

TRANSNET SOC LTD

ACTING THROUGH ITS OPERATING DIVISION

TRANSNET NATIONAL PORTS AUTHORITY

("TNPA")

REQUEST FOR PROPOSAL FOR APPOINTMENT OF A TERMINAL OPERATOR TO, ACQUIRE, OPERATE, MAINTAIN, REFURBISH, AND/OR CONSTRUCT AND TRANSFER A LIQUID BULK TERMINAL FOR A TWENTY-FIVE (25) YEAR CONCESSION PERIOD AT THE PORT OF CAPE TOWN LIQUID BULK PRECINCT.

REFERENCE NUMBER	: TNPA/2024/04/0016/62969/RFP
ISSUE OF RFP	: 16 April 2024
COMPULSORY BRIEFING	: 30 April 2024
BID SUBMISSION DATE	: 15 July 2024
CLOSING TIME	: 16:00 CAT
BID VALIDITY PERIOD	: 365 CALENDER DAYS FROM THE BID SUBMISSION DATE

Note to the bidders:

Bidders are advised to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues that they may encounter due to their internet speed, bandwidth, or the size of the number of uploads they are submitting. Transnet will not be held liable for any challenges experienced by bidders as a result of the technical challenges. Please do not wait for the last hour to submit. A Bidder can upload 30 MB per upload and multiple uploads are permitted.

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1 DISCLAIMER

- 1.1. The Request for Proposals ("RFP") (which request shall include all other information, written or oral, made available during the RFP process) is being made available by the Transnet National Ports Authority, an operating division of Transnet SOC Ltd with registration number 1990/000900/30 ("TNPA") to select a Preferred Bidder with whom TNPA may conclude a Terminal Operator Agreement.
- 1.2. This RFP documentation 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 documentation as an investment recommendation by TNPA or any of its Transaction Advisors. Each person to whom this documentation (and other later or related documents) is made available or who accesses it, must make his/her/its own independent assessment of the Project after making such investigation and taking such professional advice as deemed necessary. Neither the receipt of this document 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 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

qualification and evaluation criteria contained in this RFP document 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 Act" 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 offer. In particular, please note that TNPA reserves the right to:
 - 1.8.1. modify the Project and request Bidders to re-bid 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;
 - 1.8.4. not necessarily award the Project to the highest scoring Bid Response or an Alternative Bid Response subject to 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 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 TNPA shall not be liable to the Bidders or the Preferred Bidder for any consequences, claims or costs arising from any of these actions.

1.8.11. TNPA shall not be liable to the Bidders or the preferred bidder for any consequences, claims, or costs arising from any of the 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, over.
- 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

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

- 2.1. **"Actual Operations Commence date"** - the date to be determined by TNPA after consultation with the Preferred Bidder and the Incumbent Terminal Operator during the Transition Period as the actual date for the commencement of Operations and/or the date of Operation Commencement as stated in the Operations Certificate issued by the Independent Certifier;
- 2.2. **"Administrative Responsiveness"** - means compliance with the administrative requirements set out in (*Qualification Criteria 1: Administrative Responsiveness*) of Part II of this RFP;
- 2.3. **"Advisors"** - any advisors to any Bidder, Member, Contractor or any other participants in any Bid Responses;
- 2.4. **"Alternative Bid Response"** - has the meaning ascribed to it in Clause 20 of Part I (*General Requirements, Rules and Provisions*) this RFP;
- 2.5. **"Annexure" or "Annexures"** - any annexure or annexures attached to this RFP;
- 2.6. **"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;
- 2.7. **"BAFO"** - best and final offer;
- 2.8. **"Berth"** - the berth or berths to which the Terminal is connected via pipelines used for the conveyance of liquid bulk Cargoes to and from the Terminal as reflected in Annexure B (Terminal Layout). Berths are common-user berths, open to use by other liquid bulk terminal operators and shipping lines calling at such other operators' liquid bulk terminals.

- 2.9. **"Bidder"** - any Company or a Consortium of Members that submits a Bid Response;
- 2.10. **"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);
- 2.11. **"Bid Response"** - any bid submitted by a Bidder in response to the invitation contained in this RFP;
- 2.12. **"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 to Bidders by way of a Briefing Note;
- 2.13. **"Bid Submission Phase"** - the period commencing on the Bid Submission Date and continuing until the Terminal Operator Agreement comes into force and effect;
- 2.14. **"Bid Submission Schedules"** - the Schedules of this RFP, that are to be completed by the Bidder and or its members and submitted with the Bid Response;
- 2.15. **"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;
- 2.16. **"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;

- 2.17. **"Briefing Note"** - any document issued in writing by TNPA, prior to the Bid Submission Date, that amends or supplements this RFP in any way. These notes shall be consecutively numbered in the order in which they are issued;
- 2.18. **"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);
- 2.19. **"Business Case Guidelines"** - the guidelines in accordance with which each Bidder must develop its Business Case (Annexure CC);
- 2.20. **"Business Day"** - any day other than a Saturday, Sunday or gazetted National public holiday in the Republic of South Africa;
- 2.21. **"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;
- 2.22. **"B-BBEE Act"** - Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;
- 2.23. **"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;
- 2.24. **"Cargo"** - means for the purpose of this RFP all Liquid Petroleum and related products thereof, but excluding Liquefied Natural Gas (LNG), Any reference in this document to "cargo" or "cargoes" includes Liquid Bulk Cargoes;
- 2.25. **"Change in Control"** - means any change whatsoever in Control (as defined in the Draft Terminal Operator Agreement), whether effected directly or indirectly;
- 2.26. **"Companies Act"** - the Companies Act, 71 of 2008, as amended;
- 2.27. **"Company"** - a Company incorporated in the Republic of South Africa in terms of the Companies Act;
- 2.28. **"Competition Act"** - the Competition Act, 89 of 1998, as amended;

- 2.29. **"Completion Certificate"** - has the meaning as ascribed to this term in the Draft Terminal Operator Agreement;
- 2.30. **"Concession"** - the concession granted by TNPA to undertake the Project in terms of section 56 of the National Ports Act;
- 2.31. **"Concession Fee"** - fees payable by the Terminal Operator to TNPA, in respect of the rights to undertake the Project as set out in clause 14;
- 2.32. **"Concession Fee Offer"** - Offer made by a Bidder as part of its Bid Response;
- 2.33. **"Concession Period"** - The twenty-five (25) year period comprising the Acquire, Operate, Maintain, refurbish and/or construct and Transfer a Liquid Bulk Terminal to TNPA. During this period, the Terminal Operator is granted the right to undertake the Project in terms of the Terminal Operator Agreement;
- 2.34. **"Consents"** - all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licenses, 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;
- 2.35. **"Consortium"** - a joint venture and or a special purpose vehicle comprising of a number of Members constituted in accordance with a consortium or a joint venture agreement for the purpose of submitting a Bid Response whom will if successful, incorporate a Project Company to undertake the Project;
- 2.36. **"Constitution"** - the Constitution of the Republic of South Africa Act, 108 1996 as amended from time to time;
- 2.37. **"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;

- 2.38. **"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;
- 2.39. **"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;
- 2.40. **"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.;
- 2.41. **"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;
- 2.42. **"Corporate Financing Support Letter"** - the letter that has to be provided by the Bidder, its Members or Shareholders as set out in Annexure Y;
- 2.43. **"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;
- 2.44. **"Development Phase Date"** - Means the period commencing on the Signature Date and is inclusive of 18 (Eighteen) months Environmental Authorisation, 24 (twenty-four) months Construction and Commissioning respectively and shall end on Operations Commencement date, which date may be amended in writing by agreement between the parties.

- 2.45. **"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;
- 2.46. **"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;
- 2.47. **"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;
- 2.48. **"Draft Terminal Operator Agreement"** - the Draft Terminal Operator Agreement that is issued with this RFP, and Annexed hereto as Annexure Z (*Draft Terminal Operator Agreement*);
- 2.49. **"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;
- 2.50. **"Effective Date"** - has the meaning ascribed to this term in the Draft Terminal Operator Agreement;
- 2.51. **"EME"** - exempted micro-enterprise, being an entity with an annual turnover of R10 (ten) million or less, in terms of the Amended B-BBEE Codes;
- 2.52. **"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 law, dealing with environmental matters, for the purposes of this Project;
- 2.53. **"Equity"** - the entire issued share capital of, and Shareholder Loans to, the Terminal Operator;

- 2.54. **"Equity Funding"** - funding to be provided to the Project Company by its Shareholders either by way of share capital or Shareholder loans;
- 2.55. **"Essential Returnable Documents"** - the bid returnable documents set out in the Bid Response Form (Annexure K) of this RFP;
- 2.56. **"Evaluation Criteria"** - the evaluation criteria set out in Part III (*Evaluation Criteria*) of this RFP;
- 2.57. **"External Debt"** - any Debt, other than Corporate Finance, raised by the Terminal Operators from external sources;
- 2.58. **"Finance 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;
- 2.59. **"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;
- 2.60. **"Financial Close"** - has the same meaning as defined in the Terminal Operator Agreement;
- 2.61. **"Financing Agreements"** - has the same meaning as defined in the Terminal Operator Agreement;
- 2.62. **"Government"** - the Government of the Republic of South Africa and any of its departments, agencies or any other state-owned companies or entities that it manages, owns, or controls;
- 2.63. **"Guarantor"** - an entity that unconditionally guarantees the obligations of the Terminal Operator with regard to External Debt or Corporate Financing;
- 2.64. **"Handover Equipment"** - Terminal Equipment that may be handed over to the Preferred Bidder by the Incumbent Terminal Operator, after the purchase agreement between the two parties.
- 2.65. **"Harbour Master"** - an employee of TNPA contemplated in terms of section 74(3) of the National Ports Act and who is, in respect of the port for which he or she is appointed, the final authority in respect of all matters relating to pilotage, navigation,

- navigationals aids, dredging and all other matters relating to the movement of vessels within port limits;
- 2.66. **"Highest Ranking Bidder"** - the Bidder who is awarded the most points after the completion of the Part III (Evaluation Criteria) evaluation;
- 2.67. **"Incumbent Terminal Operator"** - the entity that is currently undertaking Operations at the Terminal;
- 2.68. **"Independent Certifier"** - has the meaning ascribed to it in the Draft Terminal Operator Agreement;
- 2.69. **"Legal Advisors"** - 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);
- 2.70. **"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;
- 2.71. **"Lenders"** - the financiers to a Bidder in respect of the Project;
- 2.72. **"Lenders Support Letter"** - the letter provided by Lenders to a Bidder confirming provisional availability of external funding in respect of such Bidder's Bid Response as set out in Annexure Y;
- 2.73. **Liquid Bulk Terminals** - equipped terminals to handle cargoes in liquid and gaseous forms, such as crude oil and oil products
- 2.74. **"Mandatory Returnable Documents"** - the bid returnable documents set out in the Bid Response Form (Annexure K) of this RFP;
- 2.75. **"Member"** - any legal entity and/or natural person that is a member of a Consortium that will become a Shareholder of the Project Company once it is incorporated;

- 2.76. **"National Treasury"** - has the same meaning ascribed to it in the Public Finance Management Act, 1 of 1999;
- 2.77. **"National Ports Act"** - the National Ports Act, 12 of 2005, as amended;
- 2.78. **"NERSA"** - The National Energy Regulator of South Africa established in terms of National Energy Regulator Act, 40 of 2004;
- 2.79. **"NEMA"** - the National Environmental Management Act, 107 of 1998, as amended;
- 2.80. **"NDP"** - National Development Plan 2030 issued by the Government in 2013, aimed at, *inter alia*, 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;
- 2.81. **"Objective Criteria"** - the Objective Criteria set out in Part IV of this RFP;
- 2.82. **"Occupational Health and Safety Act"** - The Occupational Health and Safety Act, 85 of 1993, as amended;
- 2.83. **"Operating Rights"** - Operating Rights as defined in Annexure Z (*Terminal Operator Agreement*);
- 2.84. **"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 Z (*Draft Terminal Operator Agreement*) of this RFP;
- 2.85. **"Petroleum Pipelines Act"** - the Petroleum Pipelines Act, 60 of 2003 as amended;
- 2.86. **"Port Infrastructure"** - the basic common use structures of the Port including the Berth, breakwaters, seawalls, channels, basins, quay walls, roads, and infrastructure used for the provision of water, lights, power, sewage and similar services;
- 2.87. **"Port"** - the Port of Cape Town, which has been determined as such in terms of the National Ports Act and which is situated in Cape Town in the Western Cape province of South Africa;

- 2.88. **"Ports Regulator"** - the Ports Regulator of South Africa, the independent ports regulatory body established in terms of section 29 of the National Ports Act;
- 2.89. **"Port Rules"** - the rules made in terms of section 80(2) of the National Ports Act;
- 2.90. **"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 terminals in the Port, contractors, and any contractor and/or any third parties authorised to conduct business on behalf of any Port User;
- 2.91. **"Preferred Bidder"** - a Bidder which shall comprise, a successful bidder that meets the requirements of the RFP.
- 2.92. **"Preferred Bidder Guarantee"** - the guarantee to be provided by the Preferred Bidder to TNPA in terms of Clause 35.1 (Preferred Bid Guarantee) of Part I (General Requirements, Rules and Provisions) of this RFP, in the form and content attached as Annex I to this RFP;
- 2.93. **"Preliminary Design"** - Preliminary design of the Terminal plan layout of the full site arrangement as outlined in part II of this RFP;
- 2.94. **"Project"** - means acquiring, operating, maintaining and/or constructing and transfer of a Terminal at the Port to provide the services as detailed in this RFP.
- 2.95. **"Project Company"** - a special purpose company that Members of a Consortium and or Special Purpose Vehicle appointed as the Preferred Bidder must incorporate and use as the vehicle to undertake the Project and with whom the TNPA will conclude the Terminal Operator Agreement;
- 2.96. **"Project Officer"** - the person appointed by TNPA as the project officer in respect of the Project;
- 2.97. **"Project Site"** - the portion of land (being the land area measuring approximately 18 722 m²) situated at the Eastern Mole in the liquid bulk precinct in the Port of Cape Town. The

Terminal and Terminal Infrastructure shall be situated as indicated in the diagram in Annexure B (Terminal Layout), which diagram shall include all wayleaves, servitudes, and access to common or public areas required for pipeline routing and berth access, to enable the Terminal Operator to operate and/or construct and commission the Terminal.

