

TRANSNET SOC LTD

ACTING THROUGH ITS OPERATING DIVISION

TRANSNET NATIONAL PORTS AUTHORITY

("TNPA")

**REQUEST FOR PROPOSALS FOR THE APPOINTMENT OF TERMINAL OPERATORS TO
FUND, DESIGN, DEVELOP, CONSTRUCT, OPERATE, MAINTAIN AND TRANSFER THE
LIQUID BULK AND/OR GREEN FUEL TERMINALS FOR A CONCESSION PERIOD OF
TWENTY-FIVE (25) YEARS IN THE SOUTH DUNES PRECINCT AT THE PORT OF RICHARDS
BAY**

REFERENCE NUMBER	: TNPA/2023/12/0015/51712/RFP
ISSUE OF RFP	: 06 DECEMBER 2023
NON-COMPULSORY BRIEFING	: 19 JANUARY 2024 AT 10:00 CAT
BID SUBMISSION DATE	: 30 APRIL 2024
CLOSING TIME	: 17:00 CAT
BID VALIDITY PERIOD	: 365 CALENDAR DAYS FROM THE BID SUBMISSION DATE

NOTE TO BIDDERS:

- 1. TNPA is issuing this RFP as Phase 1 for Liquid Bulk and/or Green Fuels Terminal Operators wherein the bidders are required to advise TNPA of their preferred first and second choice of the available five (5) sites and indicate the commodities to be handled at each of the two choices.**
- 2. The bidders must indicate the required footprint and the terminal design must be flexible enough to be accommodated at any of the chosen sites from the available five (5) sites.**
- 3. Bidders are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting. TNPA will not be held liable for any experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Bidder can upload 30MB per upload and multiple uploads are permitted.**

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1. DISCLAIMER

- 1.1. This Request for Proposals (“RFP”) (which shall include all other written information, made available during the RFP process) is being made available by the Transnet National Ports Authority, an operating division of Transnet SOC Ltd., with company registration number 1990/000900/30 (“TNPA”) to select a Preferred Bidder with whom TNPA may conclude a Terminal Operator Agreement.
- 1.2. This RFP is provided for the purposes set out in this disclaimer section and is not intended to form any part or basis of any investment decision by the Bidders. The recipient should not consider this RFP as an investment recommendation by TNPA or any of its Transaction Advisors. Each person to whom this RFP (and other later or related documents) is made available or who accesses it, must make his/her/its own independent assessment of the commercial viability of a Terminal and/or Terminals after making such investigation and taking such professional advice as he / she/ it deems necessary. Neither the receipt of this RFP or any related document by any person, nor any information contained in the documents or distributed with them nor previously or subsequently communicated to any Bidder or its advisor, is to be taken as constituting the giving of investment advice by TNPA or its Transaction Advisors.
- 1.3. While all reasonable care has been taken in preparing this RFP document and other related documents, the information contained herein does not purport to be comprehensive or to have been verified by TNPA, any of its officers, employees, servants, agents, Transaction Advisors or any other person. Should Bidders choose to verify the information contained in this RFP by conducting their own due diligence the onus in this regard shall be with the Bidder to do so. Accordingly, neither TNPA nor any of its Transaction Advisors will accept any liability or responsibility for the adequacy, accuracy, or completeness of any of the information or opinions stated herein.
- 1.4. Save where expressly stipulated otherwise, no representation or warranty (whether expressed or implied) is or will be given by TNPA or any of its officers, employees, servants, agents, Transaction Advisors or any other person with respect to the information or opinions contained in this RFP document. Furthermore, no representations or warranties are provided in relation to any Briefing Notes issued in relation to this RFP document or with respect to the information or opinions contained in any document or on which any document is based.
- 1.5. TNPA has developed a fair, equitable, transparent, competitive and cost-effective RFP process for this Project. Bid Responses from Bidders will be evaluated against the evaluation criteria contained in this RFP, including any Briefing Notes issued during the RFP process.

- 1.6. TNPA reserves the right to amend, modify, withdraw, terminate, amend and/or cancel this RFP or any of the procedures, procurement processes or requirements detailed in this RFP document or any part of it at any time after the issue thereof. TNPA shall be entitled to exercise this right without prior notice and without liability to compensate or reimburse any person pursuant to such amendment, modification, withdrawal, or termination.
- 1.7. The terms and conditions set out in this RFP regarding the content of prospective Bid Responses are stipulated to give effect to TNPA's prescribed legal obligation as contained in section 56(5) of the National Ports Act 2005, Act No. 12 of 2005, to follow a procedure that is fair, equitable, transparent, competitive and cost-effective.
- 1.8. Bidders are hereby advised that TNPA has the right in its sole and unfettered discretion not to accept any bid offer. In particular, please take note that TNPA reserves the right to:
 - 1.8.1. modify the Project and request Bidders to re-bid based on any such changes.
 - 1.8.2. reject any Bid Response which does not conform to instructions and specifications which are detailed herein;
 - 1.8.3. disqualify Bid Responses submitted after the Bid Submission Date and Time;
 - 1.8.4. not necessarily award the Project to the highest scoring Bidder or an Alternative Bid Response subject to the provisions of the PPPFA;
 - 1.8.5. withdraw the RFP at any stage prior to the award on good cause shown;
 - 1.8.6. award the Terminal Operator Agreement in connection with this RFP at any time after the RFP's closing date;
 - 1.8.7. award the Project and/or conclude the Terminal Operator Agreement for only a portion of the proposed services which are reflected in the scope of this RFP;
 - 1.8.8. split the award of the Project between more than one Bidder, should it be at TNPA's discretion be more advantageous in terms of, amongst others, developmental considerations;
 - 1.8.9. make no award of the Project and/or Tender; and
 - 1.8.10. should a contract be awarded on the strength of the information furnished by the Bidder, which after the Award, is proved to have been incorrect or misrepresented, TNPA reserves the right to cancel or withdraw the Award; and
 - 1.8.11. TNPA shall not be liable to the Bidders or the Preferred Bidder for any consequences, claims or costs arising from any of these actions.

- 1.9. If any Bidder or its constituent members, employees, advisors or agents makes or offers to make any gratuity to any public official or employee of TNPA or consultant to TNPA on the Project either directly or through an intermediary as an inducement or reward for appointing any Bidder as the Preferred Bidder or for showing or omitting to show favour or disfavour to any Bidder, its Members, the Contractors or their Lenders in relation to the Project, then such Bidder or its constituent member may be disqualified forthwith from participating in the Project and over and above the criminal consequences to be preferred against the bidder, be restricted from conducting business with TNPA and or Transnet in Future.
- 1.10. Any difference in information between documents made available by TNPA to the Bidders during the RFP process with any earlier document shall, unless expressed to the contrary be deemed to be a variation or modification of the earlier documents.

2. DEFINITIONS AND INTERPRETATION

2.1. In this RFP, except as otherwise defined herein, and except where the context requires otherwise, the following terms shall bear the following meanings:

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| 2.1.1. | “Administrative Responsiveness” | - | means compliance with the administrative requirements set out in (<i>Qualification Criteria 1: Administrative Responsiveness</i>) of Part II of this RFP; |
| 2.1.2. | “Advisors” | - | any advisors to any Bidder, Member, Contractor or any other participants in any Bid Responses; |
| 2.1.3. | “Alternative Bid Response” | - | has the meaning ascribed to it in Clause 21 of Part I (<i>General Requirements, Rules and Provisions</i>) of this RFP; |
| 2.1.4. | “Annexure” or “ | - | any Annexure or Annexures attached to this RFP; |
| 2.1.5. | Applicable Laws” | - | means all local, provincial or national statutes, ordinances, regulations, by-laws, and all rules, directives, decrees, decisions, determinations, rulings, rules, judgments orders of any competent court or the Government and other instruments which have the force of law in the Republic of South Africa, from time to time, as well as the South African common law; |
| 2.1.6. | “BAFO” | - | means best and final offer; |
| 2.1.7. | “Berth” | - | means the existing berth 208 & 209 and the envisaged new berth 210 to be developed by TNPA in the Port of Richards Bay; |
| 2.1.8. | “Bidder” | - | any Company or a Consortium of Members that submits a Bid Response; |
| 2.1.9. | “Bid Notice” | - | the notice published by TNPA inviting potential Bidders to acquire the RFP and submit Bid Responses thereto, which Notice is included in this RFP as a Bid Notice (Annexure A); |
| 2.1.10. | “Bid Response” | - | any bid submitted by a Bidder in response to the invitation contained in this RFP; |

- 2.1.11. **“Bid Submission Date”** - the date for the submission of the Bid Responses to TNPA, which date is set out in this RFP or such later date as may be determined by TNPA in its discretion and communicated in writing to Bidders by way of a Briefing Note;
- 2.1.12. **“Bid Submission Phase”** - the period commencing on the Bid Submission Date and continuing until the Terminal Operator Agreement comes into force and effect;
- 2.1.13. **“Bid Submission Schedules”** - the Schedules contained in Annexure I to Annexure HH (*Bid Submission Schedules*) of this RFP, that are to be completed by the Bidder and or its Members and submitted with the Bid Response;
- 2.1.14. **“Black People” or “Blacks”** - is a generic term defined in the B-BBEE Act to mean natural persons who are Africans, Coloureds and Indians:
- who are citizens of the Republic of South Africa by birth or decent; or
- who became citizens of the Republic of South Africa by naturalisation -
- before 27 April 1994; or
- on or after and who would have been entitled to acquire citizenship by naturalisation prior to that date;
- 2.1.15. **“Black Ownership”** - the effective ownership of shares in a Bidder by Black People, which shall be determined with reference to the B-BBEE Codes or Amended B-BBEE Codes and evidenced by way of a B-BBEE verification certificate;
- 2.1.16. **“Briefing Note”** - a document issued in writing by TNPA, prior to the Bid Submission Date, that amends or supplements this RFP in any way. Briefing notes shall be consecutively numbered in the order in which they are issued;
- 2.1.17. **“Business Case”** - the business case to be developed in accordance with the Business Case Guidelines and submitted

- with each Bid Response as outlined in the Business Case Guidelines (Annexure CC);
- 2.1.18. **“Business Case Guidelines”** - the guidelines in accordance with which each Bidder must develop its Business Case (Annexure CC);
- 2.1.19. **“Business Day”** - any day other than a Saturday, Sunday or gazetted National public holiday in the Republic of South Africa;
- 2.1.20. **“B-BBEE”** - Broad-Based Black Economic Empowerment; a South African legal requirement that requires all entities operating in the South African economy to contribute to empowerment and transformation;
- 2.1.21. **“B-BBEE Act”** - Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;
- 2.1.22. **“B-BBEE Codes”** - the amended B-BBEE Codes of Good Practice, published under Government Gazette No. 36928, on 10 October 2013, in terms of section 9(1) of the B-BBEE Act;
- 2.1.23. **“Cargo”** - For the purpose of this RFP Cargo shall mean but not limited to any liquid bulk commodities proposed to be handled by the Bidders at any of the five (5) sites as per Annexure B (Site Maps) which may include fuels such as petrol, diesel, jet fuel, marine fuel oils, heavy fuel oils and other liquid bulk products including any chemicals, waxes, etc and gases including liquified petroleum gas (LPG), Hydrogen and any other green fuels (green ammonia, green methanol, etc) but excluding liquefied natural gas (LNG);
- 2.1.24. **“Change in Control”** - means any change whatsoever in Control (as defined in the Draft Terminal Operator Agreement), whether effected directly or indirectly;
- 2.1.25. **“Companies Act”** - the Companies Act, 71 of 2008, as amended;

2.1.26.	“Company”	-	a Company incorporated in the Republic of South Africa in terms of the Companies Act;
2.1.27.	“Competition Act”	-	the Competition Act, 89 of 1998, as amended;
2.1.28.	“Completion Certificate”	-	has the meaning as ascribed to this term in the Draft Terminal Operator Agreement;
2.1.29.	“Concession”	-	the concession granted by TNPA to undertake the Project in terms of section 56 of the National Ports Act;
2.1.30.	“ Concession Fee”	-	fees payable by the Terminal Operator to TNPA, in respect of the rights to undertake the Project as set out in Clause 15;
2.1.31.	“Concession Fee Offer”	-	Offer made by a Bidder as part of its Bid Response;
2.1.32.	“Concession Period”	-	a twenty-five (25) year period (excluding the development period) comprising the Funding, Design, Construction, Operation, Maintenance, and Transfer of the Terminal to TNPA. During this period, the Terminal Operator is granted the right to undertake the Project in terms of the Terminal Operator Agreement;
2.1.33.	“Consents”	-	all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, and licences, that are required to be issued by or made with any Responsible Authority in terms of the Applicable Laws in connection with the Terminal Operator undertaking the Project including Environmental Consents and Safety Consents;
2.1.34.	“Consortium”	-	a joint venture or a consortium of Members constituted in accordance with a joint venture or consortium agreement respectively for the purpose of submitting a Bid Response and if successful, undertaking this Project.
2.1.35.	“Constitution”	-	the Constitution of the Republic of South Africa Act, 1996;

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| 2.1.36. | “Constitutional Documents” | - | the founding documents of a Company and all additional documents which set out the authority of such Company to act including the certificate of incorporation and the articles/memorandum of incorporation; |
| 2.1.37. | “Construction” or “Construct” | - | all work to be performed by the Terminal Operator under the Terminal Operator Agreement which entails the detailed design, construction, installation, testing and completion of the works and the obtaining of the Completion Certificate issued by the Independent Certifier in terms of the Terminal Operator Agreement; |
| 2.1.38. | “Contractors” | - | all contractors appointed or to be appointed by the Terminal Operator, for purposes of undertaking a portion of the Project, for or on behalf of the Terminal Operator; |
| 2.1.39. | “Contributor Status Level” | - | the B-BBEE contributor status level of the Bidder as determined by their compliance with the generic B-BBEE scorecard in terms of the Amended B-BBEE Codes or B-BBEE Codes; |
| 2.1.40. | “Corporate Finance” | - | debt funding sourced from and with recourse to either the Bidder, its Members or Guarantor, as appropriate, which may be raised against the Bidder’s balance sheet or the balance sheet of its Members or Guarantor and made available to the Bidder for the financing of the Project including under the form of a shareholder loan, intercompany loan or other form of advance to the Bidder and as set out in the Corporate Financing Support Letter; |
| 2.1.41. | “Corporate Financing Support Letter” | - | the letter that has to be provided by the Bidder, its Members or Shareholders as set out in Annexure Z; |
| 2.1.42. | “Debt” | - | at any date, all amounts due and payable by the Terminal Operator that are outstanding under the Financing Agreements at that date (whether Corporate Finance or External Debt), excluding all cancellation or prepayment penalties or fees |

thereon, Shareholder Loans or interest thereon and all default interest;

- 2.1.43. **DFFE** - the Department of Forestry, Fisheries and the Environment of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.44. **“DOT”** - the Department of Transport of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.45. **“DPE”** - the Department of Public Enterprises of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.46. **“Draft Terminal Operator Agreement”** - the Draft Terminal Operator Agreement that as issued with this RFP, and attached hereto as Annexure HH (*Draft Terminal Operator Agreement*);
- 2.1.47. **“DTIC”** - the Department of Trade, Industry and Competition of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.48. **“EME”** - exempted micro-enterprise, being an entity with an annual turnover of R10 million (ten million rand) or less, in terms of the Amended B-BBEE Codes;
- 2.1.49. **“Environmental Consents”** - any consents, licences, authorisations, permissions or approvals required from a Responsible Authority required in terms of any environmental law, heritage law or any applicable
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		law, dealing with environmental matters, for the purposes of this Project;
2.1.50.	“Equity”	- the entire issued share capital of, and Shareholder Loans to, the Project Company;
2.1.51.	“Equity Funding”	- funding to be provided to the Project Company by its Shareholders either by way of share capital or Shareholder loans;
2.1.52.	“Essential Returnable Documents”	- the bid returnable documents set out in the Bid Response Form (Annexure K) of this RFP;
2.1.53.	“Evaluation Criteria”	- the evaluation criteria set out in Part III (<i>Evaluation Criteria</i>) of this RFP;
2.1.54.	“External Debt”	any Debt, other than Corporate Finance, raised by the Project Company from external sources;
2.1.55.	“Financier Direct Agreement” or “FDA”	- the direct agreement which may be entered into (or to be entered into) between TNPA, the Lenders and the Terminal Operator in terms of the Terminal Operator Agreement;
2.1.56.	“Financial Advisors”	- the firm or firms advising a Bidder on the raising of Debt and Equity Funding in respect of its Bid Response and the Project;
2.1.57.	“Financial Close”	- has the same meaning as defined in the Terminal Operator Agreement;
2.1.58.	“Financing Agreements”	- has the same meaning as defined in the Terminal Operator Agreement;
2.1.59.	“Green Fuels”	- means any of the following types of green fuels: Biofuels: derived from organic materials such as crops (corn, sugarcane), algae, or organic waste. Common biofuels include ethanol (made from corn or sugarcane) and biodiesel (made from vegetable oils or animal fats); or Green Hydrogen: is produced from renewable energy sources such as wind, and solar through

water electrolysis (additional information on Hydrogen is contained in Annexure GG or

Synthetic Fuels: produced through processes like Power-to-Gas (PtG) or Power-to-Liquid (PtL), where electricity is used to convert carbon dioxide (CO₂) and water into fuels like synthetic methane or synthetic gasoline; or

Biogas: produced from the anaerobic digestion of organic materials such as agricultural waste, sewage, and food scraps. It consists primarily of methane and carbon dioxide; or

Hydrogenated Vegetable Oil (HVO): a type of biodiesel made from hydrogenating vegetable oils or animal fats, resulting in a fuel with properties similar to diesel fuel; and

Ammonia: can be produced from renewable energy sources and used as a carbon-free fuel or as a carrier of hydrogen for various applications.

2.1.60. **Legal Advisor**

- the firm or firms advising a Bidder in respect of its bid response, and if that Bidder becomes a Preferred Bidder in respect of the negotiation of the Bidder's contractual arrangements and Project Documents with, inter alia, its Members, Contractors, equipment suppliers and Lenders (if any)

2.1.61. **“Lead Member”**

- the Member of a Consortium that (i) is authorised to represent the Consortium and submits a Bid Response on behalf of the Consortium, (ii) will become the majority Shareholder in the Project Company once the Project Company is established and (iii) will be a key contractor;

2.1.62.	“Lenders”	-	the financiers to a Bidder in respect of the Project;
2.1.63.	“Mandatory Returnable Documents”	-	the bid returnable documents set out in the Bid Response Form (Annexure K) of this RFP;
2.1.64.	“Member”	-	any legal entity and/or natural person that is a member of a Consortium or Joint Venture that will become a Shareholder of the Project Company once it is incorporated;
2.1.65.	“National Treasury”	-	has the same meaning ascribed to it in the Public Finance Management Act, 1 of 1999;
2.1.66.	“National Ports Act”	-	the National Ports Act, 12 of 2005, as amended;
2.1.67.	“NERSA”	-	The National Energy Regulator of South Africa established in terms of National Energy Regulator Act, 40 of 2004;
2.1.68.	“NEMA”	-	the National Environmental Management Act, 107 of 1998, as amended;
2.1.69.	“NDP”	-	National Development Plan 2030 issued by the Government of the Republic of South Africa in 2013, aimed at, <i>inter alia</i> , addressing unemployment, reducing inequality and poverty in a strategy that is principally reliant on creating a significant increase in the number of new jobs in the economy by the year 2030, mainly in the private sector;
2.1.70.	“Occupational Health and Safety Act”	-	The Occupational Health and Safety Act, 85 of 1993, as amended;
2.1.71.	“Operating Rights”	-	Operating Rights as defined in Annexure HH (<i>Terminal Operator Agreement</i>);
2.1.72.	“Operation and Maintenance”	-	the activities and obligations of the Terminal Operator to operate and maintain the Terminal as set out in the Draft Terminal Operator Agreement in Annexure HH (<i>Draft Terminal Operator Agreement</i>) of this RFP;

- 2.1.73. **“Petroleum Pipelines Act”** - the Petroleum Pipelines Act, 60 of 2003 as amended;
- 2.1.74. **“Port Infrastructure”** - the basic common-use structures of the Port of Richards Bay, including berths, breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways and infrastructure used for the provision of water, lights, power, sewage and similar services;
- 2.1.75. **“Port”** - the Port of Richards Bay, which has been determined as such in terms of the Regulations under the National Ports Act, which is situated at Richards Bay in the KwaZulu-Natal province of South Africa;
- 2.1.76. **“Ports Regulator”** - means the Ports Regulator of South Africa, the independent regulatory body established in terms of section 29 of the National Ports Act;
- 2.1.77. **“Port Rules”** - the rules promulgated in terms of section 80(2) of the National Ports Act;
- 2.1.78. **“Port Users”** - any Person, other than the Terminal Operator, organisation and/or agency utilising the Terminal and/or conducting business within the Port limits, including shipping lines, vessel agents, licensed operators, operators of other Facilities in the Port, contractors, and any contractor and/or any third parties authorised to conduct business on behalf of any Port User;
- 2.1.79. **“Preferred Bidder”** - a Bidder which shall comprise, a successful bidder that meets the requirements of the RFP.
- 2.1.80. **“Preferred Bidder Guarantee”** - the guarantee to be provided by the Preferred Bidder to TNPA in terms of Clause 35 (*Preferred Bid Guarantee*) of Part I (*General Requirements, Rules and Provisions*) of this RFP, in the form and content attached as Annexure I to this RFP;
- 2.1.81. **“Preliminary Design”** - the preliminary design of the Terminal plan layout of the full site arrangement as outlined in part II of this RFP;

2.1.82.	“Project”	-	the Funding, Design, Construction, Operation, Maintenance and Transfer of the Liquid Bulk Terminals at the Port to provide the Services, as detailed in this RFP;
2.1.83.	“Project Company”	-	a special purpose company that, the Members of a Consortium or a Joint Venture that is a Preferred Bidder, must incorporate and use as the vehicle to undertake the Project and to be the Terminal Operator in terms of the Terminal Operator Agreement;
2.1.84.	“Project Officer”	-	the person appointed by TNPA as the project officer in respect of the Project;
2.1.85.	“Project Site”	-	<p>The five (5) portions of land referred to in Annexure B (Site Maps) with respect to the footprint in square meters as follows:</p> <ul style="list-style-type: none"> • Site no. 1= 60 552 m²; • Site no. 6 = 74 208 m²; • Site no. 7 = 61 250 m²; • Site no. 8 = 62 256 m²; and • Site no. 9 = 65 303 m²;
2.1.86.	“Project Term”	-	has the meaning given to it in the Terminal Operator Agreement (Annexure HH);
2.1.87.	“Public Finance Management Act or the PFMA”	-	the Public Finance Management Act, 1 of 1999, as amended;
2.1.88.	“QSE”	-	means a qualifying small enterprise, being an entity with a turnover of more than R10 million (ten million rand) but less than R50 million (fifty million rand), in terms of the Amended B-BBEE Codes;
2.1.89.	“Qualification Criteria”	-	the qualification criteria set out in Part II (<i>Qualification Criteria</i>) of this RFP;
2.1.90.	“Rand” or “ZAR”	-	South African Rand, the lawful currency of the Republic of South Africa;

- 2.1.91. **“Related” or “Relation”** - a relationship formed on the basis of any one or more of:
- family (including spouses and in-laws);
- friendship;
- business acquaintance;
- professional engagement; or
- employment;
- 2.1.92. **“Reserve Bidder”** - any Bidder that has not been designated as the Preferred Bidder but has been selected by TNPA as an entity with which TNPA may conclude the Terminal Operator Agreement, provided any of the circumstances in respect of the Preferred Bidder specified in Clause 58 of the RFP occur;
- 2.1.93. **“Responsible Authority”** - any ministry, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, entity, service provider of a utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;
- 2.1.94. **“RFP”** - this Request for Proposals and all Annexures, schedules, and other appendices to it as well as any Briefing Notes issued pursuant thereto, from time to time, by TNPA to solicit Bid Responses from the Bidders;
- 2.1.95. **“RFP Process”** - the process that is being conducted by TNPA in respect of the Project, as set out in this RFP;
- 2.1.96. **“Safety Consents”** - any consents, licenses, authorizations, permissions or approvals required to be obtained by the Terminal Operator from the Responsible Authority as required in terms of any health and safety law for the Project;

- 2.1.97. **“Sector Code”** - a sector code for the maritime transport and service sector published in terms of section 9 of the B-BBEE Act;
- 2.1.98. **“Shareholders”** - the Shareholders of a Company or the Members of the Consortium or Joint Venture that will become the holders of Equity in the Project Company once selected as the Preferred Bidder;
- 2.1.99. **“Shareholder Loans”** - Loans advanced by Shareholders to the Terminal Operator;
- 2.1.100. **“Signature Date”** - the date on which the Terminal Operator Agreement is signed by the last party to it, being either TNPA or the Terminal Operator and if signed on different dates, the last of such dates;
- 2.1.101. **“Special Purpose Vehicle” or “SPV”** - Members constituted in accordance with an SPV agreement for the purpose of submitting a Bid Response and if successful, undertaking this Project which shall be formally incorporated as a Project Company prior to the conclusion of the Terminal Operator Agreement,
- 2.1.102. **“Standard Bid Response”** - has the meaning ascribed to it in Clause 21.1 of Part I (*General Requirements, Rules and Provisions*) of this RFP;
- 2.1.103. **“Substantive Responsiveness”** - has the meaning ascribed to it in (*Qualification Criteria 2: Substantive Responsiveness*) of Part II of this RFP;
- 2.1.104. **“Terminal”** - the liquid bulk and/or green fuel terminal facility, **either** within the port boundary **or** inland terminal/facility used for the purpose of storing or distributing cargo;
- 2.1.105. **“Terminal Equipment”** - the movable assets, including equipment and machinery as well as above surface pipelines and Cargo storage tanks (whether affixed to the Project Site or not), which shall be, for the purposes of this

- 2.1.106. Project, be deemed to be movable, that are required in order to operate the Terminal;
- 2.1.107. **“Terminal Infrastructure”** - Terminal buildings, workshops, substations, storage facilities, surfacing, rail sidings and terminal operations and infrastructure for the provision of water, lights, power, sewerage and similar services within terminal boundaries;
- 2.1.108. **“Terminal Operator”** - the Preferred Bidder granted the right to conduct the Project in terms of the Terminal Operator Agreement pursuant to being selected as the Preferred Bidder under this RFP;
- 2.1.109. **“Terminal Operator Agreement”** - the agreement to be entered into between TNPA and the Terminal Operator, pursuant to the Project, substantially in the form of the Draft Terminal Operator Agreement attached in this RFP as Annexure HH;
- 2.1.107 **“TNPA”** - Transnet National Ports Authority, an operating division of Transnet;
- 2.1.108 **“Transaction Advisors”** - the firms advising TNPA and/or the Bidders, in respect of this RFP;
- 2.1.109 **“Transnet”** - Transnet SOC Ltd, with registration number 1990/000900/30, a state-owned company, duly incorporated in accordance with the company laws of the Republic of South Africa;
- 2.1.110 **“Uncommitted Capacity”** - "the capacity determined by the Energy Regulator, in terms of Regulation 6(14) for transmission pipelines and Regulation 6(13) for storage facilities, that is not required to meet contractual obligations, as defined in Volume 6 of the NERSA Regulatory Reporting Manual of 2013."
- 2.1.111 **“Valuer”** - a property valuer registered with the South African Council for Property Valuers; and
- 2.1.112 **“VAT”** - the value-added tax levied in terms of the Value-added Tax Act, 89 of 1991.

2.2. In this RFP:

- 2.2.1. references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.2.2. words importing the masculine gender include the feminine and neutral genders and vice versa;
- 2.2.3. the singular includes the plural and vice versa;
- 2.2.4. references to a “person” include a natural person, a company or any other juristic person or a corporate entity, partnership, joint venture, a consortium or any other association of persons;
- 2.2.5. references to a “subsidiary” or a “holding company” shall be references to a subsidiary or holding company as defined in the Companies Act;
- 2.2.6. if a definition imposes substantive rights and obligations on a person, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.2.7. any definition, wherever it appears in this RFP, shall bear the same meaning and apply throughout this RFP document unless otherwise stated;
- 2.2.8. if there is any conflict between any definitions in this RFP then, for purposes of interpreting any clause of the RFP or paragraph of any part or schedule, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in this RFP document;
- 2.2.9. the use of any expression covering a process available under South African law (such as but not limited to judicial management, business rescue or winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 2.2.10. references to any amount shall mean that amount exclusive of VAT unless the amount expressly includes VAT;
- 2.2.11. the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem*

generis rule) shall not apply and whenever the word “including” is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;

2.2.12. the rule of construction that the RFP shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of the RFP (namely the *contra proferentem* rule) shall not apply;

2.2.13. unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa; and

2.3. the expiration or termination of this RFP shall not affect such of the provisions of this RFP which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

PART I – GENERAL REQUIREMENTS, RULES, AND PROVISIONS

3. INTRODUCTION

3.1. TNPA is established in terms of the National Ports Act, 2005, as a ports authority and landlord, responsible for the safe, efficient, and economic functioning of the national ports system, which it manages, controls and administers on behalf of the State.

3.2. Section 11 of the National Ports Act prescribes the core functions of TNPA, to include the following:

3.2.1. to plan, provide, maintain and improve port infrastructure;

3.2.2. prepare and periodically update a port development framework plan for each port;

3.2.3. to promote the use, improvement and development of ports and control land use within the ports, having the power to lease port land under conditions that it determines;

3.2.4. to promote greater representation, in particular to increase participation in port operations of historically disadvantaged people;

3.2.5. to provide or arrange marine-related services, i.e. pilotage services, tug assistance, berthing services, dredging and hydrographic services;

3.2.6. to promote greater representation, in particular to increase participation in port operations of historically disadvantaged people;

- 3.2.7. to provide or arrange marine-related services, i.e. pilotage services, tug assistance, berthing services, dredging and hydrographic services;
 - 3.2.8. to ensure that adequate, affordable and efficient port services and facilities are provided, including regulatory oversight of all port activities; and
 - 3.2.9. to provide aids to assist the navigation of vessels within port limits and along the coast.
- 3.3. At an operational level, TNPA occupies a strategic position in the country's transport and logistics chain, managing South Africa's eight commercial seaports, namely Cape Town, Durban, East London, Mossel Bay, Ngqura, Port Elizabeth, Richards Bay and Saldanha Bay.
- 3.4. The ports under the control of the TNPA span approximately 2 800 km of the South African coastline. TNPA's asset base consists of port land, basic port infrastructure and marine fleet at all eight commercial ports. TNPA manages port land of approximately 43,4 million m² and about 750 leases across the port system.
- 3.5. TNPA provides its services to port users, namely operators, shipping lines, shipping agents, cargo owners and the clearing and forwarding industry.
- 3.6. TNPA also carries a distinctive feature of being self-sustaining, unlike most other landlord port authorities that rely on national or provincial governments for financial support.
- 3.7. The National Port System is depicting the location of the eight (8) commercial ports in South Africa is contained in Figure 1 below:

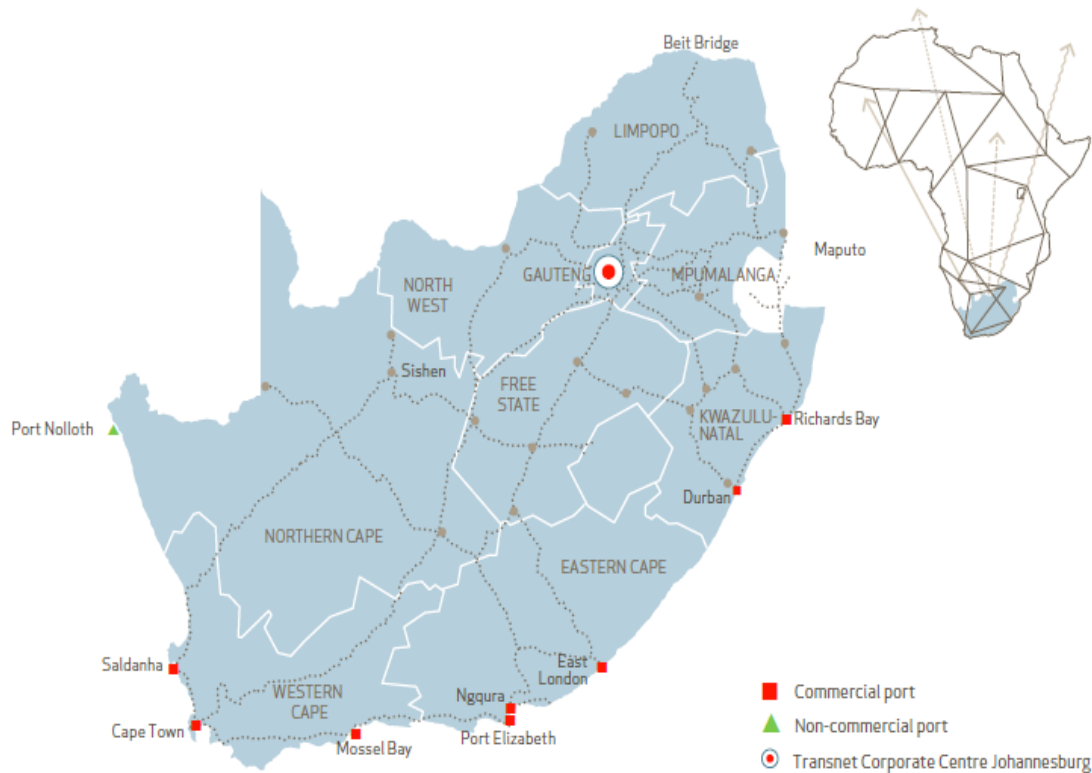


Figure 1: National Port System

4. BACKGROUND

- 4.1. TNPA issues this RFP for the possible appointment of Liquid Bulk Terminal Operators to fund, design, develop, operate, maintain, and transfer the Liquid Bulk Terminals for a twenty-five (25) year concession at the South Dunes Precinct in the Port of Richards Bay, in accordance with section 56 of the National Ports Act.
- 4.2. Section 56 of the National Ports Act permits TNPA to enter into an agreement with any person in terms of which that person, for a period and in accordance with the terms and conditions of the agreement, is authorised to:
 - 4.2.1. design, construct, rehabilitate, develop, finance, maintain or operate a port Terminal or port Terminal, or provide services relating thereto;
 - 4.2.2. provide any other service within a port designated by TNPA for this purpose;
 - 4.2.3. perform any function necessary or ancillary to the matters referred to in paragraphs (a) and (b); or
 - 4.2.4. perform any function necessary or ancillary to the matters referred to in paragraphs (a) and (b); or

- 4.2.5. perform any combination of the functions referred to in paragraphs (a), (b) and (c).
- 4.3. A Terminal Operator Agreement, will be negotiated and concluded with the Preferred Bidder, following the conclusion of the process outlined in paragraph 4.2. above.
- 4.4. A draft Terminal Operator Agreement, which will record the respective rights and obligations of the TNPA and the Terminal Operator, will be annexed to the RFP to be issued.
- 4.5. In undertaking the Concession, the Terminal Operator will be responsible for the development/construction of whatever Terminal infrastructure, as fixed improvements to the Project Site. The Terminal Operator will be required to undertake the Concession, which shall include, but not be limited to sheds, offices, ablutions, canteens, fencing, security systems, quay paving, bulk services, communication systems, lighting, substations and general machinery, plant and equipment, as may be required to operate the Liquid Bulk Terminal and/or Terminals.

