

TRANSNET SOC LTD

ACTING THROUGH ITS OPERATING DIVISION

TRANSNET NATIONAL PORTS AUTHORITY

("TNPA")

REQUEST FOR PROPOSALS FOR THE APPOINTMENT OF A TERMINAL OPERATOR TO FINANCE, DESIGN, CONSTRUCT, OPERATE, MAINTAIN, AND TRANSFER A MULTI-PURPOSE TERMINAL HANDLING FRESH PRODUCE AND COMPATIBLE BREAK BULK CARGO FOR A TWENTY-FIVE (25) YEAR CONCESSION PERIOD AT MAYDON WHARF PRECINCT IN THE PORT OF DURBAN.

REFERENCE NUMBER	: TNPA/2025/04/0015/93866/RFP
ISSUE OF RFP	: 11 April 2025
NON-COMPULSORY BRIEFING	: 07 May 2025
CLOSE FOR QUESTIONS	: 20 June 2025
BID SUBMISSION DATE	: 11 July 2025
CLOSING TIME	: 16:00 CAT
BID VALIDITY PERIOD	: 365 CALENDER DAYS FROM THE BID SUBMISSION DATE

NOTE TO THE BIDDERS:

Bidders are required to ensure that electronic bid submissions are made 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 30MB per upload and multiple uploads are permitted

TABLE OF CONTENTS

1	DISCLAIMER.....	8
2	DEFINITIONS AND INTERPRETATION.....	10
	PART I - GENERAL REQUIREMENTS, RULES, AND PROVISIONS	25
3	INTRODUCTION.....	25
4	BACKGROUND.....	27
5	WORKS PROGRAMME.....	33
6	TRANSITION PLAN	33
7	PROJECT SCOPE AND DESCRIPTION.....	34
8	COMPILATION OF DETAILED DESIGNS AND SPECIFICATIONS.....	35
9	CONSTRUCTION PROGRAM, CONSTRUCTION AND INSTALLATION, TESTING, AND COMMISSIONING OF TERMINAL EQUIPMENT AND ASSOCIATED INFRASTRUCTURE.....	36
10	OPERATION AND MAINTENANCE.....	36
11	DURATION OF TERMINAL OPERATOR AGREEMENT.....	37
12	HANDOVER AND TRANSFER OF THE TERMINAL.....	37
13	ACTIVITIES AT THE TERMINAL	38
14	OPEN ACCESS (THIRD-PARTY ACCESS)	38
15	CONCESSION FEE OFFER	39
16	KEY STAKEHOLDERS IN THE SOUTH AFRICAN PORT SYSTEM.....	39
17	PURPOSE OF THE RFP	40
18	STRUCTURE OF THIS RFP	41
19	STRUCTURE OF THE EVALUATION OF BID RESPONSES.....	41
20	BEST AND FINAL OFFER ("BAFO").....	43
21	ALTERNATIVE BID RESPONSE	43
22	PROJECT STRUCTURE AND CONTRACTS.....	44
23	TNPA'S RIGHTS.....	47
24	TIMETABLE FOR THE RFP	48
25	EXTENSION OF THE RFP BID SUBMISSION DATE	48
26	GOVERNING LAW, COMPETITION AND OTHER STATUTORY REQUIREMENTS.....	48
27	THE SOCIO-ECONOMIC OBJECTIVES AND REQUIREMENTS.....	49

28	ENVIRONMENTAL, SAFETY, HEALTH, AND SECURITY COMPLIANCE.....	53
29	BIDDERS' EXPERIENCE AND CAPACITY	53
30	GENERAL BID RULES.....	53
31	ELIGIBILITY CONSIDERATIONS	54
32	ACKNOWLEDGEMENT OF THE LAW	55
33	LEGAL PERSONALITY OF BIDDER AND CHANGES.....	56
34	AUTHORISATION OF TNPA AND THE TERMINAL OPERATOR	58
35	CONFIDENTIALITY	58
36	BID DOCUMENTATION FEE AND PREFERRED BIDDER GUARANTEE.....	59
37	CORRUPT GIFTS AND PAYMENTS	61
38	NO CONTRACT.....	61
39	NO COLLUSION.....	61
40	NON-COMPLIANCE OF BID RESPONSE RESULTING IN DISQUALIFICATION	62
41	CONTACT POLICY	63
42	TIME FOR REQUESTS AND CLARIFICATIONS	64
43	REQUESTS AND RESPONSES TO REQUESTS	64
44	NON-COMPULSORY RFP BRIEFING SESSION AND SITE VISIT	64
45	STATUS OF RESPONSE.....	65
46	SUBMISSION OF BID RESPONSE	65
47	FORMAT OF THE BID RESPONSE	66
48	LATE BID RESPONSES	69
49	BID SUBMISSION VALIDITY	69
50	EXTENSION OF BID SUBMISSION VALIDITY PERIOD	69
51	DECLARATION OF BIDDER.....	69
52	BRIEFING NOTES AND CHANGES TO THE BID PROCESS.....	69
53	COST OF BIDDING	70
54	INCONSISTENCIES.....	71
55	INCORRECT OR MISLEADING INFORMATION	71
56	ELECTRONIC ACCESS TO BID RESPONSES	71
57	RFP BID RESPONSE REJECTION	71

	4
58	DISPUTES RELATING TO THE BID PROCESS..... 71
59	SELECTION OF PREFERRED AND RESERVE BIDDER..... 72
60	PARTICIPATION IN A SINGLE BIDDER 72
61	INFORMATION VERIFICATION 72
	PART II - QUALIFICATION CRITERIA 73
62	THE STRUCTURE OF THIS QUALIFICATION CRITERIA..... 73
	PART III – EVALUATION CRITERIA 74
63	OVERVIEW OF THE EVALUATION CRITERIA 74
64	STRUCTURE OF THE EVALUATION CRITERIA..... 75
65	STAGE 1 OF THE EVALUATION CRITERIA..... 76
66	THE STRUCTURE OF STAGE 2: EVALUATION CRITERIA 99
67	STAGE 2 OF THE EVALUATION CRITERIA..... 99
68	PART IV OBJECTIVE CRITERIA 102
	ANNEXURES 104
	Annexure A 105
	Bid Notice 105
	Annexure B 106
	Site Map..... 106
	Annexure C 107
	Port Of Durban’s Safety Health and Environment (SHE) Integrated Management System Policy 107
	Annexure D 109
	Port of Durban Berthing Policy 109
	Annexure E 110
	Maydon Wharf Traffic Assessment..... 110
	Annexure F 111
	Fire Compliance Requirements 111
	Annexure G..... 112
	National Ports Act No. 12 of 2005 112
	Annexure H..... 113
	Form of Preferred Bidder Guarantee 113

Annexure I 115

Guidelines For Terminal Operator Performance Standards 115

Annexure J..... 116

Bid Response Form 116

Annexure K 123

Declaration of Bidder 123

Annexure L 126

Non-Disclosure Agreement..... 126

Annexure M 132

Resolution of Board of Members 132

Annexure N..... 133

Resolution of each Member..... 133

Annexure O..... 134

Certificate of Acquaintance with RFP Documents..... 134

Annexure P 136

Declaration of Interest..... 136

Annexure Q..... 140

Tax Clearance Requirements 140

Annexure R..... 141

Certificate of Acquaintance with the Requirements of the RFP 141

Annexure S 142

Certificate of Acquaintance with Conditions of Contract with TNPA 142

Annexure T 143

Breach of Law Form 143

Annexure U..... 144

RFP Clarification Request Form..... 144

Annexure V 145

Berth Length and Depth..... 145

Annexure W 146

Supplier Integrity Pact..... 146

Annexure X	147
Standard RFP Response Form: Information about Bidder	147
Annexure Y	162
Lenders Support Letter	162
Past experience in Financing Capital Projects Evidence Sheet.....	162
Annexure Z	163
Financial Support Letter.....	163
Annexure AA.....	164
B-BBEE Verification Certificate	164
Annexure BB.....	165
Business Case Guidelines.....	165
Annexure CC	170
Concession Fee Offer	170
Annexure DD	171
Economic Development Information from the Bidder	171
Annexure EE 1	172
Reference Letter	172
Annexure EE 2.....	173
Reference Letter	173
Annexure FF	174
Technical Information (Bulk Services)	174
Annexure GG.....	175
Technical Information (Structural Assessment Report).....	175
Annexure HH	176
Technical Information (Electrical Assessment Report).....	176
Annexure II	177
Criteria Schedule: Sub-Contract/ Joint Venture.....	177
Annexure JJ.....	179
Draft Terminal Operator Agreement.....	179
Annexure KK.....	180

List Of Commodities (*Compatible Break Bulk Cargo*) 180

1 DISCLAIMER

- 1.1. This Request for Proposals (RFP) (including any other information, written or oral, made available during the RFP process) is hereby issued by Transnet National Ports Authority (TNPA), an operating division of Transnet SOC Ltd with registration number 1990/000900/30 to select a Preferred Bidder with whom TNPA may conclude a Terminal Operator Agreement (TOA) in accordance with Section 56 of the Act.
- 1.2. This RFP is issued for purposes set out in this Clause 1 and is not intended to form any part or basis of any investment decision by the Bidders. Bidders should not consider this RFP an investment recommendation by TNPA or any of its Transaction Advisors. Each person to whom this RFP (and subsequent related information) is made available or who accesses it, must make their own independent assessment of the Project after making such investigation and taking such professional advice as deemed necessary. Neither the receipt of this RFP or any related information 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 and other related information, the information contained herein does not purport to be comprehensive or to have been verified by TNPA, any of its officers, employees, or Transaction Advisors. Bidders are encouraged to verify the information contained in this RFP by conducting their own due diligence. 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, or Transaction Advisors with respect to the information or opinions contained in this RFP. 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 related document or on which such document is based.
- 1.5. TNPA has developed a fair, equitable, transparent, competitive, and cost-effective bid process for this Project. Bid Responses will be evaluated against the qualification and evaluation criteria contained in this RFP, including related Briefing Notes issued during the bid process.
- 1.6. TNPA reserves the right to amend, modify, withdraw, terminate and/or cancel this RFP or any of the procedures, procurement processes or requirements detailed in this RFP including 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. Bidders are advised that TNPA has the right in its sole and unfettered discretion not to accept any bid. In particular, please note that TNPA reserves the right to:
- 1.7.1. modify certain non-substantive aspects of the RFP and request Bidders to re-bid on any such changes;
 - 1.7.2. reject any Bid Response which does not conform to instructions and specifications which are detailed herein;
 - 1.7.3. disqualify Bid Responses submitted after the Bid Submission Date;
 - 1.7.4. not necessarily award the Project to the highest-scoring Bid Response or an Alternative Bid Response;
 - 1.7.5. withdraw the RFP on good cause shown;
 - 1.7.6. conclude the TOA in connection with this RFP at any time after the RFP's closing date;
 - 1.7.7. award the Project and/or conclude the TOA for only a portion of the proposed services which are reflected in the scope of this RFP;
 - 1.7.8. split the award of the Project between more than one Bidder at TNPA's discretion, should it be advantageous in terms of, amongst others, developmental considerations;
 - 1.7.9. make no award of the Project and/or Bid; or
 - 1.7.10. award the RFP on the strength of the information furnished by the Bidder. Should such information, after the award, be proven 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 losses, claims or costs arising from any of these actions.
- 1.8. If any Bidder or its constituent members, employees, advisors or agents make or offers to make any gratuity to any 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 members may be disqualified forthwith from participating in the Project. Over and above the criminal consequences that may be pursued against the Bidder, the Bidder may be restricted from conducting business with TNPA and/or Transnet in future.

2 DEFINITIONS AND INTERPRETATION

- 2.1. In this RFP, except as otherwise defined or the context indicates otherwise, the following terms shall bear the following meanings:
- 2.1.1. **“Actual Operations Commencement Date”** - has the meaning ascribed to it in the TOA;
 - 2.1.2. **"Administrative Responsiveness"** - means compliance with the administrative requirements set out in (*Qualification Criteria 1: Administrative Responsiveness*) of Part II of this RFP;
 - 2.1.3. **"Advisors"** - means any advisors to a Bidder, Member, Contractor, or any other participants in any Bid Responses (including legal advisors, financial advisors, and transaction advisors);
 - 2.1.4. **"Alternative Bid Response"** - has the meaning ascribed to it in Clause 21 of Part I (*General Requirements, Rules, and Provisions*) of this RFP;
 - 2.1.5. **"Annexure" or "Annexures"** - means any annexure or annexures attached to this RFP;
 - 2.1.6. **“Applicable Law/s”** - means all local, provincial, or national statutes, ordinances, regulations, by-laws, and all rules, directives, decrees, decisions, determinations, rulings, rules, judgments orders of any competent court or the Government and other instruments which have the force of law in the Republic of South Africa, from time to time, as well as the South African common law;
 - 2.1.7. **“BAFO”** - means the Bidder’s Best and Final Offer;
 - 2.1.8. **"Berth"** - means berth 7 in Maydon Wharf, the sea space which shall be operated as a common-user berth for the loading and discharge of Cargo at the Terminal as reflected in Annexure B (Site Map).

- 2.1.9. **"Bidder"** - means any Company, Joint Venture, Consortium of Members, or special vehicle formed (whether incorporated or unincorporated) that submits a Bid Response;
- 2.1.10. **"Bid Notice"** - means 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 as Annexure A;
- 2.1.11. **"Bid Response"** - means a bid submitted by a Bidder in response to the Bid Notice contained in this RFP;
- 2.1.12. **"Bid Submission Date"** - means the deadline for the submission of Bid Responses to TNPA, which date and time is set out on the face of this RFP or any such later date and as may be determined by TNPA, at its discretion, and communicated to Bidders by way of a Briefing Note;
- 2.1.13. **"Bid Submission Period"** - means the period commencing on the Bid Submission Date and continuing until the TOA comes into force;
- 2.1.14. **"Bid Submission Schedules"** - the Schedules contained in Annexure H to Annexure JJ (*Bid Submission Schedules*) of this RFP, that are to be completed by the Bidder and/or its Members and submitted with the Bid Response;
- 2.1.15. **"Black People" or "Blacks"** - means natural persons who are Africans, Coloureds, and Indians as defined in the B-BBEE Act:
- who are citizens of the Republic of South Africa by birth or descent; or
 - who became citizens of the Republic of South Africa by naturalisation
 - before 27 April 1994; or
 - on or after and who would have been entitled to acquire citizenship by naturalisation prior to that date;

- 2.1.16. **"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;
- 2.1.17. **"Break Bulk"** - Cargo that is transported in individual units due to size and shape;
- 2.1.18. **"Briefing Note"** - means the document issued in writing by TNPA, prior to the Bid Submission Date, that amends or supplements the RFP, which shall be consecutively numbered in the order in which they are issued;
- 2.1.19. **"Business Case"** - means the business case to be developed in accordance with the Business Case Guidelines and submitted with the Bid Response as outlined in the Business Case Guidelines (Annexure BB);
- 2.1.20. **"Business Case Guidelines"** - means the guidelines in accordance with which each Bidder must develop its Business Case (Annexure BB);
- 2.1.21. **"Business Day"** - any day other than a Saturday, Sunday, or gazetted national public holiday in the Republic of South Africa;
- 2.1.22. **"B-BBEE"** - Broad-Based Black Economic Empowerment; a South African legal requirement, which prescribes that all entities operating in the South African economy to contribute to empowerment and transformation;
- 2.1.23. **"B-BBEE Act"** - Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;
- 2.1.24. **"B-BBEE Codes"** - the amended B-BBEE Codes of Good Practice, published under Government Gazette No. 36928, on 10 October 2013, in terms of section 9(1) of the B-BBEE Act;

- 2.1.25. **Cargo** - means Fresh Produce and/or Break Bulk Cargo, that will be authorised by TNPA to be handled at the Terminal;
- 2.1.26. **"Change in Control"** - means any change in Control of the Bidder's identity, structure, membership, or shareholding whether effected directly or indirectly.
- 2.1.27. **"Companies Act"** - the Companies Act, 71 of 2008, as amended;
- 2.1.28. **"Compatible Break Bulk Cargo"** - means the Cargo covered in Annexure KK, classified as compatible with the handling of Fresh Produce and compatible Break Bulk cargo, which may be subject to authorisation by TNPA and/or any other Responsible Authority;
- 2.1.29. **"Companies and Intellectual Property Commission" or "CIPC"** - Refers to the Companies and Intellectual Property Commission, an agency of the DTIC;
- 2.1.30. **"Company"** - means a Company incorporated in the Republic of South Africa in terms of the Companies Act;
- 2.1.31. **"Competition Act"** - the Competition Act, 89 of 1998, as amended;
- 2.1.32. **"Completion Certificate"** - has the meaning as ascribed to this term in the TOA;
- 2.1.33. **"Concession"** - means the concession rights granted by TNPA to undertake the Project in terms of section 56 of the Act;
- 2.1.34. **"Concession Fee"** - means the concession fees payable by the Terminal Operator to TNPA in respect of the rights to undertake the Project as set out in clause 15;
- 2.1.35. **"Concession Fee Offer"** - Offer made by a Bidder as part of its Bid Response, being the Concession Fee;
- 2.1.36. **"Concession Period"** - means the period in which the selected Terminal Operator will be authorised to finance, design, construct, operate, maintain, and transfer of the Terminal to TNPA, commencing on the Signature Date and expiring on the Expiry Date unless

otherwise terminated in accordance with the terms of the TOA or extended by agreement between the Parties;

- 2.1.37. **“Condition Assessment Report** - means the report prepared by TNPA capturing the current state of the various assets making up the Terminal on the Project Site, which is Annexure HH
- 2.1.38. **“Consents”** - all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, are required to be issued by or made with any Responsible Authority in terms of the Applicable Laws in connection with the Terminal Operator undertaking the Project including Environmental Consents and Safety Consents;
- 2.1.39. **“Consortium”** - means a group of separate Companies or a consortium of Members constituted in accordance with a consortium agreement for the purpose of submitting a Bid Response who will, if successful, incorporate a Project Company to undertake the Project;
- 2.1.40. **“Constitution”** - the Constitution of the Republic of South Africa Act, 108, 1996;
- 2.1.41. **“Construction” or “Construct”** - means all construction activities to be performed by the Terminal Operator under the TOA 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 TOA;
- 2.1.42. **“Contractor/s”** - means the contractors appointed or to be appointed by the Terminal Operator for purposes of undertaking a portion of the Project, for and on behalf of the Terminal Operator;
- 2.1.43. **“Contributor Status Level”** - the B-BBEE Contributor Status Level of the Bidder as determined by their compliance with the generic B-BBEE scorecard in terms of the Amended B-BBEE Codes or B-BBEE Codes;

- 2.1.44. **"Corporate Finance"** - debt funding sourced from and with recourse to either the Bidder, its Members or Guarantor, as appropriate, which may be raised against the Bidder's balance sheet or the balance sheet of its Members or Guarantor and made available to the Bidder for the financing of the Project including under the form of a shareholder loan, intercompany loan or other form of advance to the Bidder and as set out in the Corporate Financing Support Letter;
- 2.1.45. **"Corporate Financing Support Letter"** - means the letter that has to be provided by the Bidder, its Members, or Shareholders in the format as set out in Annexure Y;
- 2.1.46. **"Debt"** - means at any date, all amounts due and payable by the Terminal Operator that are outstanding under the Financing Agreements at that date (whether Corporate Finance or External Debt), excluding all cancellation or prepayment penalties or fees thereon, Shareholder Loans or interest thereon and all default interest;
- 2.1.47. **"Development Period"** - means the period commencing on the Effective Date of the TOA and shall end on the Actual Operations Commencement Date, which period shall not exceed 24 (twenty-four) months unless such period is extended in writing by agreement between the Parties;
- 2.1.48. **"DFFE"** - means the Department of Forestry, Fisheries and the Environment of the Government or the successor department designated by the Government from time to time;
- 2.1.49. **"DOT"** - means the Department of Transport of the Government or the successor Department designated by the Government from time to time;
- 2.1.50. **"Draft Terminal Operator Agreement"** - means the Draft TOA that is issued with this RFP and annexed hereto as Annexure JJ (*Draft Terminal Operator Agreement*);

- 2.1.51. **"DTIC"** - means the Department of Trade, Industry, and Competition of the Government or the successor Department designated by the Government from time to time;
- 2.1.52. **"Effective Date"** - has the meaning ascribed to it in the Draft TOA;
- 2.1.53. **"EME"** - means exempted micro-enterprise, being an entity with an annual turnover of R10 (ten) million or less, in terms of the amended B-BBEE Codes;
- 2.1.54. **"Environmental Consents"** - any consents, licenses, 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;
- 2.1.55. **"Equity"** - the entire issued share capital of, and Shareholder Loans to, the Terminal Operator;
- 2.1.56. **"Equity Funding"** - means funding provided to the Terminal Operator by its Shareholders either by way of share capital or Shareholder loans;
- 2.1.57. **"Essential Returnable Documents"** - means the bid returnable documents set out in the Bid Response Form (Annexure J) of this RFP;
- 2.1.58. **"Evaluation Criteria"** - means the evaluation criteria set out in Part III (*Evaluation Criteria*) of this RFP;
- 2.1.59. **"External Debt"** - any Debt, other than Corporate Finance, raised by the Terminal Operator from external sources;
- 2.1.60. **"Financier Direct Agreement" or "FDA"** - means the direct agreement entered into (or to be entered into) between TNPA, the Lenders, and the Terminal Operator in terms of the TOA;
- 2.1.61. **"Financial Advisors"** - means the firm or firms advising a Bidder on the raising of Debt and Equity Funding in respect of its Bid Response for the Project;
- 2.1.62. **"Financial Close"** - has the same meaning as defined in the TOA;