- 2.98. **"Project Term"** - has the meaning given to it in the Terminal Operator Agreement (Annexure Z);
- 2.99. **" PFMA"** - the Public Finance Management Act, 1 of 1999, as amended;
- 2.100. **"QSE"** - means a Qualifying Small Enterprise, being an entity with a turnover of more than R10 (ten) million but less than R50 (fifty) million, in terms of the Amended B-BBEE Codes;
- 2.101. **"Qualification Criteria"** - the qualification criteria set out in Part II (*Qualification Criteria*) of this RFP;
- 2.102. **"Rand" or "ZAR"** - South African Rand, the lawful currency of the Republic of South Africa;
- 2.103. **"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;
- 2.104. **"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;
- 2.105. **"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;
- 2.106. **"RFP"** - this Request for Proposals document and all Annexes, schedules, and other appendices to it and any Briefing Notes issued in respect of it, from time to time, by TNPA to solicit Bid Responses from the Bidders;
- 2.107. **"RFP Process"** - the process that is being conducted by TNPA in respect of the Project, as set out in this RFP;
- 2.108. **"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;
- 2.109. **"Sector Code"** - a sector code for the maritime transport and service sector published in terms of section 9 of the B-BBEE Act;
- 2.110. **"Shareholders"** - the Shareholders of a Company or the Members of the Consortium that will become the holders of Equity in the Project Company once selected as the Preferred Bidder;
- 2.111. **"Shareholder Loans"** - Loans advanced by Shareholders to the Terminal Operator;
- 2.112. **"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;
- 2.113. **"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 whom will if successful, incorporate a Project Company to undertake the Project
- 2.114. **"Standard Bid Response"** - has the meaning ascribed to it in Clause 20 of Part I (*General Requirements, Rules and Provisions*) of this RFP;
- 2.115. **"Substantive Responsiveness"** - has the meaning ascribed to it in (*Qualification Criteria 2: Substantive Responsiveness*) of Part II of this RFP;
- 2.116. **"Terminal"** - means the site boundaries demarcated in Annexure B (Terminal Layout), specialising in liquid bulk cargoes to be

- operated and/or redeveloped by the Terminal Operator, in accordance with the terms of this RFP and the terms of the Terminal Operator Agreement;
- 2.117. **"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 for the purposes of this project be deemed to be movable for the purposes of this Project, that are required in order to operate the Terminal;
- 2.118. **"Terminal Infrastructure"** - means the land-based structures, including the bund walls, pipelines, pipeline manifolds, storage facilities, terminal buildings, sheds, workshops, substations, surfacing and the internal network for the provision of water, lights, power, sewerage and similar services within the Terminal boundaries, as well as pipelines used for the conveyance of Liquid Bulk Cargoes between the Terminal and the Berths.
-
- 2.119. **"Terminal Operator"** - the Preferred Bidder granted the right to conduct the Project in terms of the Terminal Operator Agreement concluded between the Terminal Operator and the TNPA, pursuant to being selected as the Preferred Bidder under this RFP;
- 2.120. **"Terminal Operator Agreement (TOA)"** - the agreement to be entered into between TNPA and the Terminal Operator, pursuant to the Project, in the form of the Draft Terminal Operator Agreement attached in this RFP in Annexure Z;
- 2.121. **"TNPA"** - Transnet National Ports Authority, an operating division of Transnet;
- 2.122. **"Terminal Operations"** - services provided at the Terminal, consisting of handling Cargo, storing Cargo, transshipment of Cargo and delivering Cargo from and to vessels and services related thereto;
- 2.123. **"Transaction Advisors"** - the firms advising TNPA and/or the Bidders, in respect of this RFP;

- 2.124. **"Transition Period"** - the period between the date of signature of the Terminal Operator Agreement and the Actual Operations Commencement Date, during which TNPA and the Terminal Operator, after consultation with the Incumbent Terminal Operator, shall enter into arrangements relating to the processes for the handing over of the Terminal including the Terminal Infrastructure and where applicable the Handover Equipment;
- 2.125. **"Transition Schedule"** - a schedule to be developed by TNPA in consultation with the Terminal Operator and after consultation with the Incumbent Operator within [30] days of the date of signature of the Terminal Operator Agreement, setting out the processes for the handing over of the Terminal including the Terminal Infrastructure and, where applicable the Handover Equipment;
- 2.126. **"Transnet"** - Transnet SOC Ltd, with registration number 1990/000900/30, is a state-owned company, duly incorporated in accordance with the company laws of the Republic of South Africa;
- 2.127. **"Valuer"** - a property valuer registered with the South African Council for Property Valuers; and
- 2.128. **"VAT"** - the value-added tax levied in terms of the Value-added Tax Act, 89 of 1991.
- 2.129. **Way leave** - a right of way granted by a landowner, generally in exchange for payment and typically for purposes such as the erection of telegraph wires or laying of pipes
- 2.130. **"Works"** - any Construction, rehabilitation, refurbishment, equipment procurement and/or installation, renewal, reconstruction, repair or reinstatement work required in respect of the Terminal Infrastructure and/or the Terminal Equipment as set out in the Conditions Assessment Report (Annexure G); and
- 2.131. **"Works Programme"** - the programme for the undertaking of the Works to be submitted by the Terminal Operator and approved by TNPA.

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, company or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, 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 through the Act to be 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 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;

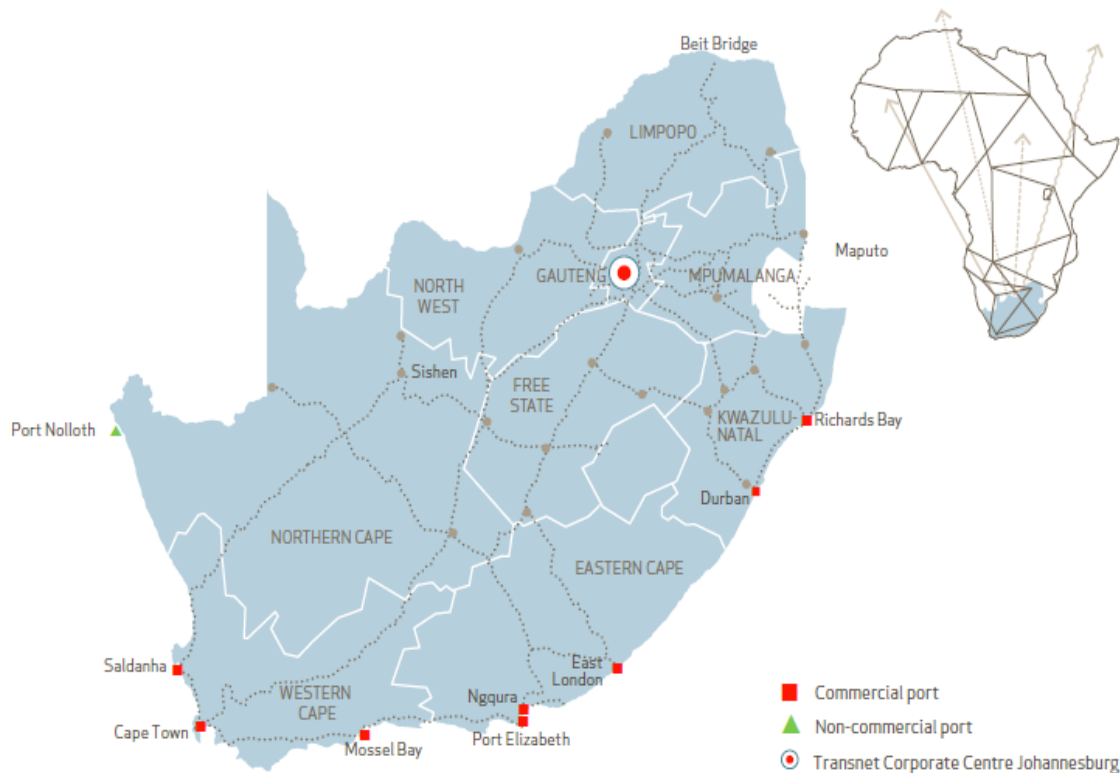
3.2.5. to provide or arrange marine-related services, i.e., pilotage services, tug assistance, berthing services, dredging, and hydrographic services;

3.2.6. to ensure that adequate, affordable, and efficient port services and facilities are provided, including regulatory oversight of all port activities; and

3.2.7. 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 the 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 terminal operators, shipping lines, shipping agents, cargo owners and the clearing and forwarding industry.

Figure 1: National Port System



4 BACKGROUND

- 4.1. TNPA is issuing this RFP, for the possible appointment of a Terminal Operator to acquire, operate, maintain and/or construct and transfer a Liquid Bulk Terminal for a twenty-five (25) year concession at the Port of Cape Town Liquid Bulk Precinct, as provided for in section 56 of "the Act".

- 4.1.1. Section 56 of the Ports Act permits TNPA to enter into an agreement with any person in terms of which that person, for a specific period and in

accordance with the terms and conditions of the agreement, is authorised to:

- 4.1.1.1. design, construct, rehabilitate, develop, fund, maintain or operate a port terminal or port facility, or provide services relating thereto; provide any other service within a port designated by TNPA for this purpose;
 - 4.1.1.2. perform any function necessary or ancillary to the matters referred to in Clauses 4.1.1.1 and 4.1.1.2; or
 - 4.1.1.3. perform any combination of the functions referred to in Clause 4.1.1.3,
- 4.1.2. A Terminal Operator Agreement will be negotiated and concluded with the Preferred Bidder, who is appointed as the preferred Bidder following the completion of the evaluation of all Bid Responses.
 - 4.1.3. A draft Terminal Operator Agreement, which will record the respective rights and obligations of the TNPA and the Terminal Operator, RFP annexed hereto marked Annexure Z.
 - 4.1.4. In undertaking the Concession, the Terminal Operator will be responsible for the operation and maintenance of whatever Terminal infrastructure, or any fixed improvements to the Project Site, which shall include but not be limited to, sheds, offices, ablutions, canteens, fencing, security systems, Terminal paving, bulk services, communication systems, lighting, substations, and general machinery, plant and equipment, as may be required to operate the Terminal.

4.2. Site description

Figure 2. Aerial Overview of Liquid bulk Precinct



4.2.1. The above Liquid Bulk Precinct consists of the following:

- 4.2.1.1. **Eastern Mole 1** was used for FFS Bunkering Operations but is currently not operational. **Eastern Mole 2, Tanker Basin 1** and **2** are common user liquid bulk berths shared by Astron Energy, Burgan Cape Terminals, FFS Refiners, and FFS Tank Terminals Common commodities handled. The product mix within the facility includes Diesel, Petrol, Jet Fuel, Marine Fuel Oils (MFO), Marine Gas Oils (MGO), VLSFO -Very Low Sulphur (0.5%S) Fuel Oil, High Sulphur Fuel Oil (HSFO) (3.5%S) Fuel Oil, Bitumen, and Vegetable Oil.