Port of Richards Bay Overview

- 4.6. The Port of Richards Bay is located on the northern east coast of the KwaZulu-Natal province and is well positioned along the major transport routes of the province with access to regional rail and road transport.
- 4.7. The Port of Richards Bay consists of three distinct precincts namely, the Bayvue Precinct, the Newark Precinct and the South Dunes Precinct (depicted in Figure 2 below).
- 4.8. The Port of Richards Bay has become South Africa's premier bulk port, focusing on four major segments including export coal, dry bulk, break bulk and liquid bulk.
- 4.9. The Port also handles Liquid Bulk and accommodates other services such as bunkering, minor ship repair as well as provides facilities for recreational craft.
- 4.10. In addition to providing bulk facilities for the hinterland, the port plays an important role in the city of uMhlatuze as well as the King Cetshwayo district' growing industrial base.

Port Precinct



Figure 2: Port of Richards Bay Precincts

South Dunes Precinct

- 4.11. The Port requires the diversification of the port commodity mix and this has necessitated the development of South Dunes Precinct as a Liquid Bulk Complex as per the Port Development Framework Plan. The opportunity exists for effective and sustainable future development of Liquid Bulk Terminals and/or Green Fuels Terminals in the South Dunes Precinct in the Port.
- 4.12. The Port has dedicated the 200 Series Berths (208 & 209) for the import and export of liquid bulk and/or green fuels products. The Port of Richards Bay Master Plan envisage the development of Berth 210 to support growth in demand for the Liquid Bulk and/or Green Fuels.
- 4.13. Currently, the pipeline infrastructure to and at the berth is owned and operated by the current Terminal Operators. TNPA is currently embarking on a project to install pipeline infrastructure (pipe racks) throughout the South Dunes Precinct to be owned by TNPA to service the Liquid Bulk and/or Green Fuel terminals as per this RFP.
- 4.14. Transnet Freight Rail (TFR) provides rolling stock to transport the products to the hinterland via various lines. TFR locomotives decouple the wagons at the TFR yard and Terminal Operators shunt the wagons between TFR yard and the customer's yard (exchange yard). Trucking is also provided by third parties for transportation of products to the hinterland via a single carriageway. Concept and Prefeasibility studies were undertaken by TNPA at the South Dunes Precinct as illustrated on Figure 3 below:

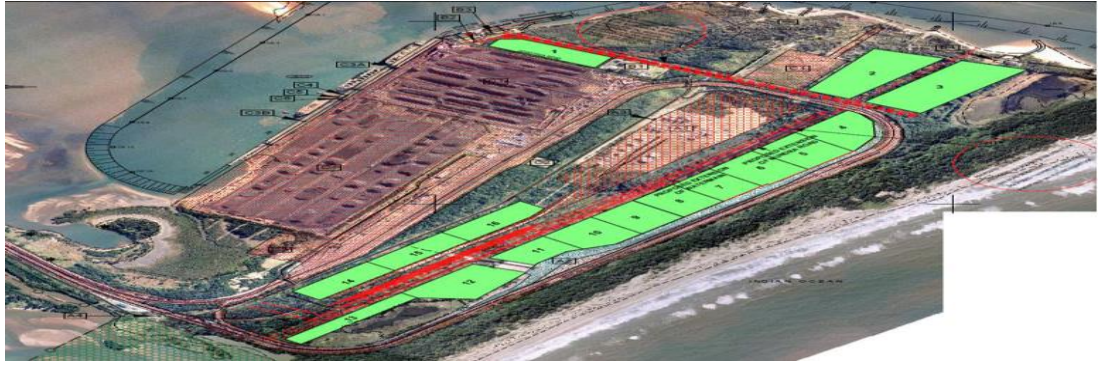


Figure 3: South Dunes Development Framework with Numbered Lease Sites

4.15. It is anticipated that demand for liquid bulk commodities that can be handled within the South Dunes Precinct will grow significantly in future due to refineries shutting down in the country, which will require clean fuels such as petrol, diesel, jet fuel, etc to be imported, and also growth in demand for cleaner green fuels as most industries are shifting towards using commodities such as LPG and LNG for their operations.

4.16. The below figure provides an indication of the current situation with respect to the country's refining capacity which will have impact on growth in demand for Liquid Bulk Cargo (including petrol, diesel, jet fuel, marine fuels, gases and chemicals) and/or Green Fuels to be offset by importing these products through South African ports:

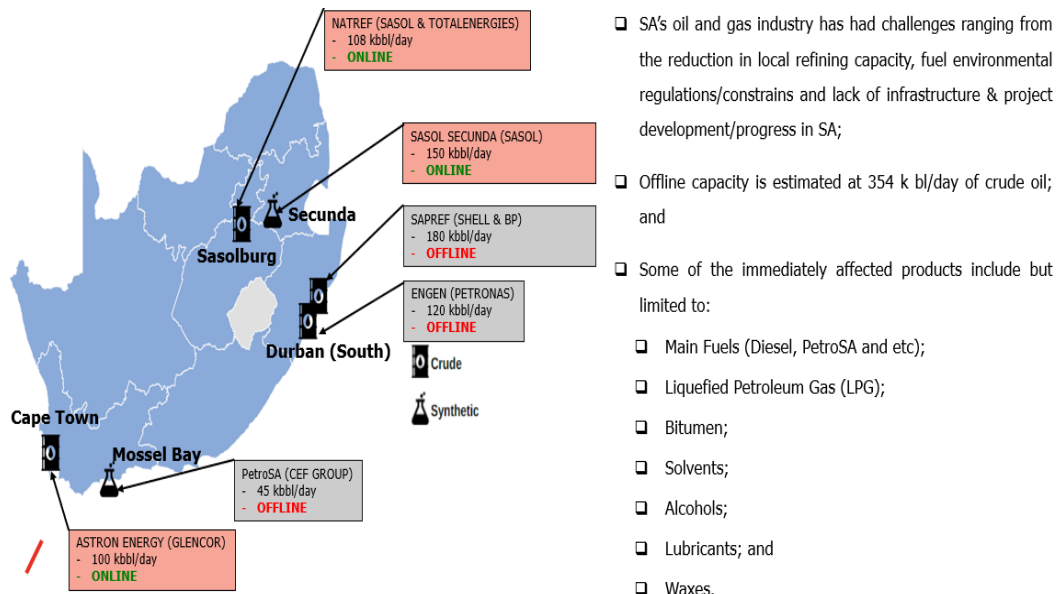


Figure 4: Current Refining Capacity in South Africa

5. THE PORT OF RICHARDS BAY MASTER PLAN

- 5.1. To address and support the Transnet segment strategy, TNPA through the KwaZulu-Natal Logistics Hub (“KZN-LH”) has conceptualized and developed the KZN Ports Logistics Hub strategy, which has resulted in the development of the KZN Ports Master Plan.
- 5.2. The Port Master Plan is indicated in Figure 5 below.
- 5.3. The proposed Liquid Bulk sites within the South Dunes Precinct are aligned to the Master Plan for the Port. (Item Number 16a & 16b).
- 5.4. The proposed Liquid Bulk sites will have access to existing berths 208 and 209 and upon demand, TNPA will prioritize the development of the envisaged berth 210 to support the liquid bulk terminals as per the Port’s Master Plan.



Figure 5: Port of Richards Bay Masterplan

6. THE PROPOSED RICHARDS BAY LIQUID BULK DEVELOPMENTS

- 6.1. In December 2022, TNPA issued a Request for Information (“RFI”) to assess the market appetite for the possible Liquid Bulk Commodities to be handled at the South Dunes Precinct in the Port of Richards Bay.
- 6.2. The RFI respondents confirmed interest in funding, constructing and operating Liquid Bulk Terminals and TNPA will validate demand through the business cases of the Bidders responding to this RFP.
- 6.3. TNPA is therefore issuing this RFP for bidders to submit their proposals and business cases on their preferred first or second choice of the five (5) sites indicated as Site 1, Site 6, Site 7, Site 8, & Site 9 in Annexure B (*Site Maps*) and propose the type of commodities to be handled.

- 6.4. It is the Bidder's responsibility to conduct further market analysis when responding to this RFP and build a solid business case which reflects Liquid Bulk volumes that warrant the Bidder's development/ construction of Liquid Bulk Terminal and/or Green Fuels Terminal in the Port of Richards Bay.

7. PROJECT SCOPE AND DESCRIPTION

- 7.1. TNPA is issuing this RFP as Phase 1 for Liquid Bulk and/or Green Fuels Terminal Operators wherein the bidders are required to advise TNPA of their preferred first and second choice of the available five (5) sites.
- 7.2. The terminal design must be flexible enough to be accommodated at any of the available five (5) sites. On allocation of sites, each terminal operator is required to pay monthly concession fee for the full land extent of the site.
- 7.3. TNPA reserve its rights to award sites to Bidders based on responses that will be aligned to the following:
- 7.3.1. Compatibility of cargoes as per land use strategy; or
 - 7.3.2. Ideal use of the land; or
 - 7.3.3. Connectivity to the berths; or
 - 7.3.4. Optimal revenue for TNPA
- 7.4. The RFP is open to all Liquid Bulk commodities including any potential for green fuels to be developed in any one of the five (5) sites but excluding LNG.
- 7.5. The identified sites for the liquid bulk development/ construction will have access to the existing berth 208 and 209 and the envisaged berth 210, including the common user infrastructure, to be developed and constructed by TNPA.
- 7.6. The layout of the of the available Phase 1 five (5) sites for the Bidders to select, including each site footprint, is depicted in Figure 6 below as per Site 1, 6, 7, 8 & 9:

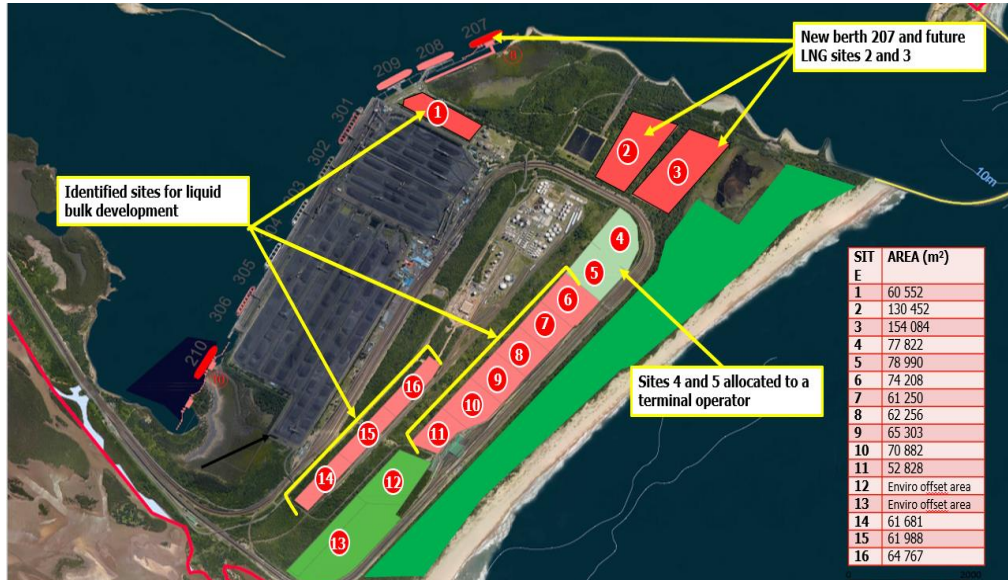


Figure 6: Phase 1 Proposed Sites for the Liquid Bulk Terminals in the South Dunes Precinct

7.7. The details of the available five (5) sites are as follows:

Site number 1	Extent (square meters)
Site 1	60 552
Site 6	74 208
Site 7	61 250
Site 8	62 256
Site 9	65 303

Table 1: Phase 1 of RFP Sites Footprint

7.8. Bidders are required to submit Bid Responses for the exclusive right to undertake the Project which entails the funding, design, construction, operation, and maintenance of the Terminal for the handling of Liquid Bulk and the transfer thereof to TNPA at the end of the Concession Period.

7.9. The Bid Response must deal with Terminal Operations only, with open access as envisaged in the Petroleum Pipelines Act, to all qualifying Port Users for Cargo handling.

7.10. The Bidder that is appointed as the Preferred Bidder will be required to comply with all the NERSA Regulations and/or approvals and be fully conversant with NERSA Regulations in respect of the handling of the chosen Cargo, taking particular note of the tariff methodology applied by NERSA in regulating the prices of a liquid bulk. The successful Bidder will be

required to, on its own, obtain all the necessary Consents from NERSA prior to the Terminal Operator Agreement becoming fully effective.

- 7.11. The successful Bidder will be required to secure all the required approvals and licenses to enable the Project, including but not limited to:
 - 7.11.1. Environmental Authorizations;
 - 7.11.2. Water use licenses (if applicable);
 - 7.11.3. Construction permits; and
 - 7.11.4. Other applicable approvals and licenses.
- 7.12. Bidders are advised to be fully conversant with all other applicable Regulations and Tariff methodologies relevant and applicable to the Project and the handling of Liquid Bulk, as the appointed Bidder will be required to comply with these Regulations and to, on its own, obtain all the necessary Consents.
- 7.13. The current challenge at the Port is the traffic mode split between road and rail/pipeline. At present, the Port is challenged with heavy truck volumes while for hinterland traffic volumes, rail would be an ideal solution.
- 7.14. TNPA, through the Port's Master Plan, is engaging extensively with all port stakeholders to expand road/rail/and pipeline capacity for the Port to enable exit and transportation of cargo volumes to the hinterland and this will be achieved through the Port.
- 7.15. Bidders are therefore required to provide further details on their plans regarding road/rail and pipeline and should premise their business case on this.
- 7.16. The appointed Terminal Operator will be responsible for negotiating and concluding any associated services/connectivity outside port boundaries with relevant stakeholders to the extent that this may be required.

8. COMPILATION OF CONCEPT DESIGNS AND SPECIFICATIONS

- 8.1. The Preferred Bidder will be required to submit Preliminary Concept Designs and thereafter following approval of same by TNPA, detailed designs for the Works. In addition, the Preferred Bidder will be required to provide design and construction specifications for the Terminal within 5 (five) months of the signature of the Terminal Operator Agreement.
- 8.2. The Preliminary Concept Designs for the Terminal(s) must consider the construction and installation of equipment from the existing berths 208 and 209 and the envisaged new berth 210, including the common user infrastructure, to be developed by TNPA, as the case may be, to the preferred site for the discharge and loading of proposed Cargo;

- 8.3. The Preliminary Concept Designs of Terminal(s) must also comply with the latest editions of the engineering standards as issued by the American Petroleum Institute (API) and the American Society of Mechanical Engineers (ASME) or equivalent international standards, taking into consideration the following:
- 8.3.1. construction and/or connectivity from berths for the conveyance of Cargoes including fuels, chemicals and gas to and from the terminal;
 - 8.3.2. storage tanks capacity for the Cargo envisaged to be handled at the terminal;
 - 8.3.3. blending and/or manufacturing process flow for any lubrications or chemicals envisaged to be handled at the terminal; and
 - 8.3.4. required terminal activities for the green fuels commodities.
- 8.4. Preliminary Concept designs must also indicate Liquid Bulk cargo traffic mode split between pipeline, rail and road with reasonable assumptions, as the case may be.

9. CONSTRUCTION PROGRAM, CONSTRUCTION AND INSTALLATION, TESTING, AND COMMISSIONING OF TERMINAL EQUIPMENT AND ASSOCIATED INFRASTRUCTURE

- 9.1. The appointed Terminal Operator will be required to undertake the Construction and establish the Terminal(s) on the Project Site(s).
- 9.2. The appointed Terminal Operator will be required to raise the capital required to undertake and complete all the work required to bring the Terminal(s) into full operation by the end of the Development/ Construction Phase date, which date will be negotiated with the appointed Terminal Operator.
- 9.3. TNPA will not prescribe to the appointed Terminal Operator, the extent of the work to be undertaken at the Terminal(s). The appointed Terminal Operator will be required to determine the extent of the Construction, the Terminal Infrastructure, and the Terminal Equipment required for the Terminal Operations. TNPA expects that port capacity be optimally and fully utilized within a specified timeframe.
- 9.4. The appointed Terminal Operator is required to provide a proposed Preliminary Concept Design for the Terminal Infrastructure and Terminal Equipment in the Business Case as detailed further in the Business Case Guidelines (Annexure CC).

10. OPERATION AND MAINTENANCE

- 10.1. Bidders must note that it is the responsibility of the Terminal Operator to complete the detailed design, construction, delivery, installation, testing and commissioning of all plant and equipment required for the Operation and Maintenance of the Terminal(s) should they be awarded the Preferred Bidder status and sign the Terminal Operator Agreement with TNPA.
- 10.2. The Terminal Operator will acquire the right to operate and assume an obligation to maintain the Terminal in the course of Operations and Maintenance. The Terminal Operator will be required to maintain the Terminal in accordance with the terms of the Terminal Operator Agreement to ensure the continuous optimal Operation of the Terminal(s).
- 10.3. The Terminal Operator will be required to maintain the surface of the quay in good working order and condition, in accordance with International Best Practice (as defined in the Draft Terminal Operator Agreement) and international standards, including undertaking any cleaning of the surface of the quay.
- 10.4. The Terminal Operator and the TNPA shall agree on the minimum performance norms and standards for the Operation and Maintenance of the Terminal(s). An overview of Terminal Operator Performance Standards is provided in Annexure J.
- 10.5. The Terminal Operator will be required to provide access, inspection and data appraisal rights to its storage monitoring system, in the case of a liquid bulk handling, as part of TNPA's statutory Terminal oversight and performance functions.
- 10.6. Bidders are to conform to international best practices for the maintenance and operations of the Terminal(s) and or the Facilities, as the case may be.
- 10.7. Bidders must note that it is TNPA's strategy that the South Dunes Precinct develops an exclusive access and egress system which will be managed by an independently elected Management Committee, of which the successful bidders are obliged to be members and adhere to the relevant Terms of References.
- 10.8. Bidders must take note that, if appointed as successful Bidder, they will be required to participate in and form part of the South Dunes Management Committee, with the task to manage and control all activities taking place within the South Dunes Liquid Bulk Precinct.
- 10.9. The main objectives of the South Dunes Management Committee will be the protection of the security and safety interests of the members within the Precinct.

11. DURATION OF TERMINAL OPERATOR AGREEMENT

- 11.1. The Concession to be granted to the Terminal Operator shall be for a maximum period of 25 (twenty-five) years only excluding development period. Proposals seeking or envisaging a longer term will be disregarded.
- 11.2. For the avoidance of doubt, a Bidder's Business Case and Financial Model must be premised on a maximum term of 25 (twenty – five) years and any bid expressing a longer term will not be evaluated and or scored in the evaluation of Bids.

12. HANDOVER AND TRANSFER OF THE TERMINAL

- 12.1. The Terminal Operator shall on expiry of the Concession Period transfer all rights title and interest in and to the Terminal Infrastructure developed to undertake the Project, to the TNPA at no cost, unless otherwise agreed and recorded in the Terminal Operator Agreement.
- 12.2. Prior to the end of the Concession Period, TNPA may in accordance with the terms of the Terminal Operator Agreement, elect to:
 - 12.2.1. either retain all or some of the Terminal Infrastructure on the Project Site without any compensation or may on written notice to the Terminal Operator, instruct the Terminal Operator to demolish and remove all or some of the Terminal Infrastructure; and/or
 - 12.2.2. on written notice to the Terminal Operator to purchase the Terminal Equipment.
- 12.3. Should TNPA elect to purchase the Terminal Equipment, the Terminal Operator shall hand over, free from encumbrances, the Terminal Equipment together with, *inter alia*, all associated certificates, manuals, and documents.
- 12.4. Should TNPA notify the Terminal Operator to demolish and remove all or some of the Terminal Infrastructure, the Terminal Operator shall decommission, demolish and remove all or the selected Terminal Infrastructure at its cost as well as rehabilitate the land as notified by TNPA.
- 12.5. At the end of the Concession Period, the Terminal Operator will be required to leave the Project Site in a safe, clean and orderly condition in accordance with the terms and conditions contained in the Draft Terminal Operator Agreement, and where applicable, be required to comply with its rehabilitation obligations.

13. ACTIVITIES AT THE TERMINAL

- 13.1. The Terminal Operator shall manage and operate the Terminal for the purposes of but not limited to the following:
- 13.1.1. receiving and dispatching of Cargo at the Terminal(s) from and to vessels, via pipelines, road and rail;
 - 13.1.2. the pumping and/or conveyance of Cargo to, in, and from the Terminal via pipeline, road, or rail;
 - 13.1.3. the dispatching of Cargo to customers through pipeline, rail and/or road; or
 - 13.1.4. blending and/or manufacturing of chemicals and/or lubricants (including engine oils, brake fluids, greases, etc as the case may be, including packaging, drumming and dispatching such products to the customers; or
 - 13.1.5. producing any of the green fuels as defined in this RFP through the Bidder's preferred method; and
 - 13.1.6. performing maintenance-related activities that the Terminal Operator may deem necessary.

14. COMMON-USER PRINCIPLE (THIRD-PARTY ACCESS)

- 14.1. The Terminal, including the Terminal Infrastructure and Terminal Equipment such as the berth infrastructure, shall be used, managed, and operated on a common-user basis and in terms of the TNPA Common-User Principle, meaning that:
- 14.1.1. the Terminal Operator shall have the exclusive right to operate the Terminal and shall provide reasonable equality of access to importers and exporters wishing to utilise the services of the Terminal(s);
 - 14.1.2. the Terminal Operator shall not unreasonably discriminate, in its tariff structure or in its trading conditions (including but not limited to all commercial terms and conditions) between various users or potential users of the Terminal(s) and the berth infrastructure;
 - 14.1.3. Terminal Users shall have, on a first come, use it or lose it, basis, open access to the Terminal and the loading facilities available and uncommitted storage tanks capacity, in line with NERSA Regulations;
- 14.2. Subject to the provisions of this RFP, the Terminal Operator shall otherwise be granted the exclusive right to undertake the Project, subject to the provisions of the National Ports Act, Port Rules, and any directives as may be issued in terms thereof.

15. CONCESSION FEE OFFER

As consideration for the grant of the Concession, the Terminal Operator shall be required to pay Concession Fees to TNPA consisting of the fixed monthly Concession Fee, as described in this Clause 15 (*Concession Fee Offer*) of Part III (*Evaluation Criteria*) of this RFP. Bidders will be required to propose the Concession Fee payable to TNPA.

16. OTHER KEY ROLE PLAYERS IN THE SOUTH AFRICAN PORTS SYSTEM

16.1. THE DEPARTMENT OF PUBLIC ENTERPRISES (“DPE”)

The DPE is the custodian of the state-owned enterprises in South Africa. The Minister of Public Enterprises, with the assistance of the DOT, exercises the Government’s rights as the sole shareholder of Transnet. The DPE manages the Government’s interest in Transnet in line with prevailing Government policy and legislation, including the Public Finance Management Act.

16.2. THE DEPARTMENT OF TRANSPORT (“DOT”)

The DOT is responsible for the regulation of transportation in South Africa including, *inter alia*, the development of maritime transport policies and for legislation in respect of ports, port regulations and policy. Transnet is a state-owned transport company that is an integral part of South Africa’s logistics network. The DOT, as the custodian of the regulation of transport will have oversight in respect of the RFP but will not be involved in any of the processes comprising or included in the RFP.

16.3. THE DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION (“DTIC”)

The DTIC is responsible for the facilitation of transformation of the economy and for the promotion of industrial development, employment creation, and building of mutually beneficial global relations to advance South Africa’s trade. It is also responsible for industrial policy and it facilitates broad-based economic participation. The DTIC has established a fair regulatory environment that enables investment, trade and industry and enterprise development in an equitable and socially responsible manner. As the custodian of regulation of trade, the DTIC has oversight in respect of B-BBEE and plays a significant role in the social development aspects of all economic activity in South Africa.

16.4. THE PORTS REGULATOR OF SOUTH AFRICA

The Ports Regulator is primarily responsible for the economic regulation of the ports system and for promoting equity of access to ports, facilities, and services provided in the ports. The Ports Regulator monitors the activities of TNPA to ensure that it performs its functions in accordance with the National Ports Act. The Ports Regulator, as the independent ports

regulatory body has oversight in respect of the RFP in order to ensure that the regulation of the Port's system is compliant with the National Ports Act.

16.5 NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

NERSA is a regulatory authority established as a juristic person in terms of Section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004). NERSA's mandate is to regulate the electricity, piped-gas and petroleum pipelines industries in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), Gas Act, 2001 (Act No. 48 of 2001) and Petroleum Pipelines Act, 2003 (Act No. 60 of 2003). The mandate of NERSA is derived from legislation governing and prescribing the role and functions of the Regulator.

16.6 DEPARTMENT OF MINERALS AND ENERGY (DMRE)

The DMRE is responsible for the exploration, development, processing, utilisation and management of South Africa's mineral and energy resources. As the country's economy continues to grow, energy is increasingly becoming a key focus. The DMRE's Energy Policy is based on the following key objectives:

- diversifying primary energy sources and reducing dependency on coal;
- attaining universal access to energy by 2014;
- accessible, affordable and reliable energy, especially for the poor; good governance, which must also facilitate and encourage private-sector investments in the energy sector; and
- environmentally responsible energy provision.

17. PURPOSE OF THE RFP

17.1. The purpose of this RFP is to:

17.1.1. appoint a Terminal Operator to develop the liquid bulk terminals for the handling of commodities including fuels, chemicals or gases and/or green fuels, in the Port of Richards Bay using the process stipulated in section 56 of the National Ports Act, 2005, which Terminal Operator will fund, design, construct, operate and maintain the Terminal for a maximum period of 25 (twenty-five) years and thereafter transfer it back to TNPA;

17.1.2. invite Bidders to submit their competitive Bid Responses to this RFP;

17.1.3. provide information to Bidders in relation to the RFP and TNPA's broader vision in respect of the framework of the Project;

- 17.1.4. set out the binding rules of participation in the RFP process referred to in this RFP. Particular attention is drawn to the provisions of the RFP relating to contact with TNPA, confidentiality, canvassing, non-collusion and Bidder changes. Failure to comply with any one or more of these provisions may result in exclusion from participation in this RFP based on the discretion of TNPA;
- 17.1.5. set out the key assumptions and constraints that need to be independently verified, considered and understood by the Bidders in preparing competitive and comparable Bid Responses for the Project;
- 17.1.6. set out the framework and information requirements within which Bid Responses to this RFP should be made;
- 17.1.7. request detailed, comprehensively priced, competitive, binding, underwritten Bid Responses to undertake the Project, which Bid Responses comply with the requirements set out in this RFP; and
- 17.1.8. set out the Qualification Criteria and the Evaluation Criteria which TNPA will apply to the Bid Responses received to enable TNPA to select the Preferred Bidder and a Reserve Bidder, as the case may be.

18. STRUCTURE OF THIS RFP

- 18.1. The Structure of this RFP is as follows:
 - 18.1.1. Part I (*General Requirements, Rules and Provisions*) of this RFP provides the general information to the Bidders and includes, *inter alia*, the glossary of terms detailing the defined terms used within this RFP, explanation of and background to the RFP and the Project, the scope of the Project, the structure and purpose of this RFP and the terms and conditions in terms of which each Bidder submits its Bid Response, including details regarding the format of each Bid Response.
 - 18.1.2. Part II (*Qualification Criteria*) of this RFP sets out the Qualification Criteria that must be satisfied by the Bidders. Bid Responses submitted in respect of this RFP will first be assessed on the basis of compliance with the Qualification Criteria, and only if a Bid Response complies with the Qualification Criteria will it be evaluated in terms of Part III (*Evaluation Criteria*) of this RFP.
 - 18.1.3. Part III (*Evaluation Criteria*) of this RFP sets out the evaluation procedure and the Evaluation Criteria to be used by TNPA in evaluating those Bid Responses that have fulfilled the Qualification Criteria and have progressed to the Evaluation Criteria. The purpose of the Evaluation Criteria is to determine the relative rankings of those pre-qualified Bid Responses and select the Preferred Bidder.

18.1.4. Part IV (*Due Diligence*) of this RFP sets out the evaluation procedure and the Due Diligence in evaluating those Bid Responses that have fulfilled the Evaluation Criteria and have progressed to the Due Diligence. The purpose of the Due Diligence as prescribed in Section 2(1) (f) of the Preferential Procurement Policy Framework Act (PPPFA) is to determine if there are objective grounds on which the TNPA may not proceed with awarding the Project to the Highest-Ranked Bidder in Part III (Evaluation Criteria).