- 2.1.63. **“Financing Agreements”** - Agreements relating to the debt payable by the Terminal Operator to the Lenders.
- 2.1.64. **“Fresh Produce”** - means perishable Cargo such as fruits, vegetables and other plant based products that are freshly harvested, necessitating temperature-controlled environments during handling, storage and transportation.
- 2.1.65. **"Government"** - means the Government of the Republic of South Africa;
- 2.1.66. **“Guarantor”** - means an entity that unconditionally guarantees the obligations of the Terminal Operator with regard to External Debt or Corporate Financing;
- 2.1.67. **"Harbour Master"** - means an employee of TNPA contemplated in terms of section 74(3) of the Act and which is, in respect of the port for which he or she is appointed, the final authority on all matters relating to pilotage, navigation, navigational aids, dredging and the movement of vessels within port limits;
- 2.1.68. **"Handover Equipment"** Terminal Equipment purchased by the incoming Terminal Operator from the Incumbent Terminal Operator and taken possession of on the Handover Date for purposes of operating the Terminal;
- 2.1.69. **“Highest Ranking Bidder”** - means the Bidder who is awarded the most points after the completion of the Part III (Evaluation Criteria) evaluation;
- 2.1.70. **“Incorporation Documents”** - means the founding documents of the Bidder and all additional documents which set out the authority of such Bidder to act including the certificate of incorporation and the articles/memorandum of incorporation;
- 2.1.71. **"Incumbent Terminal Operator"** the entity that is currently undertaking Operations at the Terminal
- 2.1.72. **"Independent Certifier"** - has the meaning ascribed to it in the Draft TOA;

- 2.1.73. **“Joint Venture”** - means a business arrangement in which two or more companies (Members) agree to combine and share assets, skills, expertise, risks, and liabilities to submit a Bid Response;
- 2.1.74. **“Lead Member”** - means the Member of a Consortium that (i) is authorised to represent the Consortium and submits a Bid Response on behalf of the Consortium, (ii) will become the majority Shareholder in the Project Company once the Project Company is established and (iii) will be a key contractor;
- 2.1.75. **"Lenders"** - means the financiers to a Bidder in respect of the Project;
- 2.1.76. **“Mandatory Returnable Documents”** - means the bid returnable documents set out in the Bid Response Form (Annexure J) of this RFP;
- 2.1.77. **“Member”** - means any legal entity that is a member of a Consortium that will become a Shareholder of the Project Company once it is incorporated;
- 2.1.78. **"National Treasury"** - has the same meaning ascribed to it in the Public Finance Management Act, 1 of 1999;
- 2.1.79. **"National Ports Act"** - means the National Ports Act, 12 of 2005, as amended (“the Act”);
- 2.1.80. **"NEMA"** - the National Environmental Management Act, 107 of 1998, as amended;
- 2.1.81. **"NDP"** - the 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;
- 2.1.82. **"Occupational Health and Safety Act"** - the Occupational Health and Safety Act, 85 of 1993, as amended;

- 2.1.83.
- 2.1.84. **"Operation and Maintenance"** - means 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 JJ (*Draft Terminal Operator Agreement*) of this RFP;
- 2.1.85. **"Port Infrastructure"** - means the basic common-use structures of the Port including the Berths, breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways, and infrastructure used for the provision of water, lights, power, sewage, and similar services;
- 2.1.86. **"Port"** - refers to the Port of Durban, determined as such in terms of the Act and which is situated in Durban in the KwaZulu-Natal province of South Africa;
- 2.1.87. **"Ports Regulator"** - means the Ports Regulator of South Africa, an independent ports regulatory body established in terms of Section 29 of the Act;
- 2.1.88. **"Port Rules"** - means the Port Rules for the Harbours of South Africa promulgated in terms of section 80(2) of the Act;
- 2.1.89. **"Port Users"** - means any Person, organisation, and/or agency, other than the Terminal Operator, 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;
- 2.1.90. **"Preferred Bidder"** - means the successful bidder that meets the requirements of this RFP and is awarded the Project;
- 2.1.91. **"Preferred Bidder Guarantee"** - means the guarantee to be provided by the Preferred Bidder to TNPA in terms of Clause 36 (*Preferred Bid Guarantee*) of Part I (*General Requirements, Rules and Provisions*) of this RFP, in

the form and content attached as Annexure G to this RFP;

- 2.1.92. **"Preliminary Design"** - means the preliminary design of the Terminal plan layout as outlined in Part II of this RFP;
- 2.1.93. **"Project"** - means the financing, design, construction, operation, maintenance, and transfer of the Fresh Produce and Break Bulk Cargo Terminal at Maydon Wharf for the purpose of providing Terminal Operations;
- 2.1.94. **"Project Company"** - means a special purpose company that Members of a Consortium that is a Preferred Bidder must incorporate and use as the vehicle to undertake the Project and with whom TNPA will conclude the TOA;
- 2.1.95. **"Project Officer"** - the person appointed by TNPA as the project officer in respect of the Project;
- 2.1.96. **"Project Site"** - means the port premises known as Leases 72, 73 & 76 on Erf 10004, Leases 62 & 63 on Erf 10014, and Lease L36050 on Portion 1 of Erf 10019 & Portion 203 ERF 10004 in extent 28 577m², situated in Maydon Wharf precinct in the Port as set out in the Site Map (Annexure B).
- 2.1.97. **"PFMA"** - means the Public Finance Management Act, 1 of 1999, as amended;
- 2.1.98. **"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;
- 2.1.99. **"Qualification Criteria"** - the qualification criteria set out in Part II (*Qualification Criteria*) of this RFP;
- 2.1.100. **"Rand" or "ZAR"** - South African Rands

- 2.1.101. **"Related" or "Relation"** - a relationship formed on the basis of any one or more of:
- family (including spouses and in-laws);
 - friendship;
 - business acquaintance;
 - professional engagement; or
 - employment;
- 2.1.102. **"Reserve Bidder"** - means the Bidder that has been selected by TNPA as the reserve bidder with whom TNPA may conclude the TOA, provided that the circumstances in respect of the Preferred Bidder specified in Clause 59 of this RFP occur;
- 2.1.103. **"Responsible Authority"** - means any ministry, any minister, any organ of state, any official in the public administration, or any other governmental or regulatory department, commission, entity, service provider of a utility, board, agency, instrumentality, or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;
- 2.1.104. **"RFP"** - means this Request for Proposals and all Annexures, schedules, appendices, and Briefing Notes issued, from time to time, by TNPA to solicit Bid Responses from the Bidders;
- 2.1.105. **"RFP Process"** - means the process that is being conducted by TNPA in respect of the Project, as set out in this RFP;
- 2.1.106. **"Safety Consents"** - means any consents, licenses, authorizations, permissions, or approvals required to be obtained by the Terminal Operator from the Responsible Authority as required in terms of any health and safety law for the Project;
- 2.1.107. **"Sector Code"** - means the Amended Sector Code for the Agricultural Sector 2017 in terms of Section 9 of the

B-BBEE Act providing for empowerment in the agricultural sector with its Amended Agri BEE Scorecards for large enterprises and qualifying small enterprises;

- 2.1.108. **"Shareholders"** - means 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;
- 2.1.109. **"Shareholder Loans"** - means loans advanced by Shareholders to the Terminal Operator;
- 2.1.110. **"SHE"** - means Safety Health and Environment;
- 2.1.111. **"Signature Date"** - means the date on which the TOA is signed by both Parties and, if signed on different dates, the later of such dates;
- 2.1.112. **"Special Purpose Vehicle" or "SPV"** - means a special purpose company created in accordance with an SPV agreement for the purpose of submitting a Bid Response;
- 2.1.113. **"Standard Bid Response"** - has the meaning ascribed to it in Clause 21 of Part I (*General Requirements, Rules, and Provisions*) of this RFP;
- 2.1.114. **"Substantive Responsiveness"** - has the meaning ascribed to it in (*Qualification Criteria 2: Substantive Responsiveness*) of Part II of this RFP;
- 2.1.115. **"Terminal"** - means the extent of land and water space as may be required to undertake the Project by the Terminal Operator, illustratively demarcated in Annexure B (Site Map) of this RFP, on which the Terminal Operator will construct the Terminal Infrastructure;
- 2.1.116. **"Terminal Equipment"** - means the movable assets, including equipment and machinery (whether affixed to the Project Site

or not), that are required in order to operate the Terminal;

- 2.1.117. **"Terminal Infrastructure"** - means the terminal buildings, workshops, substations, surfacing, rail sidings, and terminal operations and infrastructure for the provision of water, lights, power, sewerage and similar services within Terminal boundaries;
- 2.1.118. **"Terminal Operator"** - means the Preferred Bidder granted the right to undertake the Project in terms of the TOA concluded between the Terminal Operator and TNPA, pursuant to being selected as the Preferred Bidder under this RFP;
- 2.1.119. **"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
- 2.1.120. **"Transition Plan"** - **"Transition Plan"** means a plan to be developed by TNPA in consultation with the Terminal Operator setting out the processes for the handing over of the Terminal, including the Terminal Infrastructure and any Handover Equipment to the incoming Terminal Operator;
- 2.1.121. **"TNPA"** - means the National Ports Authority of South Africa, an operating division of Transnet;
- 2.1.122. **"Terminal Operations"** - means services provided at the Terminal consisting of handling, storage, transshipment, and delivery of Cargo from and to vessels and such other services ancillary and related thereto;
- 2.1.123. **"Transnet"** - means Transnet SOC Ltd, with registration number 1990/000900/30, a state-owned company, duly

incorporated in accordance with the company laws of the Republic of South Africa;

- 2.1.124. **"Valuer"** - means a property valuer registered with the South African Council for Property Valuers; and
- 2.1.125. **"VAT"** - means the value-added tax levied in terms of the Value-added Tax Act, 89 of 1991;
- 2.1.126. **"Works"** - any design, construction, refurbishment, equipment procurement, installation, and commissioning, renewal, reconstruction, repair, or reinstatement work, which may be carried out with respect to the Terminal, Terminal Infrastructure, and/or Terminal Equipment.
- 2.1.127. **"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 is that if general words or terms are used in association with specific words or terms that 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; and
- 2.2.13. unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa.
- 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.

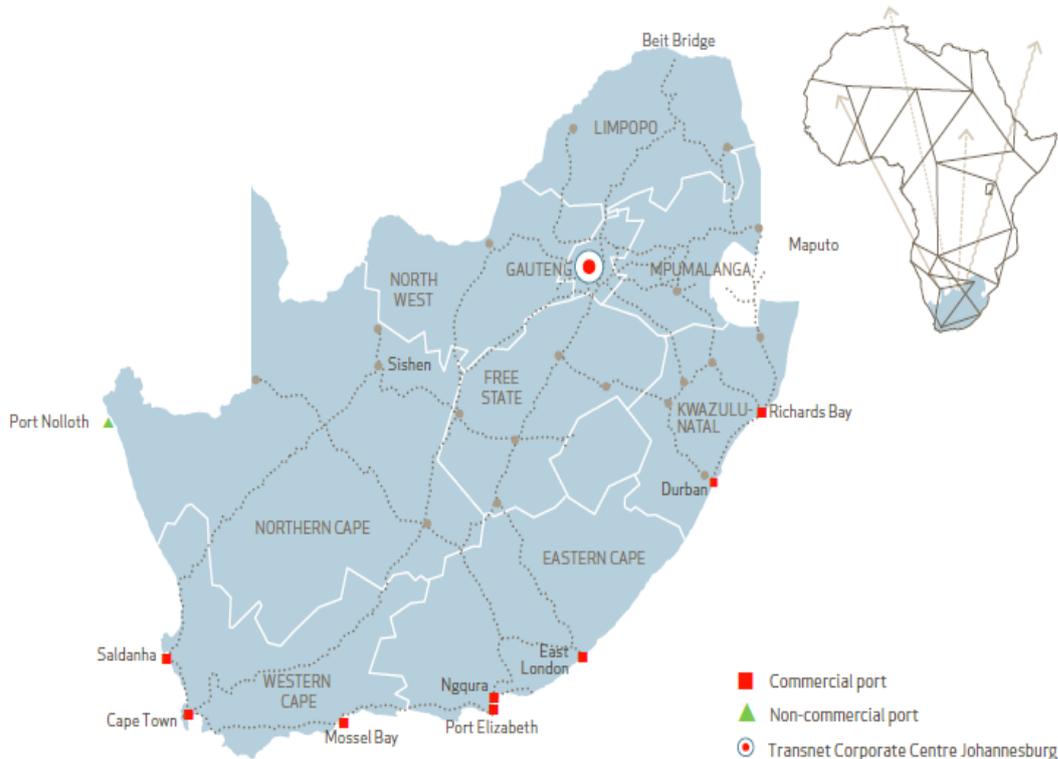
PART I - GENERAL REQUIREMENTS, RULES, AND PROVISIONS

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 Government.

- 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 South Africa's transport and logistics chain, managing the eight commercial seaports, namely the ports of Cape Town, Durban, East London, Mossel Bay, Ngqura, Port Elizabeth, Richards Bay and Saldanha Bay.
- 3.4. The ports under the control of the TNPA span approximately 2 800 km of the South African coastline. TNPA's asset base consists of port land, basic port infrastructure, and marine fleet at all eight commercial ports. TNPA manages port land of approximately 43,4 million m² and about 750 leases across the port system.
- 3.5. TNPA provides its services to port users, namely, terminal operators, shipping lines, shipping agents, cargo owners, the clearing and forwarding industry, and any person conducting port business.

Figure 1: National Port System



4 BACKGROUND

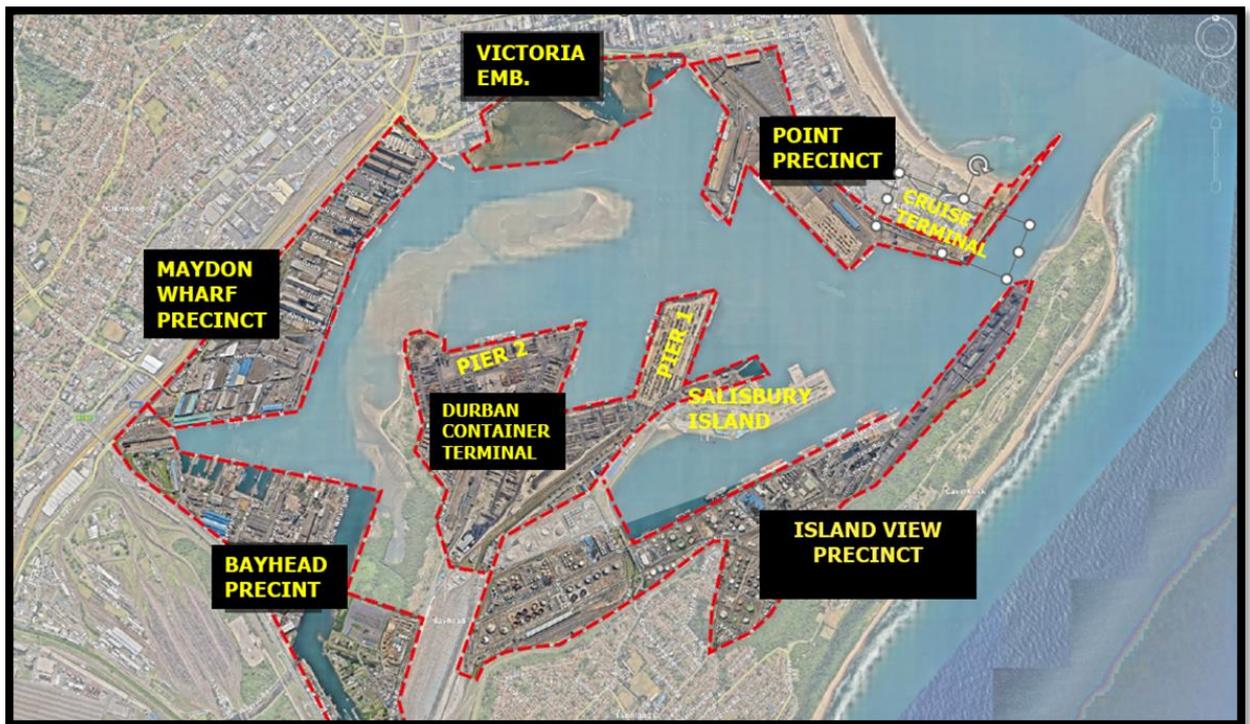
- 4.1. TNPA issues this RFP for the appointment of a Terminal Operator to finance, design, construct, operate, maintain, and transfer the Terminal for a concession period of twenty-five (25) years at Maydon Wharf precinct in the Port in terms of Section 56 of the Act.
- 4.2. Section 56 of the Act permits TNPA to enter into an agreement with any person in terms of which that person, for the period and in accordance with the terms and conditions of such agreement, shall be authorised to:
- 4.2.1. design, construct, rehabilitate, develop, finance, maintain or operate a port terminal or port facility, or provide services relating thereto;
 - 4.2.2. provide any other service within a port designated by TNPA for this purpose;
 - 4.2.3. perform any function necessary or ancillary to the matters referred to in paragraphs 4.2.1 and 4.2.2; or
 - 4.2.4. perform any combination of the functions referred to in paragraphs 4.2.1, 4.2.2, and 4.2.3

- 4.3. A TOA will be negotiated and concluded with the Preferred Bidder following the completion of the evaluation of all Bid Responses.
- 4.4. The parties shall be entitled to negotiate any provision of the Draft TOA, provided that such provision does not fall under those listed in Clause 22.6 (non-negotiable provisions).
- 4.5. The Draft TOA, which records the terms and conditions as well as the respective rights and obligations of TNPA and the Terminal Operator, is annexed hereto and marked Annexure JJ.
- 4.6. In undertaking the Project, the Terminal Operator will be responsible for the development of whatever Terminal Infrastructure, including fixed improvements to the Project Site, it will require to undertake the Project, 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.
- 4.7. **Port of Durban Overview**
- 4.7.1. The Port of Durban is located on the east coast of the southern region of the KwaZulu-Natal Province, and is well positioned along the major transport routes of the province with access to regional rail and air transport and boasts the following attractive features:
- 4.7.1.1. it is the most urbanized administrative region in the province, within the central business district of the eThekweni Metropolitan Municipality;
- 4.7.1.2. at the nexus of primary transport routes such as the N2 and N3, the Port has access to major regional and local distributor roads, and access to the hinterland, especially Gauteng;
- 4.7.1.3. adjacent to key economic activity areas such as the primary business and industrial nodes of the central business district and South Durban Basin and optimally positioned to access several local labour market sources areas such as Glenwood, Umbilo and Bluff;
- 4.7.1.4. strategically located within a national, regional, and local context, and is optimally positioned to service the Southern African community as an import and export location;
- 4.7.1.5. the proximity of tourist and related leisure activities to the Port provides additional opportunities for integrated growth and development, especially when considering the new Cruise Terminal at the Point Precinct, and its proximity to existing tourism nodes such as uShaka Marine World; and

- 4.7.1.6. the locational analysis shows that the Port is well positioned to benefit from the business, industrial, tourism, and socio-economic nodes and areas located close to the Port. The Port also has several opportunities for linkages with major business and tourist routes beyond KwaZulu-Natal, especially Gauteng province which is the economic hub of South Africa.

4.8. Port Precincts

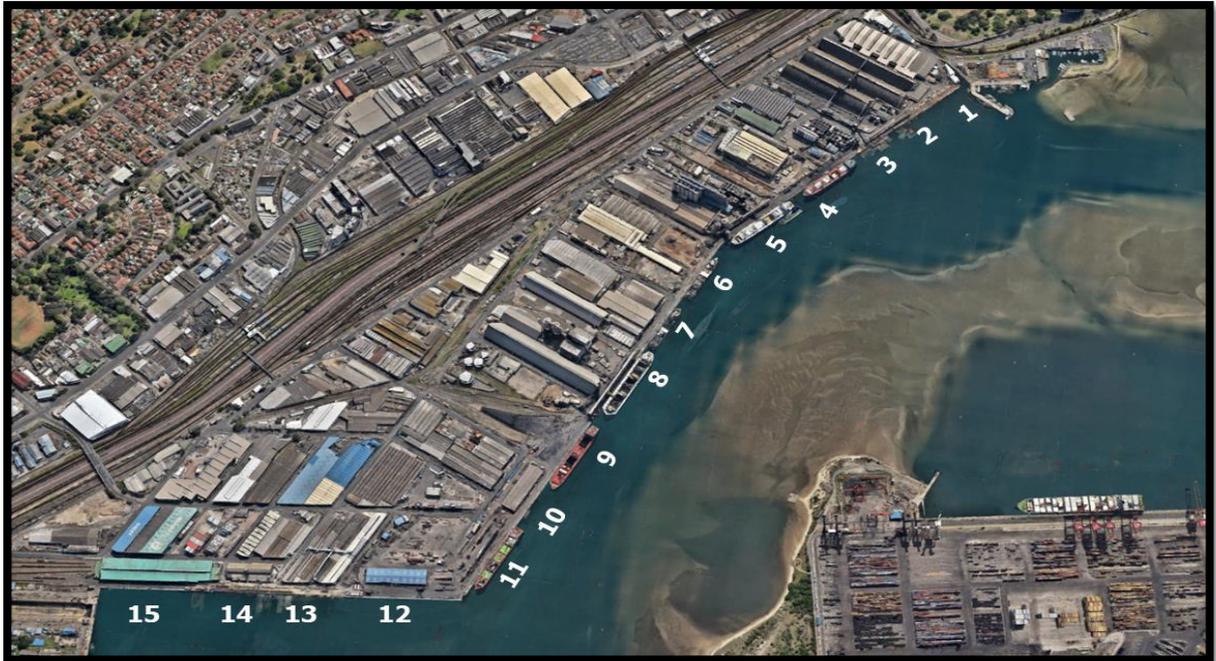
Figure 2 Port Precinct



- 4.8.1. The Port consists of five precincts that primarily focus on separate cargo handling operations:
- 4.8.1.1. The Point and Recreational precinct focus primarily on automotive cargo and cruise terminal operations;
 - 4.8.1.2. The Maydon Wharf precinct is a multi-functional precinct primarily focusing on break bulk and dry bulk;
 - 4.8.1.3. The Durban Container Terminal precinct focuses on container handling and liquid bulk;
 - 4.8.1.4. The Bayhead precinct focuses on maritime repair operations and logistics; and

- 4.8.1.5. The Island View precinct is primarily focused on liquid bulk and to an extent, dry bulk.