4.2.2. **Figure 3.** Below Aerial Overview shows a site identified with existing equipment suitable for the establishment of a Terminal.



4.2.3. The Project Site has 21 bulk storage tanks with gross volume of 33 300m³.

4.2.3.1. Bitumen Plant has 5 tanks.

4.2.3.2. Diesel Plant with 5 tanks,

4.2.3.3. Blend Plant with 5 tanks and 3 insulated tanks, and

4.2.3.4. 3 additional tanks for Fire Water and Thermal Heating Systems.

4.2.3.5. 2 Road loading gantries with 2 loading bays each,

4.2.3.6. 2 weighbridges and telemetry on all tanks for stock control,

4.2.4. 50 product pumps, 4 firefighting pumps and approximately 10kms of pipelines, of which almost 2kms is heated,

- 4.2.5. The Terminal has the ability to heat product, blend product, transfer between tankage, and recirculate within the tank,
- 4.2.6. Access to 5 import/export lines from 2 Berths,
- 4.2.7. Stand-alone firefighting system with water and foam,
- 4.2.8. 2 Thermal Heaters for insulated tanks and pipelines, and
- 4.2.9. Vacuum system for collection of oily water from site separators.
- 4.2.10. The salient features of the site are as follows:
 - 4.2.10.1. The approximate land extent of the Terminal measures 18686 m² (Project Site). The Terminal Layout is set out in Annexure B.
 - 4.2.10.2. Detailed technical information depicting pipeline routing to the berth is annexed hereto marked Annexure II.
 - 4.2.10.3. Access to the Terminal site can be made via road. This public road is not for exclusive use by the Terminal Operator but is for the common use of all tenants and the public in the precinct.
 - 4.2.10.4. The Terminal, including the Terminal Infrastructure, will be handed over to the Terminal Operator on a voetstoots basis, notwithstanding the provisions of the Condition Assessment Report.
 - 4.2.10.5. TNPA has assessed the condition of the structures on the Terminal, to capture the current state of the various assets making up the Terminal and has prepared the Condition Assessment Report in respect thereof, which is Annexure G. The Condition Assessment Report is made available to enable Bidders to gain insight into the condition of the Terminal, including the Terminal Infrastructure and Terminal Equipment.
 - 4.2.10.6. Such information will be crucial in the Bidders' determination of the scope of work required and associated investment into the Terminal to elevate it to the required standard such that it is fit for purpose for the intended Operation.
 - 4.2.10.7. Whilst this information is shared in good faith, TNPA does not accept any liability whatsoever, including for any omissions and/or deficiencies in the annexed Condition Assessment Report (Annexure G) or for any loss or damage arising out of or in connection with the use of the information contained therein. The Bidders must make the necessary allowances and

arrangements to verify and validate specific Terminal elements as may be required for their Bid Response.

4.2.10.8. The attention of the Bidders is drawn to the sections of the Condition Assessment Report that set out the Terminal Infrastructure that is at the Terminal. Such Terminal Infrastructure will be handed over to the Terminal Operator on terms and conditions set out in the Terminal Operator Agreement, and shall include the following:

4.2.10.8.1. Vertical Storage Tankage

4.2.10.8.2. Horizontal Storage Tanks

4.2.10.8.3. Electrical pumps

4.2.10.8.4. Diesel pumps

4.2.10.8.5. Piping

4.2.10.8.6. Valves, Strainers and Other Equipment

4.2.10.8.7. Electrical

4.2.10.8.8. Instrumentation

4.2.10.8.9. Bidder's attention is further drawn to the fact that Terminal Equipment belongs to the Incumbent Terminal Operator. The Incumbent Terminal Operator will, during the Transition Period, sell the Terminal Equipment to the Terminal Operator. The Preferred Bidder will be obliged to purchase the Terminal Equipment on commercial terms as agreed between the Incumbent Terminal Operator and the Preferred Bidder if the Preferred Bidder is not the Incumbent Terminal Operator. A valuation of these assets is attached to Annexure G (Valuation of Assets and conditional assessment from Existing Terminal Operator).

4.2.11. Site Baseline Environmental Contamination Assessment

4.2.10.1 Numerous environmental assessments have been conducted historically in the Port by individual companies and by TNPA at different times. A coordinated approach with a single soil and groundwater monitoring

program has been adopted in the Port. The Baseline Environmental Contamination Assessment report will be available for viewing only.

5 PROJECT SCOPE, AND DESCRIPTION

- 5.1. Bidders are required to submit Bid Responses for the right to undertake the Project which entails acquiring, operating, maintenance, refurbishment, and/or construction of the Terminal and the transfer thereof to the TNPA at the end of the Concession Period.
- 5.2. The successful Bidder will be required to obtain and/or comply with the required approvals and licenses (if applicable) to enable the Project, including but not limited to:
 - 5.2.1. Environmental Authorisations;
 - 5.2.2. Water use licenses (if applicable);
 - 5.2.3. NERSA and other Regulatory approvals;
 - 5.2.4. Construction permits; and
 - 5.2.5. Other applicable approvals and licenses.
- 5.3. Bidders are advised to be fully conversant with all Regulations and Tariff methodologies relevant and applicable to the Project and the handling of Liquid Bulk Cargoes, as the appointed Terminal Operator will be required to comply with these Regulations. The appointed Terminal Operator will accordingly be required to, on its own, obtain all the necessary consents.
- 5.4. The Preferred Bidder will be required to comply with all the NERSA Regulations and/or approvals. The Bidder that is appointed as the Preferred Bidder is expected to be fully conversant with NERSA Regulations in respect of the handling of Liquid Bulk Cargoes and should in particular take note of the tariff methodology applied by NERSA in regulating the prices of a Liquid Bulk Terminal Operator.
- 5.5. The appointed Terminal Operator will be responsible for negotiating and concluding any associated services/connectivity outside port boundaries with relevant stakeholders.
- 5.6. The Terminal Operator shall, for the avoidance of doubt, be granted the right to Operate and Maintain the Terminal and carry all risks relating thereto as provided for in the Terminal Operator Agreement.

6 COMPILATION OF DETAILED DESIGNS AND SPECIFICATIONS (FOR REFURBISHMENT OR ENHANCEMENT OF THE SITE)

- 6.1. Bidder will be required to provide detailed designs for any construction work required to TNPA for the purpose of meeting the standards of Liquid Bulk Terminal. The detailed designs and specifications for the Terminal must take into account the following:
- 6.1.1. administration building and parking;
 - 6.1.2. bulk services such as water, sewer, roads, stormwater, and electricity;
 - 6.1.3. movement of cargo within the Terminal;
 - 6.1.4. traffic management plan; and
 - 6.1.5. Safety, Health, and Environmental Specifications
 - 6.1.6. construction and installation of pipelines and loading or discharging facilities at the Liquid Bulk Precinct for the discharge and loading of Bulk Liquid to enable the optimal and efficient use of Terminal Infrastructure.
 - 6.1.7. the possible access to existing pipelines and loading facilities which will be determined by consultation with existing Port Users and terminal operators as may be relevant, in compliance with the Ports Act and NERSA Regulations and such other legislation as may be applicable;
 - 6.1.8. construction and/or connectivity to existing pipelines for the conveyance of Liquid Bulk Cargoes to and from the Terminal which is TNPA's preferred option; and
 - 6.1.9. access to the Project Site via sea, and road.
 - 6.1.10. These designs must be consistent with the relevant South African National Standards (SANS) and International Best Practice Standards for Bulk Liquid Terminals, and such further standards as may be relevant and agreed to with the appointed Terminal Operator
 - 6.1.11. storage facilities to allow for landside/waterside storage to buffer supply and demand.

7 WORKS PROGRAMME

- 7.1. Bidders are required to submit a preliminary Works Programme reflecting how they will undertake the Works if required for refurbishment and enhancement of the Terminal based on the Conditional Assessment Report (Annexure G), as part of their Bid Response.

- 7.2. The Terminal Operator will be required, in terms of the Terminal Operator Agreement, to submit a Works Programme to TNPA for approval prior to undertaking the Works.
- 7.3. The Preferred Bidder will be required to raise the capital required to undertake and complete all the Works required to do refurbishment and enhancement if required.
- 7.4. Despite having prepared the Conditional Assessment Report, TNPA will not prescribe to the Terminal Operator, the extent of the Works to be undertaken at the Terminal. The Preferred Bidder will be required to determine the extent of additional Terminal Infrastructure and Terminal Equipment required for the Terminal.
- 7.5. The Terminal Operator shall be required to complete the requisite Works during Operations and Maintenance of the Terminal as the context requires.

8 TRANSITION ARRANGEMENTS AND SECURITY OF SUPPLY

8.1. Approval to Commence Operations

- 8.1.1. It is recorded that, in order to ensure that there is no interruption of Operations at the Terminal during the cessation of Operations by the Incumbent Terminal Operator and the taking over of such Operations by the Terminal Operator, TNPA shall within 30 (thirty) days of the commencement of the Transition Period, develop the Transition Schedule setting out the processes for the handing over of the Terminal, including the Terminal Infrastructure, and where applicable the Handover Equipment.
- 8.1.2. TNPA shall develop the Transition Schedule in consultation with the Terminal Operator and after consultation with the Incumbent Terminal Operator and take the following factors into account:
 - 8.1.2.1. the date on which the Incumbent Terminal Operator shall cease to undertake Operations at the Terminal;
 - 8.1.2.2. the provisions of the Works Programme;
 - 8.1.2.3. any reports prepared by the independent certifier or engineers appointed or employed by NERSA in relation to the Project Site;
 - 8.1.2.4. the anticipated effective date of the Terminal Operator Agreement; and
 - 8.1.2.5. the anticipated date of operations commencement.
- 8.1.3. Upon completion of all the processes and activities set out in the Transition Schedule that are necessary to ensure seamless transfer of the Terminal from the Incumbent Terminal Operator to the Terminal Operator in a manner that does not interrupt

Operations at the Terminal and ensures security of supply, TNPA shall issue a notice to the Terminal Operator notifying it of the date on which the Terminal will be handed over to the Terminal Operator in accordance with the procedure set out in the Transition Schedule. The date specified by TNPA in the said notice, as the date upon which the aforesaid Terminal will be handed over to the Terminal Operator shall be the Actual Operations Commencement Date.

9 OPERATION AND MAINTENANCE

- 9.1. Bidders to note that it is the Terminal Operator's responsibility 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.
- 9.2. 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.
- 9.3. The Terminal Operator will be required to maintain the surface of the Terminal in good working order and condition, in accordance with International and SANS Standards (as defined in the Draft Terminal Operator Agreement) and including undertaking any cleaning of the surface of the quay.
- 9.4. The Terminal Operator and the TNPA shall agree on the minimum performance norms and standards for the Operation and Maintenance of the Terminal. An overview of Terminal Operator Performance Standards is provided in Annexure J.
- 9.5. The Terminal Operator will be required to provide access, inspection, and data appraisal rights to its storage monitoring system as part of TNPA's statutory terminal oversight and performance functions.
- 9.6. Bidders are to conform to international best practices for the maintenance and operations of the Terminal.

10 DURATION OF TERMINAL OPERATOR AGREEMENT

- 10.1. The Concession to be granted to the Terminal Operator shall be for a period of 25 (twenty-five) years as detailed in the Terminal Operator Agreement. Proposal seeking or envisaging a longer terms should be contained in an alternative bid.
- 10.2. Bidders should note that whilst this RFP and the Draft Terminal Operator Agreement envisage a 25 (twenty-five) year Concession Period, Bidders may suggest a longer Concession Period in an Alternative Bid in accordance with the provisions of clause 20 and in such instance,

must provide reasons for proposing a longer Concession Period and this must be reflected in their financial model and Business Case in the Alternative Bid Response. The longer Concession Period will also be assessed based on the capital expenditure and investment proposed by the Bidder which will be negotiated (should the Alternative Bid be considered) during the Terminal Operator Agreement phase.

11 HANDOVER AND TRANSFER OF THE TERMINAL

- 11.1. The Terminal Operator shall on expiry of the Concession Period transfer the 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.
- 11.2. Prior to the end of the Concession Period, TNPA may in accordance with the terms of the Terminal Operator Agreement, elect to:
 - 11.2.1. 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
 - 11.2.2. on written notice to the Terminal Operator to purchase the Terminal Equipment.
- 11.3. 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.
- 11.4. 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.
- 11.5. 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 Terminal Operator Agreement, and where applicable, be required to comply with its rehabilitation obligations.