19. STRUCTURE OF THE EVALUATION OF BID RESPONSES

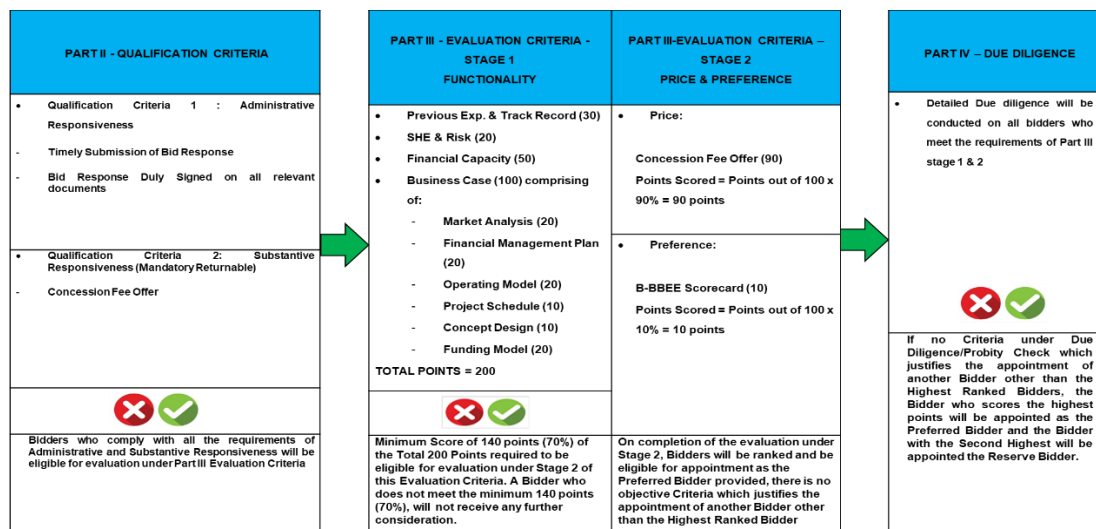
- 19.1. Bid Responses submitted in respect of this RFP will first be assessed on the basis of compliance with the Qualification Criteria, and only if a Bid Response complies with Part II (Qualification Criteria) will it be evaluated in Part III (Evaluation Criteria) and thereafter, be subject to Part IV (Due Diligence) evaluation.
- 19.2. **Qualification Criteria 1:** Administrative Responsiveness detailed in Clause 60 of Part II (Qualification Criteria) of this RFP, will be checked by the TNPA before the evaluation process commences. The requirements for these criteria are set out under Clause 60 (Qualification Criteria 1: Administrative Responsiveness) of Part II (Qualification Criteria) of this RFP.
- 19.3. **Qualification Criteria 2:** Substantive Responsiveness detailed in Clause 60 (Qualification Criteria 2: Substantive Responsiveness) of Part II (Qualification Criteria) of this RFP, will be checked by the TNPA. Before the evaluation of Part III (Evaluation Criteria) The requirements for these criteria are set out under Clause 60 (Qualification Criteria 2: Substantive Responsiveness) of Part II (Qualification Criteria) of this RFP.
- 19.4. If a Bidder's Bid Response complies with the requirements and conditions set out in Clause 60 of Part II (Qualification Criteria) of this RFP, it will proceed to be evaluated under Part III (Evaluation Criteria) of this RFP.
- 19.5. For the avoidance of doubt, Substantive Responsiveness in Part II (Qualification Criteria) of this RFP will be checked by the TNPA before the evaluation of Part III (Evaluation Criteria).
- 19.6. Upon qualification on the Substantive responsiveness, the Bidder's Bid Response will first be evaluated on the Evaluation Criteria as set out in Clause 61.
- 19.7. The Evaluation Criteria as set out in Part (III) comprises 2 (two) stages. Stage 1 entails the evaluation of the functionality of a Bidders Bid Response. In terms hereof 200 points are allocated for the assessment of this Stage 1. A Bidder will be required to score a minimum of 140 points out of the 200 points allocated, to be eligible for further evaluation under Stage 2 of the Evaluation Criteria. Stage 2 of the Evaluation Criteria entails the evaluation of the

Bidders Bid Response with respect to its Concession Fee Offer (Price) and B-BBEE Specific Goals (Preference). The evaluation will be undertaken in accordance with a 90/10 points system. For more information, please see Part III (Evaluation Criteria) of this RFP.

19.8. The points for Concession Fee Criteria (Price) scored out of ninety (90) and B-BBEE Specific Goals will be added (Preference) scored out of ten (10), will be added together to determine the total points scored out of one hundred (100) earned in respect of the Stage 2 Evaluation Criteria.

19.9. A Bidder who scores the highest points under Stage 2 of Part III shall become eligible for appointment as the Preferred Bidder unless the Due Diligence to be undertaken in Part IV (See Clause 66) establishes objective considerations which would justify an award to another Bidder.

19.10. A diagrammatic overview of the Qualification and Evaluation methodology is set out below:



19.11. TNPA will reserve its rights to award site allocation to bidders based on the following:

- 19.11.1. Compatibility of cargoes as per land use strategy; or
- 19.11.2. Ideal use of the land; or
- 19.11.3. Connectivity to the berths; or
- 19.11.4. Optimal revenue for TNPA

20. TNPA BEST AND FINAL OFFER (“BAFO”)

- 20.1. TNPA reserves the right, but is not obliged to, invite any number of Bidders to make their best and final offers, if required, provided following the conclusion of the Due Diligence in Part IV of this RFP.
- 20.2. Notwithstanding the possibility that TNPA may give Bidders the opportunity to submit a BAFO, Bidders should be aware that TNPA will, in conducting its evaluation of Bid Responses, rely on all information (including all representations) contained in such Bid Responses. Bidders are, therefore, encouraged to submit their best proposals in their Bid Responses in response to this RFP.

21. ALTERNATIVE BID RESPONSE

- 21.1. Each Bidder is required to submit a Bid Response which responds to and complies in all respects with the Qualification and Evaluation Criteria (“**Standard Bid Response**”).
- 21.2. To allow sufficient opportunity for innovation, Bidders may submit additional Bid Responses (“**Alternative Bid Response**”) that:
 - 21.2.1. improve and do not compromise the timeframes for the Project;
 - 21.2.2. improve and do not compromise the design criteria of the Terminal;
 - 21.2.3. increase Port calls without increasing the bulk services, land requirements, environmental emissions or forces on the quay infrastructure; and
 - 21.2.4. Justifiable business cases that warrant considerations for any deviations from the standard bid requirements with the exception of the twenty-five (25) year tenure and the site allocated for this project; and
 - 21.2.5. offer better value for money to TNPA.
- 21.3. However, Bidders should note that the submission of an Alternative Bid Response is not a requirement and TNPA is under no obligation to consider an Alternative Bid Response. Further, TNPA will only consider an Alternative Bid Response of the Preferred Bidder, following the completion of the evaluation of all Bid Responses in accordance with this RFP.
- 21.4. No Alternative Bid Response will be considered unless a Standard Bid Response is also submitted. The benefits of deviation from the RFP requirements shall be motivated by a Bidder who submits an Alternative Bid Response, particularly against the Standard Bid Response and the Project objectives and such Alternative Bid Response must demonstrate increased efficiency and better value for money for TNPA.

- 21.5. All Alternative Bid Responses will be evaluated in the same manner as the Standard Bid Response.
- 21.6. Bidders should note that any and all differences to the Standard Bid Response contained in the Alternative Bid Response that are not fully motivated and which do not result in a quantified saving for TNPA will be disregarded by TNPA and may adversely affect the assessment by TNPA of the Bidder's Standard Bid Response.
- 21.7. TNPA reserves the right to reject or accept any of the proposed changes to the Standard Bid Response contained in the Alternative Bid Response at its discretion.

22. PROJECT STRUCTURE AND CONTRACTS

- 22.1. The Preferred Bidder will be invited to enter into the Terminal Operator Agreement and, if required, a Finance Direct Agreement with the relevant counterparties. The Draft Terminal Operator Agreement is attached to this RFP in Annexure HH (*draft Terminal Operator Agreement*). The terms, rights and obligations of the Terminal Operator for the term of the Project are set out in the Draft Terminal Operator Agreement. The Terminal Operator Agreement will be negotiated and concluded with TNPA within 2 (two) months (or such extended period as may be determined by TNPA in its sole discretion) of the Signature Date.
- 22.2. If the Preferred Bidder fails to undertake activities or take steps reasonably required for the conclusion of the Terminal Operator Agreement within the 2 (two) month period (or such extended period as may be determined by TNPA in its sole discretion), then TNPA shall be entitled to disqualify the Preferred Bidder or revoke its status as Preferred Bidder. If the Preferred Bidder is disqualified or has its status revoked by TNPA, TNPA may appoint the Reserve Bidder as the Preferred Bidder in accordance with the provisions of Clause 58 of this RFP. TNPA shall subsequently enter into negotiations with such Reserve Bidder for the conclusion of the Terminal Operator Agreement.
- 22.3. Bidders should note that the Draft Terminal Operator Agreement has been prepared on the assumption that the Terminal Operator will:
 - 22.3.1. be a special purpose vehicle, in the case of a Consortium. In this instance, the Preferred Bidder will be required to establish and incorporate a special purpose Company with the sole purpose of undertaking the Project and entering into the Terminal Operator Agreement. All Shareholders of that Project Company are required to be Members of the Bidder that is appointed as the Preferred Bidder (i.e., from the moment the Bid Response is submitted);
 - 22.3.2. raise finance for purposes of undertaking the Project;

- 22.3.3. complete the Construction and commence Operation of the whole Terminal within 12 (twelve) months of the receipt of a positive record of decision in relation to the Environmental Impact Assessment (EIA) from the DFFE in respect of the Project and upon the submission of the detailed designs by the Terminal Operator to TNPA;
- 22.3.4. TNPA expects the Preferred Bidder to deliver this project based on the following timelines:
 - 22.3.4.1. Four (4) months - Terminal Operator Agreement negotiations;
 - 22.3.4.2. Twenty-Four (24) months - Authorisations / licences / approvals / etc;
 - 22.3.4.3. Four (4) months - Confirmation of funding;
 - 22.3.4.4. Eighteen (18) to Twenty-Four (24) months - Construction
- 22.3.5. to the extent that the Preferred Bidder's bid is not consistent with the assumption made above, the provisions of the final Terminal Operator Agreement shall be revised to be consistent with such bid.
- 22.4. The Terminal Operator Agreement is negotiable, save for those Clauses referred to in Clause 22.6 below. Bidders are required to supply a mark-up of commercial Clauses in the Draft Terminal Operator Agreement and once a Preferred Bidder has been appointed, the mark-ups made by the Preferred Bidder, as at Bid Submission Date, will become the basis for the negotiation between TNPA and the Preferred Bidder. Notwithstanding the restrictions imposed by the non-negotiable provisions as set out above, TNPA reserves the right to amend the final Terminal Operator Agreement to achieve consistency or alignment to the final accepted bid response.
- 22.5. Bidders are required to supply a marked-up version of the Draft Terminal Operator Agreement in Microsoft Word format to indicate any amendments which the Bidder and its Lenders wish TNPA to consider if appointed as Preferred Bidder. TNPA will not evaluate the extent of the mark-up of the Draft Terminal Operator Agreement at the time of the submission of the Bid Response, but submission of a marked-up Draft Terminal Operator Agreement is an Essential Returnable Document, and the Bidders are encouraged to submit this document to TNPA as part of their Bid Response. TNPA will not consider a markup to the Clauses specified in the table in Clause 22.6.
- 22.6. TNPA regards the Clauses listed below in the Draft Terminal Operator Agreement as being non-negotiable and these are:

No.	Clause number	Description
1	Clause 1	Definitions and Interpretation
2	Clause 2	Introduction
3	Clause 3	Appointment of Terminal Operator and grant of rights
4	Clause 6	Ownership and return of the Project Site and the Terminal
5	Clause 7	Indemnity
6	Clause 10	Compliance with D&C Specifications and Operating Specifications
7	Clause 12	Environmental
8	Clause 17	Port Users and Port Rules
9	Clause 18	Shareholding in the Terminal Operator
11	Clause 20	TNPA's Assistance and Rights and Limitations on Liability
10	Clause 22	Provision of the Port
11	Clause 23	Port Project Site
12	Clause 24	Key Personnel and Removal of Personnel
13	Clause 25	Health and Safety
14	Clause 26	Security
15	Clause 33	Rights of Access
16	Clause 39	Foreign exchange risk
17	Clause 40	Default Interest
18	Clause 41	Consequences of a Relief Event
19	Clause 41	Consequences of a Compensation Event

20	Clause 42	Force Majeure
21	Clause 45	Terminal Operator Default
22	Clause 47	Invalidation in terms of section 67 of the National Ports Act
23	Clause 49	No Termination Amount for termination for Force Majeure
24	Clause 50	Corrupt gifts and fraud
25	Clause 51	Terminal Operator's warranties and undertakings
26	Clause 53	Dispute Resolution
27	Clause 56	Information and audit access
28	Clause 56	Miscellaneous matters

22.7. The Preferred Bidder:

- 22.7.1. will be required to enter into the Terminal Operator Agreement with TNPA, pursuant to which TNPA will grant the Preferred Bidder the right to undertake the Project on the terms and conditions of the Terminal Operator Agreement; and
- 22.7.2. in addition to the Terminal Operator Agreement, may be required to enter into a Finance Direct Agreement with its Lenders and TNPA in respect of the Terminal Operator Agreement.

23. TNPA'S RIGHTS

23.1. TNPA reserves the right to:

- 23.1.1. reject any Bid Response which does not conform to instructions and specifications which are detailed herein;
- 23.1.2. reject bid documents that are submitted after the closing date and time, provided in the case where it can be proven that the e-tenders system was not functional at the closing time. Bidders are encouraged to submit their bid documents on time to avoid any system issues that may impact their submission;
- 23.1.3. select one or more than one Bidder as the Reserved Bidder in terms of this RFP to undertake the Project;

- 23.1.4. not necessarily award the Project to the highest-scoring Bid Response or an Alternative Bid Response unless objective criteria justify the award to another Bidder as per the requirements of the PPPFA ; and should there be objective considerations subject to the PPPFA;
 - 23.1.5. cancel or suspend the process for the appointment of the Terminal Operator in respect of the RFP;
 - 23.1.6. cancel, suspend or change the terms contained in this RFP at any stage;
 - 23.1.7. request a BAFO or not;
 - 23.1.8. amend the RFP, Terminal Operator Agreement and the Finance Direct Agreement at any time prior to the signature of these agreements;
 - 23.1.9. supplement the information provided as part of this RFP, as and when such additional information becomes necessary and available;
 - 23.1.10. reject all Bid Responses if it so decides;
 - 23.1.11. award the Project for only a portion of the proposed services at the Port as reflected in the scope of this RFP;
 - 23.1.12. split the award of the Project between more than one Bidder;
 - 23.1.13. make no award of the Project ;
 - 23.1.14. withdraw the award and /or cancel the Terminal Operator Agreement should a contract be awarded on the strength of the information furnished by the Bidder, which after award and/or the conclusion of the Terminal Operator Agreement, is proved to have been incorrect, misrepresents or may lead to an illegality or breach of Law. TNPA shall not be liable to the Bidders or the Preferred Bidder or any other person for any consequences, claims or costs arising from any of these actions; and
 - 23.1.15. to award the tender in part or in full.
- 23.2. TNPA reserves the right to award the Project to the highest-scoring Bidder unless Due Diligence justifies an award to another Bidder.

24. TIMETABLE FOR THE RFP

Activity	Deadlines
Issue of the RFP	06 December 2023
Non-Compulsory Briefing Session in Richards Bay	19 January 2024 at 10:00 CAT
Final Date for Questions and Clarifications from Bidders	12 April 2024 at 16:00 CAT
Bid Submission Closing Date	30 April 2024 at 17:00 CAT

25. EXTENSION OF RFP BID SUBMISSION DATE

TNPA may, at its discretion, extend the Bid Submission Date by issuing a Briefing Note in accordance with Clause 51 (*Briefing Notes and Changes to Bid Process*), in which case, all rights and obligations of TNPA and the Bidder that were previously subject to the original Bid Submission Date shall be subject to the extended Bid Submission Date.

26. GOVERNING LAW, COMPETITION AND OTHER STATUTORY REQUIREMENTS

26.1. GOVERNING LAW

26.1.1. The primary enabling legislation for the Project is the National Ports Act. This enabling legislation regulates and creates the competency of TNPA to procure and implement the Project and the manner in which it may conduct the Project.

26.1.2. The procurement of the Project, Bid Responses, subsequent documents, the Terminal Operator Agreement and the Finance Direct Agreement are and will be governed by and construed according to the laws of the Republic of South Africa.

26.1.3. Procurement of the Project will be carried out in accordance with the relevant legislation, which includes (but is not limited to), the Constitution; the National Ports Act; the Preferential Procurement Policy Framework Act, 5 of 2000; the Public Finance Management Act; the B-BBEE Act; and the NEMA, each to the extent applicable and subject to any lawful exemptions from any provision thereof.

26.2. COMPETITION ACT

26.2.1. Each Bidder must satisfy itself that any aspect of its Bid Response in respect of the Project is not a notifiable transaction as contemplated under the Competition Act and to the extent that it is a notifiable transaction that all necessary requirements to comply with the provisions of the Competition Act have been complied with or will be complied with by it prior to the signature of the Terminal Operator Agreement and the Finance Direct Agreement.

26.2.2. Bidders will be required to submit Annexure U (*Breach of Law Form*) in terms of which they certify whether they have been found guilty during the preceding five (5) years of a serious breach of law, including but not limited to a breach of the Competition Act by a court of law, tribunal or other administrative body.

26.3. **OTHER STATUTORY REQUIREMENTS**

The Bidder (including its Contractors (if any) and its Members), its Lenders (if any), its Legal Advisors and its Financial Advisors are required to satisfy themselves as to the compliance with all other statutory and legal requirements in relation to the Project or any aspect thereof.

27. **THE RFP SOCIO-ECONOMIC OBJECTIVES AND REQUIREMENTS**

27.1. **B-BBEE**

27.1.1. TNPA fully endorses and supports the Government's B-BBEE requirements, and it is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.

27.1.2. Since there has also been a lack of investment in infrastructure, skills development and inequality in income distribution, there have been a number of Government initiatives developed to address these challenges.

27.1.3. In terms of the proposed B-BBEE evaluation framework for the Project, prospective Bidders, will be expected to have a minimum B-BBEE certificate in accordance with the Amended B-BBEE codes as per October 2013 rating. This Clause 27 (B-BBEE) provides an overview to Bidders of what will be required of them in terms of the B-BBEE Criteria and what steps can be taken to meet those requirements.

27.1.4. Black Economic Empowerment ("**BEE**") is a process driven by the Government through legislation and policy which aims at remedying the historical imbalances and achieving economic transformation by increasing the number of Black People who participate in the mainstream South African economy.

27.1.5. BEE is fundamental to economic activities in South Africa and aims, through a mix of economic persuasion and incentive, to encourage the opening up of the economy to those disadvantaged by the past system.

27.1.6. The B-BBEE Act is intended as an enabling legislative framework which allows the Government to develop and issue the B-BBEE Codes. The B-BBEE Codes are intended to provide a standard framework for the measurement of B-BBEE across all sectors of the economy. The intention of the B-BBEE Codes is therefore to level the playing field for all entities operating within the South African economy by providing clear and comprehensive criteria for the measurement of B-BBEE.

- 27.1.7. Companies which are governed by Sector-specific Codes will be measured in terms of those Sector Codes.
- 27.1.8. TNPA would, therefore, prefer to do business with local and or international business enterprises which share the same values, and which are prepared to contribute to meaningful B-BBEE initiatives (this includes, but is not limited to, operations subcontracting and joint ventures) as part of their Bid Responses.
- 27.1.9. Entities wishing to obtain B-BBEE recognition must be accredited by a recognised verification agency. The role of the B-BBEE verification agencies is to assess, verify and validate disclosed and undisclosed related-BBEE-related information on measured entities.
- 27.1.10. The DTIC appointed the South African National Accreditation System ("**SANAS**") to conduct the accreditation of verification agencies. Accreditation as a verification agency enables an enterprise to issue a B-BBEE verification certificate. This method is aimed at instilling confidence in B-BBEE verification. A list of accredited B-BBEE verification agencies can be obtained on this website: www.sanas.co.za
- 27.1.11. Once a full verification of the documentation presented by an entity has been conducted, an entity will be awarded levels of B-BBEE recognition, which are dependent on the contributions an entity has made toward Black People in its business.
- 27.1.12. A typical B-BBEE verification certificate would contain the following information:
- 27.1.12.1. company name and number;
 - 27.1.12.2. type of certificate (group, entity or division);
 - 27.1.12.3. B-BBEE category (Qualifying Small Enterprises or generic);
 - 27.1.12.4. B-BBEE level (1 (one) to 8 (eight));
 - 27.1.12.5. procurement recognition percentage (%);
 - 27.1.12.6. black ownership percentage (%);
 - 27.1.12.7. black women ownership percentage (%);
 - 27.1.12.8. value adding supplier (yes or no);
 - 27.1.12.9. certificate issue date; and
 - 27.1.12.10. certificate expiry date.

- 27.1.13. A consortium or joint venture will qualify for points for its B-BBEE Contributor Status Level as a legal entity, provided that the entity submits its consolidated copy of the B-BBEE verification certificate.
- 27.1.14. A consortium or joint venture will qualify for points for their B-BBEE Contributor Status Level as an unincorporated entity, provided that the entity submits their consolidated copy of the B-BBEE verification certificate as if they were a group structure and that such a consolidated B-BBEE verification certificate or copy thereof is prepared for every separate bid.
- 27.1.15. Bidders who would wish to respond to this RFP as a Consortium with B-BBEE entities, must state their intention to do so in their Bid Response. Such Bidders must also submit a signed Consortium agreement between the Members clearly stating the percentage split of the Consortium and the associated responsibilities of each Member. If such a Consortium agreement is unavailable, the Members must submit confirmation in writing of their intention to enter into a Consortium agreement should they be appointed as Preferred Bidder by TNPA through this RFP Process. This written confirmation must clearly indicate the percentage split of the business and the responsibilities of each Member. In such instances, Preferred Bidder status will only be awarded once a signed copy of a Consortium agreement is submitted to TNPA.
- 27.1.16. Bidders are to note the requirements for B-BBEE compliance as required by Clause 27 of Part I (*General Requirements, Rules and Provisions*) of this RFP and submit proof of their B-BBEE Contributor Status Level in the form of a B-BBEE verification certificate in order to obtain preference points for their B-BBEE status.

28. ENVIRONMENTAL, SAFETY, HEALTH AND SECURITY COMPLIANCE

The Project must be undertaken in accordance with the safety, health, environmental, quality and security policies of TNPA, included in this RFP at Annexure E (*TNPA Security Policy*) and Annexure C (*Safety, Health, Environment and Quality Policy*), and in accordance with the Terminal Operator Agreement.

29. BIDDERS' EXPERIENCE AND CAPACITY

- 29.1. The prospective Bidders (and or their individual Members, as the case may be) should have a proven track record of successfully executing projects of a similar complexity and magnitude as the Project.
- 29.2. The prospective Bidders (and/or their individual Members, as the case may be) would therefore be required to demonstrate:

- 29.2.1. industry-specific experience, particularly, their professional and technical qualifications and experience in the operation and/or maintenance of the Liquid Bulk Terminals;
- 29.2.2. financial strength, as envisaged in Clause 63 of Part III Stage 1 (*Evaluation Criteria*) of the RFP;
- 29.2.3. access to or use of the equipment and infrastructure necessary for the operation and/or maintenance of the Terminal Operations;
- 29.2.4. adequate personnel to perform their obligations under the Terminal Operator Agreement and related contracts, as envisaged in Part II (*Qualification Criteria*) of the RFP;

GENERAL BID RULES

- 29.3. The RFP is open to the worldwide public and is not restricted to Bidders who are South African nationals and South African entities. All Bidders are subject to the B-BBEE requirements set out in Clause 27 International business enterprises will need to partner with local entities in order to achieve a minimum B-BBEE certificate Contributor Status Level to have their Bid Responses considered in terms of this RFP. The Bidders are invited to submit Bid Responses to be appointed as the Preferred Bidder for consideration by TNPA.
- 29.4. Bidders are required to submit one Standard Bid Response. An additional Alternative Bid Response will only be considered if a Standard Bid has been submitted.
- 29.5. Only Bid Responses that comply with the minimum requirements and criteria specified in the Qualification Criteria of this RFP to TNPA's satisfaction, in its discretion, may be considered by TNPA for participation in the other stages of the RFP. Each Bidder, in submitting its Bid Response, is deemed to do so, on the basis that it accepts and acknowledges the terms of this RFP.
- 29.6. The Bidder appointed as the Preferred Bidder shall be afforded a period of time, specified under Clause 24 (*Timetable for the RFP*) of this General Requirements, Rules and Provisions section of the RFP, to negotiate and finalise their contractual arrangements and Project Documents with, *inter alia*, their Members, Contractors, equipment suppliers and Lenders, and apply for the Consents required to be held by them, by the date specified in the table under Clause 24 (*Timetable for the RFP*) of this General Requirements, Rules and Provisions section of the RFP.
- 29.7. TNPA reserves the right to appoint a Reserve Bidder simultaneously with, or at any time subsequent to, the announcement of the Preferred Bidder in accordance with Clause 58

(*Selection of Preferred and Reserve Bidder*) of Part I (General Requirements, Rules and Provisions) of this General Requirements, Rules and Provisions section of the RFP.

29.8. A Reserve Bidder, which has been selected to continue to participate in the Bid Submission Phase, may only be invited to become a Preferred Bidder by TNPA if:

29.8.1. the Terminal Operator Agreement is not and is unlikely to, for whatsoever reason, be concluded with the Preferred Bidder in respect of the Terminal;

29.8.2. the Preferred Bidder is disqualified for any reason; and/or

29.8.3. the status of the Preferred Bidder is revoked for any reason whatsoever; and

accordingly, the relevant Reserve Bidder will, if requested by the TNPA, be afforded a reasonable period of time to negotiate and finalise its contractual arrangements and the Project Documents with, *inter alia*, its Members, Contractors, equipment suppliers and Lenders in order to conclude the Terminal Operator Agreement and the Finance Direct Agreement with the relevant counterparties.

30. ELIGIBILITY CONSIDERATIONS

30.1. Bid Responses will only be considered by TNPA, in accordance with the Qualification Criteria, Evaluation Criteria and Due Diligence set out in this RFP which generally set out the TNPA's requirements in respect of experience, track record, financial strength, and strategy to undertake the Project.

30.2. Any firm, group, organisation or any Member of a Bidder which is not domiciled within the Republic of South Africa, or does not have an existing, formal association with a South African firm or organisation, shall indicate this fact clearly in its Bid Response.

30.3. Bidders are required to declare if any of their Members or any individual who is a director, officer, employee or Shareholder of any Member is related to any employee of TNPA or Transnet by completing and submitting Annexure Q (*Declaration of Interest*) of this RFP.

30.4. TNPA may, at its discretion, reject a Bid Response if it includes the involvement of any person who is:

30.4.1. blacklisted by the office of the National Treasury; or

30.4.2. blacklisted by such person's professional body (if applicable); or

30.4.3. related to any other Government official or person directly involved in the Project, who may be involved with the evaluation of the Bid Responses and any person with the ability to influence the decision of TNPA with respect to the appointment of the Preferred Bidder, which Relation was not disclosed; or

- 30.4.4. who has been found guilty in any court of law of fraud or corruption-related crimes;
or
 - 30.4.5. upon whom an administrative penalty or fine has been imposed for a serious breach of law, including but not limited to breaches of the Competition Act.
 - 30.4.6. bidder that is not in good standing with TNPA (e.g., performance dispute or legal dispute, etc)
- 30.5. The participation of Not-for-Profit entities in a Bid Response is at the discretion of a Bidder and shall be at its sole risk.
- 30.6. A person, Member, other participants in a Bid Response, or advisor may not participate in, advise or be involved (either directly or indirectly) with more than one Bidder at any stage during the Project. The Bidders shall ensure that no anti-competitive or collusive behaviour is displayed or engaged in by any person, Member, or advisor participating or involved with more than one Bidder. TNPA shall, at its discretion, be entitled to disqualify any Bidders whose Bid Response displays any anti-competitive or collusive behaviour. In this regard, Bidders will be required to complete and submit Annexure W (*Supplier Integrity Pact*) of this RFP.

31. ACKNOWLEDGEMENT OF THE LAW

- 31.1. The Bidder and each of its Members registered in South Africa are required to submit with their Bid Response a declaration stating, *inter alia*, that TNPA has supplied and Bidders have received appropriate responses to any or all questions, as applicable, which were submitted by any Bidders for the RFP clarification purposes. Furthermore, such declaration shall state that the processes and procedures adopted by TNPA in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner. The declaration required in respect of the Bidder is included in Annexure L (*TNPA Declaration of Bidder*).
- 31.2. The Bidder is required to provide a declaration stating, *inter alia*, that it is aware that Bid Responses that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act and or may be reported to the National Prosecuting Authority ("**NPA**") for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 (ten) years in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 or any other applicable legislation. The declaration required in respect of the Bidder is included in Annexure P (*Certificate of Acquaintance with RFP Documents*).
- 31.3. Each Project Company and each Bidder will be solely responsible for satisfying itself with respect to all the legal requirements for the Project and as to the legal requirements applicable

to the Project and the Project Company as specified in this RFP and shall have no claim against TNPA or its Transaction Advisors for any loss or damage it may suffer or incur by reason of any flaw, or oversight or omission in relation thereto. This includes applying for, obtaining, maintaining, renewing and adhering to all relevant Consents, permits, licenses, authorisations and exemptions required to implement the Project. Failure to do so will be at the entire risk of the Project Company and each Bidder and no relief will be given for errors, oversights, or omissions of the Project Company, a Bidder or its Members or of TNPA.

- 31.4. After being selected as a Preferred Bidder, a Preferred Bidder will be required to obtain any relevant licenses and/or permits in the name of its Project Company under the relevant legislation. Each Bidder will be solely responsible for satisfying itself with respect to all the legal requirements for the issue of any relevant license and/or permits by the Responsible Authority in terms of the relevant legislation.

32. LEGAL PERSONALITY OF BIDDER AND CHANGES

- 32.1. If a Preferred Bidder is a Consortium, it will be required to establish a special purpose Company with the sole purpose of undertaking the Project and entering into the Terminal Operator Agreement. All Shareholders of that Project Company are required to be Members of the Bidder (as from the Bid Submission Date) that is appointed as Preferred Bidder.
- 32.2. No change is permitted to the membership or organisational structure of any Bidder (including its Members) after submission of its Bid Response and during the evaluation process without the prior written consent of TNPA.
- 32.3. Bidders are required to immediately notify TNPA in writing if a change in any Bidder's membership or structure will include a change to the percentage of membership in the Bidder by each Member or the intended percentage of shareholding in the Project Company by each Shareholder (including but not limited to a Change in Control) or a change in the identity of the Bidder's Members or Contractors.
- 32.4. Any Bidder and its Members wishing to change its membership and/or structure (including but not limited to a Change in Control), other than in respect of a listed public company, must immediately notify TNPA of this fact, in writing and request TNPA's written consent and provide:

- 32.4.1. full details of the reason for the change;
 - 32.4.2. full details of the parties involved;
 - 32.4.3. full details of the overall impact on the Bidder, the Project Company, the Bid Response and the Project;
 - 32.4.4. in respect of a change in Members, detailed information and all returnable schedules and/or documents in respect of such new Member as was required to be submitted in respect of the Bidder and/or its Members at the time of submission of the Bid Response;
 - 32.4.5. in respect of any change related to a sale of Equity in the Project Company, full details in respect of the transaction, including full disclosure of any premium that will be paid in relation to the sale of Equity; and
 - 32.4.6. full details on how the Bidder proposes to share any improvement or benefit that results from a change to a Bidder's Bid Response or Project with TNPA.
- 32.5. If a Bidder or any of its Members notifies TNPA that it intends to undergo a change in its membership and or structure (including but not limited to a Change in Control), TNPA reserves the right to require the Bidder to supply such further information as TNPA may, in its discretion, request with regard to such change so as to enable TNPA to consider fully the impact of such change.
- 32.6. If a Bidder or any of its Members notifies TNPA that it intends to undergo a change in its membership and/or structure (including but not limited to a Change in Control), the Bidder shall be reassessed for qualification in accordance with the terms of this RFP, which re-qualification shall be in TNPA's discretion but in respect of which TNPA shall apply the same Qualification and Evaluation Criteria. If satisfactory, TNPA will advise the Bidder in writing.
- 32.7. If an event contemplated in Clauses 32.5 or 32.6 of this General Requirements, Rules and Provisions, Part I (*General Requirements, Rules and Provisions*), occurs and TNPA, in its discretion, has not approved the relevant change, TNPA shall be entitled to advise the Bidder or any of its Members, as the case may be, in writing that its request was not approved and may, in its discretion, provide a reasonable amount of time for the Bidder or any of its Members, as the case may be, to propose a restructuring of the Bidder or any of its Members, as the case may be, that is to TNPA's satisfaction, in its discretion. Failing this or if the proposed restructuring is not to TNPA's satisfaction (in its discretion), TNPA may, in its discretion, disqualify the Bidder from participating any further in the Bid Submission Phase, or to allow the Bidder to continue in the RFP, subject to such conditions as TNPA (in its discretion) determines appropriate.

32.8. TNPA shall not be obliged to consider any extension of time in relation to any stage of the RFP on account of any change to a Bid Response and or Project including a change in any Bidder or any of its Members as contemplated above.

33. AUTHORISATION OF TNPA AND THE TERMINAL OPERATOR

33.1. The Bidder, its Members and its advisors are required to satisfy themselves as to the legal authority of TNPA to issue this RFP, to undertake the procurement processes set out in this RFP and to undertake all other actions envisaged by this RFP including entering into the Terminal Operator Agreement and the Finance Direct Agreement.