Figure 3 Maydon Wharf Precinct



- 4.8.2. The Maydon Wharf precinct is located at the Western extent of the Port and is primarily a mixed-use precinct that hosts cargo terminals catering for dry bulk, break-bulk, a limited amount of liquid bulk, and a small number of containerised units.
- 4.8.3. Maydon Wharf is the main precinct for general cargo and has been developed in phases since the early twentieth century. The precinct extends over approximately one hundred and forty-five (145) hectares with 15 (fifteen) berths and a capacity of over seven (7) million tons of cargo annually.
- 4.8.4. The landside area is dedicated to commercial logistics and includes warehousing and transport logistics-related activities.
- 4.8.5. The precinct has preferred berths for both break-bulk and dry-bulk berths. However, in practice, the berths are common user and not exclusive to specific terminals or cargo types.
- 4.8.6. The major commodities handled are steel, sugar, rice, grain and grain products, paper and paper products, fertilizer, soda ash, edible oils, and woodchips. The precinct comprises cargo terminals that range in their handling of break-bulk, dry bulk, mixed cargo, and two manufacturing plants.
- 4.8.7. The Maydon Wharf precinct boundaries comprise:

- 4.8.7.1. on the east – the existing Maydon Wharf quay wall;
- 4.8.7.2. on the south – the Bayhead Road intersection with Maydon Road;
- 4.8.7.3. on the west – the rail freight lines adjacent to the Southern freeway;
- 4.8.7.4. on the north – the Victoria Embankment / Southern freeway interchange.

4.8.8. **Figure 4** below shows a site that was identified as suitable for the establishment of a Fresh Produce and Break Bulk Cargo Terminal in Maydon Wharf Precinct at the Port of Durban.



4.8.9. The salient features of the site are as follows:

- 4.8.9.1. the subject property is a brownfield site described as Leases 72, 73 & 76 on Erf 10004, Leases 62 & 63 on Erf 10014, and Lease L36050 on Ptn 1 of Erf 10019 & Ptn 203 ERF 10004 in extent 28 577m², as set out in the Site Map (Annexure B);
- 4.8.9.2. Rail access to the Project Site may be provided through consultation with Transnet Freight Rail as may be required;
- 4.8.9.3. the goods vehicular access/road frontage is on Davey Road and Johnstone Road;
- 4.8.9.4. all Berths are common user in the Maydon Wharf precinct and the Project Site is closer to Berth 7 with a depth of 9.9 meters;

- 4.8.9.5. the Terminal, including any Terminal Infrastructure on the Project Site, will be handed over to the Terminal Operator *voetstoots*, notwithstanding the provisions of the Condition Assessment Report;
- 4.8.9.6. 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 attached as Annexure HH. The Condition Assessment Report is only made available to enable Bidders to gain insight into the condition of the Terminal, including the Terminal Infrastructure and Terminal Equipment;
- 4.8.9.7. the information in the Condition Assessment Report 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; and
- 4.8.9.8. whilst the information is shared in good faith, TNPA does not accept any liability whatsoever, including for any omissions and/or deficiencies in the Condition Assessment Report 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.
- 4.8.9.9. Bidder's attention is further drawn to the fact that Terminal Equipment belongs to the Incumbent Terminal Operator. The Incumbent Terminal Operator will determine during the Transition Period whether it will sell the Terminal Equipment to the Terminal Operator.
- 4.8.9.10. Furthermore, should the Incumbent Terminal Operator decide not to sell its Terminal Equipment, or no agreement be reached on the terms and conditions for the sale of such Terminal Equipment, the Terminal Operator shall be required to procure its Terminal Equipment. In the event that the Incumbent Terminal Operator elects to sell the Terminal Equipment to the Terminal Operator, such Terminal Equipment (being the Handover Equipment) will be handed over by the Incumbent Terminal Operator to the Terminal Operator as part of the Terminal;
- 4.8.9.11. The list of the Terminal Equipment that is being used by the Incumbent Terminal Operator at the Terminal must be sourced directly by the Terminal Operator from the Incumbent Terminal Operator.

5 WORKS PROGRAMME

- 5.1. Bidders are required to submit a preliminary Works Programme reflecting how they will undertake the Works proposed in concept design for this RFP. The Conditional Assessment must be considered, as part of their Bid Response.
- 5.2. The Terminal Operator shall be submitted to TNPA for approval prior to commencing the works.
- 5.3. Notwithstanding the Conditional Assessment Report, TNPA will not prescribe to the Terminal Operator, the extent of the refurbishment and/or construction 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 operation of the Terminal.
- 5.4. The Terminal Operator shall be required to complete the requisite Works prior to commencing Operations and Maintenance of the Terminal as the context requires.

6 TRANSITION PLAN

6.1. Approval to Commence Operations

- 6.1.1. 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.
- 6.1.2. 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:
 - 6.1.2.1. the date on which the Incumbent Terminal Operator shall cease to undertake Operations at the Terminal;
 - 6.1.2.2. the provisions of services during the Transition Period;
 - 6.1.2.3. whether the Incumbent Terminal Operator would elect to sell the Terminal Equipment to the Terminal Operator and thus whether there is any Handover Equipment as contemplated in clause 4.8.9.11;
 - 6.1.2.4. Disclosure of historical, present and post transition maintenance, environment, safety, security, intellectual property, permits, authorisations and any other record, information or document to enable the transition;

- 6.1.2.5. Payment of rental during the Transition Period;
 - 6.1.2.6. the anticipated effective date of the Terminal Operator Agreement; and
 - 6.1.2.7. the anticipated date of operations commencement.
- 6.1.3. 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.
- 6.1.4. The existing Terminal Operator has provided a value of R203 million for movable assets. The appointed preferred bidder can enter into negotiations with the incumbent terminal operator at the transition plan.

7 PROJECT SCOPE AND DESCRIPTION

- 7.1. Bidders are required to submit Bid Responses for the right to undertake the Project which entails the financing, design, construction, operation, and maintenance of the Fresh Produce and Break Bulk Cargo Terminal and the transfer thereof to TNPA at the end of the Concession Period.
- 7.2. TNPA will permit the construction and installation of appropriate infrastructure to facilitate the efficient loading and discharging of cargo, provided that the Berths are not rendered unusable to other Port Users.
- 7.3. The appointed Terminal Operator will be required, at its cost, to secure all the required approvals and licenses to enable the Project, including but not limited to:
- 7.3.1. Environmental Consents;
 - 7.3.2. Water use licenses (if applicable);
 - 7.3.3. Construction permits; and
 - 7.3.4. Other applicable approvals, Consents, and licenses.
- 7.4. Bidders are advised to be fully conversant with all regulations and tariff methodologies relevant and applicable to the Project and the handling of Fresh Produce and Break Bulk Cargo, as the appointed Terminal Operator will be required to comply with these Regulations.

- 7.5. The appointed Terminal Operator will be responsible for negotiating and concluding any associated services/connectivity networks outside port boundaries with relevant stakeholders.
- 7.6. The appointed 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 TOA.
- 7.7. The appointed Terminal Operator shall be required to raise the required funding and make the necessary capital investments required to undertake the Project.

8 COMPILATION OF DETAILED DESIGNS AND SPECIFICATIONS

- 8.1. Bidders will be required to provide detailed design and construction specifications for the Terminal within 5 (five) months of the signature of the TOA. The detailed design and construction specifications for the Terminal must take into account the following:
 - 8.1.1. warehouses for the storage of Fresh Produce and Break Bulk Cargo;
 - 8.1.2. administration building and parking;
 - 8.1.3. bulk services such as water, sewer, roads, stormwater and electricity;
 - 8.1.4. access to the site via rail and road including truck staging area;
 - 8.1.5. operational movement of Cargo to and from the Terminal;
 - 8.1.6. movement of Cargo within the Terminal;
 - 8.1.7. terminal security plan;
 - 8.1.8. traffic management plan; and
 - 8.1.9. safety, health, and environmental specifications
- 8.2. The design and construction specifications must be consistent with the relevant South African National Standards (SANS) and International Best Practice Standards, as well as such further standards as may be relevant and agreed to with the appointed Terminal Operator to access the Project Site via sea, rail, and road.
- 8.3. Given traffic congestion constraints within the Port and its surroundings, Bidders must ensure that they secure access to a truck staging area outside port limits as part of its Operational Model as contemplated in clause 63.4.2.3.
- 8.4. Storage facilities must allow for landside storage to buffer supply and demand.

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

- 9.1. The appointed Terminal Operator will be required to undertake the Construction and establish the Terminal on the Project Site.
- 9.2. The appointed Terminal Operator will be required to raise the capital required to undertake and complete all the Works required to bring the Terminal into full operation by the end of the Development Period.
- 9.3. TNPA will not prescribe to the appointed Terminal Operator the extent of the Works to be undertaken at the Project Site. The appointed Terminal Operator will be required to determine the extent of the Construction, the Terminal Infrastructure, and the Terminal Equipment required for efficient Terminal Operations. TNPA expects that the Terminal capacity be optimally and fully utilised.
- 9.4. The appointed Terminal Operator is required to provide a proposed concept design for the Terminal Infrastructure and Terminal Equipment in the Business Case as detailed further in the Business Case Guidelines (Annexure BB).

10 OPERATION AND MAINTENANCE

- 10.1. Bidders must note that it is the appointed Terminal Operator's responsibility to complete the detailed designs, construction, delivery, installation, testing, and commissioning of all plant and equipment required for the Operation and Maintenance of the Terminal.
- 10.2. The appointed Terminal Operator will be required to maintain the Terminal in accordance with the terms of the TOA to ensure the optimal Operation and Maintenance of the Terminal.
- 10.3. The appointed Terminal Operator will be required to maintain the Terminal in good working order and condition, in accordance with International Best Practices (as defined in the Draft TOA) and international standards, including undertaking any cleaning of the surface of the quay.
- 10.4. The appointed Terminal Operator and the TNPA shall agree on the minimum performance targets for the Operation and Maintenance of the Terminal. An overview of Terminal Operator Performance Standards is provided in Annexure I.
- 10.5. The appointed Terminal Operator will be required to provide access, inspection, and a statement of fact document indicating volumes of Cargo that crossed the quay as part of TNPA's statutory terminal oversight and performance functions.
- 10.6. Bidders are to conform to International Best Practices for the Maintenance and Operations of the Terminal.

11 DURATION OF TERMINAL OPERATOR AGREEMENT

- 11.1. The Concession shall be for a maximum period of twenty-five (25) years, excluding the Development Period and no requests for the extension of this period will be entertained and/or considered in any Bidder's Bid Response and/or during the negotiation of the TOA.
- 11.2. For the avoidance of doubt, a Bidders Business Case and Financial Model must be premised on a maximum tenure of twenty-five (25) years, and any proposals for longer tenure will not be evaluated and/or scored in the evaluation of Bids.

12 HANDOVER AND TRANSFER OF THE TERMINAL

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

13 ACTIVITIES AT THE TERMINAL

- 13.1. The appointed Terminal Operator shall manage and operate the Terminal for the purpose of:
- 13.1.1. handling Cargo, storage of Cargo, transshipment, and distribution of Cargo across the quay, including services related thereto, with the use of appropriate Terminal Equipment;
 - 13.1.2. the organisation and planning of traffic flow, including safe and adequate parking for all Terminal-related traffic;
 - 13.1.3. distribution of Cargo to inland customers through rail or road; and
 - 13.1.4. maintaining, replacing, and repairing Terminal Infrastructure and Terminal Equipment.

14 OPEN ACCESS (THIRD-PARTY ACCESS)

- 14.1. The Terminal, including the Terminal Infrastructure and Terminal Equipment such as Cargo loading facilities, shall be used, managed, and operated on a common-user open access basis and on equal footing in terms of the provision of port services, meaning that:
- 14.1.1. the appointed Terminal Operator shall have the 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
 - 14.1.2. the appointed Terminal Operator shall not unreasonably discriminate, in its tariff structure or its trading conditions (including but not limited to all commercial terms and conditions) between various users or potential users of the Terminal and the berth infrastructure; and
 - 14.1.3. the appointed 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.
 - 14.1.4. The principles outlined in 12.1.1 to 12.1.2 will be incorporated in the TOA and any non-compliance to these terms and any engagement in anti-competitive behaviour by the appointed Terminal Operator will be regarded as a breach of the TOA.
 - 14.1.5. The principles contained above shall be in line with all the applicable TNPA Regulations.
- 14.2. Subject to the provisions of this RFP, the appointed Terminal Operator shall otherwise be granted the right to undertake the Project, subject to the provisions of the Act, Port Rules, and any directives or instructions as may be issued in terms thereof.

15 CONCESSION FEE OFFER

- 15.1. As consideration for the grant of the Concession, the Terminal Operator shall be required to pay a Concession Fee to TNPA. Bidders will be required to propose a Concession Fee payable to TNPA in response to Clause 13 (Concession Fee Offer) of Part III (Evaluation Criteria) of this RFP.

16 KEY STAKEHOLDERS IN THE SOUTH AFRICAN PORT SYSTEM

16.1. The Department of Transport ("DOT")

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

16.2. The Department of Trade, Industry and Competition ("DTIC")

The DTIC is responsible for the facilitation of the transformation of the economy and for the promotion of industrial development, employment creation, and the 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 with respect to B-BBEE and plays a significant role in the social development aspects of all economic activity in South Africa.

16.3. The Ports Regulator of South Africa

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

14.4 The Department of Forestry, Fisheries and the Environment

The mandate and core business of the DFFE is to manage, protect and conserve South Africa's environment and natural resources. The mandate is informed by section 24 of the Constitution of the Republic of South Africa, 1996 to give effect to this constitutional environmental right and the need for sound environmental management and sustainable development. In the port system, the DFFE performs oversight on TNPA through NEMA, regulations, policies, norms and directives, and other

regulatory tools that are aimed at promoting sound environmental management practices in order to protect and conserve land and waterside environment.

14.5 **The Department of Agriculture, Land Reform and Rural Development**

The Department executes a concurrent national and provincial legislative mandate in terms of Schedules 4 and 5 of the South African Constitution, 1996. The Government's National Development Plan (NDP) Vision 2030, the Medium Term Strategic Framework (MTSF) 2019 - 2024, and the Agricultural Policy Action Plan (APAP) have identified the agricultural sector as one of the key economic sectors to drive economic growth and be the key job driver in the country and in the province of KZN. The future development of the agricultural sector will be premised on the transformation and promotion of previously disadvantaged producers and their inclusion in the agricultural mainstream economy to ensure food security, productivity, competitiveness, and processing of agricultural products to reach local and international markets.

17 **PURPOSE OF THE RFP**

17.1. The purpose of this RFP is to:

- 17.1.1. invite Bidders to submit their Bid Responses to this RFP;
- 17.1.2. provide information to Bidders in relation to the RFP and TNPA's broader vision with respect to the framework of the Project;
- 17.1.3. set out the rules of participation in the RFP process. 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 participating in this RFP at the discretion of TNPA;
- 17.1.4. 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;
- 17.1.5. set out the framework and information requirements on the basis of which Bid Responses to this RFP should be made;
- 17.1.6. 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

- 17.1.7. 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.

18 STRUCTURE OF THIS RFP

- 18.1. The structure of this RFP is as follows:

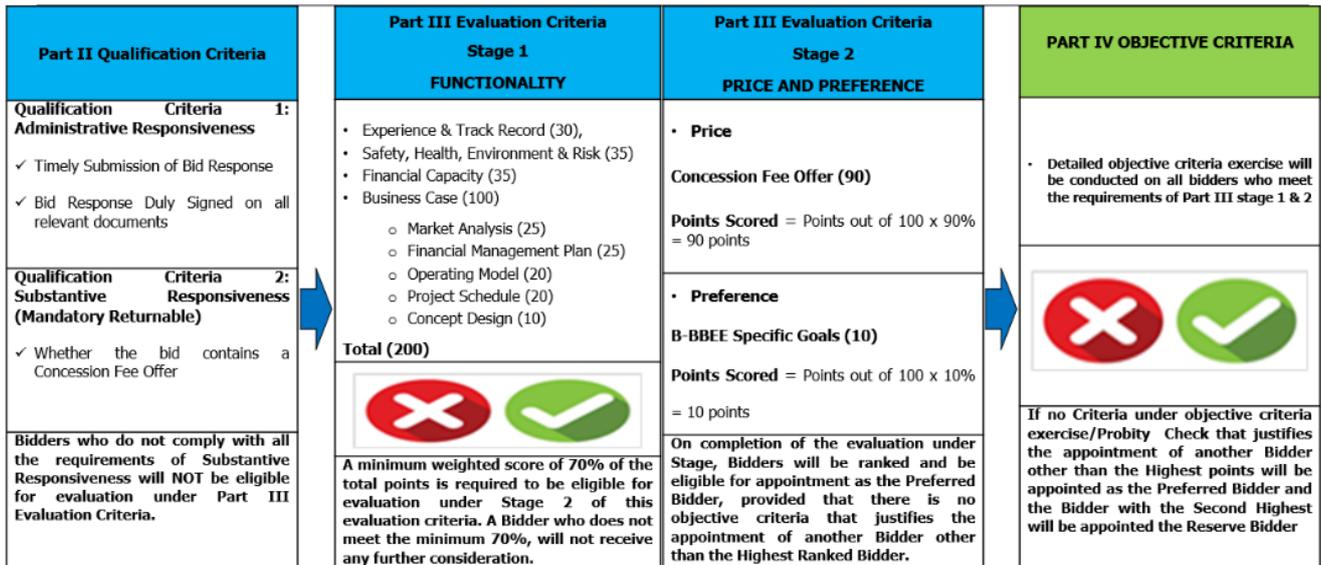
- 18.1.1. Part I (General Requirements, Rules and Provisions) of this RFP provides the general information to the Bidders and includes, *inter alia*, the glossary of terms detailing the defined terms used in this RFP, explanation of and background to the RFP and the Project, the scope of the Project, the structure and purpose of this RFP and the terms and conditions in terms of which each Bidder submits its Bid Response, including details regarding the format of each Bid Response.
- 18.1.2. Part II (Qualification Criteria) of this RFP sets out the Qualification Criteria that must be satisfied by the Bidders. Bid Responses submitted in respect of this RFP will first be assessed on the basis of compliance with the Qualification Criteria, and only if a Bid Response complies with the Qualification Criteria will it be evaluated in terms of Part III (Evaluation Criteria) of this RFP.
- 18.1.3. Part III (Evaluation Criteria) of this RFP sets out the evaluation procedure and the Evaluation Criteria to be used by TNPA in evaluating those Bid Responses that have fulfilled the Qualification Criteria and have progressed to the Evaluation Criteria. The purpose of the Evaluation Criteria is to determine the relative rankings of those pre-qualified Bid Responses and select the Preferred Bidder.
- 18.1.4. Part IV (Objective Criteria) of this RFP sets out the evaluation procedure and the Objective Criteria for evaluating those Bid Responses that have fulfilled the Evaluation Criteria and have progressed to the Objective Criteria. The purpose of the Objective Criteria as prescribed in Section 2(1) (f) of the Preferential Procurement Policy Framework Act (PPPFA) is to determine if there are objective grounds on which the TNPA may not proceed with awarding the Project to the Highest-Ranked Bidder in Part III (Evaluation Criteria).

19 STRUCTURE OF THE EVALUATION OF BID RESPONSES

- 19.1. Bid Responses submitted in respect of this RFP will first be assessed based on compliance with the Qualification Criteria, and only if a Bid Response complies with Part II (Qualification Criteria) will it be evaluated in Part III (Evaluation Criteria) and thereafter, be subject to Part IV (Objective Criteria) evaluation.

- 19.2. Qualification Criteria 1: Administrative Responsiveness detailed in Clause 62 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 62 (Qualification Criteria 1: Administrative Responsiveness) of Part II (Qualification Criteria) of this RFP.
- 19.3. Qualification Criteria 2: Substantive Responsiveness detailed in Clause 62 (Qualification Criteria 2: Substantive Responsiveness) of Part II (Qualification Criteria) of this RFP, will be checked by the TNPA. Before the evaluation of Part III (Evaluation Criteria), The requirements for these criteria are set out under Clause 62 (Qualification Criteria 2: Substantive Responsiveness) of Part II (Qualification Criteria) of this RFP.
- 19.4. If a Bidder's Bid Response complies with the requirements and conditions set out in Clause 62 of Part II (Qualification Criteria) of this RFP, the Bid Response will proceed to be evaluated under Part III (Evaluation Criteria) of this RFP.
- 19.5. For the avoidance of doubt, Substantive Responsiveness in Part II (Qualification Criteria) of this RFP will be checked by the TNPA before the evaluation of Part III (Evaluation Criteria).
- 19.6. Upon qualification on the Substantive responsiveness, the Bidder's Bid Response will first be evaluated on the Evaluation Criteria as set out in Clause 62.
- 19.7. The Evaluation Criteria as set out in Part (III) comprises two (2) stages. Stage 1 entails the evaluation of the functionality of a Bidders Bid Response. In terms thereof, 200 points are allocated for the assessment of this Stage 1. A Bidder will be required to score a minimum of 140 points out of the 200 points allocated, to be eligible for further evaluation under Stage 2 of the Evaluation Criteria. Stage 2 of the Evaluation Criteria entails the evaluation of the Bidders Bid Response with respect to its Concession Fee Offer (Price) and B-BBEE Specific Goals (Preference). The evaluation will be undertaken in accordance with a 90/10 points system. For more information, please see Part III (Evaluation Criteria) of this RFP.
- 19.8. The points for Concession Fee Criteria (Price) scored out of ninety (90) and B-BBEE Specific Goals will be added (Preference) scored out of ten (10), will be added together to determine the total points scored out of one hundred (100) earned in respect of the Stage 2 Evaluation Criteria.
- 19.9. A Bidder who scores the highest points under Stage 2 of Part III shall become eligible for appointment as the Preferred Bidder unless the Objective Criteria to be undertaken in Part IV (See Clause 68) establishes objective considerations which would justify an award to another Bidder.

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



20 BEST AND FINAL OFFER ("BAFO")

- 20.1. TNPA reserves the right but is not obliged to invite any number of Bidders to make their best and final offers, if required, provided that the Objective Criteria in Part IV of this RFP have been concluded as provided for in clause 68 of this RFP.
- 20.2. Notwithstanding the possibility that TNPA may give Bidders the opportunity to submit a BAFO, Bidders should be aware that TNPA will, in conducting its evaluation of Bid Responses, rely on all information (including all representations) contained in such Bid Responses. Bidders are, therefore, encouraged to submit their best proposals in their Bid Responses in response to this RFP.

