11th Floor, The Marine Building,
22 Dorothy Nyembe Street, Durban, 4001
Private Bag X54322, Durban, 4000
Tel: 031 365 7800
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1. Purpose

The purpose of this Terms of Reference ("TOR") is to allow suitably qualified, professional, and reputable service providers to submit proposals to the Ports Regulator of South Africa ("the Regulator") to conduct an appraisal on the components of the Tariff Strategy in comparison to its envisaged end-state and to propose suitable amendments/revisions. The assessment will include a revision of assumptions, amendments, tactics, and proposals to achieve the envisaged end-state. The assignment will be completed by 31 March 2025.

2. Introduction

2.1. Perspectives on Economic Regulation of Ports in South Africa

The Regulator is a Schedule 3A public entity in terms of the Public Finance Management Act No. 1 of 1999 ("PFMA") and is expected to comply with its requirements. The Regulator was promulgated by the National Ports Act No. 12 of 2005 ("the Ports Act") and the functions of the regulator have been identified as:

- Exercise economic regulation of the ports system in line with government's strategic objectives;
- Promote equity of access to ports and facilities and services provided in ports;
- Monitor the activities of the National Ports Authority to ensure that it performs it functions in accordance with the Act; and
- Hear appeals and complaints contemplated in terms of Section 48 of the Act.

In terms of Section 72(1)(a) of the Ports Act, the National Ports Authority ("NPA"/ "the Authority") is required, with the approval of the Regulator, to determine tariffs for services and facilities offered by the NPA and to annually publish a tariff book containing those tariffs. The Directives in terms of Section 30(3) of the Act require that the Regulator, when considering the proposed tariffs for NPA, to ensure that such tariffs allow the NPA to:

- Recover its investment in owning, managing, controlling, and administering ports and its investment in port services and facilities.
- Recover its costs in maintaining, operating, managing, controlling, and administering ports and its costs in providing port services and facilities; and

- Make a profit commensurate with the risk of owning, managing, controlling, and administering ports and of providing port services and facilities.

In line with the Directives, the revenue generated from the NPA's services is utilised inter alia to maintain and provide current and future basic port infrastructure. The NPA's Tariff Book sets out the various tariffs that are charged to maintain and develop the South African port system. Tariffs are set by firstly determining the total amount of revenue required to cover operating costs, capital costs and a return in accordance with the Tariff Methodology.

The function of the Tariff Strategy ("the Strategy") is to specify and prescribe on how the total revenue will be apportioned to the individual tariffs that are meant to be charged to customer and/or commodity categories comprised of cargo owners, shipping lines and properties (real estate).

3. Background

The South African port structure, which is comprised of eight commercial ports, is premised on a landlord port model with the Authority serving as both an infrastructure owner and the entity responsible for ensuring that the port functions adequately and development is adequately provided.

The inception of regulation in 2007 highlighted the need for a tariff reform. As a result, in 2012, the NPA submitted to the Regulator a Pricing Strategy aimed at addressing the imbalances of the past, including an ad-valorem pricing structure and cross subsidisation. In 2015, the Regulator and the port sector opted for a tariff strategy premised on a user-pay-based cost structure to eliminate cross-subsidisation, as well as a set of assumptions and guiding principles which formed the basis of the Strategy in FY 2015/16.

Historically, marine services, which is the provision of port infrastructure and facilities by the Authority to aid navigation, berthing and docking of vessels in the ports, were not priced on a cost-based approach. Currently the services are still not recovering the operating costs, depreciation / capital, and other joint costs. As a result, on a stand-alone basis (isolated) the marine services are not priced adequately to fund refurbishments, maintenance, acquisitions and expansion of the assets needed in the category. The port system earns a revenue approved for total requirements of the Authority. This implies an inadequate tariff structure heavily reliant on other tariff categories for a subsidisation.

The Tariff Strategy is aimed at rectifying these anomalies. The envisaged picture for marine services is a tariff structure that is premised on a user pay principle and cost recovery per service. This would be implemented in conjunction with discontinuation of some charges whilst others are bundled and consolidated to improve vessel turnaround time and incentivise vessels berthed to continuously work cargo.