12 ACTIVITIES AT THE TERMINAL

- 12.1. The Terminal Operator shall manage and operate the Terminal for the purpose of:
 - 12.1.1. the import/export, transit storage, handling, and distribution of Liquid Bulk Cargoes on to and off a vessel with appropriate Terminal Equipment;

- 12.1.2. organisation of traffic flow, including safe and adequate parking for all Terminal related traffic;
- 12.1.3. maintain Terminal Infrastructure and Terminal Equipment
- 12.1.4. receiving and dispatching of Liquid Bulk Cargoes at the Terminal via vessels, pipelines, and tankers;
- 12.1.5. the temporary storage of Liquid Bulk Cargoes in storage tanks;
- 12.1.6. the transfer of Liquid Bulk Cargoes to, in, and from the Terminal via pipeline, tankers, or
- 12.1.7. the transfer of Liquid Bulk Cargoes from the vessel into the storage tanks for distribution and/ or transfer of liquid bulk products from the storage tanks into the vessel;
- 12.1.8. the distribution of Liquid Bulk Cargoes to inland customers through road, and
- 12.1.9. perform maintenance-related activities that the Terminal Operator may deem necessary.

13 COMMON-USER PRINCIPLE, NON-DISCRIMINATION, AND OPEN ACCESS (THIRD-PARTY ACCESS)

- 13.1. The Terminal, including the Terminal Infrastructure and Terminal Equipment such as the loading facilities shall be used, managed, and operated on a common-user open access basis and on an equal footing in terms of NERSA Common-User Principle, meaning that:
 - 13.1.1. the Terminal Operator shall have the exclusive right to operate the Terminal and shall provide reasonable equality of access to the Terminal and the loading facilities to Terminal users and potential Terminal users wishing to utilise the services of the Terminal; and
 - 13.1.2. 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 and the loading facilities; and
 - 13.1.3. the Terminal Operator shall use and afford all Terminal users who require access and use of the Terminal the right to use the Terminal, on a first come, use it or lose it,

basis, open access to the Terminal and the loading facilities available and uncommitted.

13.1.4. TNPA will require the incorporation the principles outlined in 13.1.1 to 13.1.3 in the Terminal Operator Agreement and non-compliance by the Terminal Operator to these terms and the engagement in any anti-competitive behaviour will be regarded as a breach of the Terminal Operator Agreement.

13.1.5. The principles contained above shall be in line with all the applicable NERSA regulations.

13.2. Subject to the provisions of this RFP, the Terminal Operator shall otherwise be granted the right to undertake the Project, subject to the provisions of "the Act", Port Rules, and any directives as may be issued in terms thereof.

14 CONCESSION FEE OFFER

As consideration for the grant of the Concession, the Facility Operator shall be required to pay Concession Fees to TNPA consisting of the fixed monthly Concession Fee, as described in Clause 66.1 (*Concession Fee Offer*) of Part III (*Evaluation Criteria*) of this RFP. Bidders will be required to propose the Concession Fee payable to TNPA in response to Clause 14 (*Concession Fee Offer*) of Part III (*Evaluation Criteria*) of this RFP.

15 OTHER KEY ROLE PLAYERS IN THE SOUTH AFRICAN PORTS SYSTEM (FOR INFORMATION PURPOSES)

15.1. 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.

15.2. 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.

15.3. **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.

15.4. **THE PORTS REGULATOR OF SOUTH AFRICA ("PRSA")**

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 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 Act".

15.5. **NATIONAL ENERGY REGULATOR OF SOUTH AFRICA ("NERSA")**

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 Gas pipelines industries in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), Gas Act, 2001 (Act No. 48 of 2001) and Gas 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.

15.6. **DEPARTMENT OF MINERAL RESOURCES AND ENERGY ("DMRE")**

The DMRE is responsible for ensuring 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.

15.6.1. The DMRE's Energy Policy is based on the following key objectives:

15.6.2. diversifying primary energy sources and reducing dependency on coal;

15.6.3. attaining universal access to energy by 2014;

15.6.4. accessible, affordable and reliable energy, especially for the poor;

15.6.5. good governance, which must also facilitate and encourage private-sector investments in the energy sector; and

15.6.6. environmentally responsible energy provision.

16 PURPOSE OF THE RFP

16.1. The purpose of this RFP is to:

16.1.1. invite Bidders to submit their Bid Responses to this RFP;

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

16.1.3. set out the 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;

16.1.4. 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;

16.1.5. set out the framework and information requirements within which Bid Responses to this RFP should be made;

16.1.6. 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

16.1.7. 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.

16.1.8. This RFP is issued in accordance with Section 56 of the Act and other applicable legislation.

17 STRUCTURE OF THIS RFP

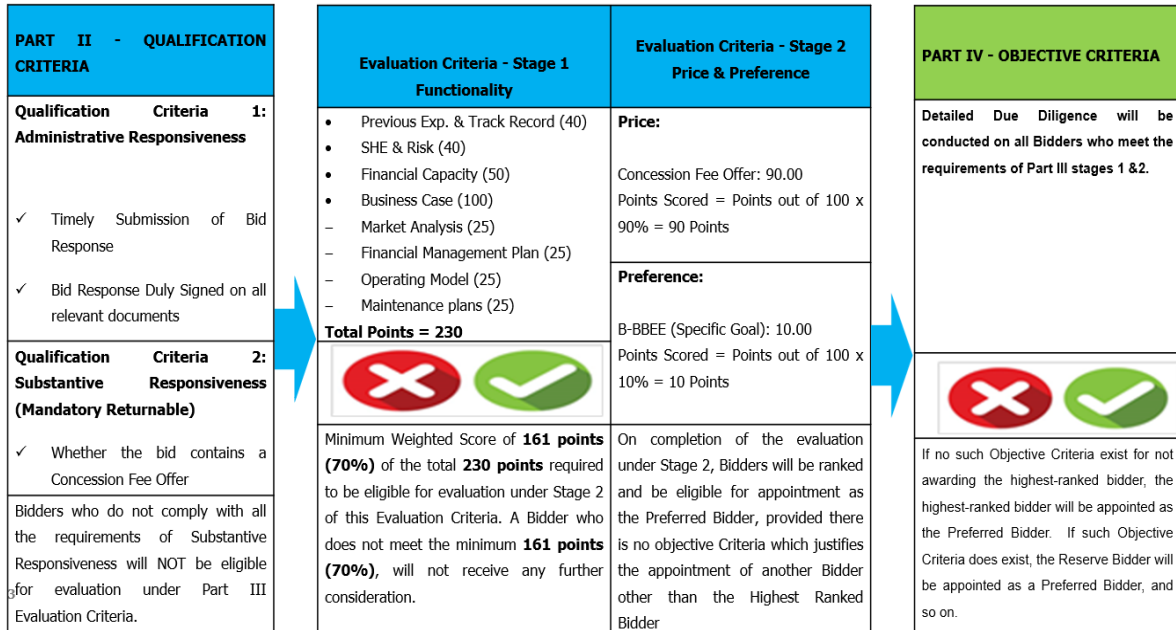
17.1. The Structure of this RFP is as follows:

- 17.1.1. 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.
- 17.1.2. 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.
- 17.1.3. 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.
- 17.1.4. Part IV (Objective Criteria) The TNPA will undertake a due diligence exercise as part of the Objective Criteria on all the Bidders that have passed Part III, Stage I & II (Functionality, Price & BBEE) of the evaluation, prior to making the final appointment of the Preferred Bidder. The purpose of the Objective Criteria is to determine if there are objective grounds on which the TNPA may not proceed with awarding the Project to the Highest-Ranking Bidder in Part III (Evaluation Criteria) and instead, select the Preferred Bidder.
- 17.1.5. Transnet reserves the right to conduct Probity Check on the Preferred Bidder and its shareholders.
- 17.1.6. In the event that the due diligence and/or Probity Check exercise establishes that the Highest Scoring Bidder's Bid Response cannot be credibly verified and or that the risk analysis establishes that the Bidder has not taken into account key business risks, such Bidder will not be eligible for appointment as the Preferred Bidder.

18 STRUCTURE OF THE EVALUATION OF BID RESPONSES

- 18.1. 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 the Part II (Qualification Criteria) will it be evaluated in Part III (Evaluation Criteria) and thereafter, be subject to Part IV (Objective Criteria) evaluation.
- 18.2. Qualification Criteria 1: Administrative Responsiveness detailed in Clause 61 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 61 (Qualification Criteria 1: Administrative Responsiveness) of Part II (Qualification Criteria) of this RFP.
- 18.3. Qualification Criteria 2: Substantive Responsiveness detailed in Clause 61 (Qualification Criteria 2: Substantive Responsiveness) of Part II (Qualification Criteria) of this RFP, will be checked next by the TNPA before the evaluation of Part III (Evaluation Criteria). The requirements for these criteria are set out under Clause 61 (Qualification Criteria 2: Substantive Responsiveness) of Part II (Qualification Criteria) of this RFP.
- 18.4. If a Bidder's Bid Response complies with all the requirements and conditions set out in Clause 61 of Part II (Qualification Criteria) of this RFP, it will proceed to be evaluated under Part III (Evaluation Criteria) of this RFP.
- 18.5. The Evaluation Criteria as set out in Part (III) comprises of 2 (two) stages. Stage 1 entails the evaluation of the functionality of a Bidders Bid Response. In terms hereof a total of 230 points are allocated for the assessment of this Stage 1. A Bidder will be required to score a minimum of 161 points out of the 230 points allocated (70%), 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 in respect of its Concession Fee Offer (Price) and Preference (B-BBEE Specific Goals). The evaluation will be undertaken in accordance with a 90/10 preference points system. For more information, please see Part III (Evaluation Criteria) of this RFP.
- 18.6. The Concession Fee (Price) is scored out of ninety (90) points and Preference (B-BBEE Specific Goals) will be scored out of ten (10) points, thereafter, the two scores will be added together to determine the total points scored out of one hundred (100) earned in respect of the Stage 2 Evaluation Criteria.
- 18.7. A Bidder who scores the highest points under Stage 2 of Part III shall become eligible for appointment as the Preferred Bidder unless the Objective Criteria to be undertaken in Part IV (See Clause 67) establishes objective considerations which would justify and award to another Bidder.

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



19 BEST AND FINAL OFFER ("BAFO")

19.1. 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 Objective Criteria in Part IV of this RFP as provided for in clause 67.

19.2. 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.

20 ALTERNATIVE BID RESPONSE

20.1. 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").

20.2. To allow sufficient opportunity for innovation, Bidders may submit additional Bid Responses ("Alternative Bid Response") that:

20.2.1. improve and do not compromise the timeframes for the Project;

20.2.2. improve and do not compromise the design criteria of the Terminal;

20.2.3. increase Port calls without increasing the bulk services, land requirements, environmental emissions or forces on the quay infrastructure; and

20.2.4. Justifiable business cases that warrant considerations for any deviations from the standard bid requirements with the exception of the site allocated for this project; and

20.2.5. offer better value for money to TNPA.

- 20.3. 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 the 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.
- 20.4. 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.
- 20.5. All Alternative Bid Responses will be evaluated in a similar manner to the Standard Bid Response (refer to Clause 20.1).
- 20.6. Bidders should note that any differences to the Standard Bid Response contained in the Alternative Bid Response that is not fully motivated and which does not result in a quantified saving for TNPA will be disregarded by TNPA and will not adversely affect the assessment by TNPA of the Bidder's Standard Bid Response.
- 20.7. TNPA reserves the right to reject or accept any of the proposed changes to the Standard Bid Response contained in the Alternative Bid Response in its discretion.

21 PROJECT STRUCTURE AND CONTRACTS

- 21.1. The Preferred Bidder will be invited to enter into the Terminal Operator Agreement and, if required, a Finance Direct Agreement with the relevant Lenders. The Draft Terminal Operator Agreement is attached to this RFP in Annexure Z (draft Terminal Operator Agreement). The 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 required to be finalised and entered with TNPA within four (4) months (or such extended period as may be determined by TNPA in its sole discretion) of a Bidder being appointed as Preferred Bidder.
- 21.2. If the Preferred Bidder fails to undertake activities or take steps reasonably required for the conclusion of the Terminal Operator Agreement within these four (4) months period (or such extended period as may be determined by TNPA in its sole discretion), then TNPA may, in its discretion, disqualify the Preferred Bidder or revoke its status as Preferred Bidder. If the Preferred Bidder is disqualified or has its status as Preferred Bidder revoked by TNPA, TNPA

may appoint a 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.