21 ALTERNATIVE BID RESPONSE

- 21.1. Each Bidder is required to submit a Bid Response which responds to and complies in all respects with the Qualification and Evaluation Criteria ("Standard Bid Response").
- 21.2. To allow sufficient opportunity for innovation, Bidders may submit additional Bid Responses ("Alternative Bid Response") that:
 - 21.2.1. improve and do not compromise the timeframes for the Project;
 - 21.2.2. improve and do not compromise the design criteria of the Terminal;
 - 21.2.3. increase Port calls without increasing the bulk services, land requirements, environmental emissions or forces on the quay infrastructure; and

- 21.2.4. Justifiable business cases that warrant considerations for any deviations from the standard bid requirements with the exception of the site allocated for this project; and
- 21.2.5. offer better value for money to TNPA.
- 21.3. Notwithstanding, Bidders should note that the submission of an Alternative Bid Response is not a requirement and TNPA is under no obligation to consider an Alternative Bid Response. Further, TNPA will only consider an Alternative Bid Response of the Preferred Bidder, following the completion of the evaluation of all Bid Responses in accordance with this RFP.
- 21.4. No Alternative Bid Response will be considered unless a Standard Bid Response is also submitted. The benefits of deviation from the RFP requirements shall be motivated by a Bidder who submits an Alternative Bid Response, particularly against the Standard Bid Response and the Project objectives. Alternative Bid Responses must demonstrate increased efficiency and better value for money for TNPA.
- 21.5. All Alternative Bid Responses will be evaluated in a similar manner to the Standard Bid Response (refer to clause 21.1).
- 21.6. Bidders should note that any differences to the Standard Bid Response contained in the Alternative Bid Response that are not fully motivated and which do not result in a quantified saving for TNPA will be disregarded by TNPA and will adversely affect the assessment by TNPA of the Bidder's Standard Bid Response.
- 21.7. TNPA reserves the right to reject or accept any of the proposed changes to the Standard Bid Response contained in the Alternative Bid Response at its discretion.

22 PROJECT STRUCTURE AND CONTRACTS

- 22.1. The Preferred Bidder will be invited to enter into the TOA and, if required, an FDA, if applicable and required with the relevant counterparties. The Draft TOA is attached to this RFP in Annexure JJ. The envisaged rights and obligations of the Terminal Operator for the term of the Project are set out in the Draft TOA and will be the subject matter of further negotiation between the Preferred Bidder and TNPA. The TOA must be finalised and entered into with TNPA within four (4) months (or such extended period as may be determined by TNPA at its sole discretion) of the appointment of the Preferred Bidder.
- 22.2. If the Preferred Bidder fails to undertake the activities or take steps reasonably required for the conclusion of the TOA within the allocated four (4) month period (or such extended period as may be determined by TNPA at its sole discretion), then TNPA may, at 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 59 of this RFP. TNPA shall subsequently enter into negotiations with such Reserve Bidder for the conclusion of the TOA.

22.3. Bidders should note that the Draft TOA has been prepared on the assumption that the appointed Terminal Operator will:

22.3.1. in the case of a Consortium, be an SPV. 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 TOA. All Shareholders of that Project Company are required to be Members of the Bidder that is appointed as the Preferred Bidder (that is, from the moment the Bid Response is submitted);

22.3.2. raise finance for purposes of undertaking the Project;

22.3.3. complete the Construction and commence Operation of the whole Terminal within twenty-four (24) months of the receipt of a positive record of decision in relation to the Environmental Impact Assessment (EIA) from the DFFE in respect of the Project and upon the submission of the detailed designs by the appointed Terminal Operator to TNPA;

22.3.4. TNPA expects the Preferred Bidder to deliver this Project based on the following timelines:

22.3.4.1. Four (4) months - Confirmation of funding and TOA negotiations;

22.3.4.2. Eighteen (18) months - Authorisations/licenses/approvals, including the EIA;

22.3.4.3. Twenty-four (24) months - Construction and commissioning of the Terminal;

22.3.5. to the extent that the Preferred Bidder's bid is not consistent with the assumptions made above, the provisions of the final TOA shall be revised to be consistent with such bid.

22.3.6. the terms and conditions contained in the Draft TOA do not limit the TNPA's rights to negotiate different terms and conditions for the final TOA;

22.4. The TOA is negotiable, save for those clauses referred to in the table in Clause 22.6. Bidders are required to supply a mark-up of commercial terms in the Draft TOA that the Bidders and its Lenders wish TNPA to consider if appointed as the Preferred Bidder, in order to expedite the conclusion of the TOA within a period of Four (4) months. Once a Preferred Bidder has been appointed, the mark-ups in the Draft TOA, as at the Bid Submission Date, will be negotiated between TNPA and the Preferred Bidder. Notwithstanding the restrictions imposed by the non-negotiable provisions as set out in the table below, TNPA reserves the right to ensure that the terms of the TOA are consistent with this RFP and the Bid Response.

22.5. TNPA will not evaluate the extent of the mark-up of the Draft TOA, but the submission of a mark-up Draft TOA is essential and must be submitted with the Bid Response. TNPA will not consider mark-up to the clauses specified in the table in Clause 22.6. A mark-up of the clauses specified in the table in 20.6 will be disregarded by TNPA.

22.6. TNPA regards the following Clauses listed in the Draft TOA as being non-negotiable, and these are:

No.	Clause number	Description
1	Clause 1	Definitions and Interpretation
2	Clause 2	Introduction
3	Clause 3	Appointment of Terminal Operator and grant of rights
4	Clause 6	Ownership and return of the Project Site and the Terminal
5	Clause 7	Indemnity
6	Clause 8 (save for Clause 8.2 (<i>single purpose company with no subsidiaries</i>))	Terminal Operator's warranties and undertakings
7	Clause 9	Compliance with D&C Specifications and Operating Specifications
8	Clause 11	Environmental
9	Clause 16	Port Users and Port Rules
10	Clause 18	TNPA's Assistance and Rights and Limitations on Liability
11	Clause 20	Provision of the Port
12	Clause 21	Project Site
13	Clause 22	Key Personnel and Removal of Personnel
14	Clause 23	Health and Safety
15	Clause 24	Security
16	Clause 31	Rights of Access
17	Clause 36	Default Interest
18	Clause 37	Consequences of a Relief Event
19	Clause 38	Consequences of a Compensation Event
20	Clause 39	Force Majeure
21	Clause 41	Terminal Operator Default
22	Clause 44	Invalidation in terms of section 67 of the National Ports Act
23	Clause 49	No Termination Amount for termination for Force Majeure
24	Clause 52	Corrupt gifts and fraud
25	Clause 55	Information and audit access
26	Clause 56	Miscellaneous matters

22.7. The Preferred Bidder:

- 22.7.1. will be required to enter into the TOA with TNPA, pursuant to which TNPA will grant the Preferred Bidder the right to undertake the Project on the terms and conditions set out in the TOA; and
- 22.7.2. in addition to the TOA, may be required to enter into an FDA with its Lenders and TNPA in respect of the TOA.

23 TNPA'S RIGHTS

23.1. TNPA reserves the right to:

- 23.1.1. reject any Bid Response that does not conform with instructions and specifications which are detailed herein;
- 23.1.2. reject any Bid Response and/or documents that are submitted after the closing date and time, unless a fault or malfunction in the electronic tender's system was reported, discovered or shown prior to the Bid Submission Date. Bidders are encouraged to exercise sound judgment concerning the submission of their Bid Responses to avoid any system or technical issues;
- 23.1.3. select more than one Bidder as the Reserved Bidder in terms of this RFP to undertake the Project;
- 23.1.4. not award the Project to the highest-scoring Bid Response or an Alternative Bid Response unless the Objective Criteria justifies the award to another Bidder as per the objective considerations of the Objective Criteria;
- 23.1.5. cancel or suspend the appointment of a Terminal Operator in respect of this RFP;
- 23.1.6. cancel, suspend, or change the terms contained in this RFP at any stage;
- 23.1.7. request a BAFO or not;
- 23.1.8. amend the RFP, the TOA, and the FDA at any time prior to the signature of these agreements;
- 23.1.9. supplement the information provided as part of the RFP, as and when additional information becomes available;
- 23.1.10. reject all Bid Responses, if it so decides;

- 23.1.11. award the Project for only a portion of the proposed services at the Port as reflected in the scope of this RFP;
- 23.1.12. split the award of the Project between more than one Bidder;
- 23.1.13. make no award of the Project;
- 23.1.14. withdraw the award and/or cancel the TOA should it be awarded on the strength of the information furnished by the Bidder, which after the award and/or the conclusion of the TOA, is proved to have been incorrect, misrepresented, or may lead to illegality or breach of law. TNPA shall not be liable to the Bidders or the Preferred Bidder or any other person for any consequences, claims, or costs arising from any of these actions; and
- 23.1.15. to award the tender in part or in full.
- 23.2. TNPA reserves the right to award the Project to the highest-scoring Bidder unless the Objective Criteria justifies the award to another Bidder.

24 TIMETABLE FOR THE RFP

Activity	Deadlines
Issue the RFP	11 April 2025
Non-Compulsory Briefing Session in Durban	07 May 2025
Deadline for all questions and requests for clarification	20 June 2025
Bid Submission Closing Date	11 July 2025

25 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 52 (*Briefing Notes and Changes to Bid Process*), in which case, all rights and obligations of TNPA and the Bidder that were previously subject to the original Bid Submission Date shall be subject to the extended Bid Submission Date.

26 GOVERNING LAW, COMPETITION AND OTHER STATUTORY REQUIREMENTS

26.1. Governing Law

- 26.1.1. The primary enabling legislation for the Project is the Act. This enabling legislation regulates and creates the competency for TNPA to procure the implementation of the Project and determine the manner in which the Project may be conducted.

26.1.2. The procurement of the Project, the Bid Responses, any subsequent documents, the TOA, and the FDA will be governed by and construed in accordance with the laws of the Republic of South Africa.

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

26.2. **Competition Act**

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

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

26.3. **Other Statutory Requirements**

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

27 THE SOCIO-ECONOMIC OBJECTIVES AND REQUIREMENTS

27.1. **B-BBEE**

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

27.1.2. To address the lack of investment in infrastructure, skills development, and inequality in income distribution, the Government has developed various initiatives to address these challenges.

27.1.3. In terms of the proposed B-BBEE evaluation framework for the Project, prospective Bidders will be expected to have a minimum B-BBEE certificate in accordance with the Amended B-

BBEE Codes of Good Practice 2013 rating. This clause 27.1 (B-BBEE) provides an overview to Bidders of what will be required of them in terms of the B-BBEE Criteria and what steps can be taken to meet those requirements.

- 27.1.4. The B-BBEE Act is intended as an enabling legislative framework that allows the Government to develop and issue the B-BBEE Codes. The B-BBEE Codes are intended to provide a standard framework for the measurement of B-BBEE across all sectors of the economy. The intention of the B-BBEE Codes is therefore to level the playing field for all entities operating within the South African economy by providing clear and comprehensive criteria for the measurement of B-BBEE.
- 27.1.5. Companies that are governed by Sector-specific B-BBEE Codes will be measured in terms of those Sector Codes.
- 27.1.6. TNPA is, therefore, required to do business with local and or international business enterprises that share the same values, and that are prepared to contribute to meaningful B-BBEE initiatives (this includes, but is not limited to, port operations, subcontracting, and joint ventures) as part of their Bid Responses.
- 27.1.7. 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 B-BBEE-related information on measured entities.
- 27.1.8. The DTIC appointed the South African National Accreditation System ("SANAS") to conduct the accreditation of verification agencies. Accreditation as a verification agency enables an enterprise to issue a B-BBEE verification certificate. This method is aimed at instilling confidence in B-BBEE verification. A list of accredited B-BBEE verification agencies can be obtained on this website: www.sanas.co.za
- 27.1.9. Once a full verification of the documentation presented by an entity has been conducted, an entity will be awarded levels of B-BBEE recognition, which are dependent on the contributions an entity has made toward Black People in its business.
- 27.1.10. A typical B-BBEE verification certificate would contain the following information:
 - 27.1.10.1. company name and company registration number;
 - 27.1.10.2. type of certificate (group, entity, or division);
 - 27.1.10.3. B-BBEE category (Qualifying Small Enterprises or generic);
 - 27.1.10.4. B-BBEE level (one (1) to eight (8));

27.1.10.5. procurement recognition percentage (%);

27.1.10.6. black ownership percentage (%);

27.1.10.7. black women ownership percentage (%);

27.1.10.8. value-adding supplier (yes or no);

27.1.10.9. certificate issue date; and

27.1.10.10. certificate expiry date.

27.1.11. A Bidder will qualify for points for its B-BBEE Contributor Status Level as a legal entity, provided that the Bidder submits a copy of its B-BBEE verification certificate, sworn B-BBEE affidavit or B-BBEE CIPC certificate.

27.1.12. A Consortium, SPV or Joint Venture will qualify only for points for its B-BBEE Contributor Status Level as a legal entity, provided that the entity submits its consolidated copy of the B-BBEE verification certificate.

27.1.13. 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 its consolidated or joint copy of the B-BBEE verification certificate or a consolidated B-BBEE scorecard as if it were a group structure on condition that such a consolidated B-BBEE scorecard is prepared for every separate venture.

27.1.14. Bidders who wish to respond to this RFP as a Consortium or Joint Venture with B-BBEE entities must state their intention to do so in their Bid Response. Such Bidders must also submit a signed Consortium or Joint Venture agreement between the Members clearly stating the percentage split of the Consortium or Joint Venture and the associated responsibilities of each Member. If such a Consortium or Joint Venture agreement is unavailable, the Members must submit confirmation in writing of their intention to enter into a Consortium or Joint Venture agreement should they be appointed as Preferred Bidder. In such instances, Preferred Bidder status will only be awarded once a signed copy of a Consortium or Joint Venture agreement is submitted to TNPA.

27.1.15. Failure to submit copies of the valid B-BBEE Contributor Status Level evidence in accordance with clauses 25.1.11, 25.1.12, and 25.1.13, at the Bid Response Date of this RFP, will result in a score of zero.

27.2. ECONOMIC DEVELOPMENT AIMS AND OBJECTIVES

- 27.2.1. Historically in South Africa, there has been a lack of investment in infrastructure, skills, and capability development and an inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the National Development Plan (NDP) developed in 2012 aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa. TNPA fully endorses and supports NDP.
- 27.2.2. The key focuses of the NDP include:
- 27.2.2.1. increasing employment intensity of the economy;
 - 27.2.2.2. addressing competitiveness;
 - 27.2.2.3. balancing spatial development of rural areas and poorer communities;
 - 27.2.2.4. reducing the carbon intensity of the economy;
 - 27.2.2.5. creating opportunities to improve regional and global cooperation; and
 - 27.2.2.6. enabling transformation that benefits a wider range of social actors in society e.g., workers, rural communities, youth, and women
- 27.2.3. TNPA, as a state-owned entity, plays an important role in ensuring these objectives are achieved. Therefore, concession agreements concluded with TNPA must be aligned with the Government's objectives for developing and transforming the local supply base. TNPA's mission is to transform its supplier base by engaging in targeted Economic Development initiatives to support localization and industrialization whilst providing meaningful opportunities for Black People with a particular emphasis on:
- 27.2.3.1. Black youth;
 - 27.2.3.2. Black women;
 - 27.2.3.3. people with disabilities;
 - 27.2.3.4. small businesses; and
 - 27.2.3.5. rural integration.
- 27.2.4. To facilitate the implementation of Economic Development Objectives, TNPA has set a framework with targets to be achieved by persons who wish to conduct business with TNPA. This framework allows for a basic set of principles to be applied to appropriately targeted Economic Development Objectives during the Development phase and the Operational

phase of the Project. Economic Development Objectives aim to build local suppliers who are competitive through building capability and capacity. This RFP has been identified as small enterprise development concession, in which the Development and Operational phases of the Project must cater for the implementation of the Economic Development commitments of the Bidder.

- 27.2.5. Bidders are required to complete and submit Annexure DD (*Economic Development Information from the Bidder*) with their Bid Response.

28 ENVIRONMENTAL, SAFETY, HEALTH, AND SECURITY COMPLIANCE

- 28.1. The Project must be undertaken in accordance with the safety, health, environmental, and quality, included in this RFP in Annexure C (*Safety, Health, Environment Policy*), and in accordance with the terms of the TOA.

29 BIDDERS' EXPERIENCE AND CAPACITY

- 29.1. The prospective Bidders (and/or Consortium /Joint Venture Members, as the case may be) should have a proven track record of successfully executing projects of similar complexity and magnitude as the Project.
- 29.2. The prospective Bidders (and/or Consortium /Joint Venture Members, as the case may be) would therefore be required to demonstrate:
- 29.2.1. industry-specific experience, particularly, their professional and technical qualifications and experience in the operation and/or maintenance of the Terminal Operations;
 - 29.2.2. financial strength, as envisaged in Clause 65 of Part III Stage 1 (Evaluation Criteria) of the RFP;
 - 29.2.3. access to or use of the equipment and infrastructure necessary for the Operation and Maintenance of the Terminal Operations;
 - 29.2.4. adequate personnel to perform their obligations under the TOA and related contracts, as envisaged in Part II (Qualification Criteria) of the RFP;
 - 29.2.5. Contractors must be accredited in terms of CIDB rating, and the Bidders need to indicate the CIDB level of all contractors.

30 GENERAL BID RULES

- 30.1. This RFP is open to the worldwide public and is not restricted to Bidders who are South African nationals and South African entities. All Bidders are subject to the B-BBEE requirements set out in

Clause 27.1. International business enterprises will need to partner with local entities in order to achieve a minimum B-BBEE Contributor Level 4 or better to have their Bid Responses considered in terms of this RFP.

- 30.2. 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.
- 30.3. Only Bid Responses that comply with the minimum requirements and criteria specified in the Qualification Criteria of this RFP to TNPA's satisfaction, at 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.
- 30.4. The Bidder appointed as the Preferred Bidder shall be afforded a period of time, specified under clause 24 (*Timetable for the RFP*) of this clause of the RFP to negotiate and finalise their contractual arrangements and Project Documents with, *inter alia*, their Members, Contractors, equipment suppliers, and Lenders, and apply for the Consents required to be held by them by the date specified in the table under Clause 24 (*Timetable for the RFP*).
- 30.5. TNPA reserves the right to appoint a Reserve Bidder simultaneously with or at any time after the announcement of the Preferred Bidder in accordance with Clause 59 (*Selection of Preferred and Reserve Bidder*) of Part I (General Requirements, Rules, and Provisions) of this RFP.
- 30.6. A Reserve Bidder, which has been selected to continue to participate in the Bid Submission Period, may only be invited to become a Preferred Bidder by TNPA if:
- 30.6.1. the TOA is not and/or is unlikely to, for whatsoever reason, be concluded with the Preferred Bidder in respect of the Terminal;
 - 30.6.2. the Preferred Bidder is disqualified for any reason; and/or
 - 30.6.3. the status of the Preferred Bidder is revoked for any reason whatsoever; and
- 30.7. Accordingly, the relevant Reserve Bidder will, if requested by the TNPA, be afforded a reasonable period of time to negotiate and finalise its contractual arrangements and the Project Documents with, *inter alia*, its Members, Contractors, equipment suppliers, and Lenders in order to conclude the TOA and the FDA with the relevant counterparties.

31 ELIGIBILITY CONSIDERATIONS

- 31.1. 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 TNPA's

requirements in respect of experience, track record, financial strength, and strategy to undertake the Project, noting the provision of Clause 61 (*Information Verification*).

- 31.2. 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.
- 31.3. Bidders are required to declare if any of their Members or any individual who is a director, officer, employee, or Shareholder of any Member is related to any employee of TNPA or Transnet by completing and submitting Annexure P (*Declaration of Interest*) of this RFP.
- 31.4. TNPA may, at its discretion, reject a Bid Response if it includes the involvement of any person who is:
- 31.4.1. blacklisted by the Office of the National Treasury; or
 - 31.4.2. blacklisted by such person's professional body (if applicable); or
 - 31.4.3. 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
 - 31.4.4. who has been found guilty in any court of law of fraud or corruption-related crimes; or
 - 31.4.5. 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.
- 31.5. The participation of not-for-profit entities or trusts in a Bid Response is at the discretion of a Bidder and shall be at its sole risk.
- 31.6. A person, Member, other participants in a Bid Response, or advisor may not participate in, advise, or be involved (either directly or indirectly) with more than one Bidder at any stage during the Project. The Bidders shall ensure that no anti-competitive or collusive behaviour is displayed or engaged in by any person, Member, or advisor participating or involved with more than one Bidder. TNPA shall, at its discretion, be entitled to disqualify any Bidders whose Bid Response displays any anti-competitive or collusive behaviour. In this regard, Bidders will be required to complete and submit Annexure W (*Supplier Integrity Pact*) of this RFP.

32 ACKNOWLEDGEMENT OF THE LAW

- 32.1. The Bidder and each of its Members are required to submit with their Bid Response a declaration stating, *inter alia*, that TNPA has supplied and Bidders have received appropriate responses to any or all questions, as applicable, which were submitted by any Bidders for the RFP clarification purposes.

Furthermore, such declaration shall state that the processes and procedures adopted by TNPA in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner. The declaration required in respect of the Bidder is included in Annexure K (*Declaration of Bidder*).

- 32.2. Each 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 may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act 12 of 2004 or any other applicable legislation. The declaration required in respect of the Bidder is included in Annexure O (*Certificate of Acquaintance with RFP Documents*).
- 32.3. 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.
- 32.4. 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.

33 LEGAL PERSONALITY OF BIDDER AND CHANGES

- 33.1. If a Preferred Bidder is a Consortium, it will be required to establish a Project Company with the sole purpose of undertaking the Project and entering into the TOA. 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.
- 33.2. 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.

- 33.3. 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.
- 33.4. 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:
- 33.4.1. full details of the reason for the change;
 - 33.4.2. full details of the parties involved;
 - 33.4.3. full details of the overall impact on the Bidder, the Project Company, the Bid Response and the Project;
 - 33.4.4. detailed information and all returnable schedules and/or documents in respect of the new Member, in respect of a change in Members, as was required to be submitted in respect of the Bidder and/or its Members at the time of submission of the Bid Response;
 - 33.4.5. full details in respect of the transaction, including full disclosure of any premium that will be paid in relation to the sale of Equity, in respect of any change related to a sale of Equity in the Project Company; and
 - 33.4.6. full details on how the Bidder proposes to share any improvement or benefit those results from a change to a Bidder's Bid Response or Project with TNPA.
- 33.5. 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, at its discretion, require with regard to such change to enable TNPA to consider fully the impact of such change.
- 33.6. If a Bidder or any of its Members notifies TNPA that it intends to undergo a change in its membership and/or structure (including but not limited to a Change in Control), the Bidder shall be reassessed for qualification in accordance with the terms of this RFP, which re-qualification shall be at 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.
- 33.7. If an event contemplated in Clauses 33.5 and/or 33.6 of this clause occurs and TNPA, at 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, at 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. Failing this or if the proposed restructuring is not to TNPA's satisfaction, TNPA may, at its discretion, disqualify the Bidder from participating any further in the Bid Submission Period, or allow the Bidder to continue in the RFP, subject to such conditions as TNPA determines appropriate.