The Regulator's cost allocation approach in the Tariff Strategy attempts to drive economic pricing and shift costs to parties best placed to manage them. Naturally, inefficiencies have a direct and indirect incremental cost to vessel owners which the Regulator is mindful of the inefficiencies in the South African port system.

The Tariff Strategy also entails the cost recovery and pricing of lease rental and concessions of land and terminals in the ports. This aspect talks to the transparency required by the port users in the way the Authority conducts its business in determining rental fees between the Transnet Port Terminals and other private operators.

The lease revenue model is important as it is considered in the context of effective long term port planning, equitable access and understanding the needs of port users in the current and future. Therefore, the port costing and pricing structures inherently includes the Real Estate portfolio of the Authority, albeit the pricing instruments are determined by market values.

It is expected that port infrastructure will expand as the economic activity through the port system. In addition, there will be growth in container traffic and bulk commodities and there will be improvements in port performance. The regulatory framework and port financial model must be able to fully accommodate the effects thereof. The cost allocation of asset groups to the various user categories in the port system therefore guides infrastructure investments in respective industries and drives the movement of cargo within the port system.

In the envisioned end state, within the marine services, the revenue contribution from infrastructure recovered through port dues would increase significantly, however with the incentives for turnaround time the tariff structure would mitigate excessive levels. The port dues would be used for its desired role of funding port infrastructure (inclusive of wet infrastructure as direct users). What would be important is that vessels are incentivised to turnaround much quicker.

The purpose of tugs and pilotage tariff structure would be to account for resources used within the simplified manner of charging users. Again, the ship repair tariff structure would reflect the infrastructure required to provide adequate service. The cost allocation approach guides revenue requirements from port user categories (classifications) in accordance with user pay principle and benefits. The shift in this approach indicates a higher proportion of allocation to vessel owners which will ultimately recovered from shippers.

The Tariff Strategy revision is in line with the initial plan of observing the first 10-year period and revise the trajectory based on the results of the period observed. With seven (7) years having passed and data available, the Regulator has observed some challenges to be volumes, port calls and variability of vessel sizes, disruptions in global supply chains impacting local imports and exports, the inefficiencies and lack of adequate infrastructure to aid navigation, docking and berthing of vessels on time in the ports.

Going forward it must have the capabilities to effectively focus on resistance to shocks and provide stability to a point of near equilibrium. It is against this background that service providers are requested to submit proposals to the Regulator to conduct an appraisal on the components of the Tariff Strategy in comparison to envisaged end-state and propose amendments where desired milestones and goals will not be achieved.

4. Problem Statement

Historically, prior to regulation, the SA tariff structure was severely imbalanced in that cargo dues were extremely high (due to wharfage charges where cargo dues were calculated on an ad-valorem basis depending on the value of the cargo), whilst marine charges to shipowners and rental of properties were relatively lower. The resultant tariff structure was skewed, non-transparent, subsidised, and had no resemblance to the actual cost to serve in usage of port infrastructure.

The initial envisaged long-term cost allocation framework to fund port infrastructure indicated a need for a shift from dependency on cargo owners to a fair split of cost recovery based on a user pay principle and benefit. In this proposal a split of 36%, 29% and 35% recovery from cargo owners, tenants, and shipping lines respectively was forecast, a move away from the then allocation of 60%, 22% and 18% respectively.

The latest review indicates gains in cost allocation to tenants and cargo owners and not so much to shipping lines. Some of the causal effects for this picture are known. However, some are probably reflecting inaccuracies in assumptions stemming from the initial setting of the Tariff Strategy such as a marine tariff structure designed to incentives quicker turnaround, which was not implemented.

The Regulator and the port users have observed a deterioration in port performance, and this has impacted waiting times, turnaround times and port costs for vessels owners and congestion in ports which are ultimately passed onto the consumers.