21.3. Bidders should note that the Draft Terminal Operator Agreement has been prepared on the assumption that the Terminal Operator will:

21.3.1. be a special purpose vehicle, in the case of a Consortium. In this instance, a Bidder who is an SPV and or Consortium will be required to establish and incorporate a Project 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);

21.3.2. raise finance for purposes of undertaking the Project;

21.3.3. complete the Construction of any refurbishment or enhancement to the Terminal within 12 (Twelve) months of approval to proceed by TNPA.

21.3.4. 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.

21.4. The Terminal Operator Agreement is negotiable, save for those Clauses referred to in Clause 21.6. 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 be negotiated 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 such that it is consistent with or aligned to the final accepted bid response.

21.5. Bidders are required to supply a mark-up of the Draft Terminal Operator Agreement 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 failure to submit a comprehensive and fully considered Draft Terminal Operator Agreement could result in disqualification. TNPA will not consider mark-up to the Clauses specified in the table in Clause 21.6. A mark-up of these Clauses of the Terminal Operator Agreement will not be acceptable to TNPA and could result in adverse evaluation in the evaluation process of this RFP.

21.6. TNPA regards the Clauses listed 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 5	Appointment of Terminal Operator and grant of rights
4	Clause 7	Ownership and return of the Project Site and the Terminal
5	Clause 8	Indemnity
6	Clause 9	Terminal Operator's warranties and undertakings
7	Clause 10	Compliance with D&C Specifications and Operating Specifications
8	Clause 12	Environmental
9	Clause 17	Port Users and Port Rules
10	Clause 18	Shareholding in the Terminal Operator
11	Clause 19	TNPA's Assistance and Rights and Limitations on Liability
12	Clause 21	Provision of the Port
13	Clause 23	Project Site
14	Clause 24	Key Personnel and Removal of Personnel
15	Clause 25	Health and Safety
16	Clause 26	Security
17	Clause 33	Rights of Access
18	Clause 37	Foreign exchange risk
19	Clause 38	Default Interest

20	Clause 37	Consequences of a Relief Event
21	Clause 40	Consequences of a Compensation Event
22	Clause 41	Force Majeure
23	Clause 43	Terminal Operator Default
24	Clause 47	Invalidation in terms of section 67 of the National Ports Act
25	Clause 52	No Termination Amount for termination for Force Majeure
26	Clause 55	Corrupt gifts and fraud
27	Clause 57	Dispute Resolution
28	Clause 58	Information and audit access
29	Clause 59	Miscellaneous matters

21.7. The Preferred Bidder:

21.7.1. 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

21.7.2. 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.

22 TNPA'S RIGHTS

22.1. TNPA reserves the right to:

22.1.1. reject any Bid Response which does not conform to instructions and specifications which are detailed herein;

22.1.2. Bid documents that are submitted after the closing date and time are not acceptable provided in 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;

- 22.1.3. select one or more than one Bidder as the Reserved Bidder in terms of this RFP to undertake the Project;
 - 22.1.4. not necessarily award the Project to the highest-scoring Bid Response or an Alternative Bid Response if the objective criteria justifies the award to another Bidder as per the requirements of the PPPFA.
 - 22.1.5. cancel or suspend the process for the appointment of the Terminal Operator in respect of the RFP;
 - 22.1.6. cancel, suspend or amend the terms and /or contents of this RFP at any stage;
 - 22.1.7. request a BAFO or not;
 - 22.1.8. amend the RFP, Terminal Operator Agreement and the Finance Direct Agreement at any time prior to the signature of these agreements;
 - 22.1.9. supplement the information provided as part of the RFP, as and when additional information becomes available before the bid closes;
 - 22.1.10. reject all Bid Responses, if it so decides;
 - 22.1.11. make no award of the Terminal Operator Agreement;
 - 22.1.12. cancel the Terminal Operator Agreement should a contract be awarded on the strength of the information furnished by the Bidder, which after the conclusion of the Terminal Operator Agreement, is proved to have been incorrect, and 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
 - 22.1.13. to award the tender in part or in full.
- 22.2. TNPA reserves the right to award the Project to the highest-scoring Bidder unless the Objective Criteria justifies the award to another Bidder.

23 TIMETABLE FOR THE RFP

Activity	Deadlines
Issue of the RFP	16 April 2024
Compulsory Briefing Session in Cape Town	30 April 2024
Deadline for all questions and requests for clarification	28 June 2024
Bid Submission Closing Date	15 July 2024

24 EXTENSION OF THE 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.

25 GOVERNING LAW, COMPETITION AND OTHER STATUTORY REQUIREMENTS

25.1. Governing Law

25.1.1. 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.

25.1.2. 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.

25.1.3. 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 12 of 2005; 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.

25.2. Competition Act

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.

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

25.3. **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.

26 THE RFP SOCIO-ECONOMIC OBJECTIVES AND REQUIREMENTS

26.1. **B-BBEE**

- 26.1.1. 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.
- 26.1.2. 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.
- 26.1.3. In terms of the proposed B-BBEE evaluation framework for the Project, prospective Bidders, will be expected to have B-BBEE in accordance with the Amended B-BBEE codes as per October 2013 rating. This Clause 26 (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.
- 26.1.4. 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.
- 26.1.5. 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.
- 26.1.6. 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.

- 26.1.7. Companies which are governed by Sector-specific Codes will be measured in terms of those Sector Codes.
- 26.1.8. 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.
- 26.1.9. 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.
- 26.1.10. 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
- 26.1.11. 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.
- 26.1.12. A typical B-BBEE verification certificate would contain the following information:
 - 26.1.12.1. company name and number;
 - 26.1.12.2. type of certificate (group, entity or division);
 - 26.1.12.3. B-BBEE category (Qualifying Small Enterprises or generic);
 - 26.1.12.4. B-BBEE level (1 (one) to 8 (eight));
 - 26.1.12.5. procurement recognition percentage (%);
 - 26.1.12.6. black ownership percentage (%);
 - 26.1.12.7. black women ownership percentage (%);
 - 26.1.12.8. value adding supplier (yes or no);

26.1.12.9. certificate issue date; and

26.1.12.10. certificate expiry date.

26.1.13. A consortium or joint venture will only qualify for points for its B-BBEE Contributor Status Level as a legal entity, provided that the entity submits its consolidated copy of B-BBEE verification certificate for the consortium/ special purpose vehicle or unincorporated joint venture.

26.1.14. 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/ joint copy of 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.

26.1.15. 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.

26.1.16. Bidders are to note the requirements for B-BBEE compliance as required by Clause 26 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.

27 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 Annex E (*TNPA Security Policy*) and Annex C (*Safety, Health, Environment and Quality Policy*), and in accordance with the Terminal Operator Agreement.

28 BIDDERS' EXPERIENCE AND CAPACITY

- 28.1. The prospective Bidders (and or their individual Members, as the case may be) should have a proven track record of successfully executing projects of similar complexity and magnitude as the Project.
- 28.2. The prospective Bidders (and/or their individual Members, as the case may be) would therefore be required to demonstrate:
- 28.2.1. Industry-specific experience, particularly, their professional and technical qualifications and experience in the operation and/or maintenance of the Terminal Operations; as envisaged in clause 63.4.1.
 - 28.2.2. financial strength, as envisaged in Clause 63 of Part III Stage 1 (Evaluation Criteria) of the RFP;
 - 28.2.3. access to or use of the equipment and infrastructure necessary for the operation and/or maintenance of the Terminal Operations;
 - 28.2.4. adequate personnel to perform their obligations under the Terminal Operator Agreement and related contracts, as envisaged in Part II (Qualification Criteria) of the RFP;
 - 28.2.5. Contractors need to be accredited in terms of CIDB rating and the bidders need to indicate the CIDB level of all contractors when they decide to upgrade the Terminal

29 GENERAL BID RULES

- 29.1. 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 26. The Bidders are invited to submit Bid Responses to be appointed as the Preferred Bidder for consideration by TNPA.
- 29.2. 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.
- 29.3. 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.
- 29.4. The Bidder appointed as the Preferred Bidder shall be afforded a period of time, specified under Clause 23 (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 23 (Timetable for the RFP) of this General Requirements, Rules and Provisions section of the RFP.

- 29.5. 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.
- 29.6. 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:
- 29.6.1. the Terminal Operator Agreement is not and is unlikely to, for whatsoever reason, be concluded with the Preferred Bidder in respect of the Terminal;
- 29.6.2. the Preferred Bidder is disqualified for any reason; and/or
- 29.6.3. the status of the Preferred Bidder is revoked for any reason whatsoever; and
- 29.6.4. accordingly, the relevant Reserve Bidder will, if requested by the TNPA, be afforded a reasonable period 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 Objective Criteria 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, noting the provision of Clause 60 (Information Verification).
- 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 Annex 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 that 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.
- 30.5. 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 Annex X (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 Annex 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 Annex 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 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 undergoing 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 Clause 17.1.1 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 collecting 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 Port Act" No. 12 of 2005.

34.1.3. Bidders are required to provide TNPA, together with their Bid Response, a copy of the Non-Disclosure Agreement Annex 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 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 BID DOCUMENTATION FEE AND 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 R5 000 000.00 (five million Rand). A Bidder that 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 Annex 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 Annex KK 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 to 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 (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 of the Preferred Bidder 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 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 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 are 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 lodged on time and at the correct drop point 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 Annex 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 Cape Town	Email: Poctliquidbulkrfp@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 40.3, 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 by no later than **17:00 CAT, 28 June 2024**, after which date TNPA will not be obliged to enter into further correspondence with the Bidder on questions related to that Bid Submission Phase of 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: Poctliquidbulkrfp@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 COMPULSORY RFP BRIEFING SESSION AND SITE VISIT

- 43.1. A 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 Cape Town – Date: 30 April 2024, at South Arm Road -TNPA House-10 Floor Boardroom, Time: 10h00.
- 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 access 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 email address Poctliquidbulkrfp@transnet.net by 26 April 2024.

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 identity documents, 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 restrict the number of attendees for each Bidder to a maximum number of 3 (three) representatives.

44 STATUS OF RESPONSE

TNPA and its Transaction Advisors will endeavor 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

Bid Responses in relation to the Bid Submission Date are to be submitted by no later than 16:00hrs Central African Time on 15 July 2024.

45.1. All Bid Responses and documents contained therein must be:

45.1.1. in a PDF format.

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

45.2. 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.

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

- 45.3.1. Log on to the Transnet e-Tenders management platform website/ Portal (transnetetenders.azurewebsites.net);
- 45.3.2. Please use Google Chrome to access Transnet link/site);
- 45.3.3. Click on "ADVERTISED TENDERS" to view advertised tenders;
- 45.3.4. Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);
- 45.3.5. Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);
- 45.3.6. Click on "SIGN IN/REGISTER" - to sign in if already registered;
- 45.3.7. Toggle (click to switch) the "Log an Intent" button to submit a bid;
- 45.3.8. Submit bid documents by uploading them into the system against each tender selected; and
- 45.3.9. 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 shall be entitled, in its discretion, to disqualify any Bid Response that fails in any way to fulfil the requirements of this Clause 46 (*Format of the Bid Response*), and to prohibit the relevant Bidder from participating further.

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 issue raised in this RFP in consequential 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 the Annexes 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. The sections of the Bid Response that correspond to each of the Qualification Criteria and the Evaluation Criteria must be separate documents and separately bound. For example, all documents that comprise the response to the Technical Qualification Criteria must be bound together or compiled in a separate file and the cover of the file or bound document 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 which 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 and sealing of the RFP Bid Response**

46.4.1. The Bidder shall write on the top right-hand corner of each document forming part of the Bid Response submitted by the Bidder, the following information:

46.4.1.1. Tender Reference Number;

46.4.1.2. Name and Address of Bidder;

46.4.1.3. Master or Copy Number;

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

46.4.1.5. 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 cover of the Bid Response with the following details:

46.4.2.1. the title of the RFP as detailed on the cover page of the RFP;

46.4.2.2. Tender 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 Annex N (Resolution of Board of Directors) and Annex 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 Annex 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 of the Bid Response. 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 (as the case may be) will be rejected without further consideration as contemplated in the Administrative Responsiveness Criteria. Late Bids will not be opened.

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 (*Bid Documentation Fee and 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 Annex L (*TNPA Declaration of Bidder*).