- 33.8. 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.

34 AUTHORISATION OF TNPA AND THE TERMINAL OPERATOR

- 34.1. 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 TOA and the FDA.
- 34.2. 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.

35 CONFIDENTIALITY

35.1 Confidentiality by the Bidders

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

35.1.1.1. 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

35.1.1.2. 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.

35.1.2. 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 Act.

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

35.2. Confidentiality by TNPA

- 35.2.1. 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 (taking into account section 86 of the Act), order of a court of competent jurisdiction, a regulatory authority 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 and the provisions of the Promotion of Access to Information Act, 2000 shall apply.
- 35.2.2. 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 Responses.
- 35.2.3. TNPA shall be entitled to disclose all data and details submitted by Bidders to the National Treasury, the DTIC, the DOT, Transnet, and Parliament to the extent necessary.
- 35.2.4. 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, or Transaction Advisors arising out of the disclosure of any information, confidential or otherwise.

36 BID DOCUMENTATION FEE AND PREFERRED BIDDER GUARANTEE

36.1. Preferred Bidder Guarantee

- 36.1.1. Subsequent to the receipt of Bid Responses and evaluation thereof, the Preferred Bidder will be required to lodge a guarantee (the "Preferred Bidder Guarantee") with TNPA in an amount equal to five million Rand (R5 000 000.00). 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 34.1.
- 36.1.2. The Preferred Bidder Guarantee must be:

- 36.1.2.1. an unconditional and irrevocable bank guarantee in the form set out in Annexure H (*Form of Preferred Bidder Guarantee*);
- 36.1.2.2. lodged with TNPA within fifteen (15) Business Days of a Bidder being notified of its provisional Preferred Bidder status;
- 36.1.2.3. 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 rating or equivalent; and
- 36.1.2.4. be valid and effective for the period from the date of issue of the Preferred Bidder Guarantee until the earlier of the expiry of the Bid Submission Validity Period, as defined in clause 49 of Part I (General Requirements, Rules, and Provisions) of this RFP (as extended from time to time) and the Effective Date as defined in Annexure JJ being the Draft TOA.

36.1.3. 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. In that circumstance, TNPA may substitute the Preferred Bidder with a Reserve Bidder nominated by it, who shall 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 36 (*Preferred Bidder Guarantee*) shall apply *mutatis mutandis* to the new Preferred Bidder Guarantee, as the case may be.

36.2. **Release of guarantee**

The Preferred Bidder Guarantee will be returned to the Preferred Bidder within 15 (fifteen) Business Days of the Effective Date as defined in the Draft TOA or at the expiry of the Bid Submission Validity Period, as the case may be.

36.3. **Forfeiture of Preferred Bidder Guarantee**

36.3.1. 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:

- 36.3.1.1. is in breach of any law relating to the RFP or is disqualified from the RFP as a result of its actions or omissions;
- 36.3.1.2. fails to extend the term of the Preferred Bidder 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);

36.3.1.3. fails to sign the TOA within the agreed time period set in the General Requirements, Rules, and Provisions, Part I (General Requirements, Rules, and Provisions) of this RFP; and/or

36.3.1.4. revokes, repudiates, or withdraws its Bid Response.

37 CORRUPT GIFTS AND PAYMENTS

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

37.2. 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 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 this Project.

37.3. 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.

38 NO CONTRACT

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

39 NO COLLUSION

39.1. The attention 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.

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

- 39.2.1. 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;
 - 39.2.2. 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;
 - 39.2.3. 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
 - 39.2.4. 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.
- 39.3. If TNPA becomes aware of or has reason to believe that any of the activities detailed in this clause 39 have been undertaken by any Bidder or any of its Members, Contractors, or participants 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 this Project.

40 NON-COMPLIANCE OF BID RESPONSE RESULTING IN DISQUALIFICATION

- 40.1. 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.
- 40.2. TNPA reserves the right to reject any non-compliant Bid Response without further evaluation.
- 40.3. 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.
- 40.4. Bidders will have to ensure that the Bid Response has been lodged on time and at the correct designated point and that all the RFP documents in the Bid Response have been duly signed by the Bidder.
- 40.5. 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.

41 CONTACT POLICY

- 41.1. 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. Bidders 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.
- 41.2. 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. TNPA shall be entitled, at its discretion, to disregard any communication from the Bidder that does not come from such contact person.
- 41.3. All queries and requests for clarification in respect of this RFP shall be requested by way of Annexure U (*RFP Clarification Request Form*) of this RFP, addressed, in writing, to the Project Manager. The contact details of the Project Officer are the following:

Area of responsibility	Contact
TNPA Project Manager: Port of Durban	Email: tnpapodfreshproducebreakbulk@transnet.net

- 41.4. 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.
- 41.5. If a Bidder, its Members, Contractors, agents, advisors, Lenders, or any other person participating in the relevant Bid Response make any such prohibited contact, TNPA reserves the right, in its discretion, to disqualify the Bidder, its Members, Contractors, agents, advisors, Lenders, or any other person participating in that Bid Response on the grounds of being in breach of this clause 41.1, from any further participation in the Project.

- 41.6. 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 41.3 above.

42 TIME FOR REQUESTS AND CLARIFICATIONS

The Bidder may request clarification on any item contained in this RFP by no later than 16:30 CAT, 20 June 2025, 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.

43 REQUESTS AND RESPONSES TO REQUESTS

- 43.1. 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: tnpapodfreshproducebreakbulk@transnet.net
- 43.2. TNPA will respond to written requests and queries by way of written Briefing Notes published on the e-tender portal.
- 43.3. 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 item contained in this RFP.

44 NON-COMPULSORY RFP BRIEFING SESSION AND SITE VISIT

- 44.1. A non-compulsory briefing session for 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:
- 44.1.1. Port of Durban – Date: 07 Mayl 2025 at the N-Shed, 1 Quayside Road, Port of Durban, Time: 10h00am.
- 44.1.2. This RFP may be downloaded directly from the National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge. The RFP may also be downloaded from the Transnet Portal at <https://transnetetenders.azurewebsites.net> (please use Google Chrome to access the Transnet link/site) free of charge.
- 44.1.3. Respondents are encouraged to bring a copy of the RFP to the site meeting and/or RFP briefing session.

- 44.1.4. Potential bidders attending the briefing session are required to RSVP to the following email address tnpapodfreshproducebreakbulk@transnet.net
- 44.1.5. 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.
- 44.1.6. For purposes of access and operational safety, Bidders may be required to bring their identity documents, appropriate safety shoes, and other personal protective equipment such as high visibility safety jackets and hard hats.

44.2. Each Bidder is limited to a maximum number of three (3) representatives.

45 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 unless the response is reflected in a Briefing Note.

46 SUBMISSION OF BID RESPONSE

- 46.1. Bid Responses in relation to the Bid Submission Date are to be submitted by no later than 16h00 CAT on 11 July 2025.
- 46.2. All Bid Responses and documents must be:
- 46.2.1. in a PDF format;
 - 46.2.2. properly indexed, readable, and capable of being electronically accessed.
- 46.3. Transnet has implemented a new electronic tender submission system, the Transnet 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.
- 46.4. The Transnet e-Tender Submission Portal can be accessed as follows:
- 46.4.1. Log on to the Transnet e-Tenders management platform website/ Portal (transnetetenders.azurewebsites.net);

- 46.4.2. Please use Google Chrome to access the Transnet link/site);
- 46.4.3. Click on “ADVERTISED TENDERS” to view advertised tenders;
- 46.4.4. Click on “SIGN IN/REGISTER” for a bidder to register their information (must fill in all mandatory information);
- 46.4.5. Click on “SIGN IN/REGISTER” to sign in if already registered;
- 46.4.6. Toggle (click to switch) the “Log an Intent” button to submit a bid;
- 46.4.7. Submit bid documents by uploading them into the system against each tender selected; and
- 46.4.8. No late submissions will be accepted. The bidder guide can be found on the Transnet e-Tender Submission Portal at transnetetenders.azurewebsites.net.

47 FORMAT OF THE BID RESPONSE

47.1. TNPA shall be entitled, in its discretion, to disqualify any Bid Response that fails in any way to fulfill the requirements of this Clause 47 (*Format of the Bid Response*) and to prohibit the relevant Bidder from participating further.

47.2. Contents of the Bid Response

47.2.1. The Bid Response must be complete, contain all the information required by this RFP, and deal with each and every issue raised in this RFP in 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 of the Annexures to this RFP.

47.2.2. 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.

47.2.3. The Bid Response must adhere to the order set out below, to aid the evaluation process:

47.2.3.1. the Mandatory Returnable Documents (as listed in Clause 22 of Annexure J)

Bidders must submit with their Bid Responses the Mandatory Returnable Documents. Failure to provide the Mandatory Returnable Documents at the Bid Submission Date and Closure of this RFP will result in the Bidder's disqualification.

- 47.2.3.2. the Essential Returnable Documents Used for Scoring (as listed in Clause 24 of Annexure J)

In addition to the requirements of clause 45.2.3.1 above, Bidders must submit with their Bid Responses the Essential Returnable Documents Used for Scoring. Failure to provide all the Essential Returnable Documents Used for Scoring the bid, by the Bid Submission Date and time of this RFP, will result in the Bidder's receiving an automatic score of zero for the applicable evaluation criterion.

- 47.2.3.3. the Essential Returnable Documents (as listed in Clause 24 of Annexure J)

Over and above the requirements of clauses 45.2.3.1 and 45.2.3.2 mentioned above, Bidders are required to submit with their Bid Responses the Essential Returnable Documents that are necessary but will not be used for scoring. Failure to provide the Essential Returnable Documents will be deemed non-compliant and may result in the Bidder's disqualification. For the purposes of evaluating the Essential Returnable Documents, TNPA reserves the right to seek clarity or updated information on the submitted documents.

- 47.2.3.4. the Response to the Qualification Criteria; and

- 47.2.3.5. the Response to the Evaluation Criteria.

- 47.2.4. 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.

47.3. **Language of the Bid**

The Bid Response and all documents forming part of the Bid Response shall be in English. A foreign Bidder may submit a Bid Response in any other 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.

47.4. **Currency of the Bid**

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

47.5. Identification and Sealing of the RFP Bid Response

47.5.1. A Bidder must write on the top right-hand corner of each document forming part of the Bid Response submitted by a Bidder, the following information:

47.5.1.1. tender reference number;

47.5.1.2. name and address of Bidder;

47.5.1.3. Master or copy number;

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

47.5.1.5. category of document (namely, the heading of the Part and clause of the RFP to which the document relates).

47.5.2. A Bidder must mark the cover of the Bid Response with the following details:

47.5.2.1. the full title of the RFP as appears on the cover page of the RFP;

47.5.2.2. tender reference number;

47.5.2.3. name and address of Bidder.

47.6. Correction of errors

The complete Bid Response shall be without alterations, deletions, or omissions, except those to accord with instructions issued by TNPA by way of a Briefing Note, 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 pen.

47.7. Signing of the Bid Response

47.7.1. The Bid Response must be signed by the duly authorised representative of a Bidder in terms of a resolution of the Bidder or each Member as attached to this RFP in Annexure L (*Resolution of Board of Directors*) and Annexure N (*Resolution of each Member*) issued for the purpose of responding to this RFP.

47.7.2. 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.

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

47.8. Further information

TNPA may seek clarification from any Bidder on any aspect of a Bidder's Bid Response. TNPA may require a Bidder to make oral and/or written representations for clarification purposes in respect of its Bid Response if so, required by TNPA. In the event that such a request for clarification of the Bid Response is made by TNPA to any Bidder, such a request should not be construed 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/s. In exceptional instances, the Bidder may be required to do a presentation of the salient features of its Bid Response to TNPA. If so, required by TNPA, the Project Officer will arrange a suitable date and venue with each Bidder.

48 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.

49 BID SUBMISSION VALIDITY

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

50 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 twenty (20) 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 36 (*Bid Documentation Fee and Preferred Bidder Guarantee*), to match any such extension may be required.

51 DECLARATION OF BIDDER

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

52 BRIEFING NOTES AND CHANGES TO THE BID PROCESS

52.1. Up to fifteen (15) 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 issuing a Briefing Note.

52.2. Issuing of Briefing Notes

52.2.1. TNPA may issue additional information regarding the RFP on an *ad hoc* basis, which information shall be provided in the form of Briefing Notes.

52.2.2. 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.

52.2.3. 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 41 (*Contact Policy*). All Briefing Notes shall be deemed to be part of the RFP.

52.3. Influence of Briefing Notes

52.3.1. 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 discretion, extend the Bid Submission Date in accordance with Clause 25 (*Extension of RFP Bid Submission Date*).

52.3.2. Bidders shall ensure that their Bid Responses are prepared, taking into account all Briefing Notes issued by TNPA.

53 COST OF BIDDING

53.1. The Bidder shall bear all of its costs (of whatsoever nature) associated with the preparation of its Bid Response.

53.2. 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:

53.2.1. not being selected as the Preferred Bidder and/or a Reserve Bidder; and/or

53.2.2. TNPA altering or abandoning any part or the entire Project, including limiting the Project to the Bid Submission Date only.

54 INCONSISTENCIES

- 54.1. 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 clause 42 (Time for requests and clarifications) and TNPA will provide clarification as to the intended position to all Bidders by way of a Briefing Note.
- 54.2. To the extent that any inconsistency exists or shall exist between the terms of the TOA, the FDA, and the provisions of the RFP, the terms of the TOA and the FDA shall prevail.

55 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 or false information which the Bidder or its Members, Contractors, agents, advisors, or any other participant in the relevant Bid Response provided in response to this RFP.

56 ELECTRONIC ACCESS TO BID RESPONSES

TNPA will electronically access all Bid Responses after the Bid Submission Date. 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 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 failure by the Bidders to submit their bids timeously challenges experienced by Bidders as a result of the technical challenges experienced by the Bidders. A Bidder can upload 30 MB per upload and multiple uploads are permitted.

57 RFP BID RESPONSE REJECTION

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

58 DISPUTES RELATING TO THE BID PROCESS

Each Bidder, its Member, Contractor, Lenders, or other person participating in a Bid Response or in the RFP waives the right to bring proceedings in any forum outside of the Republic of South Africa in relation to this Project. This Project and the RFP shall be governed by the laws of South Africa and the Bidder, its Member, Contractor, Lenders, and/or any other person participating in a Bid Response consent and submits to the jurisdiction of the High Court in Kwa-Zulu Natal.

59 SELECTION OF PREFERRED AND RESERVE BIDDER

- 59.1. TNPA will notify the provisionally selected Preferred Bidder and the Reserve Bidder, in writing of their status and request the Preferred Bidder to submit a Preferred Bidder Guarantee pursuant to Clause 36 (*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 TOA and the FDA with the relevant counterparties.
- 59.2. If TNPA selects the Preferred Bidder, the selected Preferred Bidder will be invited to enter into negotiations with TNPA leading to the signature by the appropriate parties of the TOA. Once a Bidder is appointed as a Preferred Bidder, a period not exceeding four (4) months or such extended period as may be reasonably necessary, at TNPA's sole discretion, shall be allowed for the negotiation of the TOA. If the Preferred Bidder fails to facilitate the conclusion of the TOA within the allocated four (4) months, or such extended period as may be reasonably necessary, at TNPA's sole discretion, such Preferred Bidder may be disqualified from its status as Preferred Bidder.
- 59.3. If the 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.
- 59.4. Following the signature of the TOA, the Terminal Operator will proceed to Financial Close and subsequently implement the Project.

60 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.

61 INFORMATION VERIFICATION

- 61.1. Each Bidder (including its Members, Contractors, advisors, agents, and other participants), in submitting a Bid Response, is deemed to consent to and agree that TNPA is entitled to:
- 61.1.1. perform a credit check in respect of such a Bidder, its Members, and Contractors 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;
- 61.1.2. seek references from any relevant third parties; and

- 61.1.3. verify any information provided by a Bidder (including technical and financial information) with third parties (including banks).

PART II - QUALIFICATION CRITERIA

62 THE STRUCTURE OF THIS QUALIFICATION CRITERIA

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

62.1.1. Qualification Criteria 1: Administrative Responsiveness; and

62.1.2. Qualification Criteria 2: Substantive Responsiveness.

- 62.2. The Qualification Criteria are indicated in the diagram below:

PART II - QUALIFICATION CRITERIA	
62.2.1. Qualification Criteria 1: Administrative Responsiveness	<ul style="list-style-type: none"> ✓ Timely Submission of Bid Response ✓ Bid Response duly initialled and signed on all relevant documents
62.2.2. Qualification Criteria 2: Substantive Responsiveness (Mandatory Returnable)	<ul style="list-style-type: none"> ✓ Whether the Bid contains a Concession Fee Offer
Bidders who do not comply with all the requirements of Substantive Responsiveness will NOT be eligible for evaluation under Part III Evaluation Criteria.	

- 62.3. The requirements and parameters with respect to each of these criteria are set out in 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.
- 62.4. Qualification Criteria 1: Administrative Responsiveness in Clause 62.1.1 of this Part II (Qualification Criteria) will be checked by TNPA before the evaluation of Part III commences. Failure to submit the 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.
- 62.5. 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 submitted on time.	Clause 62.2.1 of Part II of this RFP
Whether the bidder has submitted a duly initialled and signed Bid Response as required, by the RFP	Clause 62.2.1 of Part II of this RFP

62.6. Qualification Criteria 2: Substantive Responsiveness under the RFP Clause 62.2.2 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 62.2.2 of Part II of this RFP

62.7. Upon qualification on the Substantive Responsiveness, the Bidder will be evaluated on the Evaluation Criteria, which forms part of the Evaluation and Objective Criteria Assessment in Part III of this RFP as outlined in clause 63 below.

PART III – EVALUATION CRITERIA

63 OVERVIEW OF THE EVALUATION CRITERIA

63.1. In compliance with the provisions of section 56 of the Act, TNPA shall establish a panel to assist it with the evaluation of the Bid Responses. The primary responsibility of this panel shall be to evaluate all Bid Responses against the criteria set out in 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).

63.2. The panel shall constitute a working committee comprising of TNPA employees and may comprise 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.

63.3. TNPA will not delegate any decision-making authority to the panel. Furthermore, the panel shall have 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 (30) • SHE & Risk (35) • Financial Capacity (35) • Business Case (100) <ul style="list-style-type: none"> - Market Analysis (25) - Financial Management Plan (25) - Operating Model (20) - Project Schedule (20) - Concept Design (10) <p>Total Points = 200</p>	<ul style="list-style-type: none"> • Price: Concession Fee Offer (90) Points Scored = Points out of 100 x 90% = 90 points • Preference: B-BBEE Specific Goals (10) Points Scored = Points out of 100 x 10% = 10 points
	<p>Minimum Weighted Score of 140 points 70% of the Total Points required to be eligible for evaluation under Stage 2 of this Evaluation Criteria. A Bidder who does not meet the minimum 140 points (70%), will not receive any further consideration.</p> <p>On completion of the evaluation under Stage 2, Bidders will be ranked and be eligible for appointment as the Preferred Bidder provided there are no objective criteria that justify the appointment of another Bidder other than the Highest Ranked Bidder</p>

64 STRUCTURE OF THE EVALUATION CRITERIA

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

64.1.1. Evaluation Criteria 1: Experience & Track Record;

64.1.2. Evaluation Criteria 2: Safety, Health, Environment & Risk;

64.1.3. Evaluation Criteria 3: Financial Capability Criteria; and

64.1.4. Evaluation Criteria 4: Business Case.

- 64.2. 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.
- 64.3. The Bidder must respond to each and every heading in this Part III RFP (Evaluation Criteria) and is referred to in clause 64 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 64 (Evaluation Criteria) shall have an adverse impact on the evaluation of its Bid Response and may result in zero (0) points being awarded for a particular Evaluation Criteria.
- 64.4. The evaluation of this Stage 1 of the Evaluation Criteria will be undertaken out of a total of two hundred (200) points as follows:
- 64.4.1. Criteria 1: Experience & Track Record Criteria being scored out of forty (30);
- 64.4.2. Criteria 2: Safety, Health, Environment & Risk being scored out of twenty five (35);
- 64.4.3. Criteria 3: Financial Capacity being scored out of thirty-five (35); and
- 64.4.4. Criteria 4: Business Case being scored out of one hundred (100) points, as more fully explained in clause 63.4 below.
- 64.5. A Bidder will be required to meet a minimum threshold weighted score of one hundred and forty (140) points (equal to 70% of the minimum threshold) in order to be eligible for evaluation under Stage 2 of the Evaluation Criteria.

65 STAGE 1 OF THE EVALUATION CRITERIA

65.1. Evaluation Criteria 1: Experience & Track Record

A Bidder's experience and track record in handling Fresh Produce and Break Bulk Cargo, as well as Fresh Produce and Break Bulk Cargo 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:

65.1.1. Experience

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

Bidders will be required to submit:

at least one (1) letter of reference from a local or an international Fresh Produce and/or Break Bulk Cargo 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 Fresh Produce and Break Bulk Cargo and will be evaluated on this experience to ensure that TNPA secures the services of competent Terminal Operator substantively in form as set out in Annexure EE 1 annexed to this RFP;

a reference letter must be on the letterhead of the company where work was done. References should include the following:

65.1.1.1.1. The description of the project;

65.1.1.1.2. Client company name;

65.1.1.1.3. Client contact details (email and telephone);

65.1.1.1.4. 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 Break bulk cargo.

65.1.1.2. In cases where a score has been assigned to a criterion or requirement within the scoring table, a Bidder's failure to submit all necessary documentation or to fully meet the specified requirement, as indicated in both the scoring table and the corresponding clause in the RFP, shall result in a score of zero.