The port volume information over the last period indicates a trajectory opposite what was envisaged with the following observations:

- Containers: CAGR of approximately 1.25% decrease which attributed to a deliberate strategy to lower the container cargo dues tariffs but also a corresponding 1.20% decrease in volume trajectory of containers.
- Roro's: CAGR of approximately 10.00% increase behind the increase of 3.92% in volumes over a seven-year period.
- Bulk: CAGR of approximately 6.00% increase which is deliberate as the Tariff Strategy aimed to reverse the cross-subsidisation enjoyed by bulk exporters.
- The fluctuations in average Gross Tonnage (GT) for vessels calling SA ports.

5. Project Objectives

The review of the Tariff Strategy has commenced with a consultation paper and inputs from port users. Thus, the objectives of the review are to:

- Conduct own assessment to establish drivers of deviations from planned Tariff Strategy milestones set in FY 2025/16 as revised in FY 2020/21;
- The formation of tariff structures for cargo dues, marine tariffs (time, weight, availability driven cost drivers), ship repair and real estate categories;
- Assess available information on the observations of trend and time series analysis of vessel calls, and sizes of vessels across different cargo categories; and
- Amend the Tariff Strategy to reflect these enhancements and set new targets for the agreed upon period for review.

6. Scope of Work

The Successful Bidder is expected to review the fundamental aspects underpinning the Tariff Strategy including the following:

- The review of the regulatory framework, inclusive of the asset allocation principles.
- Propose the tariff structure for Marine Service and Cargo Dues as articulated in the Tariff Book (i.e. Section1-8 of Tariff Book).
- The review and simplification of tariff lines irrespective of cargo handled within a port terminal and methods to expedite theses approaches.
- Apply the Regulator's approved Regulatory Accounting Principles in the context of implementation of the Tariff Strategy.
- Review and provide inputs on written submissions from stakeholders on the pricing structure of the South African port system.

7. Project Output(s)

In revising the Tariff Strategy based on the performance of the last eight years, the preferred bidder will be required to provide a report covering the following.

- Key levers required to realise the Tariff Strategy given performance and/or progress update on the first 10 years of implementation.
- Inherent factors impacting the milestones of the Strategy arising out of interactions between the marine industry and the economy.
- Limitations and constraints and advice on the best way to optimise the approach chosen in respect of the information available.

- Present scenarios of the Tariff Strategy departing from Initial 10 years, incorporating these key levers, inherent factors and limitations into the next iteration of the strategy.
- Respond to industry inputs as provided in stakeholder engagements and consultations.

8. Key Deliverables

- An Inception report (setting out the project plan and deliverables)
- Literature Review
- Skills Transfer Plan
- Minutes of every meeting conducted towards the project
- Weekly progress reports
- Report on each project output
- Project presentation(s) for stakeholder engagements
- Internal and external workshops; and
- Final report (setting out key findings and suggested amendments to the Tariff Strategy).

9. Project Management

The Project Manager will lead and guide project objectives, outputs, and outcomes for the duration of the project. The project will be managed at two levels, at the project management team and at the project steering committee level.

9.1. Project Management Team

The project management team will comprise of the Ports Regulator team and a team specified by the successful bidder. The project management team will be responsible for the administration of the project in terms of achieving key deliverables and adhering to timelines of the project.

10. Expected Deliverables / Outcomes

To present to the Ports Regulator a report on the proses tariff strategy for the South Africa port system.

11. Non- Compulsory briefing session

Please note that the non- compulsory briefing session will be held as follows:

Date: **03rd October 2024, Thursday**

Time**: 12h00 (Midday)**

Venue**: 22 Dorothy Nyembe Street, 11th Floor, The Marine Building, Durban or on MS Teams:**

Join the meeting now
Meeting ID: 310 963 784 805
Passcode: nHxArn

12. Period / Duration of Appointment

- The contract with the appointed service provider will be for a period of five (5) months from date of appointment.
- The Project is expected to reach finalisation on 31 March 2025.
- The successful service provider will be subjected to ongoing reviews and engagements.