33.2. TNPA shall not procure a legal opinion from any of its Transaction Advisors in favour of any Bidder, the Preferred Bidder, Members, Project Company or Lenders in relation to such authority or any other aspect of this RFP or the Project envisaged by it. In this regard, copies of the relevant documents authorising TNPA to enter into the agreements to which it is a party, will be made available to the Preferred Bidder upon written request by the Preferred Bidder.

34. CONFIDENTIALITY

34.1. CONFIDENTIALITY BY THE BIDDERS

34.1.1. This RFP contains confidential information regarding the Project and/or the TNPA. By downloading this RFP, the Bidders agree that:

34.1.1.1. they will ensure that their Members, directors, officers, employees, agents, advisors and representatives use this RFP only to assess the attractiveness of the Project and prepare a Bid Response and for no other purpose; and

34.1.1.2. subject to the above Clause, they will not divulge or distribute any information in respect of this RFP or pass on any copies of this RFP without the prior written approval of TNPA and will return this RFP together with all copies thereof to TNPA promptly upon being requested to do so.

34.1.2. Each Bidder agrees to maintain the confidentiality of all information supplied to it in connection with the Project (whether in text, chart, picture, electronic or other form), and agrees to keep its own Bid Response confidential in accordance with this Clause and section 86 of the National Ports Act.

34.1.3. Bidders are required to provide TNPA, together with their Bid Response, a copy of the Non-Disclosure Agreement Annexure M (*Non-Disclosure Agreement*) of this RFP, signed by a duly authorised representative on behalf of the Bidder.

34.2. CONFIDENTIALITY BY TNPA

- 34.2.1. TNPA shall use its reasonable endeavours to keep all data and details submitted by Bidders strictly confidential, save to the extent that TNPA is required to disclose such data and or details by applicable law (including section 86 of the National Ports Act), order of a court of competent jurisdiction, a recognised stock exchange or a Government department or agency. Should it be deemed necessary to discuss any matter relating to any submission of any Bidder with third parties (other than TNPA's Transaction Advisors), the necessary permission will be obtained from the Bidder concerned.
- 34.2.2. TNPA shall be entitled to disclose all data and details submitted by Bidders to the Transaction Advisors and the National Treasury and their officers, employees, agents, advisors and representatives who are involved in the Project and/or the evaluation of the Bid Response.
- 34.2.3. TNPA shall be entitled to disclose all data and details submitted by Bidders to the National Treasury, the DPE, the DTIC, the DOT, Transnet and Parliament to the extent necessary.
- 34.2.4. TNPA shall not be liable for any loss incurred or damage suffered as a result of any disclosure of any information (confidential or otherwise) of the Bidder. Accordingly, the Bidder, its Members and or its advisors and/or its Lenders (if any) shall not have, and hereby waive, any claim against TNPA, its officers, employees, servants, agents or Transaction Advisors arising out of the disclosure of any information, confidential or otherwise.

35. PREFERRED BIDDER GUARANTEE

35.1. PREFERRED BIDDER GUARANTEE

- 35.1.1. Subsequent to the receipt of Bid Responses to the RFP and evaluation thereof, the Preferred Bidder will be required to lodge a guarantee (the "**Preferred Bidder Guarantee**") with TNPA in an amount equal to R2 000 000.00 (two million Rand). A Bidder which has been provisionally informed of its Preferred Bidder status will be considered to have been appointed by TNPA as the Preferred Bidder once the Preferred Bidder Guarantee has been submitted to TNPA in accordance with this Clause.
- 35.1.2. The Preferred Bidder Guarantee must be:
 - 35.1.2.1. an unconditional and irrevocable bank guarantee in the form set out in Annexure I (Form of Preferred Bidder Guarantee);

- 35.1.2.2. lodged with TNPA within 15 (fifteen) Business Days of a Bidder being notified of its provisional Preferred Bidder status;
 - 35.1.2.3. issued by a bank which is licensed to conduct banking business in South Africa under the Banks Act, 94 of 1990 and which has a South African rating of BBB or better by Standard & Poor's or equivalent; and
 - 35.1.2.4. be valid and effective for the period from the date of issue of the Preferred Bidder Guarantee until the earlier of the expiry of the Bid Submission Validity Period, as defined in Clause 49 of Part I (General Requirements, Rules and Provisions) of this RFP, (as extended from time to time) and the Effective Date as defined in Annexure HH of the Draft Terminal Operator Agreement.
- 35.1.3. If a provisionally appointed Preferred Bidder fails to deliver the Preferred Bidder Guarantee within the time allowed, TNPA shall be entitled to revoke the status of that Bidder as Preferred Bidder. TNPA may substitute the Preferred Bidder with a Reserve Bidder nominated by it and lodge a Preferred Bidder Guarantee with TNPA within 15 (fifteen) Business Days of being notified of its Preferred Bidder status. The provisions of this Clause 35.1 (*Preferred Bidder Guarantee*) shall apply *mutatis mutandis* to such new Preferred Bidder Guarantee in each such case.

35.2. RELEASE OF GUARANTEE

The Preferred Bidder Guarantee in respect of a Project will be returned within 15 (fifteen) Business Days of the Effective Date of the Terminal Operator Agreement or expiry of the Bid Submission Validity Period, as the case may be.

35.3. FORFEITURE OF GUARANTEE

35.3.1. TNPA may call on the Preferred Bidder Guarantee more than once (provided that the aggregate amount payable thereunder shall not exceed the maximum amount of the Preferred Bidder Guarantee) without notice or legal process if the Preferred Bidder:

35.3.1.1. is in breach of any law relating to the RFP or is disqualified from the RFP as a result of its actions or omissions;

35.3.1.2. fails to extend the term of the guarantee after agreeing to TNPA's request to extend the expiry date of the Preferred Bidder Guarantee (in which case TNPA will hold it as security in lieu of such extended or renewed Preferred Bidder Guarantee): and/or

35.3.1.3. fails to sign the Terminal Operator Agreement within the agreed time period of this General Requirements, Rules and Provisions, Part I (*General Requirements, Rules and Provisions*) of this RFP;

35.3.1.4. revokes, repudiates or withdraws its Bid Response.

36. CORRUPT GIFTS AND PAYMENTS

36.1. The attention of Bidders is drawn to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

36.2. None of the Bidders, its Members, the Lenders, any other participants in a Bid Response or any of their agents or advisors shall commit an offence in terms of the Prevention and Combating of Corrupt Activities Act, including directly or indirectly offering or giving any person in the employment of TNPA or any other Government official, who is directly involved in the Project, or any of the Transaction Advisors, any gratuity or consideration of any kind as an inducement or reward for appointing any Bidder as the Preferred Bidder, or for showing or omitting to show favour or disfavour to any Bidder, its Members, the Contractors, or their Lenders in relation to the Project.

36.3. If any offence in terms of the Prevention and Combating of Corrupt Activities Act is committed, TNPA shall be entitled to terminate the relevant Bidder's status and/or to prohibit such Bidder, its Members, its Contractors, Lenders or any other participant in the relevant Bid Response and their agents and advisors from participating in any further stage or part of the Project.

37. NO CONTRACT

This RFP does not constitute an offer to enter into a contractual relationship with any Bidder but is merely a solicitation of Bid Responses to enable TNPA to select the Preferred Bidder, in order to conclude the Terminal Operator Agreement and the Finance Direct Agreement with the Terminal Operator and other relevant counterparties.

38. NO COLLUSION

38.1. The attention of each of the Bidders, its Members, the Contractors as well as their advisors and agents is drawn to section 4(1) (b) (iii) of the Competition Act, which prohibits collusive bidding.

38.2. In submitting a Bid Response, each of the Bidders, its Members, the Contractors, Lenders, and all other participants in any Bid Response certifies that:

38.2.1. its Bid Response has been prepared without consultation, communication or agreement for restricting competition with any other Bidder, Member of another

Bidder or participant in another Bid Response, or any other competitor or potential competitor;

38.2.2. its Bid Response has not been disclosed, nor will it be disclosed to any other Bidder, Member of another Bidder or participant in another Bid Response, or any competitor or potential competitor;

38.2.3. no attempt has been made or will be made by it to induce any other person not to submit or participate in a Bid Response for the purpose of restricting competition; and

38.2.4. no attempt has been made or will be made by it to induce any other person to alter the form or contents of its participation in any Bid Response for the purpose of restricting competition.

38.3. If TNPA becomes aware of or is of the opinion that any of the activities detailed in Clause 38.1 have been undertaken by any Bidder or any of its Members, Contractors or participant in another Bid Response or any of their advisors, TNPA shall be entitled to disqualify such Bidder, its Members, Contractors or participant in such Bid Response and their advisors and to bar any or all of them from participating further in the RFP in respect of the Project.

39. NON-COMPLIANCE OF BID RESPONSE RESULTING IN DISQUALIFICATION

39.1. Any material failure on the part of a Bidder to comply with any of the terms of this RFP, read together with all Briefing Notes, may result in its Bid Response being treated as a non-compliant Bid Response.

39.2. TNPA reserves the right to reject any non-compliant Bid Response without further evaluation.

39.3. Non-submission of the Mandatory Returnable Documents required for the achievement of Administrative Responsiveness will result in the Bidder not being a compliant Bidder and the Bidder's Bid Response will not be evaluated further against the remaining Qualification Criteria. Bidders will also have to ensure that the Bid Response has been uploaded on time and that all the RFP documents in the Bid Response have been duly signed by the Bidder. Any Bid Response received without all Essential Returnable Documents requested in terms of this RFP or with insufficient information to enable a substantive evaluation thereof, as contemplated in (Qualification Criteria 2: Substantive Responsiveness) of Part II of this RFP, will be marked as incomplete and may, in TNPA's discretion, be rejected from the RFP.

40. CONTACT POLICY

40.1. All correspondence from a Bidder to TNPA shall be addressed to the Project Officer, shall be signed by the authorised representative of a Bidder and shall be legally binding on the relevant Bidder. All such correspondence must clearly indicate the name of the signatory, his or her

position and the name of the Bidder. The Bidders may not contact or correspond with any person at TNPA, Transnet or a Transaction Advisor, other than the Project Officer, in relation to the Project and or the RFP. The Bidder shall not be entitled to rely on any statements, information or correspondence in respect of this RFP or the Project that is not made, given or issued by the Project Officer and that is not contained in a Briefing Note.

- 40.2. Each Bidder shall give the Project Officer the name and contact details, in writing, of the person whom it appoints to undertake all contact with the Project Officer. It is each Bidder's sole responsibility to ensure that all contact details provided to the Project Officer are correct in every respect, including details of email addresses and telephone numbers etc. TNPA will not be held liable for the incorrectness of any contact details provided by Bidders. Any change to any details of that contact person shall be notified to the Project Officer in writing. The Bidder may only communicate with TNPA through such person and TNPA shall be entitled, at its discretion, to disregard any communication from the Bidder that does not come from such contact person.
- 40.3. All queries and requests for clarification in respect of this RFP shall be requested by way of Annexure V (*RFP Clarification Request Form*) of this RFP, addressed, in writing, to the Project Officer. The contact details of the Project Officer are the following:

Area of responsibility	Contact
TNPA Project Manager: Port of Richards Bay	Email: LIQUIDBULKTERMINALS RFP@TRANSNET.NET

- 40.4. No information or clarification in relation to the Project and/or the RFP may be requested by the Bidder, its Members, the Contractors nor any of its agents or advisors or any person participating in the relevant Bid Response from any member of the Transaction Advisors (save for requests to the Project Officer), Transnet, the employees of TNPA or any other Government official who may be associated with the Project (other than the Project Officer or National Treasury), without the prior written consent of the Project Officer.
- 40.5. If a Bidder, its Members, the Contractors or any of its agents, Lenders, other person participating in the relevant Bid Response or advisors make any such prohibited contact, TNPA reserves the right, in its discretion, to disqualify the Bidder, its Members, Contractors, other person or advisors from participating in that Bid Response on the grounds of being in breach of this Clause 40.4, from any further participation in the Project.
- 40.6. The Bidders, their Members, contractors, advisors, Lenders or agents may not rely on any information provided to any of them outside of the scope of Clause 40.3 above.

41. TIME FOR REQUESTS AND CLARIFICATIONS

The Bidder may request clarification on any item contained within this RFP prior to or until the Final Date for Bidder's Questions and Clarifications as indicated under Clause 24 (Timetable of the RFP), after which date TNPA will not be obliged to enter into further correspondence with the Bidder on questions related to the Project.

42. REQUESTS AND RESPONSES TO REQUESTS

42.1. After the briefing session, oral requests and queries will not be entertained. Requests from Bidders must be in writing and sent to the Project Officer by way of email to the following email address: **LIQUIDBULKTERMINALS RFP@TRANSNET.NET**

42.2. TNPA will respond to written requests and queries by way of written Briefing Notes published on the e-tender portal.

42.3. Bidders must take note that all requests, queries and answers during the clarification process will be dealt with in an open and transparent manner so as not to give any particular Bidder an unfair advantage over others. Bidders must take care not to include confidential information in their queries or requests for clarification. The queries or requests for clarification should be limited to any item contained in this RFP.

43. NON-COMPULSORY RFP BRIEFING SESSION AND SITE VISIT

43.1. A non-compulsory briefing to Bidders will be held physically in respect of the Project, during which time the approach to the Project will be outlined and where key issues of concern or matters requiring clarification are to be raised. Details of this briefing session are as indicated below:

43.1.1. Port of Richards Bay – Date: **[19 January 2024]**, at the Bayvue Centre, Ground Floor, Ventura Road, Port of Richards Bay, Time: **10h00 CAT**.

43.1.2. This RFP may be downloaded directly from the National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge. The RFP may also be downloaded from the Transnet Portal at <https://transnetetenders.azurewebsites.net> (please use **Google Chrome** to access the Transnet link/site) free of charge.

43.1.3. Respondents are encouraged to bring a copy of the RFP to the site meeting and/or RFP briefing.

43.1.4. Potential bidders attending the briefing session are required to RSVP to the following; LIQUIDBULKTERMINALS RFP@TRANSNET.NET by **17 January 2024** at **16:30 CAT**.

43.1.5. TNPA will produce a written register of the Bidders who attended the RFP Briefing Session and a written record of the proceedings at the RFP Briefing Session and will circulate this to all Bidders who attended the RFP Briefing Session, following the RFP Briefing Session. This written record shall be the definitive record of the proceedings and discussions at the RFP Briefing Session. There will be a question-and-answer session and all bidders will be required to submit all the questions in writing and TNPA will set a date to respond in writing.

43.1.6. Due to the access and operational safety conditions at the Terminal, Bidders will be required to bring their appropriate safety shoes for walking in the Terminal and other personal protective equipment such as safety jackets, hard hats and reflective vests.

43.2. TNPA will accommodate a maximum number of 3 (three) representatives of attendees for each Bidder to attend the briefing session.

44. STATUS OF RESPONSE

TNPA will endeavour in good faith to respond to all reasonable written queries and requests for clarification raised by the Bidders. No response given to a question or request for clarification will have any status or impact on the RFP, save to the extent that such response is subsequently reflected in Briefing Notes to the RFP.

45. SUBMISSION OF BID RESPONSE

45.1 Bid Responses in relation to the Bid Submission Date are to be submitted by no later than **17h00 CAT on 30 April 2024.**

45.2 All Bid Responses and documents contained therein must be:

45.2.1 in a PDF format.

45.2.2 Properly indexed, readable and capable of being electronically accessed.

45.3 Transnet has implemented a new electronic tender submission system, the e-Tender Submission Portal, in line with the overall Transnet digitalization strategy where suppliers can view advertised tenders, register their information, log their intent to respond to bids and upload their bid proposals/responses on to the system.

45.4 The Transnet e-Tender Submission Portal can be accessed as follows:

- Log on to the Transnet e-Tenders management platform website/ Portal (transnetetenders.azurewebsites.net);
- Please use **Google Chrome** to access the Transnet link/site);

- Click on “ADVERTISED TENDERS” to view advertised tenders;
- Click on “SIGN IN/REGISTER – for the bidder to register their information (must fill in all mandatory information);
- Click on “SIGN IN/REGISTER” - to sign in if already registered;
- Toggle (click to switch) the “Log an Intent” button to submit a bid;
- Submit bid documents by uploading them into the system against each tender selected; and
- No late submissions will be accepted. The bidder guide can be found on the Transnet Portal transnetetenders.azurewebsites.net

46. FORMAT OF THE BID RESPONSE

TNPA request Bidders to submit their Bid Responses to fulfil the requirements of this Clause 46 (*Format of the Bid Response*), as indicated below:

46.1. Contents of the Bid Response

- 46.1.1. The Bid Response must be complete, contain all the information required by this RFP and deal with each and every issue raised in this RFP in sequential order numbered in accordance with the numbering set out in this RFP. The Bid Response must contain each document, fully completed with the specific details of the Bidder and/or its Members, as provided for in all of the Annexures to this RFP.
- 46.1.2. All pages of each part of the Bid Response must be numbered consecutively from beginning to end and a detailed index to the entire Bid Response, including all pages of each section or part, must be included in the Bid Response.
- 46.1.3. The Bid Response must adhere to the order set out below, to aid the evaluation process:
 - 46.1.3.1. the Mandatory Returnable Documents;
 - 46.1.3.2. the Essential Returnable Documents;
 - 46.1.3.3. the response to the Qualification Criteria; and
 - 46.1.3.4. the response to the Evaluation Criteria.
- 46.1.4. Returnable Documents

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below. There are three types of returnable documents as indicated below and Respondents are urged to ensure that these documents are returned with their bids based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	<i>Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFP <u>will</u> result in a Respondent's disqualification.</i>
Returnable Documents Used for Scoring	<i>Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.</i>
Essential Returnable Documents	<i>Failure to provide essential Returnable Documents <u>will</u> result in Transnet affording Respondents a further opportunity to submit by a set deadline. Should a Respondent thereafter fail to submit the requested documents, this may result in a Respondent's disqualification.</i>

All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.

The sections of the Bid Response that correspond to each of the Qualification Criteria and the Evaluation Criteria must be separate documents. For example, all documents that comprise the response to the Functionality Criteria must be compiled in a separate folder and the naming or referencing must clearly set out the heading of the Part and Clause of the RFP to which the document relates.

46.2. Language of the Bid

The Bid Response and all documents forming part of the Bid Response shall be in English. Any document submitted by a foreign Bidder or Member may be in another language provided it is accompanied by an English translation of the entire document. For the purpose of interpretation of the Bid Response, the English translation provided shall govern. All correspondence and any other documentation and oral communication exchanged between the parties shall be in English.

46.3. Currency of the Bid

All monetary amounts referred to in a Bid Response shall be in Rand (ZAR), save to the extent specifically permitted for in this RFP.

46.4. Identification of the RFP Bid Response

46.4.1. The Bidder shall name each submitted folder and write on the top of each document forming part of the Bid Response submitted by the Bidder, the following information:

46.4.1.1. RFP Reference Number;

46.4.1.2. Name and Address of Bidder;

46.4.1.3. whether it is a Standard Bid Response or Alternate Bid Response;
and

46.4.1.4. Category of Document (namely, the heading of the Part and Clause of the RFP to which the document relates).

46.4.2. The Bidder shall mark the folder of the Bid Response with the following details:

46.4.2.1. the heading of the Part and Clause of the RFP to which the document relates;

46.4.2.2. RFP reference Number;

46.4.2.3. Name and Address of Bidder.

46.5. Correction of errors

The complete Bid Response shall be without alterations, deletions or omissions, except those to accord with instructions issued by TNPA, or as necessary to correct errors made by the Bidder. If corrections are made to the Bid Response such corrections shall be made in clearly legible handwriting and initialled in black ink by the person or persons signing the Bid Response. No corrections to the Bid Response shall be made with any kind of correction fluid.

46.6. Signing of Bid

46.6.1. The Bid Response is to be signed by the duly authorised representative of a Bidder authorised in terms of the resolutions of the Bidder and the Members attached to this RFP as Annexure N (*Resolution of Board of Directors*) and Annexure O (*Resolution of each Member*) issued for the purpose of responding to this RFP.

46.6.2. The duly authorised representative of a Bidder shall be the only person authorised to make statements on behalf of and receive instructions for and on behalf of the Bidder.

46.6.3. Included in each Bid Response shall be a statement by the duly authorised representative of a Bidder set out in Annexure L (*TNPA Declaration of Bidder*) of this RFP.

46.7. Further information

TNPA may seek clarification from any Bidder on any aspect of a Bidder's Bid Response. TNPA may require the Bidder to make oral and/or written presentations for clarification purposes, in respect of its Bid Response if so required by TNPA. In the event that such a request, for additional information, is made by TNPA to any Bidder, such a request should not be misconstrued by a Bidder as being an opportunity to supplement, amend, vary or modify any part of its Bid Response. TNPA reserves the right to hold one or more briefing or information sessions in respect of any or all the Bid Responses. The Bidder may be required to do a presentation of the salient features of its Bid Response to TNPA. If required by TNPA, the Project Officer will arrange a suitable date and venue with each Bidder.

47. LATE BID RESPONSES

Bid Responses reaching TNPA later than the original or extended Bid Submission Date and Time (as the case may be) will be rejected and not acknowledged, without further consideration.

48. BID SUBMISSION VALIDITY

All Bid Responses constitute an irrevocable binding offer by the Bidder to TNPA. Bid Responses must remain valid and binding for 365 (three hundred and sixty-five) calendar days from the Bid Submission Date ("**Bid Submission Validity Period**").

49. EXTENSION OF BID SUBMISSION VALIDITY PERIOD

If TNPA requests the Bidder to extend the Bid Submission Validity Period of its Bid Response for any reason, the Bidder must issue its response to TNPA in writing within 20 (twenty) Business Days of the date on which TNPA made the relevant request. Should the extension be agreed to by the Bidder, the Bid Response may not be varied but an extension of the Preferred Bidder Guarantee contemplated in Clause 35 (*Preferred Bidder Guarantee*), to match any such extension, may be required.

50. DECLARATION OF BIDDER

The authorised representative of the Bidder is required to sign the declaration in the form provided in Annexure L (*TNPA Declaration of Bidder*).

51. BRIEFING NOTES AND CHANGES TO THE BID PROCESS

Up to 15 (fifteen) Business Days prior to the Bid Submission Date, the TNPA may, for any reason, whether at its own initiative or in response to a clarification requested by a Bidder, modify any part or aspect of this RFP by the issue of Briefing Notes.

51.1. Issue of Briefing Notes

- 51.1.1. TNPA may issue additional information regarding the RFP on an *ad hoc* basis, which information shall be provided in the form of Briefing Notes.
- 51.1.2. Briefing Notes will be sequentially numbered and will indicate whether they supplement, vary or amend any portion of the RFP. All Briefing Notes shall be provided to the Bidders by way of e-mail to the address provided by each Bidder.
- 51.1.3. Any and all Briefing Notes will be issued in writing and delivered electronically to the Bidders. The Bidders shall be obliged to accept any amendments specified in Briefing Notes and shall promptly acknowledge receipt thereof by email to the email address of the Project Officer stated in Clause 40 (*Contact Policy*). All Briefing Notes shall be deemed to be part of the RFP.

51.2. Influence of Briefing Notes

- 51.2.1. In order to afford Bidders reasonable time in which to take a Briefing Note into account in preparing their Bid Responses, TNPA may, at its own discretion, extend the Bid Submission Date in accordance with Clause 25 (*Extension of RFP Bid Submission Date*).
- 51.2.2. The Bidder shall ensure that its Bid Response is prepared, taking into account all Briefing Notes issued by TNPA.

52. COST OF BIDDING

- 52.1. The Bidder shall bear all its costs (of whatsoever nature) associated with the preparation of its Bid Response.
- 52.2. No Bidder (including the Preferred Bidder or any Reserve Bidder) shall have any claim against TNPA (including any claim for the costs of bidding) as a result of:
 - 52.2.1. not being selected as the Preferred Bidder and/or a Reserve Bidder; and/or
 - 52.2.2. TNPA altering or abandoning any part or the entire Project, including limiting the Project to the Bid Submission Date only.

53. INCONSISTENCIES

- 53.1. If a Bidder identifies any errors or inconsistencies between the various portions of this RFP the Bidder shall notify the Project Officer in writing prior to the date referred to in Clauses 41 (*Time for requests and clarifications*) and TNPA will provide clarification as to the intended position to all Bidders by way of a Briefing Note.

53.2. To the extent that any inconsistency exists or shall exist between the terms of the Terminal Operator Agreement, the Finance Direct Agreement and the provisions of the RFP, the terms of the Terminal Operator Agreement and the Finance Direct Agreement shall prevail.

54. INCORRECT OR MISLEADING INFORMATION

TNPA may disqualify any Bidder and/ or revoke any decision in respect of the selection of the Preferred Bidder or a Reserve Bidder if such decision was based on any incorrect information which the Bidder or its Members, Contractors or advisors or any other participant in the relevant Bid Response and/or agents provided in response to this RFP.

55. ELECTRONIC ACCESS TO BID RESPONSES

TNPA will electronically access all Bid Responses after the Bid Submission Date following receipt of the Bid Responses after electronic Bid Submission. However, Bidders must note that TNPA will not disclose any information that the Bidders have in their Bid Responses to anyone without the Bidders consent. Bidders are required to ensure that electronic bids are submitted at least one (1) day before the closing date to avoid technical and/or network interruption issues which may be encountered due internet speed, bandwidth or size restrictions as well as the number of uploads permissible. Transnet will not be held liable for any challenges experienced by Bidders as a result of the technical challenges. A Bidder can upload 30MB per upload and multiple uploads are permitted.

56. RFP BID RESPONSE REJECTION

TNPA shall be entitled to accept or reject any Bid Response or to annul the RFP at any time.

57. DISPUTES RELATING TO THE BID PROCESS

Each Bidder and each Member and Contractors or other person participating in a Bid Response or otherwise in the RFP, waives the right to bring legal proceedings in any forum outside of the Republic of South Africa in relation to this Project. The Project and the RFP in respect of the Project shall be governed by the laws of South Africa and the Bidder and each of its Members, Lender and Contractors and such other participants consent and submit to the High Court, KwaZulu-Natal having appropriate jurisdiction in relation to it.

58. SELECTION OF PREFERRED AND RESERVE BIDDER

58.1. TNPA will send letters to the Preferred Bidder and the Reserve Bidder on an *ad hoc* basis, notifying them provisionally of their status and requesting the Preferred Bidder to submit Preferred Bidder Guarantee pursuant to Clause 35 (*Preferred Bidder Guarantee*) and to enter into negotiations with, *inter alia*, its Members, Contractors, Lenders and equipment suppliers to finalise its contractual arrangements and Project Documents in order to conclude the Terminal Operator Agreement and the Finance Direct Agreement with the relevant counterparties.

- 58.2. If TNPA nominates the Preferred Bidder, the nominated Preferred Bidder will be invited to enter into negotiations with TNPA leading to the signature by the appropriate parties of the Terminal Operator Agreement. Once a Bidder is appointed Preferred Bidder, a period of two (2) months, or such extended period as may be objectively and reasonably necessary, as determined by TNPA in its sole discretion, will be allowed for the negotiation of the Terminal Operator Agreement. If the Preferred Bidder fails to facilitate the conclusion of the Terminal Operator Agreement within the two (2) months period, or such extended period as may be objectively and reasonably necessary, as determined by TNPA in its sole discretion, such Preferred Bidder may be disqualified from its status as Preferred Bidder.
- 58.3. If these negotiations are not successful or if the Preferred Bidder is disqualified in accordance with provisions of this RFP, the Bidder nominated as the Reserved Bidder may be invited to enter negotiations with TNPA in substitution of the Preferred Bidder who will be eliminated from the RFP.
- 58.4. Following the signature of the Terminal Operator Agreement, the Terminal Operator will proceed to Financial Close and subsequently implement the Project.

59. PARTICIPATION IN A SINGLE BIDDER

No Contractor, Shareholder or Transaction Advisor, or Bidder's legal advisor may be a member of, or in any way participate or be involved, whether directly or indirectly, with more than one Bidder during any stage of the RFP process. Failure to comply with this requirement may result in the disqualification of all the entities of the Bidder, or any other organisation involved. After the selection of the Preferred Bidder and the release of the Reserve Bidder, members of the unsuccessful Bidders (including their contractors and relevant organisations) may, with the prior approval of TNPA, participate in the Preferred Bidder.

60. PART II - QUALIFICATION CRITERIA

60.1. THE STRUCTURE OF THE QUALIFICATION CRITERIA

60.1.1. The Qualification Criteria that a Bidder's Bid Response is required to satisfy is detailed below in this Part II (Qualification Criteria). The Qualification Criteria is divided into the following categories under the appropriate headings:

60.1.1.1. Qualification Criteria 1: Administrative Responsiveness; and

60.1.1.2. Qualification Criteria 2: Substantive Responsiveness.

60.2. The Qualification Criteria is indicated in the diagram below:

PART II QUALIFICATION CRITERIA
<p>Qualification Criteria 1: Administrative Responsiveness</p> <ul style="list-style-type: none"> ✓ Timely Submission of Bid Response; ✓ Bid Response Duly Signed;
<p>Qualification Criteria 2: Substantive Responsiveness (Mandatory Returnable)</p> <ul style="list-style-type: none"> ✓ Whether the bid contains a Concession Fee Offer
<p>Bidders who comply with all the requirements of Administrative and Substantive Responsiveness will be eligible for evaluation under Part III Evaluation Criteria</p>

60.3. The requirements and parameters in respect of each of these criteria are set out in this Part II. The Bidder must respond to each and every heading in this Part II (Qualification Criteria) and provide comprehensive responses and information in respect of each such criteria.

60.4. **Qualification Criteria 1: Administrative Responsiveness** in Clause 60.2. of this Part II (Qualification Criteria) will be checked by TNPA before the evaluation of Part III commences. Failure to submit and upload the Bid on the e- tender portal on time and a failure to submit a duly initialled and signed documents by the Bidder, which is required for the achievement of the Administrative Responsiveness will result in the Bidder not being compliant and the Bidder's Bid Response will not be evaluated further against Qualification Criteria 2: Substantive Responsiveness.

60.5. Only Bidders who comply with the requirements of Qualification Criteria 1: Administrative Responsiveness will have their Bid Responses evaluated against Qualification Criteria 2: Substantive Responsiveness. In order to comply with the requirements of Qualification Criteria 1: Administrative Responsiveness the following must be met.

QUALIFICATION CRITERIA 1	RFP REFERENCE
Whether the Bid Response has been uploaded on	Clause 60.2 of Part II of this RFP

time.	
Whether the bid documentation as listed in Annex K has been duly signed/initialled as required, by the Bidder	Clause 60.2 of Part II of this RFP
Whether Mandatory Returnable Document as listed in Annex K have been included in the Bid Response	Clause 60.2 of Part II of this RFP

60.6. **Qualification Criteria 2: Substantive Responsiveness** under the RFP Clause 60.2 of this Part II (Qualification Criteria), will be checked by TNPA before the evaluation of Part III commences. Failure to submit the Mandatory Returnable Documents required for the achievement of Substantive Responsiveness will result in the Bidder not being compliant and the Bidder's Bid Response will not be evaluated further against Evaluation Criteria III.

QUALIFICATION CRITERIA 2	RFP REFERENCE
Concession Fee Offer	Clause 60.2 of Part II of this RFP

60.7. The requirements and parameters in respect of each of these criteria are set out in this Part II. The Bidder must respond to each and every heading in this Part II (Qualification Criteria) and provide comprehensive responses and information in respect of each such criteria.

60.8. Upon qualification on the Substantive responsiveness, the bidder will be evaluated on the Evaluation Criteria, which form Part of the Evaluation and Due Diligence Assessment in Part III of this RFP as outlined in Clause 61 below.

PART III – EVALUATION CRITERIA

61. OVERVIEW OF PART III – EVALUATION CRITERIA


61.1. In compliance with the provisions of section 56 of the National Ports Act, TNPA may establish a panel to assist it with the evaluation of the Bid Responses. The primary responsibility of this panel shall be to evaluate all Bid Responses against the criteria set out in this Part III Stage 1 (*Evaluation Criteria: Functionality*) and Stage 2 (*Evaluation Criteria: Price & Preference*) of this RFP and to make appropriate recommendations to TNPA in respect of which Bidders meet the Evaluation Criteria in this Part III (Evaluation Criteria).

61.2. The panel shall constitute a working committee comprising of TNPA employees and may comprise of representatives of the Transaction Advisors if applicable (technical, financial, and legal) to evaluate each aspect of the Functionality and Evaluation Criteria Assessment

independently of each other against an agreed evaluation matrix which will be prepared for each discipline and utilised by each evaluator to ensure consistency in the process.

61.3. Upon completion of the evaluation by the various committees, the chairperson of the panel shall convene such further meetings in order to complete the evaluation for the purposes of formulating recommendations to TNPA.