65.1.1.3. The number of years of experience they have in handling Fresh Produce and/or Break bulk cargo terminal operations, either operated and/or are currently operating, will be assessed and scored out of ten (10) points as follows:

THE NUMBER OF YEARS OF EXPERIENCE IN HANDLING FRESH PRODUCE AND/OR BREAK BULK CARGO TERMINAL OPERATIONS	POINTS
Failure to submit all necessary documentation	0
= 1 Year	2
> 1 Year and ≤ 2 Years	4
> 2 Years and ≤ 3 Years	6
> 3 and ≤ 4 Years	8
> 4 Years	10

65.1.2. **Track Record**

- 65.1.2.1. This section will be assessed and scored out of ten (10) points.
- 65.1.2.2. In cases where a score has been assigned to a criterion or requirement within the scoring table, a Bidder's failure to submit all necessary documentation or to fully meet the specified requirement, as indicated in both the scoring table and the corresponding clause in the RFP, shall result in a score of zero.
- 65.1.2.3. The Bidders will be required to submit at least one (1) letter of reference as proof in respect of their track record that they or their Members, from either a customer, landlord, and/or any relevant authority who can confirm the number of terminals operated by the Bidder which lists the location of such terminal or facility and the nature of the operation being undertaken at the terminal or facility as the case may be, in the form as set out in Annexure EE hereto, for the following:
- 65.1.2.3.1. the number of Fresh Produce and/or Break Bulk Cargo terminals or handling facilities where Bidders have handled or stored and/or are currently handling or storing Fresh Produce and Break Bulk Cargo. Bidders will be required to submit proof of their throughput volumes and/or that of their Members with respect to the Fresh Produce and/or Break Bulk Cargo terminals in which they previously or currently operate;
- 65.1.2.3.2. the Bidder will be evaluated on the track record to ensure that TNPA secures the services of a competent and credible Terminal Operator. Bidders should accordingly provide a letter of reference, certification, or similar document confirming the number of Fresh Produce and/or Break Bulk Cargo terminals or handling facilities operated by the Bidder;
- 65.1.2.4. The number of Fresh Produce and/or Break Bulk Cargo terminals or handling facilities operated or currently operating will be assessed and scored out of ten (10) points as follows:

THE NUMBER OF FRESH PRODUCE AND/OR BREAK BULK CARGO/HANDLING FACILITIES OPERATED OR CURRENTLY OPERATING (OR INLAND TERMINALS)	POINTS
0 Terminal facility operated	0
1 Terminal facility operated or currently operating	2
2 Terminals facilities operated or currently operating	4
3 Terminals facilities operated or currently operating	6
4 Terminal facilities operated or currently operating	8
> 4 Terminal facilities operated or currently operating	10

65.1.2.5. Bidders will be required to submit a letter from an independently registered auditor e.g., the Independent Regulatory Board for Auditors or a similar professional body. Bidder's throughput volumes and/or that of their Members in respect of the Fresh Produce and/or Break Bulk Cargo terminals or facilities 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 substantively in the form of EE 2 annexed to this RFP.

65.1.2.6. The average Fresh Produce and/or Break Bulk Cargo throughput volumes (per terminal/facility) over the past three (3) years where applicable (tonnes) will be assessed and scored out of ten (10) points as follows:

AVERAGE FRESH PRODUCE AND/OR BREAK BULK CARGO THROUGHPUT VOLUMES OVER THE PAST 3 YEARS WHERE APPLICABLE (TONNES)	POINTS
Failure to submit all necessary documentation	0
≤ 100 000	2
> 100 000 and ≤ 150 000	4
> 150 000 and ≤ 200 000	6
> 200 000 and ≤ 250 000	8
> 250 000	10

65.2. EVALUATION CRITERIA 2: Safety Health Environment & Risk

65.2.1. The criteria under this section have an overall point allocation of thirty-five (35) 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.

65.2.2. Environmental Management

65.2.2.1. This section has a point allocation of seven (7) points and Bidders are required to provide evidence of experience in existing businesses and an overview of the approach or management system that is currently utilised with respect to environmental management.

65.2.2.2. The Bidder shall perform a baseline environmental risk assessment of the Project Site. The environmental risk assessment shall be associated with the intended terminal infrastructure and its operation. It must identify aspects, impacts, and mitigation measures aligned with the scope of work.

65.2.2.3. The environmental risk assessment shall have the following elements:

65.2.2.3.1. aspects and impacts to which the environment may be exposed to;

65.2.2.3.2. analysis and evaluation of the identified risks;

65.2.2.3.3. measures to mitigate, reduce, or control the risks and impacts identified;

65.2.2.3.4. roles and responsibilities for the implementation and control; and

65.2.2.3.5. defined methodology in which risks are quantified.

65.2.2.4. Bidders must provide a valid ISO 14001:2015 Environmental Management System certificate or equivalent.

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

ENVIRONMENTAL MANAGEMENT	POINTS	RFP REFERENCE
--------------------------	--------	---------------

Environmental Risk Assessment that identifies aspects, impacts, and mitigation measures aligned with the intended infrastructure and its operation.	5	Clause 65.2.2.3 of Part III of this RFP
A valid ISO 14001:2015 Environmental Management System certificate or equivalent	2	Clause 65.2.2.4 of Part III of this RFP

65.2.3. Occupational Health and Safety Management

65.2.3.1. This section has a point allocation out of eight (8) 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.

65.2.3.2. Bidders must provide:

65.2.3.2.1. an occupational health and safety policy that deals with the Bidder's commitment to their current business signed by a director of the Bidder or another properly delegated person;

65.2.3.2.2. an active and comprehensive safety management system designed to deliver a high level of safety performance. The safety management system shall be designed to achieve the aims of the company's safety policy;

65.2.3.2.3. provide a high-level occupational health and safety baseline risk assessment with mitigation and control measures. Bidders should demonstrate how they will achieve and maintain occupational health and safety legal compliance. Bidders must provide a typical occupational health and safety risk assessment that is associated with the intended infrastructure and its operation. Bidders shall identify the hazards, risks, and associated mitigation measures which shall be aligned with the operations to be conducted, including:

65.2.3.2.3.1. identify hazards to which the operation may be exposed to;

- 65.2.3.2.3.2. analysis and evaluation of the identified hazards;
- 65.2.3.2.3.3. measures to mitigate, reduce, or control the risk and impacts identified;
- 65.2.3.2.3.4. roles and responsibilities for the implementation and control thereof; and
- 65.2.3.2.3.5. defined methodology in which risks are quantified.

65.2.3.3. is registered and has a valid letter of good standing from the Workmen's Compensation Fund at the Department of Employment and Labour or Federated Employers Mutual Assurance or equivalent certification;

65.2.3.4. Bidders will be scored, for their occupational health and safety management response, as indicated in the table below:

OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT	SCORE	RFP REFERENCE
Policy, organization, and safety and health management involvement	1	Clause 65.2.3.2.1 of Part III of this RFP
Safety Management System ISO 45001: 2018 or equivalent	1	Clause 65.2.3.2.12 of Part III of this RFP
Occupational health and safety baseline risk assessment	5	Clause 65.2.3.2.13 of Part III of this RFP
A valid letter of good standing from the Department of Employment and Labour or Federated Employers Mutual Assurance.	1	Clause 65.2.3.3 of Part III of this RFP

65.2.4. Risk Management

65.2.4.1. This section has a point allocation of twenty (20) points. A Bidder must provide a business impact/risk analysis. This analysis is a critical component of business continuity planning, as it identifies the potential impacts of disruptions on an organization's critical functions and processes, allowing for the development of strategies to mitigate those risks.

65.2.4.2. The Key Components to consider as part of a baseline Business Continuity Impact/Risk Assessment are:

- 65.2.4.2.1. **Risk Identification:** This involves identifying potential risks and threats that could disrupt business operations. These can include

natural disasters, technological failures, cyberattacks, and supply chain disruptions. A thorough understanding of these risks is foundational to the assessment process

- 65.2.4.2.2. **Impact Analysis:** Once risks are identified, the next step is to assess the potential impact of these disruptions on business functions. This analysis helps determine which processes are critical and how various disruptions could affect them in terms of financial loss, operational downtime, and reputational damage
 - 65.2.4.2.3. **Resource Assessment:** Organizations need to evaluate the resources required to maintain essential functions during a disruption. This includes identifying key personnel, technology, facilities, and information necessary for continuity and recovery efforts
 - 65.2.4.2.4. **Recovery Strategies:** Developing strategies for mitigating identified risks is crucial. This includes establishing recovery time objectives (RTOs) and recovery point objectives (RPOs) to ensure that critical operations can resume promptly after a disruption
 - 65.2.4.2.5. **Communication Plan:** Effective communication is vital during a crisis. The assessment should outline how information will be disseminated to employees, stakeholders, and customers during a disruption, ensuring that everyone understands their roles and responsibilities in the response plan
- 65.2.4.3. A business continuity management (BCM) plan from the Bidder aligned to a recognized BCM system that will ensure that resilience is considered as part of the Bidder's operations in order to mitigate potential business continuity risks when operating. Some of the critical components of a BCM to consider are as follows:
- 65.2.4.3.1. **Emergency Response Procedures:** This component outlines the immediate actions to be taken in response to a crisis. It includes protocols for evacuation, first aid, and initial communication with emergency services. Clearly defined emergency procedures ensure that employees know how to act quickly and safely during a disruptive event.

- 65.2.4.3.2. **Crisis Management Framework:** This framework provides guidelines for managing crises effectively. It includes the establishment of a crisis management team, roles and responsibilities, and escalation procedures. The framework helps ensure that all stakeholders are aligned in their response efforts and that decisions can be made efficiently
- 65.2.4.3.3. **Data Backup and Recovery Plans:** This component focuses on the strategies for backing up critical data and systems to ensure they can be restored after a disruption. It includes both onsite and offsite backup solutions, as well as procedures for data recovery to minimize downtime and data loss.
- 65.2.4.3.4. **Supplier and Third-Party Risk Management:** Organizations rely on various suppliers and partners for their operations. This component assesses the risks associated with these external entities and establishes plans for maintaining supply chain continuity during disruptions. It may involve identifying alternative suppliers or creating agreements that ensure continued service during crises.
- 65.2.4.3.5. **Testing and Maintenance:** Regular testing of the business continuity plan through drills and simulations is necessary to validate its effectiveness. This component also includes a schedule for reviewing and updating the plan to reflect changes in the organization, emerging risks, and lessons learned from testing exercises.

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

RISK MANAGEMENT	SCORE	RFP REFERENCE
A business impact/risk analysis	10	Clause 65.2.4 of Part III of this RFP
A business continuity management plan	10	Clause 65.2.4.1 of Part III of this RFP

65.2.5. Summary of Safety, Health, and Environment Requirements

65.2.5.1. Bidders will be scored for the Safety, Health and Environment Requirements, as indicated in the table below:

SHE REQUIREMENTS	MAXIMUM NO OF POINTS	RFP REFERENCE
Environmental Management	7	Clause 65.2.2 of Part III of this RFP
Occupational Health & Safety	8	Clause 65.2.3 of Part III of this RFP
Risk Management	20	Clause 65.2.4 of Part III of this RFP
TOTAL	35	

65.3. EVALUATION CRITERIA 3: Financial Capability

65.3.1. In order to determine a Bidder's financial strength, Bidders or each of their Members in respect of newly incorporated or unincorporated Joint Ventures, Consortiums or incorporated SPVs must submit the following:

65.3.1.1. latest audited annual financial statements or independently reviewed financial statements for the past three (3) financial years that the Bidder has been in operation. The latest financial year should not be older than six (6) months;

65.3.1.2. In the event of the Bidder being an unincorporated Joint Venture, Consortium, or SPV, TNPA requires the latest audited annual financial statements of at least one of the Members of such Joint Venture, Consortium or SPV.

65.3.2. Where the Joint Venture, Consortium, or SPV elects to submit more than one Member's audited annual financial statements, each Member's audited annual financial statements will be assessed and scored against the criteria below and then averaged to determine the score of the Bidder.

65.3.3. In the event that a Bidder is not an SPV, a Joint Venture, or a Consortium, then TNPA will only accept audited annual financial statements of the Bidder or audited annual financial statements of its group or holding company.

65.3.4. In the event that a Bidder has been in operation for less than three (3) years, then the number of years that the Bidder has been in operation shall be averaged to determine the score of the Bidder.

65.3.5. Profitability EBITDA

65.3.5.1. Profitability of the Bidder, averaged over the past three (3) year period, will be evaluated using audited annual financial statements or independently reviewed financial statements as set out in clause 65.3.1 Bidders are to note that should they fail to provide Audited Annual Financial Statements or independently reviewed financial statements for three (3) year period, a score of zero will be allocated.

65.3.5.2. In this section the EBITDA margins are categorized into three (3) ranges as shown in the table below:

EARNINGS BEFORE INTEREST, TAXES, DEPRECIATION, AND AMORTIZATION (EBITDA)	9
Bidder EBITDA Margin < 5%	1
Bidder EBITDA Margin ≥ 5% <10%	3
Bidder EBITDA Margin ≥ 10% <15%	6
Bidder EBITDA Margin ≥ 15%	9

65.3.5.3. Bidders will be awarded points on a pro-rata basis, which means a Bidder with an EBITDA margin that falls within a certain range would receive a pro-rata score out of the total available points in that range on the table above:

65.3.5.3.1. in the event that a Bidder's EBITDA margin is 3%, which falls within the EBITDA margin < 5% range, the Bidder will receive a pro-rated score out of the total 1 point;

65.3.5.3.2. in the event that a Bidder's EBITDA margin is 11%, which falls within the EBITDA margin ≥ 10% ≤ 15% range the Bidder will receive a pro-rated score out of the total 6 points.

65.3.6. Key Financial Ratios

65.3.6.1. The key financial ratios will be used to assess the Bidder's liquidity and solvency of the company using Audited Annual Financial Statements or independently reviewed financial statements as set in clause 65.3.1. Ratios that fall within a certain range would receive a pro-rata score out of the total available points in that range and will be assessed as follows:

65.3.6.2. Current Ratio

Current Ratio (Norm is 2:1 – current assets divided by current liabilities)	3
Ratio < 1	1

Ratio $\geq 1 < 2$	2
Ratio ≥ 2	3

65.3.6.3. Solvency Ratio

Solvency Ratio (Norm is 1:1 -Total assets divided by Total Liabilities)	3
Ratio < 0.5	1
Ratio $\geq 0.5 < 1$	2
Ratio ≥ 1	3

65.3.6.4. Bidders must note that TNPA will perform its own calculations of the ratios.

65.3.7. The Proposed Funding Model

65.3.7.1. The Bidder is required to confirm sufficient funding to undertake the Project and submit verifiable sources of funding to support such confirmation.

65.3.7.2. The Bidder must provide the proposed funding model that supports the business case and capital investment of the Terminal supported with projected financial statements for the duration of the concession.

65.3.7.3. The source of the capital investment required must be explained in terms of the Debt/Equity structure. The proposed funding model will be scored out of ten (10) points as follows:

THE PROPOSED FUNDING MODEL	POINTS	QUANTITATIVE
Proposed funding model in support of project investment reflecting the split between Debt and Equity.	10	QN
<p>If Debt is a component in raising funding, the Bidder must provide a letter of support from each financial institution or capital provider. In this regard, TNPA requires a letter;</p> <ul style="list-style-type: none"> • from a financial institution or capital provider in the form of a preliminary credit-approved term sheet • or a letter of commitment from partners or investors (where external Debt will be provided), • or a letter from the group or holding company in 		

support of the funding model.		
<p>If Equity is a component in raising funding, Bidders must provide evidence of such funding from each Member of the Bidder. In this regard, TNPA requires</p> <ul style="list-style-type: none"> • a letter from shareholders confirming Equity funding, or • a letter from a financial advisor or auditor confirming sufficient funds in the form of cash reserves, • or where an individual is providing Equity finance, a letter to support such funding as evidence. 		

65.3.5. Experience in Financing Capital Projects

65.3.5.1. The Bidder's experience in arranging funds will be assessed and scored in accordance with their ability to finance capital projects.

65.3.5.2. The details for each Member relating to its experience in project finance, and/or corporate finance must be submitted.

65.3.5.3. A split between Debt and Equity should be specified and the value of each project funded:

65.3.5.3.1. Where Debt funding was used for past projects, a letter from the funders that provided the financing setting out their role and confirming the Member's experience in financing capital;

65.3.5.3.2. Where equity funding was used for past projects, annual financial statements reflecting investment outflows must be submitted as evidence including any verifiable evidence to support such Equity funding, such as a letter from the shareholders confirming equity funding, and notes in the financial statements reflecting the total value invested as outlined in Annexure Y.

- 65.3.5.4. TNPA, within its discretion, shall conduct credit searches, request references from third parties, and seek further information from financial institutions in respect of Bidder and/or Member's experience in financing capital projects. The evidence must be verifiable through relevant contact details and must form part of the Bidder's Bid Response as this is a critical requirement for the Objective Criteria under Part IV of the RFP.
- 65.3.5.5. Based on the portfolio of evidence, the Bidders will be assessed and scored out of ten (10) points as follows:

PAST EXPERIENCE IN RAISING CAPITAL	POINTS	QUANTITATIVE
No previous funding	0	QN
Funding with a value of up to R1 million	2	QN
Funding with a value > R 1 million ≤ R5 million	4	QN
Funding with a value > R5 million ≤ R10 million	6	QN
Funding with a value > R10 million ≤ R20 million	8	QN
Funding with a value > R20 million	10	QN

65.4. EVALUATION CRITERIA 4 Business Case

65.4.1. 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 by these proposals being incorporated as binding obligations for the Terminal Operator in the TOA.

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

65.4.2.1. Market and Sustainability Analysis

65.4.2.1.1. It is important to note that scoring will be allocated in accordance with the qualitative scoring methodology and the following table will be used:

Qualitative (QL) scoring methodology		
Poor response	Fair response	Good response
Score between a minimum of 0% - 19% of the total	Score between a minimum of 20% - 69% of the total points	Score between a minimum of 70% - 100% of the total

Qualitative (QL) scoring methodology		
points allocated per measure	allocated measure	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.	The business case describes major characteristics of the industry, but the analysis is limited or missing necessary elements; market attributes are described and their impacts on the business are adequately assessed; The 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, and customers, and fully describes the niche market in which the company will operate; clearly presents significant competitive advantages and effectively analyzes their impacts on organizational success.

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

65.4.2.1.3. Bidders are required to cover the following elements in respect of the Market Analysis of the Terminal:

65.4.2.1.3.1. vision and mission statement clearly articulating major goals and ambitions for the Terminal;

65.4.2.1.3.2. relevant and achievable strategic objectives for the Terminal;

65.4.2.1.3.3. a comprehensive value proposition for the Terminal;

65.4.2.1.3.4. a clear understanding of the Fresh Produce and/or Break bulk cargo industry supply chain, business operating environment as well as global economic conditions;

65.4.2.1.3.5. a comprehensive potential market, supplier and segment analysis and supplier model (for example single or multiple aggregator or open market)

65.4.2.1.3.6. in-depth global competitor analysis specifically for the Fresh Produce and/or Break bulk cargo sector;

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

65.4.2.1.3.8. in-depth SWOT analysis specifically for the Fresh Produce and/or Break bulk cargo sector;

65.4.2.1.3.9. measurable economic growth & development spin-offs;

65.4.2.1.3.10. short, medium, and long-term projection forecast of Fresh Produce and/or Break bulk cargo volumes over the Concession Period;

65.4.2.1.3.11. sustainability and growth assumptions over the Concession Period;

65.4.2.1.3.12. climate change adaptability plan.

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

MARKET ANALYSIS	POINTS	QUALITATIVE
Vision and mission statement 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
A clear understanding of the 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 potential market including a plan to mitigate any discrepancy identified	2	QL
In-depth competitor analysis specifically for the Fresh Produce and/or Break bulk cargo sector	2	QL
In-depth SWOT analysis specifically for the Fresh Produce and/or Break bulk cargo sector	2	QL
Measurable economic growth & development spin-offs	2	QL

MARKET ANALYSIS	POINTS	QUALITATIVE
Short, medium, and long term projection of Fresh Produce and/or Break bulk cargo 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	

65.4.2.2. **Financial Management Plan**

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

65.4.2.2.1. **Operational Costs (25-Year Projection)**

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

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

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

65.4.2.2.2. **Operational Revenue (25-Year Projection)**

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

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

65.4.2.2.2.3. 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 Fresh Produce and/or Break-Bulk Cargo Terminal	7	QN

65.4.2.2.3. **Capital Expenditure**

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

65.4.2.2.3.2. 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 FRESH PRODUCE AND/OR BREAK BULK CARGO 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

65.4.2.2.4. **Financial Model Assumptions**

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

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

FINANCIAL MODEL ASSUMPTIONS	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

FINANCIAL MODEL ASSUMPTIONS	POINTS	QUANTITATIVE
Other	1	QN

65.4.2.2.5. Summary of Financial Management Plan

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

SUMMARY OF FINANCIAL MANAGEMENT PLAN	MAXIMUM NO OF POINTS	RFP REFERENCE
Operational Costs	6	Clause 65.4.2.2.1 of Part II of this RFP
Operational Revenue	7	Clause 65.4.2.2.2 of Part II of this RFP
Capital Expenditure	6	Clause 65.4.2.2.3 of Part II of this RFP
Financial Model assumptions	6	Clause 65.4.2.2.4 of Part II of this RFP
Total	25	

65.4.2.3. Operational Model

65.4.2.3.1. 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 including external staging facilities and traffic control plans, Terminal security plans, operations human resource plans, SHE, Risk and Quality management systems that will be applied to mitigate any operational risks including insurable risks.

65.4.2.3.2. The operational model must include a description of the 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.

65.4.2.3.3. This criterion has a point allocation of twenty (20) points. It is important to note that scoring will be allocated in accordance with the qualitative scoring methodologies. The information provided by the Bidder must be relevant to the Fresh Produce and/or Break bulk cargo 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 a 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 a minimum of 70% - 100% of the total points allocated per measure
The Operational Model does not cover and/or lacks the required detail with respect to the requirements outlined above.	The Operational Model covers sufficient detail and has credible supporting and/or motivating information with respect to the requirements outlined above.	The Operational Model covers in comprehensive detail and demonstrates how the targeted performance will be achieved and comprehensively describes and indicates how this will be achieved.