13. Costing / Comprehensive Budget

- An all-inclusive comprehensive costing price must be submitted in a separate envelope indicating unit prices per resource inclusive of VAT (SBD 3.3 for detailed costing and the bidder should quote in South African currency (ZAR) for all the resources.
- The project should be costed per deliverable, per project phases.
- The Ports Regulator of South Africa reserves the right to negotiate with the preferred bidder identified in the evaluation process, regarding any terms and conditions, including rationalisation of the fees in terms of National Treasury guidelines prior to the awarding of the bid.

14. Evaluation Method

14.1. PHASE 1: Pre-compliance or Initial Screening

14.1.1. During this phase bid documents will be reviewed to determine compliance with SCM returnable, tax matters and whether the Central Supplier Database (CSD) report has been submitted with the bid documents at the closing date and time of the bid. Bids which do not satisfy the compliance criteria will not be evaluated further. Those who fulfil the requirements or have submitted the required documents will be further evaluated.

14.1.2. The bid proposals will be screened for compliance with administrative requirements as indicated below:

Item No.	Administrative Requirements	Check / Compliance	Non-submission may result in disqualification
1	Master Bid Document	Provided and bound	*YES
2	4 Copies of Bid Documents	Provided and bound	*YES
INCLUDED IN THE BID DOCUMENT			
3	SCM - SBD 1 - Invitation to Bid	Completed and signed	*YES
4	CSD registration number / SARS PIN and CSD summary report	Provided	*YES
5	SCM- SBD 3.3- Pricing schedule	Completed and submitted	*YES
6	SCM - SBD 4 – Bidder's Disclosure	Completed and signed	*YES
7	SCM- SBD 6.1- Preference claim form	Completed and signed	*NO
8	In case of bids where Consortium/ Joint Ventures, Consortium/Joint Venture agreement signed by both parties must be submitted with bid proposal	JV agreement completed and signed, if applicable	*YES
9	POPIA consent form	Completed and signed	*YES
10	General Conditions of Contract	Initialled and submitted	*YES

***YES** – PRSA reserves the right to reject proposals that are not submitted in the prescribed format or where information presented is illegible or incomplete and may not be further evaluated for mandatory requirements (Phase 2).

14.2. Phase 2: Mandatory Requirements

14.2.1. Only bid proposals that meets pre-compliance requirements will be evaluated on mandatory requirements. The Bidder must complete the section below by answering **YES or NO**. If, Yes, please attach proof.

NO.	REQUIREMENT	COMPLY: YES OR NO
1	**Post Graduate Qualification in Infrastructure related Economics streams of Transport/Maritime/Economics/ Engineering/Mathematics/Financial Modelling/Accounting/Planning.** The Bidder must submit documentary proof of their qualifications	

	for the project team in Infrastructure related economics illustrated above. **All other members of the project team must have a minimum bachelor's degree in the aforesaid fields. The CVs of all team members must be submitted.**	

NOTE: Failure to meet all the mandatory requirements will lead in the Bidder being disqualified and not further evaluated for functionality (Phase 3).

14.3. PHASE 3: Functionality Criteria

14.3.1. Only bid proposals that meet the mandatory requirements will be further evaluated on functionality criteria,

14.3.2. The Bidder must score a minimum of **75** during Phase 3 (functionality / technical) of the evaluation to qualify for Phase 4 of the evaluation where Price and specific goals will be considered.

14.3.3. The functionality is as follows:

PHASE 3			
GUIDELINES FOR CATEGORY CRITERIA	**FUNCTIONALITY (GUIDELINES FOR CRITERIA APPLICATION)**		**WEIGHT**
Demonstrate knowledge, skills and experience in developing non-proprietary pricing models based on tariff methodologies and strategies in infrastructure industries	**Service provider's years of experience in the field**	Indicator	**15**
	Bidder must present evidence of service rendered in the field. Evidence must be in the form of previous results or problem statements, recommendations and outcomes and impact on the pricing structure in the field.		
	No project illustrated	0	
	1 project illustrated	5	
	2 projects illustrated	10	
	3 to projects illustrated	15	
Experience of project team	**Service Provider to provide with detailed CVs of the proposed project team members that will service PRSA, including the following:** **(The bidder to clearly stipulates position of each team member according to the below mentioned)**	Indicator	**15**
	Programme Manager/Senior Manager: • Minimum 10 years' experience in financial modelling/infrastructure pricing and modelling/transport economics/Mathematics/engineering/Accounting or related.	15	