61.4. In this regard, it should be noted that TNPA has not and will not delegate any decision-making authority to the panel. Furthermore, the panel has no authority to make any decisions on behalf of TNPA in respect of the appointment of the Preferred Bidder.

PART III - EVALUATION CRITERIA - STAGE 1 FUNCTIONALITY	PART III - EVALUATION CRITERIA - STAGE 2 PRICE & PREFERENCE
<ul style="list-style-type: none"> • Previous Exp. & Track Record (30) • SHE & Risk (20) • Financial Capacity (50) • Business Case (100) comprising of: <ul style="list-style-type: none"> ○ Market Analysis (20) ○ Financial Management Plan (20) ○ Operating Model (20) ○ Project Schedule (10) ○ Concept Design (10) ○ Funding Model (20) <p>TOTAL POINTS = 200</p>	<ul style="list-style-type: none"> • Price: <ul style="list-style-type: none"> Concession Fee Offer (90) Points Scored = Points out of 100 x 90% = 90 points • Preference: <ul style="list-style-type: none"> B-BBEE Scorecard (10) Points Scored = Points out of 100 x 10% = 10 points
	
<p>Minimum Score of 140 points (70%) of the Total 200 Points required to be eligible for evaluation under Stage 2 of this Evaluation Criteria. A Bidder who does not meet the minimum 140 points (70%), will not receive any further consideration.</p>	<p>On completion of the evaluation under Stage 2, Bidders will be ranked and be eligible for appointment as the Preferred Bidder provided, there is no Due Diligence which justifies the appointment of another Bidder other than the Highest Ranked Bidder</p>

62. STRUCTURE OF THE EVALUATION CRITERIA

62.1. This Part III stage 1 (*Evaluation Criteria*) of this RFP contains the objective functionality requirements for the detailed Bid Response and the evaluation methods, criteria, and weighting in respect of those parts of the Bid Response that are subject to evaluation in terms of this Evaluation Criteria. The intent is to assess the technical, financial, safety and commercial ability to execute the Project. Those parts are:

62.1.1. Criteria 1: Experience & Track Record;

62.1.2. Criteria 2: Safety Health Environment & Risk;

- 62.1.3. Criteria 3: Financial Capability; and
- 62.1.4. Criteria 4: Business Case.
- 62.2. TNPA will only consider a Bidder's Bid Response in terms of this Evaluation Criteria if that Bidder fulfils all of the Qualification Criteria of Part II of this RFP.
- 62.3. The Bidder must respond to each and every heading in this Part III RFP (Evaluation Criteria) and referred to in this Clause 62 of this RFP and provide comprehensive responses and information in respect of each heading. Failure by a Bidder to respond adequately or at all to any of the headings of this Clause 62 (*Evaluation Criteria*) shall have an adverse impact on the evaluation of its Bid Response and may result in zero (0) points being awarded for a particular Evaluation Criteria.
- 62.4. The evaluation of this Stage 1 of the Evaluation Criteria will be undertaken out of a total of two hundred (200) points as follows:
 - 62.4.1. Criteria 1: Experience & Track Record Criteria being scored out of thirty (30) points;
 - 62.4.2. Criteria 2 : Safety, Health, Environment & Risk being scored out of twenty (20) points;
 - 62.4.3. Criteria 3 : Financial Capacity being scored out of fifty (50) points; and Objective
 - 62.4.4. Criteria 4 : Business Case being scored out of one hundred points (100) points, as more fully explained below
- 62.5. A Bidder will be required to meet a minimum threshold weighted score of 70% which is one hundred and forty (140) points in order to be eligible for evaluation under Stage 2 of the Evaluation Criteria.

63. STAGE 1 OF THE EVALUATION CRITERIA

63.1. EVALUATION CRITERIA 1: EXPERIENCE & TRACK RECORD

A Bidder's experience and track record in operating Liquid Bulk Terminals or Green Fuels, as the case may be, must be reflected in the corporate profile of the Bidder, which must be supplemented with proof as mentioned below:

63.1.1. Experience

63.1.1.1. This section will be assessed and scored out of fifteen (15) points.

63.1.1.2. Bidders will be required to submit:

63.1.1.2.1. Proof of at least a minimum of two (2) years of relevant

experience with respect to number of years operating within Liquid Bulk sector or Green fuels sector and/or that of their Members. The portfolio of evidence must be verifiable through relevant contact details and must form part of the Bidder's Bid Response as this is a critical requirement of the Due Diligence process as per Part IV of the RFP.

63.1.1.2.2. The above portfolio of evidence in respect of the number of years of experience that they or their Members as the case may be, have in operating in any area within which Bidders have handled Liquid Bulk or operated a Green fuels facility and will be evaluated on this experience to ensure that TNPA secures the services of a competent Operator.

63.1.1.3. The number of years of experience that they or their Members have relevant to the Bidder's proposed business case in handling Liquid Bulk and/or Green Fuels terminal, either operated and/or are currently operating, will be assessed and scored out of fifteen (15) points as follows:

PORTFOLIO OF EVIDENCE INDICATING RELEVANT EXPERIENCE IN HANDLING LIQUID BULK COMMODITIES AND/OR GREEN FUELS OPERATIONS	POINTS (15)
No Portfolio of evidence submitted reflecting relevant experience	0
Portfolio of evidence reflecting < 2 years relevant experience	5
Portfolio of evidence reflecting ≥ 2 Years and < 5 years relevant experience	10.5
Portfolio of evidence reflecting ≥ 5 years relevant experience	15

63.1.2. Track Record

63.1.2.1. This section will be assessed and scored out of fifteen (15) points.

63.1.2.2. The Bidders will be required to submit the proof in respect of their or their Members' track record, as the case may be, for the following:

63.1.2.2.1. Bidders will be required to submit portfolio of evidence with contact details of referee indicating the number of liquid bulk and/or green fuel terminals that the Bidders or their Members have previously operated or are currently

operating relevant to the Bidder's proposed business case for either a Liquid Bulk and/or Green fuels Terminal. The portfolio of evidence must be verifiable through relevant contact details and must form part of the Bidder's Bid Response as this is a critical requirement of the Due Diligence process as per Part IV of the RFP.

63.1.2.2.2. The number of terminals that a Bidder or their Members have previously operated or are currently operating relevant to the Bidder's proposed business case for either a Liquid Bulk and/or Green Fuels Terminal will be assessed and scored out of fifteen (15) points as follows:

NUMBER OF TERMINALS THAT DDERS OR THEIR MEMBERS HAVE PREVIOUSLY OPERATED OR ARE CURRENTLY OPERATING IN RESPECT OF LIQUID BULK AND/OR GREEN FUELS	POINTS (15)
No portfolio of evidence indicating the number of Terminals operated and/or are currently operated	0
≥1 and <2 Terminals operated and/or are currently operated supported by portfolio of evidence	5
≥3 and <5 Terminals operated and/or are currently operated supported by Portfolio of evidence	10.5
≥5Terminal operated and/or are currently operated supported by Portfolio of evidence	15

63.2. EVALUATION CRITERIA 2: SAFETY, HEALTH, ENVIRONMENT & RISK

The criteria under this section has an overall point allocation of twenty (20) points. Where a score has been allocated to a criterion or requirement in a scoring table, failure by a Bidder to provide all the documents or completely satisfy the requirement (as reflected in the scoring table and the corresponding Clause in the RFP) will result in a score of zero. TNPA will not apportion the point allocation in relation to the degree of compliance by the Bidder with the specific requirement. For example, where the scoring table provides that a Bidder needs to submit an appointment letter and a training certificate for an incident investigator to score a point of 0.1, the bidder will receive a score of zero if the Bidder does not provide both of the specified deliverables to the TNPA.

63.2.1. Environmental Management

63.2.1.1. This section has a point allocation of five (5) points, and Bidders are required to provide evidence of experience in existing businesses and an overview of the approach to the Environmental Management Plan for operating in the Port of Richards Bay. The Bidder should demonstrate how it will achieve and maintain Environmental legal compliance and sustainability. The Bidder must have the following, and submit evidence thereof:

63.2.1.2. Environmental Management Plan for operating in the Port of Richards Bay handling liquid bulk commodities or operating a green fuels terminal(s);

63.2.1.3. Bidders will be scored, for their Environmental Management Plan as indicated in the tables below. It is important to note that scoring will be allocated in accordance with the quantitative and qualitative scoring methodologies. With regard to the quantitative methodology in particular, the information provided by the bidder must be relevant to either the Liquid Bulk or Green fuels Sector. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology			
Poor	Fair	Good	Excellent
Minimum Score of between 0% - 29% of the total points allocated per measure	Minimum Score of between 30%- 69% of the total points allocated per measure	Minimum Score of between 70% - 79% of the total points allocated per measure	Minimum Score of between 80% - 100% of the total points allocated per measure
Bidder submitted Environmental Management Plan of their existing business/businesses but lacks details on how the plan was implemented	Bidder submitted Environmental Management Plan of their existing business/businesses with inadequate details of how the plan was implemented	Bidder submitted Environmental Management Plan of their existing business/businesses with adequate details of how the plan was implemented	Bidder submitted excellent Environmental Management Plan of their existing business/businesses with clearly defined details of how the plan was implemented including timeframes

ENVIRONMENTAL MANAGEMENT	POINTS	SCORING METHODOLOGY
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Environmental Management Plan for operating in the Port of Richards Bay	5	QUALITATIVE
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63.2.2. Occupational Health and Safety Management

63.2.2.1. This section has a point allocation out of five (5) points. Bidders are required to provide evidence of experience in existing businesses showing an overview of their approach to Occupational Health and Safety Management. The Bidder should demonstrate that its Occupational Health and Safety Management system adheres to the Occupational Health and Safety Act, applicable Regulations, especially the newly promulgated Construction Regulations, 2014, and any other related legislations, by laws etc. Bidders must provide:

63.2.2.1.1. An Occupational Health and Safety policy that deals with the Bidder's commitment in their current business signed by a director of the Bidder or another properly delegated person.

63.2.2.1.2. The bidder shall have an active and comprehensive Safety Programme designed to deliver a high level of safety performance. The Safety Programme shall be designed to achieve the aims of the company's Safety Policy.

63.2.2.1.3. The bidder must submit their Occupational Health and Safety policy document together with the elements covered in their safety program. The Safety Programme's content should ensure that the following minimum requirements are in place, but not limited to:

63.2.2.1.3.1. Emergency management plan;

63.2.2.1.3.2. Periodic fire and drills to address all aspects and locations of potential incidents;

63.2.2.1.3.3. Hazard identification and risk assessment;

63.2.2.1.3.4. Permit to Work and Confined Spaces Permit system;

63.2.2.1.3.5. Incident reporting procedures and tools;

- 63.2.2.1.3.6. Site safety inspections register;
- 63.2.2.1.3.7. Safe work practices and standards of housekeeping;
- 63.2.2.1.3.8. Personal Protective Equipment: the equipment provided, the expectation of its use, including for Third Party Contractors (e.g. subcontractors);
- 63.2.2.1.3.9. Safety management of visitors, contractors and vessel crew;
- 63.2.2.1.3.10. Pre-task safety discussions; and
- 63.2.2.1.3.11. On-site training, induction and familiarization with the site.

63.2.2.2. A valid letter of good standing from Department of Labour or Federated Employers Mutual Assurance;

63.2.2.3. The budgeted provision assigned to Occupational Health and Safety for the duration of the Project;

63.2.2.4. It is important to note that scoring will be allocated in accordance with the quantitative and qualitative scoring methodologies. With regard to the quantitative methodology in particular, the information provided by the bidder must be relevant to either the Liquid Bulk or Green fuels Sector. In respect of the qualitative scoring methodology, the following table will be used:

	Qualitative (QL) scoring methodology		
Poor	Fair	Good	Excellent
Minimum Score of between 0% - 29% of the total points allocated per measure	Minimum Score of between 30%- 69% of the total points allocated per measure	Minimum Score of between 70%- 79% of the total points allocated per measure	Score between 80% - 100% of the total points allocated per measure
The Bidder provided the Occupational Health and Safety Programme of their existing business/businesses which does not cover all the requirements	The Bidder provided the Occupational Health and Safety Programme of their existing business/businesses which covers requirements indicated above	The Bidder provided the Occupational Health and Safety Programme of their existing business/businesses which covers requirements	The Bidder provided excellent Occupational Health and Safety Programme of their existing business/businesses which covers all the requirements indicated above. The

indicated above	but does not provide details with respect to budget provision to implement a Safety Programme	indicated above in detail including budget provision to implement a Safety Programme but not clear how it is designed to achieve the aims of the company's Safety Policy	bidder shall also have an active and comprehensive Safety Programme designed to deliver a high level of safety performance. The Safety Programme shall be designed to achieve the aims of the company's Safety Policy
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OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT	POINTS	SCORING METHODOLOGY
Occupational Health and Safety Programme	5	QUALITATIVE

63.2.3. Risk Management

63.2.3.1. This section has a point allocation of five (5) points. A Bidder must provide:

63.2.3.1.1. A business continuity management (BCM) plan from the Bidder's existing business aligned to a recognized BCM system that will ensure that resilience is considered as part of the Bidders operations to mitigate potential business continuity risks to the Project.

63.2.3.1.2. A risk management plan aligned to a recognized written SHE management system which stipulates how the risks pertaining to construction and operational phases will be identified, assessed and managed by the Bidder including A business continuity management plan from the Bidder's existing business aligned to a recognized BCM system as indicated in 64.2.3.1.1 above.

63.2.3.2. It is important to note that scoring will be allocated in accordance with the quantitative and qualitative scoring methodologies. With regard to the quantitative methodology in particular, the information provided by the bidder must be relevant to either the Liquid Bulk or Green fuels Sector. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology			
Poor	Fair	Good	Excellent
Minimum Score of between 0% - 29% of the total points allocated per measure	Minimum Score of between 30% - 69% of the total points allocated per measure	Minimum Score of between 70%- 79% of the total points allocated per measure	Minimum Score of between 80% - 100% of the total points allocated per measure
The Bidder has submitted Risk Management Plan of their existing business/businesses but does not cover areas where incidents and emergency situations may occur	The Bidder has submitted Risk Management Plan of their existing business/businesses which cover areas where incidents and emergency situations may occur but no business continuity management (BCM) plan	The Bidder has submitted Risk Management Plan of their existing business/businesses which cover areas where incidents and emergency situations may occur including business continuity management (BCM) plan	The Bidder has submitted a detailed Risk Management Plan of their existing business/businesses which cover areas where incidents and emergency situations may occur including business continuity management (BCM) plan aligned to a recognised BCM system that will ensure that resilience is considered as part of the Bidders operations in order to mitigate potential business continuity risks to the Project

RISK MANAGEMENT	POINTS	SCORING METHODOLOGY
Risk Management Plan including Risk Assessments, Business Continuity Management Plan, etc.	5	QUALITATIVE

63.2.4. SHE Management System Certificates

This section has a point allocation of five (5) points with the following requirements:

- 63.2.4.1. Bidders are required to provide evidence of previous implementation of an environmental management system (ISO 14001:2015) or equivalent or currently utilized system in respect of environmental management and environmental authorisations achieved for similar projects in respect of liquid bulk handling or green fuels sector. The Bidder must have the following and submit evidence thereof: ISO

14001:2015 Environmental Management System Certificate or equivalent.

63.2.4.2. Bidders are also required to provide evidence of previous implementation of an Occupational Health and Safety management system (ISO 45001:2018) or equivalent or currently utilized system in respect of Occupational Health and Safety management. The Bidder must have the following and submit evidence thereof: ISO 45001:2018 Occupational Health and Safety Management System certificate or equivalent.

63.2.4.3. Bidders will be scored for the Management System Certificates, as indicated in the table below:

SHE MANAGEMENT SYSTEM CERTIFICATES	POINTS	SCORING METHODOLOGY
ISO 14001:2015 Environmental Management System Certificate or equivalent	2.5	QUANTITATIVE
ISO 45001:2018 Occupational Health and Safety Management System certificate or equivalent	2.5	QUANTITATIVE

63.2.5. Summary of SHE Requirements

Bidders will be scored for the SHE Requirements, as indicated in the table below:

SHE REQUIREMENTS	MAXIMUM NO OF POINTS	RFP REFERENCE
Environmental Management	5	Clause 63.2.1
Occupational Health & Safety	5	Clause 63.2.2
Risk Management Plan	5	Clause 63.2.3
SHE Management System Certificates	5	Clause 63.2.4
TOTAL	20	

63.3. EVALUATION CRITERIA 3: FINANCIAL CAPABILITY

63.3.1. To determine a Bidder's financial strength, Bidders or each of their Members IN respect of newly incorporated joint ventures or Project Companies must submit the following:

63.3.1.1. Audited annual financial statements or independently reviewed financial statements and annual reports for the past three (3) financial years that it has been in operation and the most recent unaudited financial statements (if the last of the three (3) audited annual financial statements is older than six months (6).

63.3.1.2. In the event of the Bidder being a Consortium, TNPA requires audited financial statements of each individual party and/or that of their Members. These financial statements will be consolidated and averaged for the purposes of assessment.

63.3.1.3. TNPA will use the Bidder's audited financial statements or independently reviewed financial statements as per Clause 63.3.1.1 to determine the following:

63.3.1.3.1. EBITDA

63.3.1.3.2. Current Ratio

63.3.1.3.3. Solvency Ratio

63.3.2. Profitability EBITDA

63.3.2.1. TNPA will calculate averaged profitability of the Bidder and this will be evaluated as set out in the table below and will be assessed out of fifteen (15) points as follows:

EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION, AND AMORTIZATION (EBITDA)	POINTS (15)
Bidder EBITDA < R1Million	0
Bidder EBITDA = R 1 million	5
Bidder EBITDA >R 1 million ≤ R2 million	10.5
Bidder EBITDA > R2 million	15

63.3.3. Key Financial Ratios

TNPA will calculate the averaged Key Financial Ratios which will be used to assess the Bidder's liquidity and solvency and will be assessed as follows:

63.3.3.1. Current Ratio

CURRENT RATIO (NORM IS 2:1 – CURRENT ASSETS DIVIDED BY CURRENT LIABILITIES)	POINTS (5)
Ratio < 1	0
Ratio ≥ 1 < 1.5	1
Ratio ≥ 1.5 < 2	2.5
Ratio ≥ 2	5

63.3.3.2. Solvency Ratio

SOLVENCY RATIO (NORM IS 1:1 - TOTAL ASSETS DIVIDED BY TOTAL LIABILITIES)	POINTS (5)
Ratio < 0.5	0
Ratio ≥ 0.5 < 0.8	1
Ratio ≥ 0.8 < 1	2.5
Ratio ≥ 1	5

63.3.4. Past Experience in Raising Capital

63.3.4.1. The Bidder's past experience in arranging project funds will be assessed and scored in accordance with their ability to raise capital. The details for each Member relating to its past experience within the last ten (10) year period of raising debt on a project finance and or corporate finance basis, which demonstrates an ability to: (i) provide equity; (ii) secure and structure such equity; and (iii) letters from the lenders or funders that provided the finance setting out their role and confirming the Member's past experience in raising the capital disclosed in response to the criterion. In cases where equity funding was used for past projects, audited annual financial statements reflecting investment outflows or any other verifiable evidence must be submitted. If the portfolio of evidence is not provided it will

negatively affect the bid noting that TNPA within its discretion conduct credit search's, request references from third parties, and seek further information from financial members in respect of Bidders, its Members, and or Contractors. The portfolio of evidence must be verifiable through relevant contact details and must form part of the Bidder's Bid Response as this is a critical requirement of the Due Diligence process as per Part IV of the RFP.

63.3.4.2. Based on the portfolio of evidence, the Bidders will be assessed and scored out of twenty-five (25) points as follows:

PAST EXPERIENCE IN RAISING CAPITAL	POINTS (25)	SCORING METHODOLOGY
No previous project funding	0	QN
Projects with a value of ≤ R100 million	5	QN
Projects with a value > R100 million ≤ R200 million	10	QN
Projects with a value > R200 million ≤ R300 million	17.5	QN
Projects with a value > R300 million ≤ R500 million	20	QN
Projects with a value > R500 million	25	QN

SUMMARY OF FINANCIAL CAPABILITY	MAXIMUM NO OF POINTS	RFP REFERENCE
EBITDA	15	Clause 63.3.2
Current Ratio	5	Clause 63.3.3.1
Solvency Ratio	5	Clause 63.3.3.2
Past Experience in Raising Capital	25	Clause 63.3.4
Total	50	

63.4. EVALUATION CRITERIA 4: BUSINESS CASE

63.4.1. The TNPA wishes to obtain a holistic view of a Bidder's proposal to undertake the Project. In order to do so, a Bidder is required to prepare and submit a Business Case, which will be implemented by the Bidder should it be appointed as the Terminal

Operator to undertake the Project. It is imperative that the Business Case reflects credible, realistic, and achievable targets as the Bidder will be bound thereby with these proposals being incorporated as binding obligations for the Terminal Operator in the Terminal Operator Agreement.

63.4.2. A Business Case will be assessed and scored out of one hundred (100) points. The Business Case will comprise the following:

63.4.2.1. Market and Sustainability Analysis

63.4.2.1.1. It is important to note that scoring will be allocated in accordance with the qualitative scoring methodologies. The information provided by the bidder must be relevant to the Bidder's business case. In respect of the qualitative scoring methodology.

63.4.2.1.2. This criterion has a point allocation of twenty (20) points and will be evaluated on the extent to which it credibly demonstrates the viability of the Project of operating the Terminals.

63.4.2.1.3. Bidders are required to provide the following in respect of the Market Analysis of the Terminal:

63.4.2.1.3.1. Vision and mission clearly articulating major goals and ambitions for the Terminal;

63.4.2.1.3.2. Relevant and achievable strategic objectives for the Terminal;

63.4.2.1.3.3. A comprehensive value proposition for the Terminal;

63.4.2.1.3.4. A clear understanding of the sector supply chain business operating environment as well as global economic conditions;

63.4.2.1.3.5. Comprehensive potential market, suppliers, and segment analysis;

63.4.2.1.3.6. In-depth Global Competitor Analysis specifically for the sector;

63.4.2.1.3.7. Gap analysis which comprises an identification of any discrepancy between an actual and a potential

market including a plan to mitigate any discrepancy identified;

63.4.2.1.3.8. In-depth SWOT analysis specifically for the sector;

63.4.2.1.3.9. Measurable Economic spin-offs;

63.4.2.1.3.10. Short, Medium, and Long term projection forecast of volumes over the concession period;

63.4.2.1.3.11. Sustainability and growth assumptions over the concession period;

63.4.2.1.4. Bidders will be scored for Market Analysis, as indicated in the table below:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure	Score between Minimum of 30% - 69% of the total points allocated per measure	Score between Minimum of 70% - 79% of the total points allocated per measure	Score between Minimum of 80% - 100% of the total points allocated per measure
Market analysis is not provided, is inadequate, or is incomplete in significant respects.	Market analysis describes major characteristics of the industry, but the analysis is limited or missing a few key elements.	Provides an adequate market analysis	Provides a detailed analysis

MARKET ANALYSIS	SCORING METHODOLOGY
Vision and mission clearly articulating major goals and ambitions for the Terminal	QUALITATIVE
Relevant and achievable strategic objectives for the Terminal	
Comprehensive Value proposition for the Terminal	
Clear understanding of business operating environment as well as global economic conditions	
Comprehensive Potential market, customers	
In-depth Competitor analysis specifically for the sector	

MARKET ANALYSIS	SCORING METHODOLOGY
In-depth SWOT analysis specifically for the Sector	
Measurable Economic spin-offs	
Short, Medium, and Long term projection forecast of volumes over the concession period	
Sustainability and growth assumptions over the concession period	
Total	20

63.4.2.2. Financial Management Plan

This section will be assessed and scored out of twenty (20) points as follows:

63.4.2.2.1. **Operational Costs (25 Year Projection)**

63.4.2.2.1.1. This section will be assessed and scored out of six points (6).

63.4.2.2.1.2. The operational costs will be used to assess the Bidder's sustainability for operating the Terminals and will be assessed on evidence showing the costs outlined in the table below:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure	Score between Minimum of 30% - 69% of the total points allocated per measure	Score between Minimum of 70% - 79% of the total points allocated per measure	Score between Minimum of 80% - 100% of the total points allocated per measure
Operational Costs are not provided, is inadequate, or is incomplete in significant respects.	Operational Costs provided but the analysis is limited or missing a few key elements.	Provides adequate assumptions and information on Operational Costs.	Provides detailed assumptions and information on Operational Costs.

OPERATIONAL COSTS (25 YEAR PROJECTION)	SCORING METHODOLOGY
Repairs & Maintenance Costs	QUALITATIVE
Labour Costs	
Other Operating Costs	
Total	6

63.4.2.2.2. Operational Revenue (25 Year Projection)

63.4.2.2.2.1. This section will be assessed and scored out of four (4) points.

63.4.2.2.2.2. Bidders will be required to submit projected income generation information.

63.4.2.2.2.3. The operational revenue will be used to assess the Bidder's capability of earning the revenue from operating the Terminals and the evidence will be assessed and scored as follows:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure	Score between Minimum of 30% - 69% of the total points allocated per measure	Score between Minimum of 70% - 79% of the total points allocated per measure	Score between Minimum of 80% - 100% of the total points allocated per measure
Operational Revenue not provided, is inadequate, or is incomplete in significant respects.	Operational Revenue provided but the analysis is limited or missing a few key elements.	Bidder provides adequate assumptions and information on Operational Revenue.	Bidder provides detailed assumptions and information on Operational Revenue.

OPERATIONAL REVENUE (25 YEAR PROJECTION)	POINTS	SCORING METHODOLOGY
Revenue to be generated from operating the Terminals	4	QUALITATIVE

63.4.2.2.3. Capital Expenditure

63.4.2.2.3.1. This section will be assessed and scored out of six (6) points.

63.4.2.2.3.2. The Bidders must provide the proposed capital expenditure being the costs/funds used to acquire and develop the Terminal(s) which includes the following:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure.	Score between Minimum of 30% - 69% of the total points allocated per measure.	Score between Minimum of 70% - 79% of the total points allocated per measure.	Score between Minimum of 80% - 100% of the total points allocated per measure.
Capital Expenditure information for the terminal not provided, is inadequate, or is incomplete in significant respects.	Capital Expenditure information for the terminal provided but the analysis is limited or missing a few key elements.	Bidder provides adequate assumptions and information on Capital Expenditure information for the terminal.	Bidder provides detailed assumptions and information on Capital Expenditure information for the terminal.

CAPITAL EXPENDITURE FOR THE TERMINAL	SCORING METHODOLOGY
Concept design	QUALITATIVE
Site investigations	
Procurement	
Direct and indirect construction costs	
Commissioning & Start-up	
Contractor's overhead and other fees	
Total	6

63.4.2.2.4. Financial Model Assumptions

63.4.2.2.4.1. This section will be assessed and scored out of four (4) points.

63.4.2.2.4.2. The Bidder must provide assumptions for their financial projections of the project for the 25 years concession period including but not limited to the following:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure.	Score between Minimum of 30% - 69% of the total points allocated per measure.	Score between Minimum of 70% - 79% of the total points allocated per measure	Score between Minimum of 80% - 100% of the total points allocated per measure
Financial Model Assumptions for the terminal not provided, is inadequate, or is incomplete in significant respects.	Financial Model Assumptions for the terminal provided but the analysis is limited or missing a few key elements.	Bidder provides adequate assumptions and information on Financial Model Assumptions.	Bidder provides detailed assumptions and information on Financial Model Assumptions.

FINANCIAL MODEL ASSUMPTIONS	SCORING METHODOLOGY
Income tax rate	QUALITATIVE
Yearly utilities e.g. water, electricity	
Operating manpower costs and benefits	
Other	
Total	4

63.4.2.2.5. **Summary of Financial Management Plan**

Bidders will be scored for the Financial Management Plan out of twenty (20) points, as indicated in the table below:

SUMMARY OF FINANCIAL MANAGEMENT PLAN	MAXIMUM NO OF POINTS	RFP REFERENCE
Operational Costs	6	Clause 63.4.2.2.1
Operational Revenue	4	Clause 63.4.2.2.2
Capital Expenditure	6	Clause 63.4.2.2.3
Financial Model assumptions	4	Clause 63.4.2.2.4
Total	20	

63.4.2.3. Operating Model

63.4.2.3.1. Bidders are required to provide a clear operating model outlining the approach to the execution of the Project, the operations methodology, performance targets, the optimal use of Terminal Infrastructure, Terminal equipment to be deployed, the logistics plan, operations human resource plans, SHEQ, Risk and Quality management systems that will be applied to mitigate any operational risks including insurable risks.

63.4.2.3.2. The model must include a description of Bidder's Organisational Structure, roles, and responsibilities, and skills profiles of the Board of Directors Executive Leadership, key operational personnel, Terminal Equipment, and machinery acquisition and maintenance strategies.

63.4.2.3.3. This criterion has a point allocation of twenty (20) points. It is important to note that scoring will be allocated in accordance with the qualitative scoring methodologies. The information provided by the bidder must be relevant to the Sector. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure.	Score between Minimum of 30% - 69% of the total points allocated per measure.	Score between Minimum of 70% - 79% of the total points allocated per measure.	Score between Minimum of 80% - 100% of the total points allocated per measure.
The Operating Model does not cover or lacks the required detail in respect of what is outlined above.	The Operating Model covers sufficient detail and had credible supporting motivation in respect of what is outlined above.	The Operating Model covers in comprehensive detail and demonstrates how the Targeted Performance will be achieved and comprehensively described and indicates how this will be achieved. .	The Operating Model covers in exceptional detail and demonstrates how the Targeted Performance will be achieved and comprehensively described and indicates how this will be achieved.

63.4.2.3.4. Bidders will be scored for the Operating Model, as indicated in the table below:

OPERATING MODEL	SCORING METHODOLOGY
Bidders to demonstrate the optimal use of the land-based pumps, conveyance pipelines and storage tanks for receiving, loading and offloading of cargo;	QUALITATIVE
Traffic and Security management plan including but not limited to: Access to the site via pipeline, rail and road including truck staging area. Cargo evacuation split through pipeline, road and rail including identified routes and any other Logistics Plan including the Technologies to be used to enhance operational efficiencies.	
SHEQ, Risk and Quality management systems that will be applied to mitigate any operational risks including a description of Bidders Organisational Structure, roles and responsibilities and skills profiles of Board of Directors Executive Leadership, key operational personnel, Terminal Handling Equipment and machinery acquisition and maintenance strategies.	
Total	20

63.4.2.4. Project Schedule

63.4.2.4.1. Bidders are required to articulate a clear and concise Terminal development/construction plan, which outlines how and within what timeframes it will implement the desired Liquid Bulk Terminal and/or Terminals, providing clearly outlined project schedule and project delivery timeframes.

63.4.2.4.2. This section has a point allocation of ten (10) points. It is important to note that scoring for the Project Schedule will be allocated in accordance with the quantitative and qualitative scoring methodologies. With regard to the quantitative methodology in particular, the information provided by the bidder must be relevant to the sector. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure	Score between Minimum of 30% - 69% of the total points allocated per measure	Score between Minimum of 70% - 79% of the total points allocated per measure	Score between Minimum of 80% - 100% of the total points allocated per measure
Level 1 Project Schedule No Project Schedule or a poor Project Schedule and does not set out clear timeframes, clear milestones, major activities, or key deliverables. No or Poor Project Schedule	Level 2 Project Schedule Moderate Project Schedule, however major milestones and key deliverables are missing.	Level 2 Project Schedule Good Project Schedule, with all major milestones and key deliverables included.	Level 3 Project Schedule. Excellent Project Schedule, with all major milestones and key deliverables included.

63.4.2.4.3. Bidders will be scored on the Project Schedule as follows:

PROJECT SCHEDULE LEVEL	SCORING METHODOLOGY
No logical sequencing and scheduling of key milestones	QL
Level 1 Schedule (Level 1 Schedule is the highest level, called overall project summary level. It includes major milestones or achievements and highlights major activities and key deliverables.)	
Level 2 Schedule (Level 2 Schedule is the area or system summary (roll-up summary of level 3 schedule). It is also called major summary schedule. It is used to integrate into level 3 schedules which involved detail tasks. It can be used to report the project area or trade progress status.)	
Level 3 Schedule (Level 3 Schedule is the most used in planning. Level of schedule is usually decomposed into Level 5. The intention of decomposing schedule level is to manage and control the project or task to a manageable level.)	
Total	10

63.4.2.4.4. Bidders are required to submit Project Delivery Timeframes for Execution, highlighting key sequential milestones and relevant timelines.