65.4.2.3.4. Bidders will score twenty (20) points if all the elements of the Operating Model indicated in the table below, are met:

OPERATIONAL MODEL	POINTS	QUALITATIVE
Bidders to demonstrate the use of the land-based facilities to receive Fresh Produce and/or Break bulk cargo directly from conventional carriers, storing it in warehouses.	8	QL
Access to the site via rail and road including proposal on the Bidder's truck staging / holding area outside the Port. Cargo split on road and rail explained in Bid Submission. Technologies and cargo handling methods to be used to enhance operational efficiencies.	6	QL
A description of the Bidders' Organisational Structure, roles and responsibilities, and skills profiles of the Board of Directors Executive Leadership, key operational personnel, Terminal Equipment, plant and machinery acquisition and maintenance strategies.	6	QL
Total	20	

65.4.2.4. Project Schedule

65.4.2.4.1. Bidders are required to articulate a clear and concise Terminal development plan, which outlines how and within what timeframes it will implement the Project, and a clearly outlined Project schedule.

65.4.2.4.2. This section has a point allocation of twenty (20) points. It is important to note that scoring will be allocated in accordance with the qualitative scoring methodology. The information provided by the Bidder must be relevant to the Fresh Produce and/or Break bulk cargo sector. In respect of the qualitative scoring methodology, the following table will be used:

65.4.2.4.3. Bidders will be scored on the Project schedule as follows:

PROJECT SCHEDULE LEVEL	POINTS	QUALITATIVE
If: <ul style="list-style-type: none"> • No project schedule is submitted; • the project schedule submitted has no logical sequencing. 	0	QL
Level 1 Schedule Level 1 Schedule is the highest level, called the overall project summary level. It includes major milestones or achievements and highlights major activities and key deliverables (with logical sequencing and scheduling of key milestones for the development of the Project).	2	QL
Level 2 Schedule Level 2 Schedule is the area or system summary (roll-up summary of level 3 Schedule). It is also called a major summary schedule. It is used to integrate into level 3 and schedules which involve detailed tasks. It can be used to report the project area or trade progress status (with logical sequencing and scheduling of key milestones for the development of the Project).	5	QL
Level 3 Schedule Level 3 Schedule is the most used in planning. The level of schedule is usually decomposed into Level 4. The intention of decomposing the schedule level is to manage and control the project or task to a manageable level. It includes all major milestones, major elements of design, engineering, procurement, construction, testing, commissioning, and/or Operation (with logical sequencing and scheduling for the development of the Project).	10	QL

65.4.2.4.4. Bidders are required to submit a Project Delivery schedule, highlighting key sequential milestones and project timelines.

65.4.2.4.5. Bidders will be scored for the Project Delivery schedule as indicated in the tables below:

PROJECT DELIVERY TIMEFRAMES	POINTS	QUANTITATIVE
> 52 months	1	QN
37 - 52 months	2.5	QN
25 - 36 months	5	QN
0 - 24 months	10	QN

65.4.2.5. **Concept Design**

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

65.4.2.5.2. The Preliminary Design for the Terminal must include concept technical design, brief reports, and concept layout with sectional drawings indicating the following:

65.4.2.5.2.1. concept design of the Terminal with plan and elevation drawings (building, warehousing, paving, utilities, etc.);

65.4.2.5.2.2. firefighting system, drainage system, cargo weighing mechanism, and loading and offloading of cargo within the Terminal;

65.4.2.5.2.3. conveyance of cargo from the vessel to the Terminal and from the Terminal to the vessel;

65.4.2.5.2.4. traffic flow with rail and road connectivity to and from the Terminal; and

65.4.2.5.2.5. design brief/specifications that consider the safety, and environmental best available technology and sustainability considerations on infrastructure and equipment to ensure the Terminal is compatible with the neighbouring terminals and Port Infrastructure.

65.4.2.5.2.6.

65.4.2.5.3. Bidders will be scored for Concept design as indicated in the table below:

CONCEPT DESIGN	POINTS	QUALITATIVE
Concept design of the Terminal with plan and elevation drawings (building, warehousing, paving, utilities, etc.)	2	QL
Firefighting system, drainage systems, cargo weighing mechanism, and loading and offloading of cargo within the Terminal.	2	QL
Conveyance of cargo from the vessel to the Terminal and from the terminal to the vessel.	2	QL
Traffic flow with rail, and road connectivity to and from the Terminal.	2	QL
Design brief/specification that considers the safety and environmental best available technology and sustainability on infrastructure and equipment to ensure the terminal is compatible with the neighbouring terminals and Port Infrastructure.	2	QL

65.4.3. Summary of Business Case

SUMMARY OF BUSINESS CASE	POINTS	RFP REFERENCE
Market and Sustainability Analysis	25	Clause 65.4.2.1 of Part II of this RFP
Financial Management Plan	25	Clause 65.4.2.1.4 of Part II of this RFP
Operational Model	20	Clause 65.4.2.3 of Part II of this RFP
Project Schedule	20	Clause 0 of Part II of this RFP
Concept Design	10	Clause 0 of Part II of this RFP
Total	100	

65.4.4. Summary of Technical and Functional Criteria Assessment¹

TECHNICAL ASSESSMENT	CRITERIA	MAXIMUM NO OF POINTS	RFP REFERENCE
Previous experience		20	Clause 65.1.1 of Part II of this RFP
Track record		10	Clause 0 of Part II of this RFP
SHE requirements		35	Clause 65.2 of Part III of this RFP
Financial Capability		35	Clause 65.3 of Part III of this RFP
Business Case		100	Clause 65.4 of Part II of this RFP
TOTAL		200	

¹ NOTE: Only Bidders that score a minimum of 140 points and above will move to Part III Stage 2 of the evaluation process

66 THE STRUCTURE OF STAGE 2: EVALUATION CRITERIA

- 66.1. 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:
- 66.1.1. Evaluation Criteria 1: Price: Concession Fee Offer; and
 - 66.1.2. Evaluation Criteria 2: Preference B-BBEE Specific Goals.
- 66.2. 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.
- 66.3. The Bidder must respond to each and every heading in clause 66 of this RFP (Evaluation Criteria) and in the Annexures referred to in clause 66 (Evaluation Criteria) and provide comprehensive responses and information with respect to each heading. Failure by a Bidder to respond adequately or at all to any of the headings of this clause 66 (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.
- 66.4. The evaluation will be undertaken in accordance with a 90/10 points system. The Concession Fee Offer (Price) will be scored out of ninety (90) points and B-BBEE Specific Goals (Preference) will be scored out of ten (10) points.
- 66.5. The points for Concession Fee Offer (Price) (scored out of ninety (90) points) and B-BBEE Specific goals (Preference) (scored out of ten (10) points) will be added together to determine the total points (scored out of one hundred (100)) earned in respect of the Evaluation Criteria. The total points will be rounded off to the nearest two decimal places if required.
- 66.6. 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.

67 STAGE 2 OF THE EVALUATION CRITERIA

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

67.1.1. Evaluation Criteria 2 has a weighting of ninety (90) percent of the total score for the Evaluation Criteria.

67.1.2. Price (Concession Fee Offer)

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

$$Ps = 90 (1 + (Pt - Pmax) / Pmax)$$

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

- 67.1.2.6. Ramp-up percentages for each payment period which will be applied to the monthly Concession Fee structured as follows:
- 67.1.2.6.1. zero percent (0%) of concession fee during the application of Environmental Impact Assessment to a maximum of twenty-four (24) months,
- 67.1.2.6.2. twenty-five percent (25%) during the construction period (to a maximum of eighteen (18) months, thereafter one hundred percent (100%) concession fee will apply from the commissioning of the Terminal.
- 67.1.2.7. **Summary of Concession Fee Offer:**

Price (Concession Fee Offer)	Points	RFP Reference
Concession Fee Offer	90	Clause 67.1.2 of Part III of this RFP
Total	90	

67.2. Evaluation Criteria 2: Preference

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

67.2.2. 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 67.2.4 below.

67.2.3. The Bidder must submit a valid B-BBEE Contributor Level Status Certificate. A Bidder who bids as an unincorporated Joint Venture, Consortium, or SPV must submit a consolidated B-BBEE Contributor Status Level certificate.

67.2.4. Points awarded for specific goals and evidence required to award allocated points:

67.2.4.1. Specific goals applicable

Specific Goals	Number of points (90/10 system)
B-BBEE Status Level of Contributor 1 or 2	3
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.	7
Non-compliant and/or B BBEE Level 3 - 8 contributors	0

67.2.4.2. Specific Goals Evidence

Specific Goals	Evidence
B-BBEE Status Level of Contributor 1 or 2	B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate (in case of unincorporated JV, a consolidated scorecard will be accepted) as per DTIC guideline
The promotion of supplier development through subcontracting for a minimum of 30% of the value of a contract to/with EMEs and /or QSEs 51% owned by Black People, youth, women (30% owned), or disabled people owned.	Sub-contracting agreements as required by Annexure II, Declaration / Joint Venture Agreement, and CIPC – B-BBEE Certificate / Sworn- Affidavit / B-BBEE CIPC Certificate as per DTIC guidelines.

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

Summary of Evaluation Criteria	Points	RFP Reference
Price	90	Clause 67.1.2 of Part III of this RFP
Preference	10	Clause 65.2 of Part III of this RFP
Total	100	

68 PART IV OBJECTIVE CRITERIA

68.1. TNPA will undertake an objective criteria exercise on all the Bidders that have passed Part III, Stage I & II (Functionality, Price & B-BBEE) of the evaluation, prior to making the final appointment of the Preferred Bidder. The objective criteria accordingly entail a consideration of, inter alia, the following:

68.1.1. the verification of the authenticity of the Bidder's trade references provided as part of Stage 1 of Part III of the Evaluation Criteria, industry associations, and/or regulatory bodies;

68.1.2. 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;

68.2. the conducting of an analysis of the Bidders' Business Case to confirm that all risks have been identified and appropriately mitigated, which shall include, but not limited to, the following:

68.2.1. financial risks;

68.2.2. technical risks;

68.2.3. operational risks;

68.2.4. legislative (compliance) risks;

68.2.5. quality Management risks;

68.2.6. reputational risks;

68.2.7. risks associated with dependency on the strategic partners and holding the partners to accountability.

68.3. Transnet reserves the right to conduct a probity check on the Preferred Bidder and its shareholders.

68.4. In the event that the objective criteria and/or probity check exercise establish 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.

- 68.5. Bidders are to note that the purpose of the TNPA's objective criteria 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 that will justify the award of the Project to another Bidder (other than the Bidder who has scored the highest points).



ANNEXURES

Annexure A

Bid Notice

(To be uploaded on the eTenders Portal website)



Annexure B

Site Map

[to be provided by TNPA]



Annexure C

Port Of Durban's Safety Health and Environment (SHE) Integrated Management System Policy

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

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

Our commitment is to:

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

Responsibility and accountability:

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

Port Manager : _____

Date: _____

Annexure D

Port of Durban Berthing Policy
(To be uploaded onto the eTenders Portal website)

Annexure E

Maydon Wharf Traffic Assessment

[To be uploaded onto the eTenders Portal website]

Annexure F

Fire Compliance Requirements

[to be provided by the Bidder]

Annexure G

National Ports Act No. 12 of 2005
(To be uploaded onto the eTenders Portal website)

Form of Preferred Bidder Guarantee

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

By: **[insert name of issuer of the Preferred Bidder Guarantee_____]**

In favour of Transnet National Ports Authority.

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

WHEREAS Transnet National Ports Authority ("**TNPA**"), a division of Transnet SOC Limited has issued a Request for Proposals ("**RFP**") in respect of the 25 (twenty-five) year concession for the Development, Design, Financing, Construction, Operation, and Maintenance, and Transfer of the Maydon Wharf Terminal specialising in handling Fresh Produce and Break Bulk Cargo for the purpose of entering into, *inter alia*, the Terminal Operator Agreement with TNPA;

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

AND WHEREAS TNPA requires the Bidder to provide an on-demand guarantee in favour of TNPA in the amount of Five Million Rand (R5 000 000) ("**Guarantee Amount**") to secure certain undertakings or obligations of the Bidder as the Preferred Bidder under the RFP;

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

NOW THEREFORE

1. the Bank, duly represented by _____ being duly authorised to sign this Preferred Bidder Guarantee, hereby irrevocably and unconditionally guarantees and as a primary obligation undertakes to pay TNPA without objection or argument amounts not exceeding in aggregate the Guarantee Amount, such payment(s) to be made by the Bank upon first written demand by TNPA being received at the Bank's counter, situated at [●], attention [●], declaring that the Preferred Bidder has:
 - 1.1. breached any law relating to the Procurement Programme or is disqualified from the Procurement Programme as a result of its actions or omissions;

Annexure I

Guidelines For Terminal Operator Performance Standards

(To be uploaded onto the eTenders Portal website)

Annexure J**Bid Response Form**

We _____

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

of _____ [full _____ address]

carrying on business trading/operating as

represented

by _____

in my capacity as

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

1. We agree to be bound by the conditions in TNPA's:
 - 1.1. terms of this RFP; and
 - 1.2. any other standard or special conditions mentioned and or embodied in this RFP or Terminal Operator Agreement.
2. We accept that unless TNPA should otherwise decide and so inform us in the letter of appointment, our Bid Response (and, if any, its covering letter and any subsequent exchange of correspondence), together with TNPA's acceptance thereof shall constitute a binding contract between TNPA and us.
3. Should TNPA decide that the Terminal Operator Agreement should be negotiated and entered into with us, this Bid Response (and, if any, its covering letter and any subsequent exchange of correspondence) together with TNPA's letter of appointment, shall constitute a binding contract between TNPA and us until the formal contract is signed.
4. We further agree that if, after we have been notified of the acceptance of Bid Response, we fail to enter into the Terminal Operator Agreement or fail to commence the provision of services within 24

(twenty-four) months thereafter, TNPA may, without prejudice to any other legal remedy which it may have, recover from us any expense to which it may have been put in calling for Bid Responses afresh and or having to accept any less favourable Bid Response.

5. We accept that the Terminal Operator Agreement resulting from this offer will be for a period of 25 (twenty-five) years only. Furthermore, we agree to the penalty Clauses to be negotiated with TNPA, which will allow TNPA to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the services due to non-performance by ourselves, failure to meet Economic Development and or B-BBEE Improvement Plan commitments. In addition, we agree that non-compliance with any of the material terms of the RFP, including those mentioned above, will constitute a material breach of the Terminal Operator Agreement and provide TNPA with cause for cancellation.

6. ADDRESS FOR NOTICES

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

8. Bidder to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

Facsimile:

Address: _____

9. NOTIFICATION OF AWARD OF RFP

10. As soon as possible after approval to award the appointment of the Preferred Bidder, the Preferred Bidder will be informed of the acceptance of its Bid Response. Unsuccessful Bidders will be advised in writing of the name of the Preferred Bidder and the reason as to why their Bid Responses have

been unsuccessful, for example, in the category of administrative responsiveness, technical criteria, B-BBEE status, or for any other reason.

11. VALIDITY PERIOD

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

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

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

15. Registration number of company or CC

Registered name of the company or CC or name of the consortium

Full name(s) of director or member(s)	Address/Addresses	ID Number(s)
---------------------------------------	-------------------	--------------

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

16. CONFIDENTIALITY

17. All information related to this RFP is to be treated with strict confidence. In this regard, Bidders are required to complete and return a signed copy of Annexure O (*Certificate of Acquaintance with RFP Documents*) with Annexure L (*Non-Disclosure Agreement*) Annexed to this RFP. All information related to the Terminal Operator Agreement, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from the provision of the services, which is either directly or indirectly related to TNPA's business, written approval to divulge such information must be obtained from TNPA.

18. DISCLOSURE OF THE CONCESSION TENDERED

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

YES		NO	
------------	--	-----------	--

20. RETURNABLE DOCUMENTS

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

21. Mandatory Returnable Documents

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

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

MANDATORY RETURNABLE DOCUMENTS	RFP REFERENCE	SUBMITTED [Yes or No]
Concession Fee Offer	Clause 67.1.2	

23. Essential Returnable Documents

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

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

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

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

ESSENTIAL RETURNABLE DOCUMENTS USED FOR SCORING	RFP REFERENCE	SUBMITTED [Yes or No]
Technical and Functional Criteria		
Proof of valid B-BBEE Contributor Status Level	Clause 61.3	
Previous Experience	Clause 65.1.1	
Track Record	Clause 0	
SHE Requirements	Clause 65.2	
Financial Capabilities	Clause 65.3	
Business Case	Clause 65.4	

ESSENTIAL RETURNABLE DOCUMENTS & ANNEXURES	RFP REFERENCE	SUBMITTED [Yes or No]
A valid Tax Clearance Certificate or PIN	N/A	
Annexure A (<i>Bid Notice</i>)	N/A	TNPA Document
Annexure J (<i>Bid Response Form</i>)	N/A	
Annexure K (<i>Declaration of Bidder</i>)	N/A	
Annexure L (<i>Non-Disclosure Agreement</i>)	N/A	
Annexure M (<i>Resolution of Board of Directors</i>)	N/A	
Annexure N (<i>Resolution of Each Member</i>)	N/A	
Annexure O (<i>Certificate of Acquaintance with the RFP Documents</i>)	N/A	

Annexure P (<i>Declaration of Interest</i>)	N/A	
Annexure Q (<i>Tax Clearance Requirements</i>)	N/A	
Annexure R (<i>Certificate of Acquaintance with the Requirements of the RFP</i>)		
Annexure S (<i>Certificate of Acquaintance with Conditions of Contract with TNPA</i>)		
Annexure X (<i>Standard RFP Response Form: Information about Bidder</i>)		
Annexure Y (<i>Lenders Support Letter</i>)		
Annexure Z (<i>Financial Support Letter</i>)		
Annexure AA (<i>B-BBEE Verification Certificate</i>)		
Annexure BB (<i>Business Case</i>)		
Annexure DD (<i>Economic Development Information</i>)		
Annexure JJ (<i>Terminal Operator Agreement</i>)		

25. CONTINUED VALIDITY OF RETURNABLE DOCUMENTS

26. The Preferred Bidder will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE verification certificate, for the duration of any contract emanating from this RFP. Should the Preferred Bidder be awarded the Terminal Operator Agreement and fail to present TNPA with such renewals as and when they become due, TNPA shall be entitled, in addition to any other rights and remedies that it may have in terms of the Terminal Operator Agreement, to terminate such Terminal Operator Agreement forthwith without any liability and without prejudice to any claims which TNPA may have for damages against the Bidder.

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

SIGNED at _____ on this ____ day of _____ 20__

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1. Name _____

2. Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____

DESIGNATION: _____

Annexure K**Declaration of Bidder**

NAME OF ENTITY: _____

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

We _____ do hereby certify that:

1. In this declaration, words and expressions which are defined in the Request for Proposals for twenty-five (25) year concession for the Development, Design, Financing, Construction, Operation, Maintenance, and Transfer of the Maydon Wharf Terminal specialising in handling Fresh Produce and Break Bulk Cargo at the Port of Durban back to TNPA, Tender No: **[insert tender number]** shall bear the same meaning when used in this letter unless the context requires otherwise.
2. The Bidder further certifies that:
 - 2.1. the TNPA has supplied, and we have received appropriate responses to any or all questions, as applicable, which were submitted by us for the RFP clarification purposes;
 - 2.2. we have received all the information we deemed necessary for the completion of this RFP;
 - 2.3. at no stage have we received additional information relating to the subject matter of this RFP from the TNPA sources, other than information formally received from the designated TNPA contact(s) as nominated in the RFP documents;
 - 2.4. we are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by the TNPA in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner; and
 - 2.5. furthermore, we declare that a relationship formed on the basis of any one or more of a family (including spouses and in-laws), friendship, business acquaintance, professional engagement, or employment exists or does not exist [delete as applicable] between an owner or member or director or partner or shareholder of our entity and an employee or board member of the TNPA including any person who may be involved in the evaluation and or adjudication of this Bid.
 - 2.6. In addition, we declare that an owner, member, director, partner, or shareholder of our entity is or is not [delete as applicable] an employee or board member of the TNPA.
 - 2.7. If such a relationship as indicated in paragraphs 2.5 and or 3 exists, the Bidder is to complete the following section:

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

ADDRESS:

Indicate nature of relationship with TNPA:

DATE:

SIGNATURE:

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

- 2.8. We declare, to the extent that we are aware or become aware of any relationship between ourselves and the TNPA (other than any existing and appropriate business relationship with the TNPA) that could unfairly advantage our entity in the forthcoming adjudication process, we shall notify TNPA immediately in writing of such circumstances.
- 2.9. We accept that any dispute pertaining to this Bid Response will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.
- 2.10. We further accept that TNPA reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

SIGNED at _____ on this _____ day of _____ 20____

For and on behalf of

AS WITNESS:

duly authorised hereto

Name: _____

Name: _____

Position: _____

Position: _____

Signature: _____

Signature: _____

Date: _____

Place: _____

Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

BETWEEN

(Reg)

AND

TRANSNET SOC Ltd,

acting through its operating division

TRANSNET NATIONAL PORTS AUTHORITY

(Reg 1990/000900/30)

This agreement entered into between

_____ located at and

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

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

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

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

1. For purposes of this Agreement, company confidential and/or proprietary information, hereinafter called “proprietary Information”, shall be construed to mean any information disclosed by a Party to the other Party, including without limitation all computer software, which is identified as such by an appropriate stamp or legend or any other notice in writing, or when disclosed orally, has been identified as proprietary at the time of disclosure and has been promptly (30 (thirty) days at the latest) confirmed and designated in writing as Proprietary Information of the disclosing party, hereinafter called the ‘Disclosing Party’, in either hard copy or electronic media and which each Party considers to be material to its business operations, including, without limitation, wage and salary information, technical information, commercial information, financial information, and personnel records.
2. The receiving party, hereinafter called the ‘Receiving Party’ of any Proprietary Information covenants that, for a period of 7 (seven years) from the effective date of this Agreement, the Proprietary Information received from the Disclosing Party:
 - 2.1. shall not be used, duplicated, in whole or in part, for any purpose other than the purpose here above stated, without the prior written consent of the Disclosing Party,

- 2.2. shall be protected and kept in confidence said Proprietary Information by using the same degree of care and safeguard as it uses to protect its own Proprietary Information of like importance,
- 2.3. shall only be disclosed to persons within the Receiving Party's organisation who have a need to know and solely for the purpose mentioned in the preamble.
- 2.4. Nothing contained in the Agreement shall be construed as granting or conferring, expressly or impliedly, any rights in or title to the proprietary information disclosed hereunder. It is agreed that no license under any patents of either Party is granted by this Agreement or by any disclosure or use of such Proprietary Information which:
 - 2.5. Was at the time of receipt otherwise known to the Receiving Party
 - 2.6. Has been published or is otherwise within the public knowledge or is generally known to the public at the time of its disclosure to the Receiving Party
 - 2.7. Subsequently is developed independently in good faith by employees of the Receiving Party who did not have access to the Proprietary Information
 - 2.8. Becomes legally known or available to the Receiving Party from a source other than the Disclosing Party, and without breach of the Agreement by the recipient
 - 2.9. Becomes part of the public domain without breach of the Agreement by the recipient
 - 2.10. Is so disclosed or used with the written approval of the Disclosing Party
- 2.11. Unless extended in writing by mutual agreement and unless earlier terminated as hereafter, this Agreement shall terminate upon the expiration of 7 (seven) years from its effective date. This Agreement including all rights and obligations of the Parties hereto, except the obligations specified in paragraph 2 hereof, may be earlier terminated by either Party by operation of law and without demand at any time upon 30 (thirty) days written notice. The end of termination of the Agreement shall not relieve either Party from complying with the obligations of paragraph 2 with respect to the use and protection of the Proprietary Information received prior to the date of termination or the end of this Agreement. Such obligations shall continue for the period applicable as set forth in said paragraph.
- 2.12. Each Party shall bear its own costs incurred under or in connection with the Agreement. Nothing in the Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract or any other business relationship with the other Party or to disclose any Proprietary Information to the other Party.
- 2.13. It is understood that this Agreement constitutes a Non-Disclosure Agreement only. Nothing in this Agreement shall grant either Party the right to make any commitments of any kind for, or on behalf of, the other Party without the prior written consent of the other Party.

