confirm acceptance of the terms and conditions and form of the operation and maintenance contract according to Volume 1: Book 4 of the Tender Documentation. Tenderers are requested to provide, in detail, proposed black lined amendments showing additions and deletions with reasons for such proposed amendments.
- 11.4 Background of contentious procedures:** Each Tenderer shall provide, for all members of the proposed Concessionaire, a list and short description (including nature of and amount in dispute) of all past, current and pending contentious procedures (litigation and arbitration) (last 5 years) relating to construction projects and formal non-contentious procedures (conciliation, mediation) (last 5 years) relating to construction projects initiated by or against each member where the amount in dispute is or was greater than R5 million. Where such information is confidential, names of opposing parties may be disguised.

12. FORMAT OF TENDERS



12.1 Language of Tenders

The Tender Documentation and related documents shall be in English. Tenders/Proposals must also be prepared and submitted in English. Any printed literature submitted by a foreign Tenderer together with its Tender may be in another language so long as it is accompanied by an English translation of the pertinent passages. For the purpose of interpretation of the Tender, the English translation provided shall govern.

All correspondence and any other documentation and oral communication exchanged between the parties shall be in English.

12.2 Marking the Tender Documentation

The Tenderer shall write in the top right hand corner of each document submitted by him a reference number containing;

- SARB Contract Number;
- Name and Address of Tenderer or Consortium;
- Basic Tender or Alternative Tender;
- Category (documentation forming the Tender - Paragraph 4.1):eg. Basic Documents of Tender , Traffic and Toll Strategy etc.
- Original or copy number.

12.3 Marking of the Tenders

Each of the Basic Tender or Alternative Tender should be wrapped separately and its cover marked with the following details:

- SARB Contract Number;
- Basic Tender or Alternative Tender;
- Name and Address of Tenderer.

12.4 Copies of Tenders

The Tenderer shall prepare one original and six copies of the documents comprising the tender.

12.5 Sealing of Tenders

All documents should be bound, either singly or with several documents bound together. The Tender should not include any loose paper.

12.6 Addressing of Tenders

The packaged Tenders shall be delivered by hand and should be placed in the tender box in Room 2098B, 2nd floor, Forum Building, cnr Bosman and Struben Streets, Pretoria, South Africa.

12.7 Correction of Errors

The complete Tender shall be without alterations, erasures or omissions, except those to accord with instructions issued by the SARB, or as necessary to correct errors made by the Tenderer in which case, such corrections shall be initialled in black ink by the person or persons signing the Tender.

13. *SIGNING REQUIREMENTS*

13.1 Signing of Tenders

The original Tender shall be signed by the Executive Director or principal or persons duly authorised to legally bind the organisation concerned. 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; and copies of such resolution, properly dated and signed by the Chairperson (or his/her equivalent) must accompany each Tender.

In addition, every signatory shall make a written declaration to the effect that all documentation signed by him/her is factually correct and true.

All copies of correspondence from the Tenderer to the SARB must be signed by an authorised person or persons, legally binding the Tenderer. All such signatures must be accompanied by the name of the person(s) signing them, their position(s) and the name of their organisation.

13.2 Tenders of a Consortium

Tenders submitted by a joint venture shall comply with the following requirements:

The Tender shall be signed so as to be legally binding on all joint venture partners;

One of the partners shall be nominated as leader being in charge of the rights and duties as mentioned in Paragraph 13.1 above ("the Lead Partner") and this authorisation shall be included in the agreement to be entered into by the joint venture partners;

The Lead Partner shall be the only authorised party to make legal statements and receive instruction for and on behalf of any and all partners of the joint venture.

A copy of the agreement entered into by the joint venture partners shall be submitted with the Tender.

14. SUBMISSION OF TENDERS

14.1 Tender Submission Date

Tenders must be placed in the Tender Box at the address specified in Paragraph 12.6 not later than 11:00 on 12 December 1997.