63.4.2.4.5. Bidders will be scored for the Project Delivery Timeframes and logical sequencing of activities, as indicated in the tables below:

PROJECT DELIVERY TIMEFRAMES FOR EXECUTION (EXCLUDING ENVIRONMENTAL IMPACT ASSESSMENT)	POINTS (5)	SCORING METHODOLOGY
>30 months	2	QN
25-30 months	3	QN
19- 24 months	4	QN
0 - 18 months	5	QN

SUMMARY OF PROJECT SCHEDULE	MAXIMUM NO. OF POINTS	RFP REFERENCE
Project Schedule Level	5	Clause 63.4.2.4.3
Project Delivery Timeframes	5	Clause 63.4.2.4.5
TOTAL	10	

63.4.2.5. Concept Design

63.4.2.5.1. This section has a point allocation of ten (10) points. It is important to note that scoring will be allocated in accordance with the qualitative scoring methodologies. The information provided by the bidder must be relevant to the Sector.

63.4.2.5.2. The Preliminary Design for the Terminal must include concept technical design brief reports and concepts layout drawings indicating the following:

63.4.2.5.2.1. Concept design of the Terminal including storage tanks, pipelines, valves, or any other ancillary equipment, Design must also include mooring, fenders, bollards, firefighting equipment etc to accommodate the Terminal for the concession period;

63.4.2.5.2.2. Receipt of Cargo directly from vessels, conveyance of Cargo using Terminal Equipment such as pumps, loading arms, manifolds, pipelines, valves, etc, and loading Cargo to a vessel;

63.4.2.5.2.3. Pipeline, rail and road connectivity and accessibility for evacuation of Cargo; and

63.4.2.5.2.4. Overall Safety including tanks safety distances and environmental best available technology and sustainability considerations on infrastructure and equipment.

63.4.2.5.3. Bidders will be scored for Concept Design in line with the qualitative scoring methodology, and the following table will be used:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure.	Score between Minimum of 30% - 69% of the total points allocated per measure.	Score between Minimum of 70% - 79% of the total points allocated per measure.	Score between Minimum of 80% - 100% of the total points allocated per measure
Poor preliminary concept design proposal (Examples include: Design not optimizing potential throughput capacity and tank turns per annum, basic technical brief reports, basic concepts drawings of elevations and layout plans, basic safety and environmental standards considerations including tanks safety distances, basic pipeline rail, and road accessibility design.	Adequate preliminary concept design proposal (Examples include: Design optimizing potential throughput capacity and tank turns per annum, acceptable technical brief reports, acceptable concepts drawings of elevations and layout plans, acceptable safety and environmental standards considerations including tanks safety distances, acceptable pipeline, rail, and road accessibility design.	Good preliminary concept design proposal (Examples include: Design optimizing potential throughput capacity and tank turns per annum, Good technical brief reports, Good concepts drawings of elevations and layout plans, Good safety and environmental standards considerations including tanks safety distances, pipeline, rail, and road accessibility design.	Excellent preliminary concept design proposal (Examples include: Design optimizing potential throughput capacity and tank turns per annum, Excellent technical brief reports, Excellent concepts drawings of elevations and layout plans, Excellent safety and environmental standards considerations including tanks safety distances, pipeline, rail, and road accessibility design.

CONCEPT DESIGN	POINTS	SCORING METHODOLOGY
Preliminary concept design proposal clearly indicating all the above	10	QUALITATIVE

63.4.2.6. The Proposed Funding Model

63.4.2.6.1. The Bidder is required to confirm sufficient funding to undertake the Project of the Terminal and commence implementation upon the conclusion of the Terminal Operator Agreement.

63.4.2.6.2. The Bidder must provide the proposed funding model that supports the business case and capital investment of the Terminal which is required for the Projected Financial Model for the duration of the concession.

63.4.2.6.3. The source of the capital investment required must be explained in terms of the debt/equity structure. It is important to note that scoring will be allocated in accordance with the qualitative scoring methodologies. The information provided by the bidder must be relevant to the sector. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology			
Poor response	Fair response	Good response	Excellent
Score between Minimum of 0% - 29% of the total points allocated per measure.	Score between Minimum of 30% - 69% of the total points allocated per measure.	Score between Minimum of 70% - 79% of the total points allocated per measure.	Score between Minimum of 80% - 100% of the total points allocated per measure.
<p>The Funding Model does not demonstrate an integration of capital planning with the capital budget and does not clearly spell out capital amounts to fund the infrastructure, does not clearly separate the build period from the operating period, funding from equity, loans and others.</p> <p>The Funding Model does not clearly articulate business, financial and industry risk which will not augur well for the success of the project or demonstrate the ability to fund commitments as they become due. It presents an aggressive</p>	<p>The Funding Model meets the requirements, however key critical elements are missing.</p> <p>The Funding Model attempts to present the business, financial and industry risk, moderate scenarios to meet debt obligations and equity returns, higher profitability and coverage (e.g. lower pre-tax interest coverage, EBITDA, Operating profit), higher cash flow ratios (e.g. Debt/EBITDA), affirming covenants with financial risks not satisfactorily hedged.</p> <p>Adequately and reflects moderate Cash Flow Projections, Return on Investment, Internal Rate of Return, Project Net Present Value</p>	<p>The Funding Model adequately meets the requirements where it includes operational and non-operational expenditure, all capital outlays, integrates capital expenditures with the term and funding from capital providers in terms of equity, loans and others, fairly demonstrates funder's support in terms of sufficient capital to cover unexpected and recurrent expenditures, it demonstrates the ability to derive value in procuring and constructing the infrastructure, it gives a clearer understanding through budgeting to operation</p>	<p>The Funding Model exceeds the requirements where it includes operational and non-operational expenditure, all capital outlays, integrates capital expenditures with the term and funding from capital providers in terms of equity, loans and others, fairly demonstrates funder's support in terms of sufficient capital to cover unexpected and recurrent expenditures, it demonstrates the ability to derive value in procuring and constructing the infrastructure, it gives a clearer understanding through budgeting to operation phase, it presents a harmonized picture</p>

Qualitative (QL) scoring methodology			
<p>scenario with a larger risk should the picture not materialize, the financial risks are clearly visible through the financial ratios presented. The profitability and coverage are a bit suspect (e.g. lower pre-tax interest coverage, EBITDA, Operating profit, lower cash flow ratios (e.g. Debt/EBITDA), stringent covenants with restricted access to capital.</p> <p>Does not or poorly reflects the Cash Flow Projections, Return on Investment, Internal Rate of Return, Project Net Present Value</p>		<p>phase, it presents a harmonized picture with the Funding Model.</p> <p>The Funding Model clearly presents business, financial and industry risk, moderate scenarios to meet debt obligations and equity returns, higher profitability and coverage (e.g. lower pre-tax interest coverage, EBITDA, Operating profit, higher cash flow ratios (e.g. Debt/EBITDA), affirming covenants, access to capital, clear liquidity in the Model, hedged financial risks, higher earning of cash from operating income.</p> <p>Comprehensively reflects positive Cash Flow Projections, Return on Investment, Internal Rate of Return, Project Net Present Value</p>	<p>with the Funding Model.</p> <p>The Funding Model clearly presents of business, financial and industry risk, moderate scenarios to meet debt obligations and equity returns, higher profitability and coverage (e.g. lower pre-tax interest coverage, EBITDA, Operating profit, higher cash flow ratios (e.g. Debt/EBITDA), affirming covenants, access to capital, clear liquidity in the Model, hedged financial risks, higher earning of cash from operating income.</p> <p>Comprehensively reflects positive Cash Flow Projections, Return on Investment, Internal Rate of Return, Project Net Present Value</p>

63.4.2.7. The proposed funding model will be scored out of 20 (twenty) points as follows:

THE PROPOSED FUNDING MODEL	POINTS	SCORING METHODOLOGY
<p>Proposed funding model in support of project investment.</p> <p>A written document confirming the Bidder's ability to source funds from a reputable financial institution or within the consortium/group company clearly articulating all the Key Financial Indicators as stipulated in the Qualitative scoring methodology table above</p>	20	QUALITATIVE

63.4.3. **Summary of Business Case**

SUMMARY OF BUSINESS CASE	POINTS	RFP REFERENCE
Market and Sustainability Analysis	20	Clause 63.4.2.1
Financial Management Plan	20	Clause 63.4.2.2
Operational model	20	Clause 63.4.2.3
Project Schedule	10	Clause 63.4.2.4
Concept Design	10	Clause 63.4.2.5
The Proposed Funding Model	20	Clause 63.4.2.6
Total	100	

63.4.4. **Summary of Functionality Assessment**

FUNCTIONALITY ASSESSMENT	MAXIMUM NO OF POINTS	RFP REFERENCE
Previous experience and Track Record	30	Clause 63.1
SHE requirements	20	Clause 63.2
Financial Capability	50	Clause 63.3
Business Case	100	Clause 63.4
TOTAL	200	

NOTE: ONLY BIDDERS THAT SCORE A MINIMUM OF 140 POINTS AND ABOVE WILL MOVE TO PART III STAGE 2 OF THE EVALUATION PROCESS.

64. PART III: THE STRUCTURE OF STAGE 2: EVALUATION CRITERIA

- 64.1. This Part III Stage 2 (*Evaluation Criteria*) of this RFP contains the requirements for the detailed Bid Response and the evaluation methods, criteria, and weighting in respect of those parts of the Bid Response that are subject to evaluation in terms of this Evaluation Criteria Assessment. Those parts are:
- 64.1.1. Evaluation Criteria 1: Price: Concession Fee Offer; and
 - 64.1.2. Evaluation Criteria 2: Preference: B-BBEE Specific goals
- 64.2. TNPA will only consider a Bidder's Bid Response in terms of this Evaluation Criteria Assessment if that Bidder fulfils all of the Qualification Criteria Assessment of Part II of this RFP.
- 64.3. The Bidder must respond to each and every heading in this Clause 64 of this RFP under Part III (Evaluation Criteria) and in the Annexures referred to in this Clause 64 of this RFP (Evaluation Criteria) and provide comprehensive responses and information in respect of each heading. Failure by a Bidder to respond adequately or at all to any of the headings of this Clause 64 (*Evaluation Criteria*) and the Annexures referred to in this Evaluation Criteria shall have an adverse impact on the evaluation of its Bid Response and may result in disqualification and or (0) zero points being awarded.
- 64.4. The evaluation will be undertaken in accordance with a 90/10 points system. The Concession Fee Offer (Price) will be scored out of ninety (90) points and B-BBEE (Preference) will be scored out of ten (10) points.
- 64.5. The points for Concession Fee Offer (Price) scored out of ninety (90) points and B-BBEE (Preference) scored out of ten (10) points will be added together to determine the total points scored out of one hundred (100) earned in respect of the Evaluation Criteria. The total points will be rounded off to the nearest two decimal places if required.
- 64.6. The decision to appoint a particular Bidder as First Ranked Bidder will have regard to all objective considerations relating to the response to Part II (Qualification Criteria) and Part III (Evaluation Criteria) submitted by that Bidder and the requirements of TNPA as contained in this RFP, together with the overall scoring achieved by that Bidder.

65. STAGE 2 OF THE EVALUATION CRITERIA

65.1. EVALUATION CRITERIA 1: CONCESSION FEE OFFER (PRICE)

- 65.1.1. Evaluation Criteria 1 has a weighting of ninety (90) points of the total score for the Evaluation Criteria.

65.1.2. **Price (Concession Fee Offer)**

- 65.1.2.1. This section has a point allocation of ninety (90) points.
- 65.1.2.2. The Bidder must offer a Concession Fee Offer amount in Rand (land), based on annual Concession fee escalation.
- 65.1.2.3. The Concession Fee Offer will be used to calculate the return and will be assessed and scored competitively between the Bidders with a maximum score available out of ninety (90) points.
- 65.1.2.4. The Concession Fee offered will be benchmarked to market-related and comparable opportunities which may comprise of property valuations and Terminals valuations. Therefore, TNPA reserves the right to further embark and request BAFO with top 3 highest ranked Bidders to ensure the payment of a market-related Concession Fee.
- 65.1.2.5. The Bidder making the highest Concession Fee Offer will be awarded maximum points with the other Bidders with lower Concession fee will proportionately obtain lower percentages based on the following formula:

$$P_s = 90 (1 + (P_t - P_{max}) / P_{max})$$

Where:

P_s = points scored for the offer under consideration

P_t = the price of bid/offer under consideration

P_{max} = the price of the highest acceptable bid/offer received

- 65.1.2.6. Ramp up percentages for each payment period which will be applied to the monthly Concession Fee structured as follows:
- 65.1.2.6.1. Zero percent (0%) of Concession fee during the application of Environmental Impact Assessment to a maximum of twenty-four (24) months,
- 65.1.2.6.2. Twenty-five percent (25%) during the construction phase (to a maximum of Eighteen (18) months, after that one-hundred percent (100%) Concession fee will apply until such time that the Terminal is commissioned.

65.1.2.7. Summary of Concession Fee Offer:

Price (Concession Fee Offer)	Points	RFP Reference
Concession Fee Offer (Land)	90	Clause 65.1.2 of Part III of this RFP
Total	90	

65.2. EVALUATION CRITERIA 2: PREFERENCE

- 65.2.1. This section has a point allocation of ten (10) points.
- 65.2.2. Preference points will be awarded to a Bidder for attaining the required B-BBEE specific goals in accordance with the table indicated in Clause 65.2.4 below.
- 65.2.3. The Bidder must submit a valid copy of the B-BBEE Scorecard.
- 65.2.4. Points to be awarded for achieving specific goals listed below:

Specific Goals	Number of points (90/10 system)
B-BBEE Status Level of Contributor 1 or 2	4.0
The promotion of enterprises located in uMhlathuze Municipality for work to be done or services to be rendered in that Municipality	2.0
The promotion of supplier development through subcontracting a minimum of 30% of the value of the contract to /with EMEs and/or QSEs 51% owned by black people, 51% owned by black youth, 51% owned by black people with disabilities or 30% owned by black women	4.0
Non-compliant and/or B-BBEE Level 3-8 contributors	0.0

65.3. SUMMARY OF EVALUATION CRITERIA 1 AND 2: PRICE (CONCESSION FEE OFFER) AND PREFERENCE

Summary of Evaluation Criteria	Points	RFP Reference
Price	90	Clause 65.1 of Part III of this RFP
Preference	10	Clause 65.2 of Part III of this RFP
Total	100	

66. PART IV DUE DILIGENCE ASSESSMENT

66.1. DUE DILIGENCE

The TNPA will undertake a thorough Due Diligence exercise on all the Bidders that have passed Part III, Stage I & II (Functionality, Price & BBBEE) of the evaluation, prior to making the final appointment of the Preferred Bidder. The Due Diligence accordingly entails a consideration of, inter alia, the following:

- 66.1.1. The verification of the authenticity of the Bidders trade references provided as part of Stage 1 of Part III of the Evaluation Criteria, industry associations and or regulatory bodies;
- 66.1.2. The verification of the Bidders Financial capacity by engaging and obtaining credit references for accredited credit reference agencies and any financial institutions and or funders whom bidders have referenced in their Bid Response;
- 66.1.3. The conducting of a risk analysis of Bidders' Business Case to confirm that all enterprise wide risks have been identified and appropriately mitigated inclusive but not limited to the following:
 - 66.1.3.1. financial risks;
 - 66.1.3.2. technical risks;
 - 66.1.3.3. operational risks;
 - 66.1.3.4. legislative (Compliance) risks;
 - 66.1.3.5. quality Management risks;
 - 66.1.3.6. reputational risks;
 - 66.1.3.7. risks associated with dependency on the strategic partners; and holding the partners to accountability; and
- 66.1.4. Transnet reserves the right to conduct a thorough Probity Check on the Bidders and its shareholders.
- 66.1.5. The outcome of a probity check/risk assessment will be used to identify potential risks and mitigate those risks, where appropriate or possible.
- 66.1.6. Bidders are to note that the purpose of the TNPA's Due Diligence and/or Probity Check process is not intended to re-evaluate Bidders under the Criteria set out in Part III of the RFP, but to confirm that there are no objective considerations which

will justify the award of the Project to another Bidder, other than the Bidder, who has scored the highest points.

66.2. FUNCTIONALITY

66.2.1. The due diligence consideration of the Bidders in respect of the Stage 1 of the Evaluation Criteria set out in Part III of the RFP to determine if there is no objective considerations which will justify the award of the Project to another Bidder, other than the Bidder who has scored the highest points; and

66.2.2. In this regard Bidders are to note that the nature of the TNPA's enquiry is not to re-evaluate Bidders on Stage 1 Evaluation Criteria set out in Part III of the RFP, but to confirm that there are no objective considerations which will justify the award of the Project to another Bidder, other than the Bidder, who has scored the highest points.



ANNEXURES

Annexure A

BID NOTICE
(as contained in separate PDF document uploaded on National Treasury website)

STRICTLY PRIVATE AND CONFIDENTIAL



Annexure B

SITE MAPS

(as contained in separate PDF document uploaded on National Treasury website)



Annexure C

PORT OF RICHARDS BAY'S SAFETY HEALTH AND ENVIRONMENT (SHE) INTEGRATED MANAGEMENT SYSTEM POLICY

Transnet National Ports Authority, Port of Richards Bay is responsible for the safe, effective and efficient economic functioning of the port system, which it manages in a landlord capacity. It provides port infrastructure and marine services. It operates within a legislative and regulatory environment and is governed by the National Ports Act (Act No. 12 of 2005). The Port of Richards Bay is aware of the potential impacts of its operations and that of its lease holders, contractors and service providers that negatively impact on the environment and therefore, undertakes to:

- Comply with all applicable Health, Safety and Environmental legislation and regulations as well as international Protocols and Codes ratified by the Republic of South Africa;
- Provide a healthy and safe working environment for all employees and stakeholders;
- Prevent pollution, injury and ill health;
- Set and annually review SHE objectives, targets and programmes;
- Promote the efficient use of energy and natural resources;
- Promote continual improvement through 5s of goal alignment of all operations and performance management;
- Promote a safety culture within the organisation and enhance behavioural change for all employees;
- Implement sustainability and environmental monitoring; and
- Empower all our employees by providing information, instruction, training and supervision to enable them to perform their assigned roles safely and help drive TNPA SHE performance.

Our commitment is to:

- Conform to the requirements of ISO 14001, SANS 3000 and OHSAS 18001 Standards;
- Manage and mitigate SHE risks within legally acceptable limits;
- Review the SHE Policy annually in the SHE IMS Management Review to ensure it remains relevant and appropriate to the organisation; and
- Communicate and make the SHE Policy available to all stakeholders upon request.

Responsibility and accountability:

The Port of Richards Bay's Executive Committee recognises its ultimate responsibility and accountability for Safety, Health and Environment Integrated Management System in its capacity as the landlord and that all employees, contractors and port users have a role to play in delivering on commitments set out in this Policy.

Port Manager : _____ Date: _____

ANNEXURE D

PORT OF RICHARDS BAY BERTHING POLICY

(as contained in separate PDF document uploaded on National Treasury website)

TRANSNET NATIONAL PORTS AUTHORITY

SECURITY POLICY

PORTFOLIO: LEGAL, RISK & COMPLIANCE

DEPARTMENT: SECURITY

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1. STATEMENT OF PURPOSE

1.1 Transnet National Port Authority (TNPA) depends on its personnel, information and other assets to deliver services that ensure the health, safety, security and economic growth and development of our country. TNPA must therefore manage these resources with due diligence and take appropriate measures to protect them.

1.2 Threats that can cause harm to TNPA, and some economies abroad, include acts of terror and sabotage, espionage, unauthorised access to buildings and premises, theft, armed robbery, fraud and corruption, vandalism, fire, natural disasters, technical failures and accidental damage. The threat of cyber attack and malicious activity through the internet is prevalent and can cause severe harm to electronic services and critical infrastructure. Threats to the national interests, such as transnational criminal activity, foreign intelligence activities and terrorism, continue to evolve as the result of changes in local, national and international environment.

1.3 The Security Policy of TNPA prescribes the application of security measures to reduce the risk of harm that can be caused to the company if the above threats should materialise. It has been designed to protect employees, preserve the confidentiality, integrity, availability and value of information and assets, and assure the continued delivery of services. Since TNPA relies extensively on information and communication technology (ICT) to provide its services, this policy emphasises the need for acceptable use of ICT equipment as well as ICT protection measures to be complied with by employees.

1.4 The main objective of this Policy therefore is to support the national interest and TNPA's business objectives by protecting employees, information and other assets and assuring the continued delivery of services to South African citizens and the maritime community.

1.5 This Policy complements other TNPA Policies (e.g. sexual harassment, occupational health and safety, official languages, information management, asset control, real estate and financial resources).

2. SCOPE

2.1 **This Policy applies to the following individuals and entities:**

- All TNPA employees;
- All contractors and consultants delivering a service to TNPA, including their employees who may interact with TNPA;



<ul style="list-style-type: none"> • Temporary TNPA employees; • All information assets of TNPA; • All intellectual property of TNPA; • All fixed property that is owned or leased out by TNPA; • All moveable property that is owned or leased out by TNPA; • All Facilities operating at TNPA Ports including their employees; • All private port users; • All State Agencies operating at the Ports; • All Port users with a temporary right of access. <p>2.2 The Policy further covers the following seven elements of the security program of TNPA:</p> <ul style="list-style-type: none"> • Security organisation • Security administration • Information security • Physical security • Personnel security • Information and communication Technology (ICT) security • Business Continuity Planning (BCP) <p>3. LEGISLATIVE OR REGULATORY REQUIREMENTS</p> <p>3.1 This Policy is informed by and complies with applicable national legislation, international codes, national security policies and national security standards. A list of applicable regulatory documents in this regard has been attached as Annexure 1.</p> <p>4. POLICY STATEMENT</p> <p>4.1 General</p> <ul style="list-style-type: none"> • Employees of TNPA must be protected against identified threats according to baseline security requirements and continuous security risk management; • Information and assets of TNPA must be protected according to baseline security requirements and continuous security risk management; • Continued delivery of services of TNPA must be assured through baseline security requirements, including business continuity planning and continuous security risk management. 	<p>Port Security Plans</p>
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<p>4.2 Compliance requirements</p> <p>4.2.1 All individuals and institutions mentioned in par. 2 above must comply with the baseline requirements (refer 4.3 below) of this Policy and its associated Security Directives as contained in the Port Security Plans of TNPA (i.e. Security Plans of the respective Ports). These requirements are/shall be based on integrated security Threat and Risk Assessments (TRA's) to the national interest as well as employees, information and assets of TNPA. The necessity of security measures above baseline levels will also be determined by the continual updating of the security TRA's.</p> <p>4.2.2 Security threat and risk assessments involve:</p> <ul style="list-style-type: none"> • Establishing the scope of the assessment and identifying the information, employees and assets to be protected; • Determining the threats to information, employees and assets of TNPA and assessing the probability and impact of threat occurrence; • Assessing the security risk based on the adequacy of existing security measures and vulnerabilities; • Implementing any supplementary security measures that will reduce the security risk to an acceptable level. <p>4.2.3 Staff accountability and acceptable use of assets</p> <p>4.2.3.1 The Chief Executive (CE) of TNPA shall ensure that information and assets of TNPA are used in accordance with procedures as stipulated in the Security Directives as contained in the Security Plan of TNPA.</p> <p>4.2.3.2 All employees of TNPA shall be accountable for the proper utilisation and protection of such information and assets. Employees that misuse or abuse assets of TNPA shall be held accountable therefore disciplinary action shall be taken against any such employee.</p> <p>4.3 Specific baseline requirements</p> <p>4.3.1 Security organisation</p> <p>4.3.1.1 The CE of TNPA will/has appointed the Head of Security (National Security Manager) to establish and direct a security program that ensures co-ordination of all Policy functions and implementation of this Policy requirements;</p>	<p>See Disciplinary Code</p>
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<p>4.3.1.2 Given the importance of this role, a Head of Security with sufficient security experience and training who is strategically positioned within TNPA so as to provide institution-wide strategic advice and guidance to senior management, must be appointed.</p> <p>4.3.1.3 The CE of TNPA must ensure that the Head of Security has an effective support structure (security component) to fulfil the functions referred to in par. 4.3.2 below.</p> <p>4.3.1.4 Individuals that will be appointed in the support structure of the Head of Security must be security professionals with sufficient security experience and training to effectively cope with their respective job functions.</p>	<p>See organisational diagram of the security component</p>
<p>4.3.2 Security administration</p>	
<p>4.3.2.1 The functions referred to in par. 4.3.1 above are, but not limited to:</p> <ul style="list-style-type: none"> • General security administration (company directives and procedures, training and awareness, security risk management, security audits, sharing of information and assets); • Setting of access limitations; • Administration of security screening (refer par. 4.3.5 below); • Implementing physical security; • Ensuring the protection of employees; • Ensuring the protection of information; • Ensuring ICT security; • Ensuring security in emergency and increased threat situations; • Facilitating business continuity planning; • Ensuring security in contracting; and • Facilitating security breach reporting and investigations. 	<p>See detailed functions the Security Component SOP's in the Security Directive</p>
<p>4.3.2.2 Security incident/breaches reporting process</p>	
<p>4.3.2.2.1 Whenever an employee of TNPA becomes aware of an incident that might constitute a security breach or an unauthorised disclosure of information (whether accidentally or intentionally), he/she shall report that to the Head of Security of TNPA by utilising the formal reporting procedure prescribed in the Security Breach Directive of TNPA; who will then report to the CE.</p>	<p>See Security Directive Reporting of Security Breaches</p>



<p>4.3.2.2.2 The CE of TNPA shall report to the appropriate authority (as indicated in the Security Breach Directive of TNPA) all cases or suspected cases of security breaches, for investigations;</p> <p>4.3.2.2.3 The Head of Security of TNPA shall ensure that all employees are informed about the procedure for reporting security breaches.</p> <p>4.3.2.3 Security incidents/breaches response process</p> <p>4.3.2.3.1 The Security Department shall develop and implement security breach response mechanisms for TNPA in order to address all security breaches/alleged breaches which are reported;</p> <p>4.3.2.3.2 The Head of Security shall ensure that the CE of TNPA is advised of such incidents as soon as possible;</p> <p>4.3.2.3.3 It shall be the responsibility of the National Intelligence Structures (e.g. NIA or SAPS) to conduct an investigation on reported security breaches and provide feedback with recommendations to TNPA;</p> <p>4.3.2.3.4 Access privileges to classified information, assets and/or to premises may be suspended by the CE of TNPA until administrative, disciplinary and/or criminal processes have been concluded, flowing from investigations into security breaches or alleged security breaches;</p> <p>4.3.2.3.5 The end result of these investigations, disciplinary action or criminal prosecutions may be taken into consideration by the CE of TNPA in determining whether to restore, or limit, the security access privileges of an individual or whether to revoke or alter the security clearance of the individual.</p>	<p>See Security Directive Security Breaches Response Process</p>
<p>4.3.3 Information Security</p> <p>4.3.3.1.1 Categorisation of information and information classification system</p> <p>4.3.3.1.1 The Head of Security must ensure that a comprehensive information classification system is developed for and implemented at TNPA. All sensitive information produced or processed by TNPA must be identified, categorised and classified according to the origin of its source and contents and according to its sensitivity to loss or disclosure;</p>	<p>See Security Directive Information Classification</p>

