

REQUEST FOR PROPOSAL [RFP] No TNPA/2023/11/0015/49564/RFP

DESCRIPTION: ESTABLISHMENT OF AN APPROVED PANEL OF SERVICE PROVIDERS TO BE APPOINTED AS OPERATOR(S) OF LAST RESORT OF TNPA PORT TERMINAL/FACILITY OPERATIONS FOR A PERIOD OF THREE (3) YEARS AS AND WHEN REQUIRED, AS A TRANSITIONAL MECHANISM UNTIL NEW TERMINAL OPERATOR(S) ARE APPOINTED THROUGH THE SECTION 56 PROCESS

NON-COMPULSORY BRIEFING SESSION DATE: Wednesday, 13 December 2023 at 10:00

QUESTIONS AND ANSWERS 1 OF 1

Question	Answer
Questions Posed During Briefing Session	
<p>1. Is the main company allowed to bid in this RFP to be on the panel of last resort rather than its 100% owned subsidiaries who are the operating companies. If the answer to question 1 is "Yes", then can main company use the experience of its 100% subsidiary companies in its submission in terms of this RFP?</p>	<p>a) Yes, any suitable company can bid provided that the Company is a corporate entity that will provide the service and must meet the criteria set to be placed on the Panel of Terminal Operators who will provide such services by and on behalf of the TNPA in its role as "Operator of Last Resort". If a Company is not able to meet all the requirements in its single capacity (either Holding or Subsidiary), the company can collaborate and formulate a Joint Venture or Consortium to bid for this particular tender.</p> <p>b) The Holding Company would need to formulate a Joint Venture or a Consortium with its subsidiaries for their RFP submission to be considered and evaluated uniformly with other competitors. This is to ensure the fair evaluation and selection of the panel.</p>
<p>2. Can TNPA please grant an extension of at least two months for the submission of this RFP</p>	<p>a) The need for bid extension will be assessed closer to the time depending on demand and motivation. The period of extension will also be decided then.</p>
<p>3. Who's terminal guidelines will the terminal Operators utilize for berthing and servicing of vessels.</p>	<p>a) This RFP is intended to constitute a panel of terminal operators and as a default the terms and conditions which the existing Terminal</p>

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	<p>Operator uses will continue to apply to ensure unnecessary disruption to terminal operations.</p> <p>b) It must however be noted that where a Terminal Operator Licence or Terminal Operator Agreement is cancelled and or suspended, TNPA will develop a specification based on the particular operational needs of each terminal and this may include a revision of the terminal guidelines.</p>
<p>4. Please confirm that the panel will be reconstituted every 3 years</p>	<p>a) The panel will be utilised for a period of three years, thereafter, re-advertised for the appointment of a new panel towards the end of the third year depending on the success of the first panel.</p>
<p>5. The Operator of last resort is a section 11 function of the National Ports Authority, and the question is whether this can be legally outsourced to a third party?</p> <p>From a regulatory perspective, the current RFP combines two distinct functions of operator of last resort and the section 60 duties in terms of the National Ports Act, which should be read in conjunction with the applicable legal instruments of terminal operators. Clarity is required as to whether the RFP is accurately issued and worded?</p>	<p>a) The question turns on a perspective or interpretation of the relevant provisions of the Ports Act and the intent is not to delegate a statutory function which is otherwise not capable of such delegation in terms of the law.</p> <p>b) The RFP is intended to establish a Panel of Terminal Operators who will assist the TNPA in playing its role and executing its function as an "Operator of Last Resort".</p> <p>c) The full nature and extent a particular Terminal Operator will play is highly dependent on the extent of the dysfunctionality a particular terminal is experiencing.</p>
<p>6. Under Annexure A, as the Description for Experience it says the following: <i>"Bidder to demonstrate experience of operating and maintaining a Port Terminal as a Terminal Operator or stevedore"</i></p>	<p>a) If a Stevedore is able to demonstrate that it meets the criteria set out on Annexure A, it will qualify to be placed on the Panel of Terminal Operators.</p>

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<p>Does this mean that a stevedore who, by definition, handles cargo over the quayside or on a vessel but does not actively operate terminals, would be permitted to sit on the panel to be a Terminal Operator?</p>	
<p>7. Please confirm if the key deliverables as stated under scope of works, 3.3 on the RFP are required across all 8 ports?</p>	<p>a) As the RFP clearly states, the intent is to establish the panel to support the TNPA across all Ports and will be appointed as and when the occasion arises. Item 3.3 pertains to general deliverables that a Terminal Operator is expected to perform. The definitive scope and deliverables will be issued with the subsequent RFQ's/RFP's issued to the panel.</p>
<p>8. Will only panel members be eligible to bid or is the public also be allowed to bid?</p>	<p>a) Only panel members will be allowed to bid. However, in case where the required skills are not obtained from members of the panel, TNPA reserves the right to procure a Service Provider as set out on the RFP document, Section 4, clause 3 (a).</p>
<p>9. What happens in the event that services required does not fall within the skills set of the panel?</p>	<p>a) The RFP document, Section 4, clause 3 (a) indicates that "<i>TNPA reserves the right to procure a Service Provider if and in instances where the required technical capacity is not available from the approved Panel of Services Providers.</i>"</p>
<p>10. Please provide the Technical Evaluation Criteria referred to as Annexure A on page 14 of 33 of the RFP</p>	<p>a) The Technical evaluation criteria is part of the attachments published with the bid document.</p>
<p>11. On Section 10: Port and Commodity Selection Form, there is a difference between sectors and commodities. The schedule 5.3 may not be reflecting accurately the dedicated containers terminals versus multi-purpose terminals</p>	<p>a) The RFP is intended to establish a Panel and for bidders to indicate their particular commodity/sector expertise and port of interests. b) It is noted that Mossel Bay does not have a Terminal in the ordinary sense of the word, it</p>