PHASE 3			
GUIDELINES FOR CATEGORY CRITERIA	**FUNCTIONALITY (GUIDELINES FOR CRITERIA APPLICATION)**		**WEIGHT**
	Project Team • The project team must at least have a minimum of 5 years in financial modelling/ engineering/infrastructure planning/ economics or maritime.	20	**20**
A proposed project plan on the adopted Methodology and approach to the tariff strategy with deliverables, timeframes, project costing and milestones on how the Bidder intends to achieve the objectives of the PRSA over the contract period.	**Methodology and Approach for Tariff Strategy** The Bidder must provide details (methodology and project schedule) on how the function/service will be carried out, including the resources to be allocated and how such resources will be utilized.	Indicator	**40**
	No information provided	0	
	Limited information provided on a project plan, methodology and management.	20	
	Project plan and methodology action well broken down with details of deliverables, timeframes/ milestones/ costing	40	
Service provider's experience in the field of maritime, tariff benchmarking and tariff design should be followed by letters of reference depicting names and scope of project work successfully completed and recommendations by previous clients.	**Reference letters**	Indicator	**10**
	Bidder must share projects completed and the outcomes of such projects together with (reference) testimonial letters from previous clients. Reference letters must be on the referee's letter head, dated and signed and they must be for the services rendered in the past ten (10) years.		
	No reference letters attached.	0	
	1 to 2 reference letters attached	5	
	3 to 4 reference letters attached	15	
	5 to 6 reference letters attached	20	
	7 and more reference letters attached	25	
Total points on functionality			**100**

14.4. PHASE 4: Price and specific goals Criteria

14.4.1. Only bid proposals that have achieved 75 out of 100 on the functionality criteria will be further evaluated on price and specific goals.

14.4.2. The Regulator will utilise the following formula in its evaluation of Price:

$$Ps = 80\left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

14.4.3. Bidders total price proposal weighs 80 points and specific goals weighs 20 points.

14.4.4. The bidder must complete and submit SBD 6.1 preference points claim form in order to claim the preference points.

14.4.5. The specific goal for this tender is as follows:

No	Specific Goal	How it will be measured	Specific goals Points allocated
1	B-BBEE compliance certificate	Valid B-BBEE certificate or affidavit	20

15. Bid Submission Requirements

15.1. The service providers should ensure that the following submission requirements, which will be needed for evaluation purposes are included in their bid proposal and are as follows:

15.1.1. The service provider must draft a Table of Contents Page which will indicate where each document is in the proposal.

15.1.2. The proposal must consist of two parts, namely the technical bid and the pricing bid (master and copy).

15.1.3. A certified copy of the relevant tertiary qualification or equivalent from a member from a recognised institution. Certificate with the bid submission for evaluation. **Failure to do so will render the resource nominated not being allocated points and scoring zero (0).**

15.1.4. The information in the CV of the proposed team members should include relevant experience and qualifications in the chosen area of expertise demonstrating the required competency.

15.1.5. A detailed Project Plan with clear indication of who will be responsible for the management of the assignment as well as its execution. The allocation of team members on the assignments should be based on the experience in delivering the scope of work as listed.

15.1.6. Standard bidding documents (SBD 1, 3.3, and 4). Tax compliance status requirements and/or Central Supplier Database (CSD) number or report.

15.1.7. Certified copies of identity documents of directors and shareholders of the Bidder(s).

15.1.8. Letter of Authority to sign documents on behalf of the Bidder(s).

16. Special Conditions of Contract

16.1. On appointment, the performance measures for the delivery of the agreed services will be closely monitored by the Regulator.

16.2. The Regulator will not be held responsible for any costs incurred by the service providers in the preparation, presentation and submission of the proposal.