<p>security measures of TNPA as well as the need to protect sensitive information against disclosure, loss or destruction;</p> <p>4.3.5.4.3 Periodic security awareness presentations, briefings and workshops will be conducted and in addition to that, posters and pamphlets will be frequently distributed in order to enhance the training and awareness program. Attendance of the above programs will be compulsory for all employees who shall have been identified and notified to attend;</p> <p>4.3.5.4.4 Regular audits, surveys and walkthrough inspections shall be conducted by the Head of Security and members of the security department to monitor the effectiveness of the security training and awareness program.</p> <p>4.3.6 Information and Communication Technology (ICT) Security</p> <p>4.3.6.1 IT Security</p> <p>4.3.6.1.1 A secure network shall be established for TNPA in order to ensure that information systems are secured against rapidly evolving threats that have the potential to impact on their confidentiality, integrity, availability, intended use and value;</p> <p>4.3.6.1.2 To prevent the compromise of IT systems, TNPA shall implement baseline security controls and any additional control identified through the security TRA. These controls, and the security roles and responsibilities of all personnel, shall be clearly defined, documented and communicated to all employees;</p> <p>4.3.6.1.3 To ensure policy compliance, the Chief Information Officer of TNPA shall:</p> <ul style="list-style-type: none"> • Certify that all its systems are secure after procurement, accredit IT systems prior to operation and comply with minimum security standards and directives; • Conduct periodic security evaluations of systems, including assessments of configuration changes conducted on a routine basis; • Periodically request assistance, review and audits from the National Intelligence Agency (NIA) in order to get an independent assessment. <p>4.3.6.1.4 Server rooms and other related security zones where IT equipment is kept shall be secured with adequate physical security measures and strict access control shall be enforced and monitored;</p>	<p>See ICT Security Policy and Security Directive ICT Security</p>
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<p>4.3.6.1.5 Access to the resources on the network of TNPA shall be strictly controlled to prevent unauthorised access. Access to all computing and information systems and peripherals of TNPA shall be restricted unless explicitly authorised;</p> <p>4.3.6.1.6 System hardware, operating and application software, the network and communication systems of TNPA shall be adequately configured and safeguarded against both physical attack and unauthorised network intrusion;</p> <p>4.3.6.1.7 All employees shall make use of IT systems of TNPA in an acceptable manner and for business purposes only. All employees shall comply with the IT Security Directives in this regards at all times;</p> <p>4.3.6.1.8 The selection of passwords, their use and management as a primary means to control access to systems is to strictly adhere to best practice guidelines as reflected in the IT Security Directives. In particular, passwords shall not be shared with any other person for any reason;</p> <p>4.3.6.1.9 To ensure the ongoing availability of critical services, TNPA shall develop IT continuity plans as part of its overall Business Continuity Planning (BCP) and recovery activities.</p> <p>4.3.6.2 Internet Access</p> <p>4.3.6.2.1 The Chief Information Officer (CIO) of TNPA, having the overall responsibility for setting up Internet Access for TNPA, shall ensure that the network of TNPA is safeguarded from malicious external intrusion by developing, as a minimum, a configured firewall. Human Resources management shall ensure that all personnel with Internet access (including e-mail) are aware of, and will comply with, an acceptable code of conduct in their usage of the Internet;</p> <p>4.3.6.2.2 The CIO of TNPA shall be responsible for controlling user access to the Internet, as well as ensuring that users are aware of the threats, and are trained in the safeguards, to reduce the risk of Information Security breaches and incidents;</p> <p>4.3.6.2.3 Incoming e-mails must be treated with the utmost care due to its inherent Information Security risks. The opening of e-mail with file attachments is not permitted unless such attachments have already been scanned for possible computer viruses or other malicious code;</p>	<p>See BCP</p> <p>See Security Directive ICT Security</p>
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<p>4.3.6.5.2 The Head of Security of TNPA shall ensure that areas that are utilised for discussions of a sensitive nature as well as offices or rooms that house electronic communications equipment, are physically secured in accordance with the standards laid down by NIA in order to support the sterility of the environment after a TSCM examination, before any request for a TSCM examination is submitted;</p> <p>4.3.6.5.3 No unauthorised electronic devices shall be allowed in any boardrooms and conference facilities where sensitive information of TNPA is discussed. Authorisation must be obtained from the Head of Security.</p> <p>4.3.7 Business Continuity Planning (BCP)</p> <p>4.3.7.1 The Head of Security of TNPA must establish a Business Continuity Plan (BCP) to provide for the continued availability of critical services, information and assets if a threat materialises and to provide for appropriate steps and procedures to respond to an emergency situation to ensure the safety of employees, contractors, consultants, facilities, private port users and visitors;</p> <p>4.3.7.2 The BCP shall be periodically tested to ensure that the management and employees of TNPA understand how it is to be executed;</p> <p>4.3.7.3 All employees of TNPA shall be made aware and trained on the content of the BCP to ensure understanding of their own respective roles in terms thereof;</p> <p>4.3.7.4 The Business Continuity Plan shall be kept up to date and re-tested periodically by the Head of Security.</p> <p>5. SPECIFIC RESPONSIBILITIES</p> <p>5.1 Chief Executive</p> <p>5.1.1 The CE of TNPA bears the overall responsibility for implementing and enforcing the security program of TNPA. In executing this responsibility, the CE shall:</p> <ul style="list-style-type: none"> • Establish the post of the Head of Security and appoint a well-trained and competent security official in the post; • Establish a Security Committee for the company and ensure the participation of all Senior Management members of all the core business functions of TNPA in the activities of the Committee; 	<p>See BCP</p>
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<ul style="list-style-type: none"> • Approve and ensure compliance with this Policy and its associated Security Plans and Directives. <p>5.2 Head of Security</p> <p>5.2.1 The delegated security responsibility lies with the Head of Security of TNPA who will be responsible for the execution of the entire security function and program within TNPA (co-ordination, planning, implementing, controlling). In executing his/her responsibilities, the Head of Security shall, amongst others;</p> <ul style="list-style-type: none"> • Chair the Security Committee of TNPA; • Draft the internal Security Policy and Security Plan (containing the specific and detailed Security Directives) of TNPA in conjunction with the Security Committee; • Ensure that Port Security and Port Terminal Security Plans are in place and reviewed annually; for all regulated ports falling under TNPA jurisdiction; • Review the Security Policy and Security Plan at regular intervals; • Conduct a security TRA of TNPA with the assistance of the Security Committee; • Advise management on the security implications of management decisions; • Implement a security risk awareness program; • Conduct internal compliance audits and inspections at TNPA at regular intervals; • Conduct preliminary enquiries on security breaches within TNPA; • Establish a good working relationship with both NIA and SAPS and liaise with these institutions on a regular basis. <p>5.3 Security Committee</p> <p>5.3.1 The Security Committee referred to in par. 5.1.1 above shall consist of senior managers of TNPA representing all main business units of TNPA.</p> <p>5.3.2 Participation in the activities of the Security Committee by the appointed representatives of business units of TNPA shall be compulsory;</p> <p>5.3.3 The Security Committee of TNPA shall be responsible for, amongst others, assisting the Head of Security in the execution of all security related responsibilities at TNPA, including completing tasks such as drafting/reviewing of the Security Policy and Plan; conducting of a security TRA; conducting of security audits; drafting of BCP; and assisting with security risk awareness and training.</p>	
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<p>5.4 Port Managers</p> <p>5.4.1 All Port Managers have a delegated responsibility and commensurate authority to manage security at their respective regulated ports and must account on security matters to the Head of Security's Office;</p> <p>5.4.2 Port Managers must ensure that appropriate measures are implemented and steps are taken immediately to rectify any non-compliance issues that may come to their attention. This includes taking disciplinary action against employees if warranted.</p> <p>5.5 Port Security Officer (PSO)</p> <p>5.5.1 Manage, lead, co-ordinate, plan and organise the total TNPA security function within a specified port;</p> <p>5.5.2 Carry out duties as specified in the Maritime Security Regulations 2004.</p> <p>5.6 Port Facilities (Terminal Operators)</p> <p>5.6.1 All Terminal Operators are required to manage their security in accordance with their approved Port Terminal Security Plans.</p> <p>5.6.2 All Terminal Operators are required to act upon the security levels as set by the Director General, National Department of Transport.</p> <p>5.6.3 All Terminal Operators are required to comply with all applicable legislation and International Legal Instruments.</p> <p>5.7 Line Management</p> <p>5.7.1 All managers of TNPA shall ensure that their subordinates comply with this policy and the Security Directives as contained in the Security Plan of TNPA at all times;</p> <p>5.7.2 Managers must ensure that appropriate measures are implemented and steps are taken immediately to rectify any non-compliance issues that may come to their attention. This includes taking disciplinary action against employees if warranted.</p>	<p>See Disciplinary</p>
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<p>5.8 Port Terminal Security Officer (PFSO)</p> <p>A Port Terminal Security Officer shall:</p> <p>5.8.1 Ensure that Port Terminal Security Plans are developed in line with the respective overall Port Security Plan;</p> <p>5.8.2 Ensure that regular reviews are held and plans updated accordingly;</p> <p>5.8.3 Carry out functions as per the Maritime Regulations 2004; and the ISPS Code;</p> <p>5.8.4 Report incidents as provided for in Section 62 (5) of the National Ports Authority Act (Act 12 of 2005).</p> <p>5.9 Employees, Consultants, Contractors and Other Service Providers</p> <p>5.9.1 Every employee, consultant, contractor, various port users and other service providers of TNPA shall know what their security responsibilities are, accept it as part of their normal job function, and not only co-operate, but contribute to improving and maintaining security at TNPA at all times.</p> <p>6. AUDIENCE</p> <p>6.1 This Policy is applicable to all members of the management, employees, consultants, contractors, port facilities & various port users and any other service providers of TNPA. It is further applicable to all visitors and members of the public visiting premises of, or may officially interact with, TNPA.</p> <p>7. ENFORCEMENT</p> <p>7.1 The CE of TNPA and the appointed Head of Security are accountable for the enforcement of this Policy;</p> <p>7.2 All employees of TNPA are required to fully comply with this Policy and its associated Security Directives and Port Terminal Security Plans as contained in the Security Plan. Non-compliance with any prescripts shall be addressed in terms of the Disciplinary Code of TNPA;</p>	<p>See Security Directive Security</p>
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<p>10. COMMUNICATING THE POLICY</p> <p>10.1 The Head of Security of TNPA shall ensure that the content of this Policy (or applicable aspects thereof) is communicated to all employees, port facilities and various port users, consultants, contractors, other service providers, clients, visitors, members of the public that may officially interact with TNPA. The Head of Security will further ensure that all security policy and directive prescriptions are enforced and complied with.</p> <p>10.2 The Head of Security must ensure that a comprehensive security risk awareness program is developed and implemented within TNPA to facilitate the above said communication. Communication of the Policy by means of this program shall be conducted as follows:</p> <ul style="list-style-type: none"> • Awareness workshops and briefings to be attended by all employees, port facilities and various port users; • Distribution of memos and circulars to all employees; • Access to the policy and applicable directives on the intranet of TNPA. <p>11. REVIEW AND UPDATE PROCESS</p> <p>11.1 The Head of Security, assisted by the Security Committee of TNPA, must ensure that this Policy and its associated Security Directives is reviewed and updated on an annual basis. Amendments shall be made to the Policy and Directives as need arises.</p> <p>12. IMPLEMENTATION</p> <p>12.1 The Head of Security of TNPA must manage the implementation process of this Policy and its associated Security Directives (contained in the Security Plan by means of an action plan (also to be included in the Security Plan of TNPA)).</p> <p>12.2 Implementation of the Policy and its associated Security Directives is the responsibility of each and every individual this Policy is applicable to (see par. 2.1 above).</p> <p>13. MONITORING OF COMPLIANCE</p> <p>13.1 The Head of Security, with the assistance of the security department and Security Committee of TNPA must ensure</p>	
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compliance with this policy and it's associated Security Directives by means of conducting internal security audits and inspections on a frequent basis.

13.2 The findings of the said audits and inspections shall be reported to the CE of TNPA forthwith after completion thereof.

14. DISCIPLINARY ACTION

14.1 Non-compliance with this Policy and its associated Security Directives shall result in disciplinary action which may include, but is not limited to:

- Re-training;
- Verbal and written warnings;
- Termination of contracts in the case of contractors or consultants delivering a service to TNPA;
- Dismissal;
- Suspension;
- Loss of TNPA information and asset resources access privileges.

14.2 Any disciplinary action taken in terms of non-compliance with this Policy and its associated directives will be in accordance with the Disciplinary Code of TNPA.

15. APPROVAL

APPROVED BY

_____ **Date:** _____
Mr. K. Phihlela (CE TNPA)

Summary of Changes:

Version	Status/Changes	Author	Year of Issue
01	Second Issue	MJ Moleya	2008/09

Distribution: To all

ANNEXURE “1”

APPLICABLE LEGISLATION AND OTHER REGULATORY FRAMEWORK DOCUMENTS

1. Applicable Legislation

- 1.1 The Constitution Act 108 of 1996
- 1.2 The National Ports Authority Act 12 of 2005
- 1.3 Control of Access to Public Premises and Vehicles Act 53 of 1985 as amended
- 1.4 The Criminal Procedure Act 51 of 1977 as amended
- 1.5 The Protection of Information Act 84 of 1982 as amended
- 1.6 The Occupational Health and Safety Act 85 of 1993 as amended
- 1.7 The Promotion of Access to Information Act of 2 of 2000
- 1.8 Firearms Control Act 60 of 2000
- 1.9 State Information Technology Act 88 of 1998
- 1.10 Private Security Industry Regulation Act 56 of 2001
- 1.11 Trespass Act 6 of 1959 as amended
- 1.12 National Archives of South Africa Act, 43 of 1996
- 1.13 Fire Brigade Services Act, 99 of 1987 as amended
- 1.14 Public Finance Management Act, 1 of 1999
- 1.15 Public Service Regulations, of 2001
- 1.16 The National Strategic Intelligence Act, 39 of 1994
- 1.17 The National Key Points Act 102 of 1980
- 1.18 The Corruption Act, 94 of 1992
- 1.19 Prevention of Organised Crime Act, 121 of 1998
- 1.20 Protected Disclosures Act, 26 of 2000
- 1.21 Telecommunications Act, 2 of 2000
- 1.22 Prevention of Interception and Monitoring Act, 70 of 2002
- 1.23 Electronic Communication Security Act, 68 of 2002
- 1.24 The National Building Regulations and Standards Act, 103 of 1956 as amended
- 1.25 The Prevention and Combating of Corrupt Activities Act 12 of 2004
- 1.26 National Environmental Management Act, 107 of 1995

2. Other Regulatory Framework Documents

- 2.1 Minimum Information Security Standards (MISS), Second Edition March 1998;
- 2.2 Minimum Physical Security Standards (MPSS)
- 2.3 International Ship and Port Terminal Security Code and SOLAS Amendments 2002;
- 2.4 Merchant Shipping Act (Maritime Security Regulations) of 2004
- 2.5 Risk Management Standard GRB 1.1 Transnet Generic Security Standard;
- 2.6 White Paper on Intelligence (1995)
- 2.7 SACSA/090/1(4) Communication Security in the RSA
- 2.8 NIA Guidance Documents: ICT Policy and Standards: Part 1 & 2
- 2.9 ISO 17799
- 2.10 National Building Regulations

ANNEXURE “2”

GLOSSARY AND DEFINITIONS

- “accreditation” means the official authorisation by management for the operation of an Information Technology (IT) system, and acceptance by that management of the associated residual risk. Accreditation is based on the certification process as well as other management considerations;
- “assets” means material and immaterial property of an institution. Assets include but are not limited to information in all forms and stored on any media, networks or systems, or material, real property, financial resources, employee trust, public confidence and international reputation;
- “availability” means the condition of being usable on demand to support operations, programs and services;
- “business continuity planning” includes the development of plans, measures, procedures and arrangements to ensure minimal or no interruption of the availability of critical services and assets;
- “candidate” means an applicant, an employee, a contract employee or a person acting on behalf of a contract appointee or independent contractor;
- “certification” means the issuing of a certificate certifying that a comprehensive evaluation of the technical and non-technical security features of an Information and Communication Technology system (hereinafter referred to as an ICT system) and its related safeguards has been undertaken and that it was established that its design and implementation meets a specific set of security requirements;
- “COMSEC” means the organ of state known as the Electronic Communications Security (Pty) Ltd, which was established in terms of section 2 of the Electronic Communications Security Act, 2002 (Act No. 68 of 2002) and until such time as COMSEC becomes operational, the South African Communication Security Agency will be in force;
- “critical service” means a service identified by an institution as a critical service through a Threat and Risk Assessment and the compromise of which will endanger the effective functioning of the institution;
- “document’ means –
 - any note or writing, whether produced by hand or by printing, typewriting or any other similar process, in either tangible or electronic format;
 - any copy, plan, picture, sketch or photographic or other representation of any place or article;
 - any disc, tape, card, perforated roll or other device in or on which sound or any signal has been recorded for reproduction;

- “information security” includes, but is not limited to;
 - document security;
 - physical security measures for the protection of information;
 - information and communication technology security;
 - personnel security;
 - business continuity planning;
 - contingency planning;
 - security screening;
 - technical surveillance counter-measures;
 - dealing with information security breaches;
 - security investigations; and
 - administration and organisation of the security function at organs of state;
- “National Intelligence Structures” means the National Intelligence Structures as defined in section 1 of the National Strategic Intelligence Act, (Act 39 of 1994);
- “reliability check” means an investigation into the criminal record, credit record and past performance of an individual or private organ of state to determine his, her or its reliability;
- “risk means the likelihood of a threat materialising by exploitation of a vulnerability;
- “screening investigator” means a staff member of a National Intelligence Structure designated by the head of the relevant National Intelligence Structure to conduct security clearance investigations;
- “security breach” means the negligent or intentional transgression of or failure to comply with security measures;
- “security clearance” means a certificate issued to a candidate after the successful completion of a security screening investigation, specifying the level of classified information to which the candidate may have access subject to the need-to-know principle;
- “site access clearance” means clearance required for access to installations critical to the national interests;
- “Technical Surveillance Counter measures” (TSCM) means the process involved in the detection, localisation, identification and neutralisation of technical surveillance of an individual, an organ of state, Terminal or vehicle;
- “technical/electronic surveillance” means the interception or monitoring of sensitive or proprietary information or activities (also referred to as bugging);
- “threat” means any potential event or act, deliberate or accidental, that could cause injury to person, compromise the integrity of information or could cause the loss or damage of assets;

- “Threat and Risk Assessment” (TRA) means, within the context of security risk management, the process through which it is determined when to avoid reduce, and accept risk, as well as how to diminish the potential impact of a threatening event;
- “vulnerability” means a deficiency related to security that could permit a threat to materialise.

ANNEXURE “3”

SUPPORTING DOCUMENTS

- Security Plan containing the following:
 - Security Component Organisation Structure
 - Security Component SOP’s
 - Specific Responsibilities of Key Role Players
 - Port Security Plans
 - Security Directive: Reporting of Security Breaches
 - Security Directive: Security Breaches Response Procedures
 - Security Directive: Information Security: General Responsibilities
 - Security Directive: Classification System
 - Security Directive: Security Screening
 - Security Directive: Physical Security
 - Security Directive: Access Control
 - Security Directive: ICT Security
 - Security Directive: Secure Discussion Areas
 - Security Directive: TRA
 - Security Directive: Security Audits and Inspections
- ICT Security Policy
- BCP
- OHS Policy
- Disciplinary Code

TRUCK RULES AT THE PORT OF RICHARDS BAY

(as contained in separate PDF document uploaded on National Treasury website)

Annexure G

Technical Specifications of Proposed Berth 208 & 209

(as contained in separate PDF document uploaded on National Treasury website)

NATIONAL PORTS ACT NO. 12 OF 2005

(as contained in separate PDF document uploaded on National Treasury website)

Form of Preferred Bidder Guarantee

[To be submitted on the letterhead of the issuing institution]

By: [insert name of issuer of the Preferred Bidder Guarantee _____]

In favour of: Transnet National Ports Authority.

Terms with initial capital letters, unless otherwise defined herein, have the meanings given to them in the RFP.

WHEREAS Transnet National Ports Authority ("**TNPA**"), a division of Transnet SOC Limited has issued a Request for Proposals ("**RFP**") in respect of the Financing, Design, Construction, Operation, and Maintenance and after 25 years Decommission, Rehabilitate and Transfer of the Liquid Bulk and/or Green Fuel Terminals for the purpose of entering into, *inter alia*, the Terminal Operator Agreement with TNPA;

AND WHEREAS pursuant to the RFP, TNPA has selected *[insert the names of each Member of the Preferred Bidder consortium, or the name of the Preferred Bidder]* ("**Preferred Bidder**") as a Preferred Bidder in the RFP process for which it submitted a Bid Response;

AND WHEREAS TNPA requires the Bidder to provide and on demand guarantee in favour of TNPA in the amount of Two Million Rand (R2 000 000) ("**Guarantee Amount**") to secure certain undertakings or obligations of the Bidder as the Preferred Bidder under the RFP;

AND WHEREAS we, [insert name of guarantor institution] ("**Bank / [Insurer (substitute throughout if applicable)]**") have agreed to issue this guarantee to secure such undertakings and obligations of the Preferred Bidder ("**Preferred Bidder Guarantee**").

NOW THEREFORE

1. the Bank, duly represented by _____ being duly authorised to sign this Preferred Bidder Guarantee, hereby irrevocably and unconditionally guarantees and as a primary obligation undertakes to pay TNPA without objection or argument amounts not exceeding in aggregate the Guarantee Amount, such payment(s) to be made by the Bank upon first written demand by TNPA being received at the Bank's counter, situated at [●], attention [●], declaring that the Preferred Bidder has:

- 2. breached any law relating to the Procurement Programme or is disqualified from the Procurement Programme as a result of its actions or omissions;**
 - 2.1. failed to extend the term of guarantee after agreeing to the TNPA's request to extend the expiry date of the Preferred Bidder Guarantee: and or**
 - 2.2. failed to sign the Terminal Operator Agreement within the time period agreed;**
 - 2.3. revoked, repudiated or withdrawn its Bid Response.**
3. More than one demand may be made under this Preferred Bidder Guarantee, provided that the aggregate amount payable shall not exceed the Guarantee Amount.
4. Payment of the amounts so demanded will be made without set-off or deduction to TNPA's bank account. or to other accounts as TNPA may notify the Bank in writing.
5. This Preferred Bidder Guarantee shall be valid and effective from the date of its issue until the earlier of (a) the expiry of the Bid Validity Period (as it may be extended in terms of the RFP); and (b) the date on which the Preferred Bidder complies with the requirements of any protocol issued by TNPA.
6. The Preferred Bidder Guarantee shall remain valid during the period described above notwithstanding the Bidder's insolvency, winding-up, liquidation, business rescue, dissolution or deregistration, whether provisionally or finally.
7. Notwithstanding the above provisions, this Preferred Bidder Guarantee shall terminate and be returned to the Bank within fifteen (15) Business Days of payment of an amount or amounts which, in aggregate, equal the Guarantee Amount, or of expiry of Preferred Bidder Guarantee as set out above.
8. This Preferred Bidder Guarantee shall be governed by the laws of the Republic of South Africa, and the parties hereto consent and submit for the benefit of TNPA to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

Signature of Representative

Date: _____

Signature of Representative

Date: _____

GUIDELINES FOR TERMINAL OPERATOR PERFORMANCE STANDARDS

(as contained in separate PDF document uploaded on National Treasury website)

Bid Response Form

We _____

[name of entity, company, consortium, close corporation or partnership]

of _____ *[full* _____ *address]*

carrying on business trading/operating as

represented

by _____

in my capacity as

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, as per Annexure N (*Resolution of Board of Directors*) of this RFP (a certified copy of which is annexed hereto) hereby offer to undertake the Project at the prices determined in terms of Part III (*Evaluation Criteria*) of this RFP).

1. We agree to be bound by those conditions in TNPA's:
 - 1.1 terms of this RFP; and
 - 1.2 any other standard or special conditions mentioned and or embodied in this RFP or Terminal Operator Agreement.

2. We accept that unless TNPA should otherwise decide and so inform us in the letter of appointment, our Bid Response (and, if any, its covering letter and any subsequent exchange of correspondence), together with TNPA's acceptance thereof shall constitute a binding contract between TNPA and us.

3. Should TNPA decide that the Terminal Operator Agreement should be negotiated and entered into with us, this Bid Response (and, if any, its covering letter and any subsequent exchange of correspondence) together with TNPA's letter of appointment, shall constitute a binding contract between TNPA and us until the formal contract is signed.
4. We further agree that if, after we have been notified of the acceptance of Bid Response, we fail to enter into the Terminal Operator Agreement, or fail to commence the provision of services within 24 (twenty four) months thereafter, TNPA may, without prejudice to any other legal remedy which it may have, recover from us any expense to which it may have been put in calling for Bid Responses afresh and or having to accept any less favourable Bid Response.

We accept that the Terminal Operator Agreement resulting from this offer will be for a period of 25 (twenty-five) years only. In addition, we agree that non-compliance with any of the material terms of the RFP, including those mentioned above, will constitute a material breach of the Terminal Operator Agreement and provide TNPA with cause for cancellation.

5. ADDRESS FOR NOTICES

- 5.1 The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The domicilium citandi et executandi shall be a place in the Republic of South Africa to be specified by the Bidder hereunder, at which all legal documents may be served on the Bidder who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Bidders shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign the Terminal Operator Agreement which may have to be entered into in the event of their Bid Response being accepted and to act on their behalf in all matters relating to such Terminal Operator Agreement.

- 5.2 Bidder to indicate the details of its domicilium citandi et executandi hereunder:

Name of Entity:

Facsimile:

Address: _____

6. NOTIFICATION OF AWARD OF RFP

6.1 As soon as possible after approval to award the appointment of the Preferred Bidder, the Preferred Bidder will be informed of the acceptance of its Bid Response. Unsuccessful Bidders will be advised in writing of the name of the Preferred Bidder and the reason as to why their Bid Responses have been unsuccessful, for example, in the category of administrative responsiveness, technical criteria, B-BBEE status or for any other reason.

7. VALIDITY PERIOD

7.1 TNPA requires a validity period of 365 (three hundred and sixty five) calendar days from the Bid Submission Date against this RFP.

8. NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)

8.1 The Bidder must disclose hereunder the full name(s) and address(s) of the director(s) or members of the consortium, company or close corporation [C.C.] on whose behalf the RFP is submitted.

8.2 Registration number of company or CC

8.3 Registered name of company or CC or name of consortium

8.4	Full name(s) of director or member(s) Number(s)	Address/Addresses	ID
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9. CONFIDENTIALITY

9.1 All information related to this RFP is to be treated with strict confidence. In this regard Bidders are required to complete and return a signed copy of Annexure P (Certificate of Acquaintance with RFP Documents) with Annexure M (Non-Disclosure Agreement) annexed

to this RFP. All information related to the Terminal Operator Agreement, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the services, which is either directly or indirectly related to TNPA's business, written approval to divulge such information must be obtained from TNPA.

10. DISCLOSURE OF THE CONCESSION TENDERED

10.1 Bidders must indicate below whether TNPA may disclose their tendered concession and conditions to other Bidders:

YES		NO	
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11. RETURNABLE DOCUMENTS

11.1 All sections, must be signed, stamped and dated by the Bidder. Bid Returnable Documents means all the documents, sections and Annexures, as listed in the tables below.

11.2 Mandatory Returnable Documents

11.3 Failure to provide all mandatory Returnable Documents at the closing date and time of this tender will result in a Bidder's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

11.4 Please confirm submission of the mandatory Returnable Documents detailed below by so indicating [Yes or No] in the table below:

MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED [Yes or No]
Concession Fee Offer	Clause 15 and 65.1.2	

11.5 Essential Returnable Documents

11.5.1 Bidders are further required to submit with their Bid Responses the following essential Returnable Documents as detailed below.

Failure to provide all essential Returnable Documents may result in a Bidder's disqualification at TNPA's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Bid Responses.

11.5.2 Please confirm submission of these essential Returnable Documents by so indicating [Yes or No] in the table below.

11.5.3 Full responses and documentation in respect of each qualification criterion in Part II of the RFP, including the following:

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	RFP REFERENCE	SUBMITTED [Yes or No]
1. Financial Capability		
1.1 Profitability EBITDA		
1.2 Past experience in raising capital		
1.3 Operational Costs (Projected)		
1.4 Operational Revenue (Projected)		
1.5 Key Financial Indicators (Projected)		
1.6 Key Financial Ratios (Calculated by TNPA using AFS)		
2. Stage 1 Functionality		
2.1 Previous Experience		
2.2 Track Record		
2.3 SHE Requirements		

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	RFP REFERENCE	SUBMITTED [Yes or No]
3. Business Case		
3.1 Market and Sustainability Analysis		
3.2 Operating Model		
3.3 Project Schedule		
3.4 Concept Design		
3.5 Proposed funding model		
4. Stage 2 Preference		
4.1 Concession Fee Offer (Price)		
4.2 B-BBEE (Preference)		
5. A Mark-up of the Terminal Operator Agreement		
ANNEXURES	RFP REFERENCE	SUBMITTED [Yes or No]
Annexure A (<i>Bid Notice</i>)		
Annexure K (<i>Bid Response Form</i>)		
Annexure L (<i>TNPA Declaration of Bidder</i>)		
Annexure M (<i>Non-Disclosure Agreement</i>)		
Annexure N (<i>Resolution of Board of Directors</i>)		
Annexure O (<i>Resolution of Each Member</i>)		
Annexure P (<i>Certificate of Acquaintance with the RFP Documents</i>)		
Annexure Q (<i>Declaration of Interest</i>)		

ESSENTIAL RETURNABLE DOCUMENTS & SCHEDULES	RFP REFERENCE	SUBMITTED [Yes or No]
Annexure R (<i>Tax Clearance Requirements</i>)		
Annexure S (<i>Certificate of Acquaintance with the Requirements of the RFP</i>)		
Annexure T (<i>Certificate of Acquaintance with Conditions of Contract with TNPA</i>)		
Annexure X (<i>Schedule TOA: RFP Economic impact Data</i>) – to be filled in with each Bid Response		
Annexure Y (<i>Standard RFP Response Form: Information about Bidder</i>)		
Annexure Z (<i>Lenders Support Letter</i>)		
Annexure AA (<i>Financial Support Letter</i>)		
Annexure BB (<i>B-BBEE Verification Certificate</i>)		
Annexure CC (<i>Business Case</i>)		
Annexure DD (<i>Concession fee Offer</i>)		
Annexure EE (<i>TNPA Tariff Methodology</i>)		
Annexure FF (<i>How to access and register tenders</i>)		
Annexure GG (<i>Additional Information on Green Hydrogen</i>)		
Annexure HH (<i>Terminal Operator Agreement</i>)		

12. CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

- 12.1 The Preferred Bidder will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE verification

certificate, for the duration of any contract emanating from this RFP. Should the Preferred Bidder be awarded the Terminal Operator Agreement and fail to present TNPA with such renewals as and when they become due, TNPA shall be entitled, in addition to any other rights and remedies that it may have in terms of the Terminal Operator Agreement, to terminate such Terminal Operator Agreement forthwith without any liability and without prejudice to any claims which TNPA may have for damages against the Bidder.

12.2 By signing these RFP documents, the Bidder is deemed to acknowledge that it has made itself thoroughly familiar with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof, and TNPA will recognise no claim for relief based on an allegation that the Bidder overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered concession or otherwise.

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____

DESIGNATION: _____

TNPA Declaration of Bidder

NAME OF ENTITY: _____

[insert name of Bidder] ("the Bidder")

We _____ do hereby certify that:

1. In this declaration, words and expressions which are defined in the Request for Proposals for 25 (twenty five) year concession for the Financing, Design, Construction, Operation, Maintenance and after 25 years Decommission, Rehabilitate and Transfer the Terminal at the Port of Richards Bay back to TNPA, Tender No: **TNPA/2023/12/0015/51712/RFP** shall bear the same meaning when used in this letter, unless the context requires otherwise.
2. The Bidder further certifies that:
 - 2.1 the TNPA has supplied and we have received appropriate responses to any or all questions, as applicable, which were submitted by ourselves for the RFP clarification purposes;
 - 2.2 we have received all information we deemed necessary for the completion of this RFP;
 - 2.3 at no stage have we received additional information relating to the subject matter of this RFP from the TNPA sources, other than information formally received from the designated the TNPA contact(s) as nominated in the RFP documents;
 - 2.4 we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by the TNPA in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner; and
 - 2.5 furthermore, we declare that a relationship formed on the basis of any one or more of family (including spouses and in-laws), friendship, business acquaintance, professional engagement, or employment exists or does not exist [delete as applicable] between an owner or member or director or partner or shareholder of our entity and an employee or board member of the TNPA including any person who may be involved in the evaluation and or adjudication of this Bid.
 - 2.6 In addition, we declare that an owner or member or director or partner or shareholder of our entity is or is not [delete as applicable] an employee or board member of the TNPA.

2.7 If such a relationship as indicated in paragraph 2.5 exists, the Bidder is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/PARTNER/SHAREHOLDER:

ADDRESS:

Indicate nature of relationship with TNPA:

DATE:

SIGNATURE:

[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Bidder from doing future business with TNPA]

2.8 We declare, to the extent that we are aware or become aware of any relationship between ourselves and the TNPA (other than any existing and appropriate business relationship with the TNPA) which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify TNPA immediately in writing of such circumstances.

2.9 We accept that any dispute pertaining to this Bid Response will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.

2.10 We further accept that TNPA reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

SIGNED at _____ on this ____ day of _____ 20__

For and on behalf of

AS WITNESS:

duly authorised hereto

Name: _____

Name: _____

Position: _____

Position: _____

Signature: _____

Signature: _____

Date: _____

Place: _____

Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

BETWEEN

(Reg)

AND

TRANSNET SOC Ltd,
acting through its operating division
TRANSNET NATIONAL PORTS AUTHORITY

(Reg 1990/000900/30)

This agreement entered into between

_____ located at and

Transnet SOC Ltd, acting through its operating division, Transnet National Ports Authority (“TNPA”),

(hereinafter referred to respectively as ‘a Party’ or ‘the Parties’),

concerns the safeguarding of proprietary and company confidential information to be provided by each Party to the other in connection with discussions regarding

WITNESSED THAT: It is agreed between the Parties as follows:

- 1. For purposes of this Agreement, company confidential and/or proprietary information, hereinafter called “proprietary Information”, shall be construed to mean any information disclosed by a Party to the other Party, including without limitation all computer software, which is identified as such by an appropriate stamp or legend or any other notice in writing, or when disclosed orally, has been identified as proprietary at the time of disclosure and has been promptly (30 (thirty) days at the latest) confirmed and designated in writing as Proprietary Information of the disclosing party, hereinafter called the ‘Disclosing Party’, in either hard copy or electronic media and which each Party considers to be material to its business operations, including, without limitation, wage and salary information, technical information, commercial information, financial information and personnel records.**

- 2. The receiving party, hereinafter called the 'Receiving Party' of any Proprietary Information covenants that, for a period of 7 (seven years) from the effective date of this Agreement, the Proprietary Information received from the Disclosing Party:**
- 2.1 shall not be used, duplicated, in whole or in part, for any purpose other than the purpose here above stated, without the prior written consent of the Disclosing Party,**
 - 2.2 shall be protected and kept in confidence said Proprietary Information by using the same degree of care and safeguard as it uses to protect its own Proprietary Information of like importance,**
 - 2.3 shall only be disclosed to persons within the Receiving Party's organisation who have a need to know and solely for the purpose mentioned in the preamble.**
 - 2.4 Nothing contained in the Agreement shall be construed as granting or conferring, expressly or impliedly, any rights in or title to the proprietary information disclosed hereunder. It is agreed that no license under any patents of either Party is granted by this Agreement or by any disclosure or use of such Proprietary Information which:**
 - 2.5 Was at the time of receipt otherwise known to the Receiving Party**
 - 2.6 Has been published or is otherwise within the public knowledge or is generally known to the public at the time of its disclosure to the Receiving Party**
 - 2.7 Subsequently is developed independently in good faith by employees of the Receiving Party who did not have access to the Proprietary Information**
 - 2.8 Becomes legally known or available to the Receiving Party from a source other than the Disclosing Party, and without breach of the Agreement by the recipient**
 - 2.9 Becomes part of the public domain without breach of the Agreement by the recipient**
 - 2.10 Is so disclosed or used with the written approval of the Disclosing Party**
 - 2.11 Unless extended in writing by mutual agreement and unless earlier terminated as hereafter, this Agreement shall terminate upon the expiration of 7 (seven) years from its effective date. This Agreement including all rights and obligations of the Parties hereto, except the obligations specified in paragraph 2 hereof, may be earlier terminated by either Party by operation of law and without demand at any time upon 30 (thirty) days written notice. The**

end of termination of the Agreement shall not relieve either Party from complying with the obligations of paragraph 2 with respect to the use and protection of the Proprietary Information received prior to the date of termination or the end of this Agreement. Such obligations shall continue for the period applicable as set forth in said paragraph.

- 2.12** Each Party shall bear its own costs incurred under or in connection with the Agreement. Nothing in the Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract or any other business relationship with the other Party or to disclose any Proprietary Information to the other Party.
- 2.13** It is understood that this Agreement constitutes a Non-Disclosure Agreement only. Nothing in this Agreement shall grant either Party the right to make any commitments of any kind for, or on behalf of, the other Party without the prior written consent of the other Party.
- 2.14** This Agreement and the rights and obligations hereunder may not be transferred or assigned by a Party without the proper written approval of the other Party hereto.
- 2.15** This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa
- 2.16** Any dispute arising from or in connection with this Agreement, which cannot be settled amicably by the Parties, shall be finally resolved in accordance of the Arbitration Foundation of Southern Africa (AFSA) by an arbitrator or arbitrators appointed by the Foundation. The arbitration will be held in Sandton, Johannesburg, in accordance with the formalities of AFSA rules and procedure settled by the arbitrator and may be held in informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings or the strict rules if the evidence.
- 2.17** Any Proprietary Information (and copies thereof) disclosed by a Party to the other Party shall remain the property of the Disclosing Party and shall be returned by the Receiving Party immediately upon request.
- 2.18** Any Proprietary Information disclosed by the Parties under this Agreement, shall be identified by the Disclosing Party as Proprietary Information at the time of disclosure, and

the disclosure, protection, use and handling of such information shall be in accordance with the security procedures prescribed by the South African government.