14.2 Extension of Tender Submission Date

The SARB may, at its discretion, extend the Tender Submission Date by issuing an Addendum in accordance with Paragraph 18 below, in which case all rights and obligations of the SARB and the Tenderer, previously subject to the original Tender Submission Date shall thereafter be subject to the new deadline as extended.

14.3 Late and Incomplete Submissions

Proposals reaching the SARB later than the date and time given in Paragraph 14.1 and submissions that are incomplete or not submitted in accordance with the requirements of this document may be rejected without further consideration.

15. TENDER VALIDITY

15.1 Validity Period

Tenders shall remain valid and open for acceptance for a period of 360 days from the Tender Submission Date prescribed in Paragraph 14.1, or as amended.

15.2 Extension of Validity Period

In exceptional circumstances, prior to expiry of the original Tender validity period, the SARB may request the Tenderer for a specific extension to the validity period. The request and the response thereto shall be made in writing. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer agreeing to the request will not be permitted to modify

its Tender.

16. TENDER SECURITY

Any Tender not accompanied by an acceptable Tender Security will be rejected by the SARB.

16.1 Amount and Validity of Tender Security

The Tenderer shall furnish as part of its Tender a tender security in an amount of R3 m. The security shall be valid for a period equal to the Validity Period in Paragraph 15.1.

16.2 Form of Tender Security

Tender Security shall be in the form of a Bank Guarantee, in accordance with Annexure 4 to this Volume, issued by one of the major South African Banks, in a form acceptable to the SARB.

16.3 Return of Tender Security

The Tender Security submitted by unsuccessful Tenderers will be returned by the SARB as promptly as possible, but not later than 15 days after expiry of Tender Validity.

16.4 Increase of Tender Security

During the evaluation of Tenders, at least two of the Tenderers as stated in Paragraphs 19.1 and 19.2 will be asked to increase their Tender Security.

16.5 Forfeiture of Tender Security

The Tender Security shall be forfeited at any stage of the evaluation of Tenders or selection of Tenderers in terms of Paragraph 19.1 herein:

- (a) If a Tenderer withdraws its tender during the Tender Validity Period.**
- (b) In the case of selection in terms of Paragraph 19.1, if the Tenderer fails to increase his Tender Security.**
- (c) In the case of the Preferred Tenderer, if the Preferred Tenderer fails to comply with the conditions in Paragraph 19.2 herein.**

17. EVALUATION CRITERIA

17.1 The Tenders will be evaluated within the following categories:

Traffic and Toll Strategy

Environment

Entrepreneurial Development and Training

Engineering

Financial

Legal

Tender Submission Forms

17.2 Traffic and toll strategy :The Traffic and Toll strategy will be evaluated according to the following criteria:

- **Traffic:** Reasonableness of toll traffic figures and growth rates.
- **Plaza location:** Acceptability of the location of the toll plaza.
- **Tariffs:** Acceptability of the level of the toll tariffs, the concessions and the discounts, and the adjustment mechanism for toll tariffs.

17.3 Environment: This category will be evaluated pursuant to the Environmental Requirements set forth in the Engineering Requirements (Volume 2, Book 1)

17.4 Entrepreneurial development and Training: Under this category the proposal will be evaluated in terms of the overall strategy and level of commitment for the full duration of the Concession Period.

17.5 Engineering: The engineering evaluation will take into account, *inter alia*, the following criteria:

- **Compliance with Engineering Requirements**
- **Innovation credibility, strategy and practicability in respect of Improvements to the Highway and new construction.**
- **The integration and reconciliation with financial model.**
- **Experience and expertise in the fields of Highway Concessioning and operation.**

17.6 Financial: The Financial Evaluation will take into account, *inter alia*, the following areas:

- **The applicability of the financial structure.**
- **The robustness of project cash flows to cover debt service payments.**
- **The level of commitment provided for the debt and equity.**
- **The revenue sharing proposals of the Tenderer.**
- **The proposed return on equity.**

- Treatment of existing debt of the N3 Toll Highway.
- Financial structuring of the delayed expenditure regarding the new construction via De Beers Pass.