51 BRIEFING NOTES AND CHANGES TO 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 (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 24 (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 of 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 40 (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 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. Transnet will not be held liable for any challenges experienced by bidders because of the technical challenges. Please do not wait for the last hour to submit. A Bidder can upload 30 MB 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 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 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' consents and submits to the High Court of Cape Town having exclusive 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 not exceeding 4 (four) 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 this 4 (four) month 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 INFORMATION VERIFICATION

- 60.1. Each Bidder (including its Members, Contractors, advisors and other participants), in submitting a Bid Response, is deemed to consent to and agree that TNPA is entitled to:
- 60.1.1. perform a credit check in respect of such a Bidder, its Members, Contractors and participants by accessing any credit bureau's database and use any information and data obtained from a credit bureau in respect of the evaluation of the Bidder's Bid Response;
- 60.1.2. seek references from any relevant third parties; and
- 60.1.3. verify any information provided by a Bidder (including technical and financial information) with third parties (including banks).

PART II - QUALIFICATION CRITERIA

61 THE STRUCTURE OF THIS QUALIFICATION CRITERIA

- 61.1. 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 are divided into the following categories under the appropriate headings:

61.1.1. Qualification Criteria 1: Administrative Responsiveness; and

61.1.2. Qualification Criteria 2: Substantive Responsiveness.

61.2. 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 on all relevant documents
<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 do not comply with all the requirements of Substantive Responsiveness will NOT be eligible for evaluation under Part III Evaluation Criteria.</p>

61.3. 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.

61.4. Qualification Criteria 1: Administrative Responsiveness in Clause 61.1.1 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 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.

61.5. 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 time.	Clause 61.1.1 of Part II of this RFP
Whether the Bidder has submitted a duly signed/initialled Bid Response as required, by the RFP.	Clause 61.1.2 of Part II of this RFP

- 61.6. Qualification Criteria 2: Substantive Responsiveness under the RFP Clause 61.1.2 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 61.2. of Part II of this RFP

- 61.7. Upon qualification on the Substantive responsiveness, the bidder will be evaluated on the Evaluation Criteria, which forms Part of the Functionality Evaluation and Price & Preference Criteria Assessment in Part III of this RFP as outlined in clause 62 below.

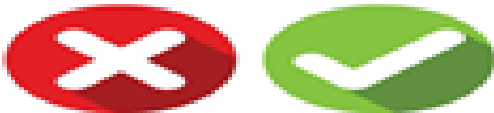
PART III –EVALUATION CRITERIA

62 OVERVIEW OF THE EVALUATION CRITERIA

- 62.1. In compliance with the provisions of section 56 of "the Act". TNPA shall establish a Bid Evaluation Committee (BEC) to assist it with the evaluation of the Bid Responses. The primary responsibility of this BEC 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).
- 62.2. The BEC 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 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.

- 62.3. Upon completion of the evaluation by the various committees, the chairperson of the BEC shall convene such further meetings in order to complete the evaluation for the purposes of formulating recommendations to TNPA.
- 62.4. In this regard, it should be noted that TNPA has not and will not delegate any decision-making authority to the BEC. Furthermore, the BEC has no authority to make any decisions on behalf of TNPA in respect of the appointment of the Preferred Bidder.

Evaluation Criteria - Stage 1 Functionality	Evaluation Criteria - Stage 2 Price & Preference
<ul style="list-style-type: none"> • Previous Exp. & Track Record (40) • SHE & Risk (40) • Financial Capacity (50) • Business Case (100) <ul style="list-style-type: none"> – Market Analysis (25) – Financial Management Plan (25) – Operating Model (25) – Maintenance plans (25) <p>Total Points = 230</p>	<p>Price:</p> <p>Concession Fee Offer: 90.00</p> <hr/> <p>Preference:</p> <p>B-BBEE (Specific Goal): 10.00</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 objective Criteria which justifies the appointment of another Bidder other than the Highest Ranked Bidder</p>
<p>Minimum Weighted Score of 161 points (70%) of the total 230 points required to be eligible for evaluation under Stage 2 of this Evaluation Criteria. A Bidder who does not meet the minimum 161 points (70%), will not receive any further consideration.</p>	

63 STRUCTURE OF THE EVALUATION CRITERIA

- 63.1. This Part III stage 1 (Evaluation Criteria) of this RFP contains the 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:

63.1.1. Evaluation Criteria 1: Experience & Track Record;

63.1.2. Evaluation Criteria 2: Safety Health Environment & Risk;

63.1.3. Evaluation Criteria 3: Financial Capability Criteria; and

63.1.4. Evaluation Criteria 4: Business Case.

63.2. 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.

63.3. The Bidder must respond to each and every heading in this Part III RFP (Evaluation Criteria) referred to in this clause 63 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 63 (Evaluation Criteria) shall have an adverse impact on the evaluation of its Bid Response and may result in (0) zero points being awarded for a particular Evaluation Criteria.

63.4. The evaluation of this Stage 1 of the Evaluation Criteria will be undertaken out of a total of two hundred and thirty (230) points as follows:

63.4.1. Criteria 1: Experience & Track Record Criteria being scored out of 40 (forty),

63.4.2. Criteria 2: Safety, Health, Environment & Risk being scored out of 40 (forty),

63.4.3. Criteria 3: Financial Capacity being scored out of 50 (fifty) and Objective,

63.4.4. Criteria 4: Business Case being scored out of 100 (one hundred) points, as more fully explained below.

63.5. A Bidder will be required to meet a minimum threshold weighted score of 161 points (70% in order to be eligible for evaluation under Stage 2 of the Evaluation Criteria.

64 STAGE 1 OF THE EVALUATION CRITERIA

64.1. Evaluation Criteria 1: Experience & Track Record

A Bidder's experience and track record in Liquid Bulk Cargoes handling, as well as liquid bulk operations, must be reflected in the corporate profile of the Bidder, which must be supplemented with appropriate letters of reference as proof as mentioned below:

64.1.1. Experience

- 64.1.1.1.1. This section will be assessed and scored out of twenty (20) points.
- 64.1.1.1.2. Bidders will be required to submit:
 - 64.1.1.1.2.1. At least 1 (one) letter of reference from an international or Local Liquid Bulk Cargoes customer and or supplier of the Bidder; as proof 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 Cargoes, and will be evaluated on this experience to ensure that TNPA secures the services of competent Terminal Operator.
 - 64.1.1.1.3. The reference letter must be on the letterhead of the Bidder's client; references should include the following:
 - 64.1.1.1.3.1. The description of the project;
 - 64.1.1.1.3.2. Client Company name;
 - 64.1.1.1.3.3. Client contact details (email and telephone);
 - 64.1.1.1.3.4. Bidder Experience in Liquid Bulk Cargoes: years of operation experience and years of experience in handling Liquid Bulk Cargoes.
- 64.1.1.2. At least one letter of reference confirming the Bidder's affiliation to a recognized industry body association in South Africa dealing with liquid bulk handling; or
- 64.1.1.3. At least 1 (one) letter of reference from an international body of association on Liquid Bulk Sector.
- 64.1.1.4. 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 Objective Criteria as per Part IV of the RFP.

64.1.1.5. The Number of Years of experience handling Liquid Bulk Cargoes /or operating a Terminal handling Liquid Bulk Cargoes, either operated and/or are currently operating, will be assessed and scored out of 10 (ten) points as follows:

NUMBER OF YEARS OF EXPERIENCE OPERATING A FACILITY/TERMINAL HANDLING LIQUID BULK CARGOES	POINTS
0 years	0
>0 years to 5 years	4
> 5 years and ≤ 10 years	6
> 10 years and ≤ 20 years	8
> 20 years	10

64.1.1.6. The Number of Years of experience handling Liquid Bulk Cargoes /or operating a Terminal handling Liquid Bulk Cargoes in a Commercial Sea Port. will be assessed and scored out of 10 (ten) points as follows:

NUMBER OF YEARS OF EXPERIENCE OPERATING A FACILITY/TERMINAL HANDLING LIQUID BULK CARGOES IN A COMMERCIAL SEA PORT	POINTS
0 years	0
>0 years to 5 years	4
> 5 years and ≤ 10 years	6
> 10 years and ≤ 20 years	8
> 20 years	10

64.1.2. Track Record

64.1.2.1. This section will be assessed and scored out of twenty (20) points.

64.1.2.2. The Bidders will be required to submit at least 1 letter of reference as proof in respect of each liquid bulk terminal/facility that they or their Members,

from either a customer, landlord and or any relevant authority who can confirm the terminal operated by the Bidder which lists the location of such terminal/ facility and the nature of the operation being undertaken at the terminal / facility as the case may be and must state the following;

- 64.1.2.2.1. The number of Terminals/handling facilities where bidders have handled or stored and/or are currently handling or storing Liquid Bulk Cargoes. Bidders will be required to submit proof of their throughput volumes and or that of their Members in respect of the Liquid Bulk Terminal in which they previously or currently operated.
- 64.1.2.2.2. The Bidder will be evaluated on the track record to ensure that the TNPA secures the services of a competent and credible Terminal Operator. Bidders should accordingly provide, a letter of reference, or similar document confirming each Terminal/handling facility operated by the Bidder.
- 64.1.2.2.3. 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 a Liquid Bulk Terminal will be assessed and scored out of ten (10) points as follows:

THE NUMBER OF TERMINAL FACILITIES OPERATED OR CURRENTLY OPERATING (OFFSHORE AND/OR INLAND TERMINALS) Evidence required Terminal Operator License	POINTS
0 Terminal facility operated.	0
1 Terminal facility operated or currently operating.	4
2 Terminals facilities operated or currently operating.	6
3 Terminals facilities operated or currently operating.	8
≥4 Terminal facilities operated or currently operating.	10

- 64.1.2.2.4. Bidders will be required to submit, a letter from an independent registered auditor or an independent reviewer from a professional accountant confirming the Bidders Liquid Bulk Cargoes throughput volumes, and or that of their Members in

respect of the Terminals in which they previously or currently operate; such as letters of reference, certifications, and like, regarding their or their Members' relevant previous and current track record of their throughput volumes.

64.1.2.2.5. The average Liquid Bulk Cargoes throughput volumes (per terminal) over the past 3 years will be assessed and scored out of 10 (ten) points as follows:

OPERATED OR CURRENTLY OPERATING AVERAGE LIQUID BULK TERMINAL THROUGHPUT VOLUMES ACHIEVED AGAINST TERMINAL DESIGN CAPACITY FOR THE PAST 3 YEARS.	POINTS
Submitted information and achieved 60%-69% vs design capacity of the Terminal.	2
Submitted information and achieved 70% -79% vs design capacity of the Terminal.	4
Submitted information and achieved 80% -89% vs design capacity of the Terminal.	6
Submitted information and achieved 90%-99% vs design capacity of the Terminal.	8
Submitted information and achieved 100% vs design capacity of the Terminal.	10

64.2. **EVALUATION CRITERIA 2: Safety Health Environment & Risk**

The criteria under this section have an overall point allocation of forty (40) 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.

64.2.1. **Environmental Management**

64.2.1.1. This section has a point allocation of fifteen (15) points, and Bidders are required to provide evidence of experience in existing businesses and an

overview of the approach or management system (ISO 14001:2015) as amended from time to time, that are currently utilized in respect of environmental management. The Bidder should also provide a high-level Environmental Risk Assessment with mitigation/control. 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:

64.2.1.2. A typical environmental risk assessment that is associated with the intended infrastructure and its operation. It should identify aspects, impacts, and mitigation controls in respect thereof.

64.2.1.3. In respect of the scoring the following table will be used:

<p>Environmental Risk Assessment Service provider shall submit a high-level Environmental Risk Assessment with mitigation/control. The Environmental risk assessment must have the following:</p> <ol style="list-style-type: none"> 1. Identify the aspects and impacts to which the Environment may be exposed to 2. Analysis and evaluation of the identified risks 3. Measures to mitigate, reduce or control the risks and impacts identified 4. Roles and responsibilities for the implementation and control 5. Defined methodology in which risks are quantified 	<p>0= No response or submission, or the applicable document was not submitted</p>	0
	<p>20= Service providers have submitted < one (1) element of risk assessment.</p>	2
	<p>40= Service provider have submitted two (2) elements of risk assessment.</p>	4
	<p>60= Service providers has submitted three (3) of the elements of risk assessment.</p>	6
	<p>80= Service providers has submitted four (4) of the elements of risk assessment.</p>	8
<p>100= Service providers have submitted five (5) of the required elements of risk assessment.</p>	10	

64.2.1.4. ISO 14001:2015 Environmental Management System or equivalent

Bidders will be scored, for their Environmental Management response, as indicated in the table below:

ENVIRONMENTAL MANAGEMENT	POINTS
Environmental Risk Assessment that identifies aspects, impacts, and mitigation controls in respect thereof	10
ISO 14001:2015 Environmental Management System or the equivalent	5

64.2.2. Occupational Health and Safety Management

64.2.2.1. This section has a point allocation out of 15 (fifteen) 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, bylaws etc. such as, but not limited to: MHI Regs, ISGOTT, GHS, SDS Schedule Activity Permits, NFPA etc. The bidder must have a strategy for achieving compliance within a reasonable timeframe for the proposed terminal operations.