- 2.19** In the event of one Party visiting any of the facilities of the other Party, the visiting party undertakes that any further Proprietary Information relating to the Party being visited which may come to the visiting Party's knowledge as a result of any such visit, including without limitation, any information relating to plant and equipment which may be seen at such facilities, the methods of operation thereof and the various applications thereof shall be kept strictly confidential and be subject to the same protection as is provided for in Clause 2 above.
- 2.20** The execution, existence and performance of the Agreement shall be kept confidential by the Parties and shall not be disclosed by a Party without the prior consents of the other Party.
- 2.21** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances, understanding and agreements between the Parties with respect to or in connection with any of the matters or things to which such Agreement applies or refers.
- 2.22** The Parties hereby represent that the disclosure of Proprietary Information by and between themselves is not contrary to the laws and regulations of the Republic of South Africa.
- 2.23** With respect to any exchange of Proprietary Information which may occur as a result of the Agreement, it is expressly understood and agrees that the below listed employees shall, on behalf of the respective Parties be the exclusive individuals authorized to receive and or transmit Proprietary Information under the Agreement:

TNPA

- 2.23.1** As regard the individuals identified in Paragraph here above, each Party shall have the right and power to redesignate such persons within their organisation as are authorized to



receive/transmit Proprietary Information, which are made by a Party, shall be effected by rendering written notice of such change to the other Party.

2.23.2 The Parties agree that this Agreement shall be drafted in the English language.

IN WITNESS WHEREOF, the Parties hereto have to set their hands as of the date first above written.

TNPA

Date:

Place:

Witness 1: (Name, Address, Signature, Date).....

.....
.....

Witness 2: (Name, Address, Signature, Date)

.....
.....

Terminal Operator

Date:

Place:

Witness 1: (Name, Address, Signature, Date).....

.....
.....

Witness 2: (Name, Address, Signature, Date).....

.....
.....

Resolution of Board of Directors

(TO BE COMPLETED BY LEAD MEMBER OF A BIDDER CONSORTIUM OR BY THE PROJECT COMPANY IF ESTABLISHED AT BID SUBMISSION DATE)

[Name of Entity] (Registration Number: [insert])

(the "Company")

RESOLUTION OF THE BOARD OF DIRECTORS OF THE COMPANY PASSED AT A MEETING HELD ON [•],

RESOLVED THAT:

1. the Company participates as the Bidder [***OR, in the case of a Bidder consortium***], in the [insert name of Bidder] consortium ("**Bidder**") in responding to the RFP issued by the TNPA on or about [insert date] under Tender Reference number **TNPA/2023/12/0015/51712/RFP**, in respect of the for 25 (twenty five) year concession for the Financing, Design, Construction, Operation and Maintenance, and after 25 years Decommission, Rehabilitate and Transfer of the Liquid Bulk Terminal at the Port of Richards Bay,
2. [***Note: This paragraph is for Bidders that are consortia***] the Company, by agreement with the other Members, be the Lead Member of the Bidder consortium (the "**Lead Member**"); and
3. [***Note: This paragraph is for all Bidders***][insert name of authorised individual in the **Company**] be and hereby is authorised to authorised to enter into, sign, execute and complete any documents relating to this Bid Response and any subsequent agreement for the provision of services.

Signed by the Directors

Name: _____

Date: _____

Resolution of each Member

(OTHER THAN THE LEAD MEMBER) OF A BIDDER CONSORTIUM OR EACH
SHAREHOLDER OF A BIDDER PROJECT COMPANY

[Name of Entity] (Registration number: [insert])

(the "Company")

RESOLUTION OF THE BOARD OF DIRECTORS OF THE COMPANY PASSED AT A
MEETING HELD ON [INSERT DATE]

RESOLVED THAT:

1. the Company participates as the Bidder **[OR, in the case of a Bidder consortium]**, in the **[insert name of Bidder]** consortium ("Bidder") in responding to the RFP issued by the TNPA on or about **[insert date]** under Tender Reference number **TNPA/2023/12/0015/51712/RFP**, in respect of the for 25 (twenty five) year concession for the Financing, Design, Construction, Operation and Maintenance, and after 25 years Decommission, Rehabilitate and Transfer of the Liquid Bulk Terminals at the Port of Richards Bay,
2. **[Note: This paragraph is for Bidders that are consortia]**the Company, by agreement with the other Members, be the Lead Member of the Bidder consortium (the "Lead Member"); and
3. **[Note: This paragraph is for all Bidders]****[insert name of authorised individual(s) in the Company]** be and hereby is authorised to authorised to enter into, sign, execute and complete any documents relating to this Bid Response and any subsequent agreement for the provision of services.

Signed by the Directors

Name: _____ Date: _____

Certificate of Acquaintance with RFP Documents

NAME OF ENTITY:

1. We _____ do hereby certify that we acquainted ourselves with all the documentation comprising this RFP and all conditions contained therein, as laid down by TNPA for the carrying out of the Project for which we submitted our Bid Response.
2. We furthermore agree that TNPA shall recognise no claim from us for relief based on an allegation that we overlooked any RFP or contract condition or failed to take it into account for the purpose of calculating our offered concession or otherwise.
3. We accept that an obligation rests on us to clarify any uncertainties regarding this bid which we may have, before submitting the Bid Response. We agree that we will have no claim based on an allegation that any aspect of this RFP was unclear but in respect of which we failed to obtain clarity.
4. We understand that the accompanying Bid Response will be disqualified if this Certificate is found not to be true and complete in every respect.
6. For the purposes of this Certificate and the accompanying Bid Response, we understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
 - 6.1 has been requested to submit a Bid Response in respect of the RFP;
 - 6.2 could potentially submit a Bid Response in response to RFP, based on their qualifications, abilities or experience; and
 - 6.3 provides the same services as the Bidder and/or is in the same line of business as the Bidder.
7. The Bidder has arrived at the accompanying Bid Response independently from, and without consultation, communication, agreement or arrangement with any competitor. However

communication between partners in a joint venture or consortium will not be construed as collusive bidding.

- 8.** In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - 8.1 prices;
 - 8.2 geographical area where Services will be rendered (market allocation);
 - 8.3 methods, factors or formulas used to calculate concession;
 - 8.4 the intention or decision to submit or not to submit, a Bid Response;
 - 8.5 the submission of a Bid Response which does not meet the specifications and conditions of the RFP;
or
 - 8.6 bidding with the intention not being awarded Preferred Bidder status.
- 9.** In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the services to which this RFP relates.
- 10.** The terms of the accompanying Bid Response have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 11.** We are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bid Responses that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act 89 of 1998 and or may be reported to the National Prosecuting Authority ("NPA") for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 (ten) years in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 or any other applicable legislation.

SIGNED at _____ on this ____ day of _____ 20__.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Declaration of Interest

1. General

- 1.1. **This Declaration of Interest Form is to be duly completed and signed by each Bidder which is a Project Company, each Shareholder thereof, and where the Bidder is a consortium, by each Member of the Bidder (for purposes of this Declaration, the "Member").**
- 1.2. **Failure to complete this form may lead to disqualification.**
- 1.3. **'Related' in this form means a relationship formed on the basis of any one or more of (i) family (including spouses and in-laws), (ii) friendship, (iii) business acquaintance, (iv) professional engagement, or (v) employment).**

2. Disclosure of Interest

- 2.1. **Please state if the Bidder or any Member or any individual who is a director, officer, employee or shareholder of any Member is Related, in any manner, to any employee of the TNPA or Transnet and or to any other Government official or person directly involved in the Procurement Programme in respect of the Liquid Bulk and/or Green Fuel Terminals , who may be involved with the evaluation of Bid Responses.**

Yes / No [*The Member is required to circle the applicable response*]

If so, state particulars:

.....

.....

.....

- 2.2. **Please state if the Bidder or any Member or any individual who is a director, officer, employee or shareholder of any Member is Related, in any manner, to any employee of the TNPA or Transnet and or any other Government official or person with the ability to influence the**

decision of TNPA with respect to the appointment of the Preferred Bidder and or the Reserve Bidder.

Yes / No [*The Member is required to circle the applicable response*]

If so, state particulars:

.....

.....

.....

2.3. Is any national public entity, or provincial public entity (both as defined in the Public Finance Management Act 1 of 1999), or a person employed by a national public entity or a provincial public entity, a Contractor of or participating as a Member, or a shareholder (direct or indirect) of any Member, of the Bidder?

Yes / No [*The Member is required to circle the applicable response*]

If so, state particulars:

.....

.....

.....

3. Declaration in respect of Litigation

3.1. Please describe the extent of any material pending or threatened litigation or legal proceedings (civil or criminal, and including any investigations or complaint proceedings conducted against the Member in terms of the Competition Act, 89 of 1998 or in terms of any other legislation providing for investigations or complaint proceedings) in which the Member is involved as at the Bid Submission Date, or has been involved during the last 5 (five) years, instituted by any South African organ of state against the Member. If the Bidder or Member has something to declare, please provide all details in the space provided below. If the Bidder

or Member has nothing to declare, please insert "*nothing to declare*" in the space provided below. *[Add extra pages to be appended to this Declaration if necessary.]*

.....

.....

.....

.....

.....

.....

3.2. Please describe in detail:

3.2.1. all occurrences of a failure by the Member to timeously complete any contracts (a) with any South African organ of state; or (b) relating to any Government project or procurement programme;

3.2.2. any incidences of damages deducted or recovered within the last 5 (five) years by any South African organ of state in relation to a contract with the Member, or by any person in relation to any Government project or procurement programme; and

3.2.3. any contract between the Member and any South African organ of state which was terminated during the past five years on account of failure by the Member to perform on or to comply with the contract. If the Bidder or Member has something to declare, please provide all details in the space provided below. If the Bidder or Member has nothing to declare, please insert "*nothing to declare*" in the space provided below. *[Add extra pages to be appended to this Declaration if necessary.]*

.....

.....

.....

.....

.....

4. Declaration of Past Supply Chain Practices

4.1. Is the Member or any of its directors listed on the National Treasury database as companies or persons prohibited from doing business with the State / public sector?

Yes / No [*The Member is required to circle the applicable response*]

If yes, state particulars:

.....

4.2. Is the Member or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act 12 of 2004?

4.3. Yes / No [*The Member is required to circle the applicable response*]

If yes, state particulars:

.....

4.4. Was the Member or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?

Yes / No [*The Member is required to circle the applicable response*]

If yes, state particulars:

.....

.....
DECLARATION

I, the undersigned (Name of authorised individual representing the Member)

CERTIFY THAT THE INFORMATION FURNISHED IN THIS DECLARATION IS COMPLETE, TRUE AND CORRECT. I ACCEPT THAT THE TNPA MAY DISQUALIFY MY BID RESPONSE IN THE EVENT THAT THE INFORMATION FURNISHED ABOVE IS IN ANY RESPECT UNTRUE, INCORRECT OR INCOMPLETE.

Signature_____

Date_____

Position_____

Name of Member_____

Name of Bidder_____

Who warrants his / her authority hereto

Tax Clearance Requirements

1. It is a condition of bidding in response to this RFP that:
 - 1.1. the taxes of a Bidder and its Members must be in order, or that satisfactory arrangements have been made with the South African Revenue Services ("**SARS**") or other local revenue authority for the relevant Bidder to meet its tax obligations;
 - 1.2. the form "Application for Tax Clearance Certificate TCC 001", available on the official SARS website or at any SARS office, must be completed in all respects and submitted to SARS where the Bidder is registered for tax purposes. SARS will then furnish the Bidder with a Tax Clearance Certificate that will be valid for a period of six (6) months from the date of issue.
2. Each Bidder and its Members established or incorporated in South Africa more than 365 days prior to the Bid Submission Date must submit an original and valid Tax Clearance Certificate with the Bidder's Bid Response.
3. Each Bidder and its Members established or incorporated in South Africa within the last 365 days of the Bid Submission Date must submit proof that an application for a Tax Clearance Certificate has been submitted and received by SARS, with the Bidder's Bid Response.
4. A Bidder and its Members which are not established or incorporated in South Africa must produce a tax clearance certificate or equivalent certificate translated into English, if applicable, from the local revenue authority where they are established or incorporated to demonstrate that they are in good standing with that authority.

Annexure S

Certificate of Acquaintance with the Requirements of the RFP

NAME OF ENTITY:

We **[insert name of Bidder]** _____ do hereby certify that we acquainted ourselves with all the documentation comprising the requirements of the RFP as received on _____ **[insert date]** from TNPA in respect of the Project for which we submitted our Bid Response.

We furthermore agree that TNPA shall recognise no claim from us for relief based on an allegation that we overlooked any terms and conditions of the RFP or failed to take it into account for the purpose of calculating our offered concession or otherwise.

SIGNED at _____ on this _____ day of _____ 20____.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure T

Certificate of Acquaintance with Conditions of Contract with TNPA

NAME OF ENTITY: _____

We _____ do hereby certify that we acquainted ourselves with all the documentation comprising the Terminal Operator Agreement and the provisions of Annexure HH of the RFP as received on _____ **[insert date]** from TNPA in respect of the Project for which we submitted our Bid Response.

We furthermore agree that TNPA shall recognise no claim from us for relief based on an allegation that we overlooked any requirement of the Terminal Operator Agreement or failed to take it into account for the purpose of calculating our offered concession or otherwise.

We also note the obligations as set out in the Terminal Operator Agreement.

SIGNED at _____ on this _____ day of _____ 20____

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure U

Breach of Law Form

NAME OF ENTITY:

We _____

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

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

DATE OF BREACH:

Furthermore, we acknowledge that TNPA reserves the right to exclude any Bidder from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at _____ on this _____ day of _____ 20__.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure V

RFP Clarification Request Form

RFP No: **TO BE INCLUDED ONCE GENERATED ON E-TENDERS**

RFP deadline for questions / RFP Clarifications: Prior to Bid Submission Closing Date of 30 April 2024

TO: TNPA

ATTENTION: The RFP Administrator

EMAIL:

DATE: _____

FROM: _____

RFP Clarification No **[to be inserted by TNPA]**

REQUEST FOR RFP CLARIFICATION

Supplier Integrity Pact

1. **TNPA's Integrity Pact requires a commitment from Bidders to TNPA that they have not, nor will they engage in any:**
 - 1.1 **corrupt and fraudulent practices;**
 - 1.2 **anti-competitive practices; and**
 - 1.3 **act in bad faith towards each other.**
2. **The Integrity Pact also serves to communicate TNPA's Gift Policy as well as the remedies available to TNPA where a Bidder contravenes any provision of the Integrity Pact.**
3. **Bidders are required to familiarise themselves with the contents of the Integrity Pact which is attached to this RFP as Annexure W1 and also available on the Transnet Internet site [www.transnet.net/Tenders/Pages/default.aspx] or on request.**

NAME _____ OF _____ ENTITY: _____

We _____ do hereby certify that we have acquainted ourselves with all the documentation comprising the TNPA Integrity Pact. We agree to fully comply with all the terms and conditions stipulated in the TNPA Supplier Integrity Pact.

4. **We furthermore agree that TNPA shall recognise no claim from us for relief based on an allegation that we overlooked any terms and conditions of the Integrity Pact or failed to take it into account for the purpose of submitting our offer.**
5. **We confirm having been advised that a signed copy of this Schedule can be submitted in lieu of the entire TNPA Integrity Pact as confirmation in terms of the Returnable Schedule.**

SIGNED at _____ on this _____ day of _____ 20 ____.

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure X

SCHEDULE TOA (RFP ECONOMIC IMPACT DATA)

TOA SCHEDULE 1

PROJECT SITE AND OTHER DETAILS	
Project Site [Chosen by Bidder]	
Surrounding Property	
Common Areas	The immediate surrounding common areas as depicted on Project Site Map
INFORMATION REGARDING PARTIES	
TNPA	Transnet National Ports Authority
Terminal Operator / Bidder	
Terminal Operator / Bidder Domicilium	
TNPA's Domicilium	
RELEVANT TIME PERIODS	
Commencement Date:	
Expiry Date	
Total Concession Period	
PROJECT ECONOMIC IMPACT INFORMATION	

Bidder's Projected Investment Value (in ZAR)	
Estimated number of Jobs (1 st year Operational Jobs)	
Estimated number of Jobs (Construction Jobs)	
Concession Fee Offer (in ZAR)	
Land size required by Bidder (in sqm)	
Bidder's B-BBEE Level.	
Bidder's / Terminal Operator's Shareholding [Ownership %]	
OTHER AGREEMENTS	
Ancillary Agreements / Licences	

Standard RFP Response Form: Information about Bidder

1. INSTRUCTIONS FOR COMPLETION OF THE RESPONSE FORM

1.1. Structure of the Questionnaire

1.1.1. The responses to the information requests set out in clause *Information about the Bidder and the Project* of the RFP must be submitted as requested and provided for in the response forms contained in this Annexure Y (*Standard RFP Response Form: Information about the Bidder*) of the RFP.

1.1.2. The questionnaire has been structured in sections so that the capability and suitability of the Bidder and its Members can be tested in each of the following areas to encompass general capability or suitability and technical ability. These headings largely mirror the evaluation criteria contained in the RFP and are inserted as headings for the Bidders' reference throughout the response forms in this Annexure Y (*Standard RFP Response Form: Information about the Bidder*) of the RFP to broadly indicate which responses will be evaluated under each evaluation item:

1.1.3. Information about the Bidder (Bidder's Details);

1.1.4. Member Information;

1.1.5. Government Contracts; and

1.1.6. Legal Proceedings.

1.2. Notes for Completion

1.2.1. Please note that each section may relate to one or more entities and care should be taken to ensure that each Member provides a completed response for the general sections and those which relate

to their speciality or experience. Certain sections of the response form may have to be duplicated and completed in respect of the Bidder and each Member.

- 1.2.2. Please answer using the electronic forms, in the manner and space provided for in the response forms in this Annexure Y (Standard RFP Response Form: Information about the Bidder) of the RFP, the questions stated in the following sections as fully as possible. Extra pages may be appended to the response form if necessary.
- 1.2.3. Bidders should note that the provision of false or misrepresenting information may result in an entity's exclusion from the RFP.
- 1.2.4. To the extent that some of the information sought and responded to by each Bidder and its Members constitute its or their views and opinions on certain issues, TNPA is under no obligation to accommodate any such views and or opinions at any later stage of the procurement process but reserves the right to hold the Bidder (and relevant Member) thereto.

2. Information about the Bidder

2.1. Please state (in the format provided):

- 2.1.1. the name of the Bidder, indicating whether or not it is incorporated and the date of its legal formation. If a Bidder is a Company, the Bidder must submit the Constitutional Documents of the Company. If the Bidder is a joint venture or consortium, the Bidder must submit a signed joint venture or consortium agreements between the Members clearly stating the percentage split of the joint venture or consortium and the associated responsibilities of each Member. If such a joint venture or consortium agreement is unavailable, the Members must submit confirmation in writing of their intention to enter into a joint venture or consortium agreement should they be appointed as Preferred Bidder by TNPA through this RFP. This written confirmation must clearly indicate the percentage split of the business and the responsibilities of each Member;

BIDDER INFORMATION	
Name of Bidder	
Legal status: (e.g. Limited Liability Company or Joint Venture or Consortium)	
Date of legal formation of Bidder	
HEAD OFFICE	
physical address:	
postal address:	
e-mail address:	
telephone number:	
telefax number:	

- 2.1.2. name and contact details of the contact person for the Bidder for purposes of this RFP. If the Bidder is an unincorporated joint venture or consortium, this will be the lead member of the Bidder who is responsible for the submission of an RFP Bid Response. The contact details are to include the physical address, postal address, e-mail address, telephone and telefax numbers of that person;

CONTACT PERSON / LEAD MEMBER FOR THE BIDDER	
Name:	
Physical address:	
Postal address:	
E-mail address:	
Telephone numbers:	
Telefax number:	

2.1.3. the names of all those persons that will be Lenders, Legal Advisors, Financial Advisors and technical consultants in respect of the Bid Response and the Project and their respective roles and responsibilities:

NAME LEGAL ADVISORS	ROLES AND RESPONSIBILITIES

--	--

NAME FINANCIAL CONSULTANTS	ROLES AND RESPONSIBILITIES

NAME TECHNICAL ADVISORS	ROLES AND RESPONSIBILITIES

2.1.4. the Bidder's Legal and Financial Advisors must provide a written declaration of interest where they disclose any potential or existing conflicts of interest due to any affiliation or relation with TNPA, Transnet or any other Government official or person with the ability to influence the decision of TNPA and/or other Bidders. Relationship will include a relationship formed on the basis of any one or more of (i) family (including spouses and in-laws), (ii) friendship, (iii) business acquaintance, (iv) professional engagement, or (v) employment. If the Advisor has something to declare, please provide all details in the space provided below. If the Bidder or Member has nothing to declare, please insert "*nothing to declare*" in the space provided below. Failure by the relevant Advisors to disclose an interest may result in the Bidder being disqualified from the RFP.

2.1.5. _____

2.1.6. Please attach to this response form an organogram which details the entire structure of the Bidder with explanatory notes in respect of the identity and role of each Member of the Bidder.

2.2. Member Information

2.2.1. Please state (in the format provided) the following name and contact detail information in relation to each Member:

2.2.2. name and legal status of the Member, its registration number, date and country of registration;

2.2.3. registered address and website address (if any) of each Member;

2.2.4. street address, postal address, telephone number and telefax numbers and e-mail address of each Member; and

2.2.5. the person dealing with this RFP and the Bid Response on each Member's behalf and their contact details.

[The tables in this section must be duplicated and completed for each Member of the Bidder.]

MEMBERS INFORMATION	
Name of Member:	
Legal status: (e.g. Limited Liability Company, Trust, or Joint Venture or Consortium or other)	
Registration :	
Date and country of registration:	
Registered address of the Member:	
Website address, if any:	

HEAD OFFICE	
Physical address:	
Postal address:	
E-mail address:	
Telephone numbers:	
Telefax number:	
CONTRACT PERSON INFORMATION	
Name:	
E-mail address:	
Mobile number:	
Telephone number:	
Telefax number:	

2.2.6. Please state (in the format provided) the following key personnel information in relation to the aforementioned entities:

2.2.7. the full names and addresses of (i) each director or equivalent of each Member; and

	NAME OF DIRECTOR OR EQUIVALENT	ADDRESS

2.2.8. Brief description of each Member’s primary business and main products or services, comprising of no more than four (4) pages.

2.2.9. Brief history of each Member, comprising of no more than four (4) pages, including detail of any parent or associated companies and any changes in ownership of the Member, over the last five (5) years:

2.2.10. Brief description, comprising of no more than four (4) pages of the Member's main customers and suppliers and highlighting any associations with or sales to any entities within the Government sector:

2.3. Please attach the following information in respect of each Member to this Schedule:

- 2.3.1. certified copies of all Constitutional Documents, including all documents that evidence changes thereto, such as change of name certificates;
- 2.3.2. certified copies of documents that evidence the Member's directorship; and
- 2.3.3. particulars of share capital showing classes of shares and amounts of authorised and issued share capital, including relevant copies of share registers and/or share option details.
- 2.3.4. Please provide (in the format provided) the following information in relation to either the Bidder or the Member with the appropriate experience:

2.3.5. a brief description of the leadership and project management capabilities of the Bidder or the Member in operation and maintenance or similar projects, including the outcomes of those projects and the time periods from development to financial close of those projects;

2.3.6. a detailed description of how the Member or Bidder will approach the leadership and control and co-ordination of the Bidder during the bid preparation phase, negotiations phase and the Operation and Maintenance phase of the Project should the Bidder be appointed as Preferred Bidder and then awarded the Terminal Operator Agreement to implement the Project, as the case may be;

2.3.7. a detailed description of how the Member or Bidder will deliver and or co-ordinate an experienced project management, Operation and Maintenance management, legal and finance team capable of delivering the Project on a fully integrated basis.

2.4. Government Contracts

Please state (in the format provided) the following information in relation to each Member forming part of the Bidder:

2.4.1. Details of any contracts awarded to the Member by the Government in the last three (3) years:

2.4.2. Brief details of any contracts awarded to the Member by other governments during the last three (3) years, highlighting any Liquid Bulk or Green Fuels Terminal and/or port related Construction, operation and maintenance of the Liquid Bulk or Green Fuels Terminal projects:

2.4.3. Details of the bidding processes of any similar projects from which any of the Members withdrew, indicating the reasons for withdrawal and whether any claim and/or legal proceedings was made against the Member by the relevant government in relation to the bid process:

2.4.4. Details of any current Liquid Bulk or Green Fuels Terminal concession projects for which any of the Members are bidding and their status (for example: preferred bidder, short-listed) in respect of such projects:

2.5. Legal Proceedings [Each of these sections must be duplicated and completed for the Bidder and each Member.]

Please provide (in the format provided) the following information in respect of the Bidder and each of the Members:

2.5.1. whether any order of a court for that Bidder's and/or its Member's winding up has been granted. If so, please advise whether such order has been for the purposes of *bona fide* reconstruction or amalgamation or not;

2.5.2. whether the Bidder and/or its Members has ever been or is currently subject to, liquidation, business rescue or insolvency proceedings or equivalent proceedings in a foreign jurisdiction, and if so, please provide details thereof, including the current status and the outcome of such proceedings;

2.5.3. whether the Bidder and/or its Members or any director thereof is currently being prosecuted for or has been convicted of a criminal offence, including fraud and corruption, related to the conduct of its business or profession in South Africa and worldwide. If so, please provide details thereof as well as the outcome or current status thereof;

2.5.4. whether the Bidder and or its Member is currently or has been engaged in any disputes in respect of the provision of services with any supplier and/or client within the last three (3) years to the value above R5 million (five million Rand). If so, please furnish details of the nature of such dispute as well as the current status or outcome thereof;

2.5.5. whether the Bidder and/or its Member has suffered a deduction for liquidated or ascertained damages in respect of any government contract within the last three (3) years. If so, please furnish details of the reasons for such deductions; and

2.5.6. whether the Bidder and/or its Member has had any government contract cancelled or not renewed, for failure to perform in accordance with the terms thereof.

2.5.7 Save to the extent that disclosure is made pursuant to this RFP, the Bidder warrants by virtue of it submitting a Bid Response that no such event has occurred in respect of each person forming part of the Bidder or its Bid Response in respect of any disclosure made. Furthermore, each Bidder warrants the accuracy and correctness of the information supplied.

2.5.8 Bidders are to note that a failure to submit an Essential Returnable may result in a Bidder being awarded Zero (0) points in the event that the Essential Returnable is required to score a Bid Response and the TNPA reserves the right to reject a Bidders Bid response on the basis as outlined in Annexure K.



Annexure Z

Lenders Support Letter

(as contained in separate PDF document uploaded on National Treasury website)



Annexure AA

Financial Support Letter
(to be submitted by the Bidder)



Annexure BB

B-BBEE Verification Certificate

(to be submitted by the Bidder)

Business Case Guidelines

Bidders will be required to submit a detailed business case including as a minimum the information listed below. The Business Case essential and will contribute to the scoring as detailed in the RFP.

1) Executive Summary

2) Company Description

Shareholding of entity

B-BBEE Shareholding

Advisors

Products and services

Long Term Aim of Business

Objectives

S.W.O.T. Analysis

3) Technical aspects

TECHNICAL CRITERIA	ITEM
Previous experience	<ul style="list-style-type: none"> • Number of years operating in the Liquid Bulk or Green Fuels sector.
Track record	<ul style="list-style-type: none"> • Number of Liquid Bulk and/or Green Fuels Terminals operated and/or are currently operating.
Market analysis	<ul style="list-style-type: none"> • a clear statement of the vision, mission and strategic objectives of the Bidder; • value proposition of business, • identification of the status quo market and services at the Port; • identification of the potential market and segment analysis for the Terminal; • a marketing strategy which includes a SWOT analysis; • economic spin-offs per market segment; • provide the Short, Medium and Long term projection forecast; • provide the strategy for Third Party access • sustainability and growth assumptions of the Liquid Bulk and/or Green Fuel Terminals ; and • details of sources of information on all market information or analysis
Commercial and Operations Analysis	<ul style="list-style-type: none"> • Profitability and price forecast; • Cargo evacuation plan between pipeline, rail and road linking to regional and hinterland destinations; • Competitor analysis;
Project schedule	<ul style="list-style-type: none"> • a project schedule, highlighting key sequential milestones and relevant timelines
Concept Design	<ul style="list-style-type: none"> • Terminal plan layout of the full site arrangement indicating: <ul style="list-style-type: none"> ○ Concept design of the Terminal and related marine infrastructure including but not limited to: mooring, fenders, bollards, and terminal infrastructure including fire fighting equipment etc to accommodate the Liquid Bulk or Green Fuels Terminal for the concession period; ○ Receive Cargo directly from vessel, conveying of Cargo using Terminal Equipment such as pumps, loading arms, manifolds, pipelines, storage tanks etc, and loading Liquid Bulk or Green Fuels to and from a vessel; ○ Pipeline, rail and road connectivity and accessibility for evacuation of Cargo; ○ Safety and environmental best available technology and sustainability considerations on infrastructure and equipment; and ○ Any other Concept Design considerations

SHE Requirements	<ul style="list-style-type: none"> • Environmental Management <ul style="list-style-type: none"> ○ Environmental Management Plan of Bidder's existing business/businesses; • Occupational Health & Safety <ul style="list-style-type: none"> ○ an Occupational Health and Safety policy that deals with the Bidder's commitment in their current business signed by a director of the Bidder or another properly delegated person; • Risk Management <ul style="list-style-type: none"> ○ a business continuity management plan from the Bidder's existing business aligned to a recognised BCM system that will ensure that resilience is considered as part of the Bidders operations in order to mitigate potential business continuity risks to the Project ○ a risk management plan aligned to a recognised written SHE management system and a business continuity management plan from the Bidder's existing business aligned to a recognised BCM system which stipulates how the risks pertaining to construction and operational phases will be identified, assessed and managed by the Bidder • Health and Safety Performance <ul style="list-style-type: none"> ○ Compliance Plan / framework ○ Comprehensive Risk Assessment ○ Health and Safety policy document together with objectives and targets ○ The bidder must have an existing Safety Management System (SMS) Certificate which is certified by a recognised body or assurance audit
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4) Financial Aspects

FINANCIAL CRITERIA	ITEM
Profitability EBITDA	<ul style="list-style-type: none"> • Profitability of the Bidder averaged over the past 3 (three) year period;
Proposed funding model	<ul style="list-style-type: none"> • The Bidder must provide the proposed funding model that supports the business case and capital investment required; and • The source of the capital investment required must be explained in terms of the debt/equity structure
Past Experience in raising capital	<ul style="list-style-type: none"> • The details for each Member relating to its past experience (within the last 10 (ten) year period) of raising debt on a project finance and or corporate finance basis, which demonstrates an ability to: (i) provide equity; (ii) secure and structure such equity; and (iii) letters from the lenders or funders that provided the finance setting out their role and confirming the Member's past experience in raising the capital disclosed in response to the criterion.

Operational Cost (projected)	<ul style="list-style-type: none"> • Maintenance Cost • Environmental Management Cost • Other Operating Costs
Operational Revenue (projected)	<ul style="list-style-type: none"> • Income generation information, providing revenue generation streams and indicating the cyclical nature of the business (both Qualitative and quantitative information) • Other revenue sources identified
Key Financial indicators (projected)	<ul style="list-style-type: none"> • Cash flow projections • Present value of future cash flow • Profit and lost accounts (projected) • Statement of financial position (projected) • Return on investment
Key Financial Ratios (projected)	<ul style="list-style-type: none"> • Current • Solvency

5) Marketing strategy for the Terminal

6) Appendices



Annexure DD

CONCESSION FEE OFFER

NAME OF ENTITY: _____

We _____ do hereby

offer R_____ per square meter per month for _____ square meter of

total available land ofm².

1. We agree that this Concession fee offer is subject to acceptance by TNPA and is also subject to negotiation at the discretion of the TNPA.
2. The offered Concession fee amount or if applicable, the negotiated and agreed upon Concession fee amount will be incorporated in the Terminal Operator Agreement.

We also note the obligations as set out in the Terminal Operator Agreement.

SIGNATURE OF BIDDER



Annexure EE

TNPA Tariff Methodology

(as contained in separate PDF document uploaded on National Treasury website)



Annexure FF

How to access and register tenders

(as contained in separate PDF document uploaded on National Treasury website)



Annexure GG

Additional Information on Green Hydrogen

(as contained in separate PDF document uploaded on National Treasury website)



Annexure HH

TERMINAL OPERATOR AGREEMENT

(as contained in separate PDF document uploaded on National Treasury website)