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<p>handing containers. Further, by way of example, Mossel Bay has no terminals.</p>	<p>does however have an offshore cargo handling facility as provided for in Section 66 of the Ports Act.</p>
<p>12. How many service providers are required in the pool, is there a limit?</p>	<p>a) All bidders that pass the functionality assessment will form part of the panel.</p>
<p>13. Will TNPA allow competitor Terminal Operators to be on the list or will the list/Terminal Operators be subject to Competition Commission approvals?</p>	<p>a) This and other legislative requirements will be given due and proper consideration as and when the need arises to make a formal appointment. Suffice to state, TNPA is obliged and will comply with all regulatory requirements.</p>
<p>14. How does the RFP align with existing TOA/TOL provisions where the TO defaults/terminates? The understanding is that the process is governed in terms of specific provisions in the TOA/TOL which need to be followed first, i.e., TNPA will invoke the breach/termination clauses in the TOA/TOL as that is the agreement that governs the relationship between TNPA and the TO as the provisions in Section 60 of the Act are already incorporated in the TOA/TOL.</p>	<p>a) The appointment of a Terminal Operator will take place with due regard to the rights and duties of the TNPA and a particular Terminal Operator as provided for in the Terminal Operator Licence and Terminal Operator Agreement.</p>
<p>15. The current RFP includes the provision of an interim Terminal Operator for the suspension and or cancellation of a Terminal Operator licence and lease, TNPA to guide whether it will include current / existing section 79 or section 56 terminal operators.</p>	<p>a) TNPA's right to appoint a Terminal Operator to step in as it's Terminal Operator of last resort where there is a suspension and or cancellation of a section 65 Terminal operator licence, section 56 terminal operator agreement and section 79 Terminal operator agreement.</p>
<p>16. When the list has been compiled, will the Terminal Operators be subject to an annual review to ensure that they still meet the criteria to remain on the list as possible step-in operators? It is uncertain how TNPA will manage changes for the respective companies post the initial evaluation checks.</p>	<p>a) Section 4, clause 3 indicates that "<i>(h) During the panel term, Transnet National Ports Authority (TNPA) will periodically require all service providers appointed to the panel to submit updated company information and documentation (e.g., COIDA, B-BBEE, CIPC, CSD, SARS tax compliance pin etc.)</i> (i) TNPA</p>

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	<p><i>reserves the right to conduct a refresh of the panel on a periodic basis.”</i></p> <p>b) Any changes will be managed through the clauses above mentioned.</p>
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Questions Posed After Briefing Session	
<p>1. If the intended period is up to 3 years, what financial guarantees/bonds will TNPA expect the incoming Terminal Operators to lodge to ensure that the party has the financial ability to operate the facility for up to 3 years. TNPA needs to disclose this to the potential bidders as that cannot be postponed and only be included if a RFP is issued. The financial checks that TNPA will perform as part of the evaluation does not provide a guarantee that the Operator has the cashflow/funding to operate a Terminal for up to 3 years.</p>	<p>These will be determined during the next phase of the process as each case will need to be dealt with on its merits and the extent of dysfunctionality at a particular terminal.</p>
<p>2. Is the TNPA expecting the defaulting Terminal Operator to make available/transfer its customers/clients, labour, moveable assets, IP etc to an interim third party and what mechanisms will be in place for payment for such use?</p>	<p>This will be determined during the next phase of the process as each case will be dealt with on its merits and the extent of dysfunctionality at a particular terminal.</p>
<p>3. How will risk and liability and indemnities operate during this intervening period?</p>	<p>This will be determined during the next phase of the process as each case will be dealt with on its merits and the extent of dysfunctionality at a particular terminal.</p>
<p>4. No mention of how IP will be protected as a competitor of the current cancelled Terminal Operator will have access to the IP and operations and commercials and the like.</p>	<p>This will be determined during the next phase of the process as each case will be dealt with on its merits and the extent of dysfunctionality at a particular terminal.</p>

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5. For this submission, do we need to complete Annexure B: Master Agreement. If yes, what information do we need to fill in?	The document is provided for review at this stage of the RFP process.