64.2.2.1.1. The Bidder must have formalised Risk Management Procedures in place which demonstrate how hazards are identified and quantified, and how the Associated risk is managed. The Bidder must submit risk assessments for the proposed terminal operations and be structured in a manner to enable it to identify hazard events, assess the probability of occurrence, and determine the potential consequences of the event.

64.2.2.1.2. the Bidder must have a systematic and comprehensive evaluation of the building or premises to identify and assess potential fire hazards, evaluate the effectiveness of existing fire safety measures, and develop a plan to minimize the risk of fire and protect the safety of occupants. Fire risk assessments are

essential for ensuring the safety of people in buildings and complying with fire safety regulations.

- 64.2.2.1.3. Major hazardous installations (MHI) refer to facilities, plants, or industrial sites that handle, store, or process large quantities of hazardous substances or engage in activities that have the potential to cause significant harm to people, property, and the environment in the event of accidents or incidents. The identification and regulation of major hazardous installations are essential for public safety and environmental protection. The bidder is to identify, evaluate, and manage the risks associated with the operation of such proposed facilities. The risk assessment should determine if the proposed operations will be deemed a MHI or not.
- 64.2.2.1.4. The output of the risk assessment should provide recommendations on prevention, mitigation, and recovery in the form of a MHI QRA according to the new draft MHI regulations. A high-level MHI QRA according to the new draft MHI regulations must be submitted to the authority and will form part of the scoring mechanism for the bidders.
- 64.2.2.1.5. 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;
- 64.2.2.1.6. 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. The Policy, Organisation, and Safety and Health Management Involvement shall include the following elements:
 - 64.2.2.1.6.1. Safety and Health Plan
 - 64.2.2.1.6.2. Signed and dated Safety and Health Policy copy signed by the Chief Executive Officer / Managing Director:
 - 64.2.2.1.6.3. OHS Act 16.2 Appointee

64.2.2.1.6.4. Relevant SHE legal appointees in terms of Construction Regulations applicable to the Project:

64.2.2.1.6.5. SHE Representatives

64.2.2.1.6.6. First Aiders

64.2.2.1.6.7. Risk Assessors

64.2.2.1.6.8. Company organogram

64.2.2.1.7. 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 aim of the Company's Safety Policy. The bidder is to demonstrate a framework for managing occupational health and safety and the requirements for establishing, implementing, maintaining, and continually improving the OH&S management system. Bidders are required to provide evidence of experience in existing businesses and an overview of the approach or management system (ISO 45001; 2018) or equivalent that is currently utilized with respect to safety management.

64.2.2.2. a valid letter of good standing from the Department of Labour or Federated Employers Mutual Assurance;

64.2.2.3. The budgeted amount assigned to health and safety for operational/project costs;

64.2.2.4. Is registered and has a valid letter of good standing from the Compensation Fund at the Department of Labour or Federated Employers Mutual Assurance or equivalent.

64.2.2.5. Bidders will be scored, for their Occupational Health and Safety Management response, as indicated in the table below:

OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT	SCORE
Fire Risk Assessment	3
A high-level MHI QRA	3
Policy, Organization and Safety and Health Management Involvement	2
Safety Management System ISO 45001: 2018 or equivalent	3
Valid Letter of Good Standing from the department of labour or Federated Employers Mutual Assurance.	2
The budgeted amount assigned to health and safety for the duration of the Project	2

64.2.3. Risk Management

64.2.3.1. This section has a point allocation of 10 (ten) points. A Bidder must provide:

64.2.3.1.1. A business continuity management plan from the Bidder's existing business aligned to a recognized Business Continuity Management (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.

64.2.3.1.2. A separate risk management plan aligned to a recognized written SHE management system which stipulates how the risks pertaining to construction, development, and operational phases will be identified, assessed, and managed by the Bidder.

64.2.3.2. Bidders will be scored, for their Risk Management response as outlined in the table below:

RISK MANAGEMENT	SCORE
Business Continuity Management Plan /Contingency plan	7
Risk Management Plan	3

64.2.4. 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	15	Clause 64.2.1 of Part III of this RFP
Occupational Health & Safety	15	Clause 64.2.2 of Part III of this RFP
Risk Management	10	Clause 64.2.3 of Part III of this RFP
TOTAL	40	

64.3. EVALUATION CRITERIA 3: Financial Capability (50 points)

64.3.1. In order to determine a Bidder's financial strength, Bidders or each of their Members in respect of newly incorporated or unincorporated joint ventures/ Consortia and or incorporated Project Companies must submit the following:

64.3.1.1. Audited annual financial statements or independently reviewed financial statements for the past 3 (three) financial years that it has been in operation and the most recent statements.

64.3.1.2. In the event of the Bidder being an unincorporated Joint Venture Consortium, TNPA requires audited financial statements of all the members of such Joint venture or Consortium.

64.3.1.3. Where the joint venture and or consortia elect to submit more than one member's Annual Financial Statements, to be submitted in ZAR, each

member's Annual Financial Statements will be assessed and scored against the criteria below and then averaged to determine the score of the Bidder.

64.3.1.4. In the event that a Bidder is an existing company and not an SPV, TNPA will not accept audited financial statements for a holding Company and/or any other companies related to the Bidder. TNPA will only accept audited financial statements of the company bidding.

64.3.2. Profitability EBITDA

64.3.2.1. Profitability of the Bidder averaged over the past 3 (three) year period will be evaluated using Annual Financial Statements as set out in clause 64.3.1 and it will be assessed as follows:

Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA)	15
Bidder EBITDA Margin < 10%	0
Bidder EBITDA Margin = 10%	5
Bidder EBITDA \geq 10% \leq 12%	10
Bidder EBITDA Margin > 12%	15

64.3.3. Key Financial Ratios

The Key Financial Ratios will be used to assess the Bidder's liquidity and solvency of the company using Annual Financial Statements as set in clause 64.3.1 and will be assessed as follows:

64.3.3.1. Current Ratio

Current Ratio (Norm is 2:1 – current assets divided by current liabilities)	5
Ratio < 1	0
Ratio $\geq 1 < 2$	1
Ratio $\geq 2 < 3$	3
Ratio ≥ 3	5

64.3.3.2. Solvency Ratio

Solvency Ratio (Norm is 1:1 -Total assets divided by Total Liabilities)	5
Ratio < 1	0
Ratio $\geq 1 < 1.5$	1
Ratio $\geq 1.5 < 2$	3
Ratio ≥ 2	5

64.3.3.3. The Proposed Funding Model

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

64.3.3.3.2. The Bidder must provide the proposed funding model that supports the business case and capital investment required and supported with Projected Financial Statements for the duration of the concession.

64.3.3.3. 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 quantitative and qualitative scoring methodologies. With regard to the quantitative methodology in particular, the information provided by the bidder must be relevant to the liquid bulk sector. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology		
Does not meet requirements	Meets requirements	Exceeds requirements
Score between minimum of 0% - 19% of the total points allocated per measure	Score between minimum of 20% - 69% of the total points allocated per measure	Score between minimum of 70% - 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 scenario with a larger risk should the picture not materialize; the financial risks are clearly visible through the financial ratios presented.</p> <p>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 reflect the Cash Flow Projections, Return on Investment, Internal Rate of Return, Project Net Present Value</p>	<p>The Funding Model meets the requirements where it includes operational and non-operational expenditure, all capital outlays and where the capital plan integrates capital expenditures with the term and funding from capital providers in terms of equity, loans and others. The Funding Model clearly presents 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 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 with the Funding Model. 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>

64.3.3.4. The proposed funding model will

64.3.3.5. be scored out of 15 (fifteen) points as follows:

THE PROPOSED FUNDING MODEL	POINTS	QUALITATIVE
Proposed funding model in support of project investment. In addition to the proposed funding model, a written document confirming the Bidder's ability to source funds from a reputable financial institution or within the consortium/group company clearly articulating the Key Financial Indicators.	15	QL

64.3.4. Experience in Raising Capital

64.3.4.1. 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 20 (twenty) 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) a reference letter 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 along with the project that was funded, the amount of funding raised and the structure of the financing arrangements. In cases where equity funding was used for past projects, audited annual financial statements reflecting investment outflows must be submitted. If the letter 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,

64.3.4.2. The Bidders will be assessed and scored out of 10 (ten) points as follows:

PAST EXPERIENCE IN RAISING CAPITAL	POINTS	QUALITATIVE
No previous project funding	0	QL
Projects with a value of up to R 200 million	3	QL
Projects with a value > R 200 million ≤ R300 million	5	QL
Projects with a value > R 300 million ≤ R400 million	7	QL
Projects with a value > R 400 million ≤ R 500 million	8	QL
Projects with a value > R 500 million	10	QL

64.4. **EVALUATION CRITERIA 4: Business Case**

64.4.1. 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 the Bidder 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.

64.4.2. A Business Case will be assessed and scored out of 100 (One Hundred) points. The Business Case will comprise the following:

64.4.2.1. **Market and Sustainability Analysis**

64.4.2.1.1. 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 the Liquid Bulk Sector. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology		
Poor response	Fair response	Good response
Score between minimum of 0% - 19% of the total points allocated per measure	Score between minimum of 20% - 69% of the total points allocated measure	Score between minimum of 70% - 100% of the total points allocated per measure
Industry analysis is not provided, is inadequate, or is incomplete in significant respects; evaluation of important industry characteristics is lacking detail and does not present a comprehensive assessment of the industry in which the company will be competing; limited competitor and market analyses are provided; few if any competitive advantages are identified, and no analysis of their effects is provided.	Business Case describes major characteristics of the industry, but the analysis is limited or missing a few elements; market attributes are described and their impacts on the business are adequately assessed; Business Case identifies competitive advantages of the company, but a discussion of their contribution to the company's market success is missing or less than fully developed; industry analysis is appropriately developed.	Provides a thorough analysis of industry size, segments, maturity, opportunities and threats in the industry, overall trends and outlook for the industry, and major competitors; specifically identifies target market and consumer demographics, demand, supply, customers, and offtakes and fully describes niche in which the company will operate; clearly presents significant competitive advantages and effectively analyzes their impacts on organizational success.

64.4.2.1.2. This criterion has a point allocation of 25 (twenty-five) points and will be evaluated on the extent to which it credibly demonstrates the viability of the Terminal.

64.4.2.1.3. Bidders are required to provide the following in respect of the Market Analysis of the Facility:

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

64.4.2.1.3.2. Relevant and achievable strategic objectives for the Terminal;

64.4.2.1.3.3. A comprehensive value proposition for the Terminal;

64.4.2.1.3.4. A clear understanding of the Liquid Bulk Cargoes supply chain business operating environment as well as global economic conditions;

64.4.2.1.3.5. Comprehensive potential market, suppliers, and segment analysis and Supplier Model (for example single or multiple aggregator or open market)

64.4.2.1.3.6. In-depth Global Competitor Analysis specifically for the Liquid Bulk sector;

64.4.2.1.3.7. Gap analysis which comprises an identification of any discrepancy between an actual and a potential market including a plan to mitigate any discrepancy identified;

64.4.2.1.3.8. In-depth SWOT analysis specifically for the Liquid Bulk sector;

64.4.2.1.3.9. Measurable Economic spin-offs;

64.4.2.1.3.10. Short, Medium, and Long term projection forecast for Liquid Bulk Cargoes volumes over the concession period;

64.4.2.1.3.11. Sustainability and growth assumptions over the concession period;

64.4.2.1.3.12. Climate Change Adaptability Plan

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

Market Analysis	Points	Qualitative (QL)
Vision and mission clearly articulating major goals and ambitions for the Terminal	2	QL
Relevant and achievable strategic objectives for the Terminal	2	QL
Comprehensive Value proposition for the Terminal	2	QL
Clear understanding of business operating environment as well as global economic conditions	2	QL
Comprehensive Potential market, suppliers and segment analysis	2	QL
Gap analysis which comprises an identification of any discrepancy between an actual and a	2	QL

Market Analysis	Points	Qualitative (QL)
potential market including a plan to mitigate any discrepancy identified		
In-depth Competitor analysis specifically for the Liquid Bulk sector	2	QL
In-depth SWOT analysis specifically for the Liquid Bulk Sector	2	QL
Measurable Economic spin-offs	2	QL
Short, Medium, and Long term projection forecast of volumes over the concession period	2	QL
Sustainability and growth assumptions over the concession period	2	QL
Climate Change Adaptability Plan	3	QL
Total	25	