16.3. The service provider(s) must make sure that if one of the team members allocated to Regulator is no longer forming part of the team, such member must be replaced with the person with the similar expertise and qualifications, and the Regulator must be notified.

16.4. The proposals should be submitted with all required information containing technical information.

16.5. Disbursements must form part of the total costing of the project in the bidding process. The Regulator will not account for any additional costs incurred by the service provider not costing in the bid submission.

16.6. The Bidders failing to meet all the mandatory requirements will automatically be disqualified.

16.7. If the application is made by a Joint Venture or Partnership, the accreditation credentials in name of joined entity should be submitted. Both members in the joint venture must meet the requirements of the proposal.

16.8. Poor or non-performance by the Bidders will result in cancellation of the bid and the SLA.

16.9. Should the Bidder(s) fail to perform, the Regulator reserves the right to request that the Bidder remedy the given thirty (30) days' notice of cancellation of the contract.

17. Sub-Contracting Conditions/Requirements

In a case whereby sub-contracting is not set as a pre-qualification criterion, however, should the service provider intend to sub-contract a portion of work, such awarded a contract may only enter sub-contracting arrangements with the written approval of the Regulator.

18. Payment Terms

The Regulator undertakes to pay out in full or as per deliverables within thirty (30) days of all valid claims for work done and the required reports stipulated in this report No payment will be made where there is outstanding information/work not submitted by the Service Provider/s until that outstanding information is submitted.

19. Bid Evaluation and Criteria

Any bidder who fails to submit any elements of the bid submission requirements set out in the terms of this TOR may, at the discretion of the evaluation panel, be rejected for evaluation and therefore not be further considered.

The proposals will be evaluated as an entire package with attention paid to the competence of the respondent in all the necessary specialist and functional areas. Proposals will be initially evaluated on functionality and respondents will be expected to obtain 75 points on functionality for them to qualify for final evaluation on price and preference.

Proposals that fail to meet the minimum threshold 75 points on functionality will be disqualified.

This bid will be evaluated on an 80/20 Preference Point System, where the 80 points represent price and the 20 points is for specific goals. Only the qualifying bids will be evaluated in terms of the 80/20 Preference Points System.

The 80/20 preference point system applies for acquisition of goods or services for Rand value equal or above R30 000 and up to R50 million.

20. Required Expertise and Project Teams

Bidders must match the skills and expertise required in port pricing and strategies and must disclose any involvement in previous port tariff strategies in ports.

Current involvement in Transnet projects must be disclosed and will be considered a Conflict of Interest.

21. Pricing Conditions

For comparative purposes, quotes will be assessed on the total price of the services and the specific goals.

22. Bid Deadline

The closing date of the bid is **22 October 2024 at 12h00 (Midday)**.

All dates and times in this request for proposals are South African standard time. Any time or date in this invitation is subject to change at the Regulator's discretion and notice will be placed on the Regulator's website.

The establishment of a time or date in this invitation does not create an obligation on the part of the Regulator to take any action or create any right in any way for any bidder to demand that any action be taken on the date established.

The bidder accepts that, if the Regulator extends the deadline for proposal submission (the Closing Date and Time) for any reason, the requirements of this bid otherwise apply equally to the extended deadline.

A specific box is provided (at the PRSA Reception Area) for the receipt of proposals, and no proposal found in any other box or elsewhere after the closing date and time of bid will be considered.

Any submission received after the closing date and time will be considered late and will be returned unopened.

23. Contract Award

The Regulator reserves the right to accept any proposal submitted or reject all proposals.

The Regulator further reserves the right to cancel or withdraw this TOR at any time, as a whole or in part without furnishing reasons and without attracting any liability.

24. Project Submission

The service provider will be required to submit the bidding documents to the Ports Regulator of South Africa, 11th Floor, the Marine Building, 22 Dorothy Nyembe Street on or before the advertised closing time and date.

25. Project Enquiries

Any enquiries regarding bidding procedures and technical may be directed to:

Email: tenders@portsregulator.org