17.7 **Legal:** The degree of deviation in principle and detail from the Basic Documents of Tender for the Concession Contract and Form of Agreement, the Design and Construction Contract Term Sheet and the Operations and Maintenance Contract Term Sheet.

17.8 **Additional Information:** The information in Annexure 3 will be subdivided and evaluated in the above categories.

18. *AMENDMENT OF TENDER*

18.1 SARB's Right to Modify

Up until 28 days prior to the date for submission of Tenders, the SARB may, for any reason, whether at its own initiative, or in response to a clarification requested by a Tenderer, modify the Tender Documentation by the issue of Addendum's.

18.2 Issue of Addenda

Any and all Addenda will be issued in writing and Tenderers will be obliged to accept any amendments and shall promptly acknowledge receipt thereof by facsimile to the SARB's agent detailed in Paragraph 18.1 above.

18.3 Influence of Addenda/Amendments

In order to afford prospective Tenderers reasonable time in which to take an Addendum into account in preparing their Tenders, the SARB may, at its own discretion, extend the date for the submission of Tenders in accordance with Paragraph 14.2.

19. *SELECTION OF PREFERRED TENDERER AND PROCEDURE UP TO THE EFFECTIVE DATE*

19.1 Selected Tenderers

Provided that the Tenders received from Tenderers are substantially responsive to the Tender Documents and acceptable to the SARB, the SARB will select, at least 240 days prior to the expiry of the Tender Validity Period, two Tenderers with whom to enter into detailed negotiations. Upon receipt of a letter informing them of their selection, the Tenderers so selected will be required to increase their Tender Security pursuant to Paragraph 16 herein

up to the amount of R6 million without changing the conditions, except that such Tender Security shall remain in place until the expiry of the Tender Validity Period or the signing of the Concession Contract, whichever is the earlier.

19.2 Preferred Tenderer

Should the best offer(s) of one of the two selected Tenderers be to the approval of the SARB, the SARB will select, at least 180 days prior to the expiry of the Tender Validity, one of the two above Tenderers as its Preferred Tenderer. The Preferred Tenderer will be requested to increase its Tender Security pursuant to Paragraph 16.1 and Paragraph 19.1 to R10 million without changing any conditions, except that this Tender Security will remain in place until signature of the Concession Contract.

19.3 Resolutive Conditions Bond

Simultaneous with the signing of the Concession Contract, the Concessionaire shall, pursuant to Paragraph 25 of the Concession Contract Term Sheet, provide to the SARB the security for fulfilment of the Resolutive Conditions set forth in Paragraph 24.2 of the Concession Contract, in the form of a Resolutive Conditions Bond, also described in the Concession Contract. Upon receipt of the Resolutive Conditions Bond, the SARB shall return the Tender Security to the Concessionaire.

19.4 Effective Date

During the period between signature of the Concession Contract and the Effective Date, the provisions of the Concession Contract shall be in full force and effect save where otherwise mentioned by provisions pursuant to Paragraph 24.1 in the Concession Contract or required by the context.

The Site shall only be delivered for the construction, operation and maintenance of the Highway on or after the Effective Date provided that all the said Resolutive Condition have been complied with by the Concessionaire before or on the Effective Date.

19.5 Modification and Amendment

The SARB reserves the right to modify the above procedures at its discretion in appropriate circumstances. The SARB also reserves the right to request and accept the amendments or modification of any aspect of any tender from any selected or preferred tenderer at any time.

The tender submission, the subsequent documentation and the contracts arising therefrom will be governed by and construed according to the laws of the Republic of South Africa.

21. *EXISTING DEVELOPMENT*

The SARB will assist the Concessionaire in adjusting the existing contract conditions with operators of developments. The Concessionaire should accept that some developments are subject to long term leasing and similar contracts. Information relating to the contracts and agreements can be obtained from the SARB, but the SARB will only enter into negotiations about the transferring of any such rights and obligations with the Preferred Tenderer.