64.4.2.2. **Financial Management Plan**

This section will be assessed and scored out of 25 (twenty-five) points as follows:

64.4.2.2.1. Operational Costs (25-Year Projection)

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

64.4.2.2.1.2. The operational costs will be used to assess the Bidder's sustainability for operating the Terminal based on evidence showing the costs outlined in the table below:

OPERATIONAL COSTS (25 YEAR PROJECTION),	POINTS	QUANTITATIVE (QN)
Repairs & Maintenance Costs	2	QN
Labour Costs	2	QN
Other Operating Costs	2	QN
Total	6	

64.4.2.2.2. Operational Revenue (25 Year Projection)

64.4.2.2.2.1. This section will be assessed and scored out of 7 (seven) points.

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

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

OPERATIONAL REVENUE (25 YEAR PROJECTION),	POINTS	QUANTITATIVE
Revenue generated from operating the Terminal	7	QN

64.4.2.2.3. Capital Expenditure

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

64.4.2.2.3.2. The Bidders must provide the proposed capital expenditure being the costs/funds used to acquire and build the Terminal which includes the following:

CAPITAL EXPENDITURE FOR THE TERMINAL	POINTS	QUANTITATIVE
Detailed design	1	QN
Site investigations	1	QN
Procurement	1	QN
Direct and indirect construction costs	1	QN
Commissioning & Start-up	1	QN
Contractor's overhead and fees	1	QN

64.4.2.2.4. Financial Model Assumptions

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

64.4.2.2.4.2. The Bidder must provide assumptions for their financial projections of the project including but not limited to the following:

FINANCIAL ASSUMPTIONS	MODEL	POINTS	QUANTITATIVE
Income tax rate		1	QN
Monthly utilities e.g., water, electricity		1	QN
Operating manpower costs and benefits		1	QN
Future commodity prices per ton		1	QN
Seasonality variance based on future Cargo forecasts		1	QN
Other		1	QN

64.4.2.2.5. Summary of Financial Management Plan

Bidders will be scored for the Financial Management Plan out of 25 (twenty-five) points, as indicated in the table below:

SUMMARY OF FINANCIAL MANAGEMENT PLAN	MAXIMUM NO OF POINTS	RFP REFERENCE
Operational Costs	6	Clause 64.4.2.2.1. of Part II of this RFP
Operational Revenue	7	Clause 64.4.2.2.2. of Part II of this RFP
Capital Expenditure	6	Clause 64.4.2.2.3 of Part II of this RFP
Financial Model assumptions	6	Clause 64.4.2.2.4 of Part II of this RFP
Total	25	

64.4.2.3. Operational Model

64.4.2.3.1. Bidders are required to provide a clear operational model outlining the approach to the execution of the Project, the operations methodology, performance targets, the optimal use

of Terminal Infrastructure, the Terminal handling 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.

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

64.4.2.3.3. This criterion has a point allocation of 25 (twenty) points. It is important to note that scoring will be allocated in accordance with the quantitative and qualitative scoring methodologies. Regarding the quantitative methodology in particular, the information provided by the bidder must be relevant to the Liquid Bulk Sector. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology		
Poor response	Fair response	Good response
Score between minimum of 0% - 19% of the total points allocated per measure	Score between a minimum of 20% - 69% of the total points allocated measure	Score between minimum of 70% - 100% of the total points allocated per measure
The Operational Model does not cover or lacks the required detail in respect of what is outlined above.	The Operational Model covers sufficient detail and has credible supporting motivating in respect of what is outlined above.	The Operational Model covers in comprehensive detail and demonstrates how the Targeted Performance will be achieved and comprehensively described and indicates how this will be achieved. .

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

OPERATIONAL MODEL	POINTS	QUALITATIVE
<p>Bidders to demonstrate the use of the land-based facilities to receive Liquid Bulk Cargoes directly from conventional carrier, storing it in tanks. (Road Tankers)</p> <p>Use can be demonstrated through submission of previous or current Terminal Operator Licence / Terminal Operator Agreements the operator has had before as evidence of operational model (vessel-tank and out the port) and of volumes handled</p>	10	QL
<p>Traffic and Security management plan including but not limited to:</p> <p>Access to the site via and road including truck staging area.</p> <p>Liquid Bulk Cargoes split on pipeline, road, and</p> <p>Logistics Plan</p> <p>Technologies to improve operational efficiencies for vessel turnaround time, safety, and truck turnaround time if road trucks will be utilized</p>	15	QL
Total	25	

64.4.2.4. **Maintenance plans for existing equipment**

64.4.2.4.1. This section has a point allocation of 25 (twenty-five) points. 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 the Terminal. In respect of the qualitative scoring methodology, the following table will be used:

Qualitative (QL) scoring methodology		
Poor response	Fair response	Good response
Score between minimum of 0% - 19% of the total points allocated per measure	Score between minimum of 20% - 69% of the total points allocated measure	Score between minimum of 70% - 100% of the total points allocated per measure
Poor maintenance plans for existing equipment proposal (Examples include: basic technical brief reports/ plans , basic layout plans, basic safety and environmental standards considerations, basic pipeline, and road accessibility plans.	Acceptable maintenance plans for existing equipment proposal (Examples include: plans that seek to bring about the terminal throughput capacity, acceptable technical brief reports, acceptable layout plans, acceptable safety and environmental standards considerations, acceptable pipeline, and road accessibility plans	Excellent maintenance plans for existing equipment proposal (Examples include: Plans that seek to optimizing potential throughput into full capacity, Excellent technical brief reports, Excellent layout plans, Excellent safety and environmental standards considerations, excellent pipeline, and road accessibility plans

64.4.2.4.2. The maintenance plans for existing equipment of the Terminal must include brief technical reports stating the sequencing / phasing of Maintenance activities and layout drawings indicating the following:

64.4.2.4.2.1. Phased approach to accommodate the Terminal for the concession period including continuity of operations during maintenance period.

64.4.2.4.2.2. Measures that will be taken to ensure success of the work.

64.4.2.4.2.3. How material including long lead items will be sourced and what are those items.

64.4.2.4.2.4. Safety and environmental best available technology and sustainability considerations on infrastructure and equipment (including safety distances, access platform, escape routes, etc);

64.4.3. Summary of Business Case

SUMMARY OF BUSINESS CASE	POINTS	RFP REFERENCE
Market and Sustainability Analysis	25	Clause 64.4.2.1 of Part II of this RFP
Financial Management Plan	25	Clause 64.4.2.2 of Part II of this RFP
Operational model	25	Clause 64.4.2.3 of Part II of this RFP
Maintenance plans for existing equipment	25	Clause 64.4.2.4 of Part II of this RFP
Total	100	

64.4.4. Summary of Technical and Functional Criteria Assessment¹

TECHNICAL ASSESSMENT CRITERIA	MAXIMUM NO OF POINTS	RFP REFERENCE
Previous experience	20	Clause 64.1.1 of Part II of this RFP
Track record	20	Clause 64.1.2 of Part II of this RFP
SHE requirements	40	Clause 64.2 of Part III of this RFP
Financial Capability	50	Clause 64.3 of Part III of this RFP
Business Case	100	Clause 64.4 of Part II of this RFP
TOTAL	230	

¹ NOTE: Only Bidders that score a minimum of 161 points and above will move to Part III Stage 2 of the evaluation process.

65 THE STRUCTURE OF STAGE 2: EVALUATION CRITERIA

- 65.1. 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. Those parts are:
- 65.1.1. Evaluation Criteria 1: Price: Concession Fee Offer; and
 - 65.1.2. Evaluation Criteria 2: Preference (B-BBEE Specific Goals).
- 65.2. TNPA will only consider a Bidder's Bid Response in terms of this Evaluation Criteria if that Bidder fulfils all the Qualification Criteria of Part II of this RFP.
- 65.3. The Bidder must respond to each and every heading in this clause 64 of this RFP I (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.
- 65.4. The evaluation will be undertaken in accordance with a 90/10 points system. The Concession Fee Offer (Price) will be scored out of 90 (ninety) points and B-BBEE Specific goals (Preference) will be scored out of 10 (ten) points.
- 65.5. The points for Concession Fee Offer (Price) (scored out of 90 (ninety) points) and B-BBEE Specific goals (Preference) (scored out of 10 (ten) points) will be added together to determine the total points (scored out of 100 (one hundred) earned in respect of the Evaluation Criteria. The total points will be rounded off to the nearest two decimal places if required.
- 65.6. 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.

66 STAGE 2 OF THE EVALUATION CRITERIA

66.1. Evaluation Criteria 1: Concession Fee Offer (Price)

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

66.1.2. Price (Concession Fee Offer)

66.1.2.1. This section has a point allocation of 90 (ninety) points.

66.1.2.2. The Bidder must offer a Concession Fee Offer amount in Rand (land), based on annual rental escalation.

66.1.2.3. 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 90 (ninety) points.

66.1.2.4. The Concession Fee Offer will be benchmarked to market rentals achieved for comparable properties as to ascertain that the offer made is economically viable. 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.

66.1.2.5. The Bidder making the highest Concession Fee Offer will be awarded maximum points with the other Bidders with a lower rental will proportionately obtain lower percentages based on the following formula:

$$\mathbf{Ps = 90 (1 + (Pt - Pmax) / Pmax)}$$

Where:

Ps = points scored for the offer under consideration

Pt = the price of bid/offer under consideration

Pmax = the price of the highest acceptable bid/offer received

66.1.2.6. Ramp up percentages for each payment period which will be applied to the monthly Concession Fee structured as follows:

66.1.2.6.1. 0% (zero percent) of rental fee during the application of Environmental Impact Assessment to a maximum of twenty-four (24) months,

66.1.2.6.2. 25% (twenty-five percent) during the construction phase (to a maximum of eighteen months (18), after that 100% rental fee will apply until such time that the terminal is commissioned.

66.1.2.7. Summary of Concession Fee Offer:

Price (Concession Fee Offer)	Points	RFP Reference
Concession Fee Offer (Land)	90	Clause 66.1.2 of Part III of this RFP
Total	90	

66.2. Evaluation Criteria 2: Preference

66.2.1. This section has a point allocation of 10 (ten) points.

66.2.2. Preference points will be awarded to a Bidder for attaining the required B-BBEE specific goals status level of contribution in accordance with the table indicated in clause 66.2.4 below.

66.2.3. The Bidder must submit a valid B-BBEE Contributor Level Status Certificate. A Bidder who bids as an unincorporated joint venture or special purpose company must submit a consolidated and or joint venture B-BBEE certificate.

66.2.4. Points awarded for achieving specific goals listed below:

Specific Goals	Number of points
	10 points
B-BBEE Status Level of Contributor 1 or 2	2
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	8
Non-compliant and/or B-BBEE Level 3 - 8 contributors	0
Total	10.00

66.2.5. SPECIFIC GOAL EVIDENCE

Specific Goal	Evidence
B-BBEE Status Level of Contributor 1 or 2	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of JV, a consolidated scorecard will be accepted) as per DTIC guideline
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	Sub-contracting agreements and Declaration / Joint Venture Agreement and CIPC – B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate as per DTIC guideline

66.3. Summary Of Evaluation Criteria 1 And 2: Price (Concession Fee Offer) And Preference

Summary of Evaluation Criteria	Points	RFP Reference
Price	90.00	Clause 66.1.2 of Part III of this RFP
Preference	10.00	Clause 66.2.4 of Part III of this RFP
Total	100	

67 PART IV OBJECTIVE CRITERIA

67.1 The TNPA will undertake a due diligence exercise on all the Bidders that have passed Part III, Stage I & II (Functionality, Price & BBEE) 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:

67.1.1. 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;

- 67.1.2. The verification of the Bidders Financial capacity by engaging and obtaining credit references from accredited credit reference agencies and any financial institutions and or funders whom bidders have referenced in their Bid Response;
- 67.2. 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:
 - 67.2.1. financial risks;
 - 67.2.2. technical risks;
 - 67.2.3. operational risks;
 - 67.2.4. legislative (Compliance) risks;
 - 67.2.5. quality management risks;
 - 67.2.6. reputational risks;
 - 67.2.7. risks associated with dependency on the strategic partners; and holding the partners to accountability; and
- 67.3. Transnet reserves the right to conduct Probity Check on the Preferred Bidder and its shareholders.
- 67.4. The outcome of the Probity check /risk assessment will be used to identify potential risks and mitigate those risks where appropriate and possible.
- 67.5. 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.
- 67.6. The due diligence consideration of the ranked Bidder's Bid Responses 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.
- 67.7. 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.