- 2.14. This Agreement and the rights and obligations hereunder may not be transferred or assigned by a Party without the proper written approval of the other Party hereto.
- 2.15. This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa
- 2.16. Any dispute arising from or in connection with this Agreement, which cannot be settled amicably by the Parties, shall be finally resolved in accordance with the Arbitration Foundation of Southern Africa (AFSA) by an arbitrator or arbitrators appointed by the Foundation. The arbitration will be held in Sandton, Johannesburg, in accordance with the formalities of AFSA rules and procedure settled by the arbitrator and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings or the strict rules if the evidence.
- 2.17. Any Proprietary Information (and copies thereof) disclosed by a Party to the other Party shall remain the property of the Disclosing Party and shall be returned by the Receiving Party immediately upon request.
- 2.18. Any Proprietary Information disclosed by the Parties under this Agreement, shall be identified by the Disclosing Party as Proprietary Information at the time of disclosure, and the disclosure, protection, use and handling of such information shall be in accordance with the security procedures prescribed by the South African government.
- 2.19. In the event of one Party visiting any of the facilities of the other Party, the visiting party undertakes that any further Proprietary Information relating to the Party being visited which may come to the visiting Party's knowledge as a result of any such visit, including without limitation, any information relating to plant and equipment which may be seen at such facilities, the methods of operation thereof and the various applications thereof shall be kept strictly confidential and be subject to the same protection as is provided for in Clause 2 above.
- 2.20. The execution, existence and performance of the Agreement shall be kept confidential by the Parties and shall not be disclosed by a Party without the prior consents of the other Party.
- 2.21. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances, understanding and agreements between the Parties with respect to or in connection with any of the matters or things to which such Agreement applies or refers.
- 2.22. The Parties hereby represent that the disclosure of Proprietary Information by and between themselves is not contrary to the laws and regulations of the Republic of South Africa.
- 2.23. With respect to any exchange of Proprietary Information which may occur as a result of the Agreement, it is expressly understood and agreed that the below-listed employees shall, on behalf

of the respective Parties be the exclusive individuals authorized to receive and or transmit Proprietary Information under the Agreement:

_____ TNPA

2.23.1. As regards the individuals identified in clause 2.23 here above, each Party shall have the right and power to redesignate such persons within their organisation as are authorized to receive/transmit Proprietary Information, which is made by a Party, shall be effected by rendering written notice of such change to the other Party.

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

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

TNPA

Date:

Place:

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

.....
.....

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

.....
.....

Terminal Operator

Date:

Place:

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

.....
.....

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

.....
.....

Annexure M

Resolution of Board of Members

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

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

(the "Company")

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

RESOLVED THAT:

1. the Company participates as the Bidder [***OR, in the case of a Bidder consortium***], in the [insert name of Bidder] consortium ("**Bidder**") in responding to the RFP issued by the TNPA on or about [insert date] under Tender Reference number [insert tender number], in respect of the twenty-five (25) year concession for the Development, Design, Financing, Construction, Operation, and Maintenance, and Transfer of the Maydon Wharf Terminal specialising in handling Fresh Produce and Break Bulk Cargo in the Maydon Wharf Precinct at the Port of Durban.
2. [***Note: This paragraph is for Bidders that are consortia***] The Company, by agreement with the other Members, be the Lead Member of the Bidder consortium (the "**Lead Member**"); and
3. [***Note: This paragraph is for all Bidders***][insert name of authorised individual in the Company] be and hereby is authorised to authorised to enter into, sign, execute, and complete any documents relating to this Bid Response and any subsequent agreement for the provision of services.

Signed by the Directors

Name: _____

Date: _____

Resolution of each Member

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

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

(the "Company")

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

RESOLVED THAT:

1. the Company participates as the Bidder [**OR, in the case of a Bidder consortium**, in the **[insert name of Bidder]** consortium ("**Bidder**") in responding to the RFP issued by the TNPA on or about **[insert date]** under Tender Reference number **[insert tender number]**, in respect of the for twenty-five (25) year concession for the Development, Design, Financing, Construction, Operation and Maintenance, and Transfer of the Maydon Wharf Terminal specialising in handling Fresh Produce and Break Bulk Cargo in the Maydon Wharf Precinct at the Port of Durban.
2. *[Note: This paragraph is for Bidders that are consortia]* The Company, by agreement with the other Members, be the Lead Member of the Bidder consortium (the "Lead Member"); and
3. *[Note: This paragraph is for all Bidders]* [insert name of authorised individual(s) in the Company] be and hereby is authorised to authorised to enter into, sign, execute, and complete any documents relating to this Bid Response and any subsequent agreement for the provision of services.

Signed by the Directors

Name: _____

Date: _____

Annexure O**Certificate of Acquaintance with RFP Documents****NAME OF ENTITY:**

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

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

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

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure P

Declaration of Interest

1. General

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

2. Disclosure of Interest

- 2.1. Please state if the Bidder or any Member or any individual who is a director, officer, employee, or shareholder of any Member is Related, in any manner, to any employee of the TNPA or Transnet and or to any other Government official or person directly involved in the Procurement Programme in respect of the Maydon Wharf Terminal specialising in handling Fresh Produce and Break Bulk Cargo, who may be involved with the evaluation of Bid Responses.

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

If so, state particulars:

.....

.....

.....

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

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

If so, state particulars:

.....

.....
.....

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

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

If so, state particulars:

.....
.....
.....

3. Declaration in respect of Litigation

3.1. Please describe the extent of any material pending or threatened litigation or legal proceedings (civil or criminal, including any investigations or complaint proceedings conducted against the Member in terms of the Competition Act, 89 of 1998 or in terms of any other legislation providing for investigations or complaint proceedings) in which the Member is involved as at the Bid Submission Date, or has been involved during the last 5 (five) years, instituted by any South African organ of state against the Member. If the Bidder or Member has something to declare, please provide all details in the space provided below. If the Bidder or Member has nothing to declare, please insert "*nothing to declare*" in the space provided below. [*Add extra pages to be appended to this Declaration if necessary.*]

.....
.....
.....
.....
.....
.....

3.2. Please describe in detail:

- 3.2.1. all occurrences of a failure by the Member to timeously complete any contracts (a) with any South African organ of state; or (b) relating to any Government project or procurement programme;
- 3.2.2. any incidences of damages deducted or recovered within the last 5 (five) years by any South African organ of state in relation to a contract with the Member, or by any person in relation to any Government project or procurement programme; and
- 3.2.3. any contract between the Member and any South African organ of state which was terminated during the past five years on account of failure by the Member to perform on or to comply with the contract. If the Bidder or Member has something to declare, please provide all details in the space provided below. If the Bidder or Member has nothing to declare, please insert "*nothing to declare*" in the space provided below. *[Add extra pages to be appended to this Declaration if necessary.]*

.....

.....

.....

.....

.....

.....

4. Declaration of Past Supply Chain Practices

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

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

If yes, state particulars:

.....

.....

.....

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

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

If yes, state particulars:

.....
.....
.....

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

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

If yes, state particulars:

.....
.....
.....

DECLARATION

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

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

Signature_____

Date_____

Position_____

Name of Member_____

Name of Bidder_____

Who warrants his / her authority hereto

Annexure Q**Tax Clearance Requirements**

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

Annexure R

Certificate of Acquaintance with the Requirements of the RFP

NAME OF ENTITY:

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

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

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

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure S

Certificate of Acquaintance with Conditions of Contract with TNPA

NAME OF ENTITY: **[insert name of Bidder]** _____

We _____ do hereby certify that we acquainted ourselves with all the documentation comprising the Terminal Operator Agreement and the provisions of Clause 22.6 of Part I of the RFP as received on _____ ***[insert date]*** from TNPA in respect of the Project for which we submitted our Bid Response.

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

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

SIGNED at _____ on this _____ day of _____ 20__

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure T

Breach of Law Form

NAME OF ENTITY:

We _____

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

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

NATURE OF BREACH:

DATE OF BREACH:

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

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

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Annexure V

Berth Length and Depth

[to be provided by TNPA]

Annexure W**Supplier Integrity Pact**

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

NAME _____ OF _____ ENTITY: _____

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

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

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

SIGNATURE OF WITNESS

SIGNATURE OF BIDDER

Standard RFP Response Form: Information about Bidder

1. INSTRUCTIONS FOR COMPLETION OF THE RESPONSE FORM

1.1. Structure of the Questionnaire

1.1.1. The questionnaire has been structured in sections so that the capability and suitability of the Bidder and its Members can be tested in each of the following areas to encompass general capability or suitability and technical ability.

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

1.1.3. Member Information;

1.1.4. Government Contracts; and

1.1.5. Legal Proceedings.

1.2. Notes for Completion

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

2. Information about the Bidder

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

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

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

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

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

NAME LEGAL ADVISORS	ROLES AND RESPONSIBILITIES

NAME	FINANCIAL	ROLES AND RESPONSIBILITIES
CONSULTANTS		

NAME	TECHNICAL	ROLES AND RESPONSIBILITIES
ADVISORS		

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

2.1.5. _____

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

2.2. Member Information

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

- 2.2.2. name and legal status of the Member, its registration number, date, and country of registration;
- 2.2.3. registered address and website address (if any) of each Member;
- 2.2.4. street address, postal address, telephone number and telefax numbers, and e-mail address of each Member; and
- 2.2.5. the person dealing with this RFP and the Bid Response on each Member’s behalf and their contact details.

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

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

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

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

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

	NAME OF DIRECTOR OR EQUIVALENT	ADDRESS

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

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

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

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

2.3.1. certified copies of all Constitutional Documents, including all documents that evidence changes thereto, such as change of name certificates;

2.3.2. certified copies of documents that evidence the Member's directorship; and

2.3.3. particulars of share capital showing classes of shares and amounts of authorised and issued share capital, including relevant copies of share registers and/or share option details.

2.3.4. Please provide (in the format provided) the following information in relation to either the Bidder or the Member with the appropriate experience:

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

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

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

2.4. Government Contracts

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

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

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

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

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

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

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

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

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

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

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

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

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

Lenders Support Letter

Past experience in Financing Capital Projects Evidence Sheet

[To be provided by the Bidder]

No:	PROJECT NAME	DEBT PORTION	EQUITY PORTION	TOTAL VALUE	SUPPORT
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					



Financial Support Letter

[To be provided by the Bidder]



B-BBEE Verification Certificate

[To be provided by the Bidder]

Business Case Guidelines

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

1) Executive Summary

2) Company Description

Shareholding of entity

B-BBEE Shareholding

Advisors

Products and services

Long Term Aim of Business

Objectives

S.W.O.T. Analysis

Economic Development Spin Offs (development & Operational phases)

3) Technical aspects

TECHNICAL CRITERIA	ITEM
Previous experience	<ul style="list-style-type: none"> • Number of years operating in the Fresh Produce and Break Bulk Cargo sector.
Throughput volumes	<ul style="list-style-type: none"> • Average throughput volumes over the past 3 years (Tons per annum)
Market analysis	<ul style="list-style-type: none"> • a clear statement of the vision, mission, and strategic objectives of the Bidder; • value proposition of business, • identification of the status quo market and services at the Port; • identification of the potential market and segment analysis for the Facility; • a market strategy which includes a SWOT analysis; • economic spin-offs per market segment; • provide the short, medium, and long-term projection forecast; • provide the strategy for open access (Third Party access) • sustainability and growth assumptions of the Maydon Wharf Terminal specialising in handling Fresh Produce and Break Bulk Cargo; and • details of sources of information on all market information or analysis
Commercial and Operations Analysis	<ul style="list-style-type: none"> • Profitability and price forecast; • Fresh Produce and Break Bulk Cargo distribution plan between rail and road linking to regional and hinterland destinations; • Competitor analysis;
Project schedule	<ul style="list-style-type: none"> • a project schedule, highlighting key sequential milestones and relevant timelines
Preliminary Design	<ul style="list-style-type: none"> • Terminal plan layout of the full site arrangement indicating <ul style="list-style-type: none"> ○ Safety infrastructure and equipment Linkages to pipeline, rail, and road for distribution ○ Other
SHE Requirements	<ul style="list-style-type: none"> • Environmental Management <ul style="list-style-type: none"> ○ Bidders must provide a valid ISO 14001:2015 Environmental Management System certificate or equivalent. ○ Environmental Risk Assessment that identifies aspects, impacts, and mitigation measures aligned with the intended infrastructure and its operation.

	<ul style="list-style-type: none"> • Occupational Health & Safety <ul style="list-style-type: none"> ○ an Occupational Health and Safety policy that deals with the Bidder's commitment to their current business signed by a director of the Bidder or another properly delegated person ○ an active and comprehensive safety management system designed to deliver a high level of safety performance. The safety management system shall be designed to achieve the aims of the company's safety policy; ○ provide a high-level occupational health and safety baseline risk assessment with mitigation and control measures. Bidders should demonstrate how they will achieve and maintain occupational health and safety legal compliance. Bidders must provide a typical occupational health and safety risk assessment that is associated with the intended infrastructure and its operation. Bidders shall identify the hazards, risks, and associated mitigation measures which shall be aligned with the operations to be conducted; ○ is registered and has a valid letter of good standing from the Workmen's Compensation Fund at the Department of Employment and Labour or Federated Employers Mutual Assurance or equivalent certification; • Risk Management <ul style="list-style-type: none"> ○ This section has a point allocation of twenty (20) points. A Bidder must provide a business impact/risk analysis. This analysis is a critical component of business continuity planning, as it identifies the potential impacts of disruptions on an organization's critical functions and processes, allowing for the development of strategies to mitigate those risks. ○ The Key Components to consider as part of a baseline Business Continuity Impact/Risk Assessment are: <ul style="list-style-type: none"> ▪ Risk Identification: This involves identifying potential risks and threats that could disrupt business operations. These can include natural disasters, technological failures, cyberattacks, and supply chain disruptions. A thorough understanding of these risks is foundational to the assessment process ▪ Impact Analysis: Once risks are identified, the next step is to assess the potential impact of these disruptions on business functions. This analysis helps determine which processes are critical and how various disruptions could affect them in terms of financial loss, operational downtime, and reputational damage ▪ Resource Assessment: Organizations need to evaluate the resources required to maintain essential functions during a disruption. This includes identifying key personnel, technology, facilities, and information necessary for continuity and recovery efforts ▪ Recovery Strategies: Developing strategies for mitigating identified risks is crucial. This includes establishing recovery time objectives (RTOs) and recovery point objectives (RPOs) to ensure that critical operations can resume promptly after a disruption ▪ Communication Plan: Effective communication is vital during a crisis. The assessment should outline how information will be disseminated to employees, stakeholders, and
--	--

	<p>customers during a disruption, ensuring that everyone understands their roles and responsibilities in the response plan</p> <ul style="list-style-type: none"> ○ A business continuity management (BCM) plan from the Bidder aligned to a recognized BCM system that will ensure that resilience is considered as part of the Bidder's operations in order to mitigate potential business continuity risks when operating. Some of the critical components of a BCM to consider are as follows: <ul style="list-style-type: none"> ▪ Emergency Response Procedures: This component outlines the immediate actions to be taken in response to a crisis. It includes protocols for evacuation, first aid, and initial communication with emergency services. Clearly defined emergency procedures ensure that employees know how to act quickly and safely during a disruptive event. ▪ Crisis Management Framework: This framework provides guidelines for managing crises effectively. It includes the establishment of a crisis management team, roles and responsibilities, and escalation procedures. The framework helps ensure that all stakeholders are aligned in their response efforts and that decisions can be made efficiently ▪ Data Backup and Recovery Plans: This component focuses on the strategies for backing up critical data and systems to ensure they can be restored after a disruption. It includes both onsite and offsite backup solutions, as well as procedures for data recovery to minimize downtime and data loss. ▪ Supplier and Third-Party Risk Management: Organizations rely on various suppliers and partners for their operations. This component assesses the risks associated with these external entities and establishes plans for maintaining supply chain continuity during disruptions. It may involve identifying alternative suppliers or creating agreements that ensure continued service during crises. ▪ Testing and Maintenance: Regular testing of the business continuity plan through drills and simulations is necessary to validate its effectiveness. This component also includes a schedule for reviewing and updating the plan to reflect changes in the organization, emerging risks, and lessons learned from testing exercises.
--	--

4) Financial Aspects

FINANCIAL CRITERIA	ITEM
Profitability EBITDA	<ul style="list-style-type: none"> • Profitability of the Bidder averaged over the past 3 (three) year period
Proposed funding model	<ul style="list-style-type: none"> • The Bidder must provide the proposed funding model that supports the business case and capital investment required



	<ul style="list-style-type: none"> The source of the capital investment required must be explained in terms of the debt/equity structure
Past Experience in raising capital	<ul style="list-style-type: none"> The details for each Member relating to its past experience (within the last 10 (ten) year period) of raising debt on a project finance and or corporate finance basis, which demonstrates an ability to: (i) provide equity; (ii) secure and structure such equity; and (iii) letters from the lenders or funders that provided the finance setting out their role and confirming the Member's past experience in raising the capital disclosed in response to the criterion
Operational Cost (projected)	<ul style="list-style-type: none"> Maintenance Cost Environmental Management Cost Other Operating Costs
Operational Revenue (projected)	<ul style="list-style-type: none"> Income generation information, providing revenue generation streams and indicating the cyclical nature of the business (both Qualitative and quantitative information) Other revenue sources identified
Key Financial Indicators (projected)	<ul style="list-style-type: none"> Cash flow projections Present value of future cash flow Profit and lost accounts (projected) Statement of financial position (projected) Return on investment
Key Financial Ratios (projected)	<ul style="list-style-type: none"> Current Solvency

5) Marketing strategy for the Terminal

6) Appendices

Concession Fee Offer

NAME OF ENTITY: **[insert name of Bidder]** _____

We _____ do hereby offer R_____ per square meter per month of the total available land size of 28 577m², for project site.

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

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

SIGNATURE OF BIDDER



Economic Development Information from the Bidder

(Development and Operational value summaries tables (DD-E1 and DD-E2))



Annexure EE 1

Reference Letter

[to be provided by the Bidder]

Addressed to

*The Chairperson**Evaluation Committee (Insert the RFP reference number)**Transnet National Ports Authority**Dear Sir / Madam***Re: (Insert the name of the Bidder) / Experience**

I confirm that (insert details of company providing the reference) has made use of the services of / has supplied (**Name of Bidder / Member of the Bidder**) and has provided Fresh Produce and/or Break bulk cargo handling services to my company for a period of (insert the number of years) at the following Fresh Produce and Break Bulk Cargo/facilities it operates.

Name of Terminal / Facility	Number of Years

Should you require any further information please do not hesitate to contact me on

Telephone No: _____

Electronic Email Address: _____

Annexure EE 2

Reference Letter
[to be provided by the Bidder]

Addressed to

The Chairperson

Evaluation Committee (Insert the RFP reference number)

Transnet National Ports Authority

Dear Sir / Madam

Re: (Insert the name of the Bidder) Track Record

*I, (Name of Referee).in my capacity as an independently registered auditor and duly authorized, thereto confirm that **(Name of Bidder/member of Bidder)** has operated and maintained the following multi-purpose terminals and/or Fresh Produce and Compatible Cargo listed in the table below for the purpose of use of Agricultural Dry Bulk Cargo and Compatible Cargo handling services:*

Name of Terminal / Facility	Average Throughput for the past 3 years

Should you require any further information please do not hesitate to contact me on

Telephone No: _____

Electronic Email Address: _____

Annexure FF

Technical Information (Bulk Services)

[to be provided by TNPA]

Annexure GG

Technical Information (Structural Assessment Report)

[to be provided by the TNPA]



Annexure HH

Technical Information (Electrical Assessment Report)

[to be provided by TNPA]

Annexure II

Criteria Schedule: Sub-Contract/ Joint Venture

Preference Point form, tenderers are required to commit to specific goals by Sub-contracting/ Joint Venture **a minimum of 30%** to one or more company/companies that meet the requirements of the Transnet Preferential Procurement Policy as indicated hereto:

1. The promotion of supplier development through sub-contracting or JV for a minimum of 30% of the value of a contract to SThe promotion of supplier development through sub-contracting or JV for a minimum of 30% of the value of a contract to South African Companies which are:
 - I. HDI's – Women, Youth, and people with disabilities
 - II. Entities with a specified minimum B-BBEE level (1 and 2)
 - III. EMEs and/or QSEs black-owned

Provide **detailed information** of the proposed Sub-contractors or joint venture below:

Name of Proposed Subcontractor			Address		Nature of work		Amount of Worked	Percentage of work
% Black Owned	EME	QSE	Youth	Women	Disabilities	Rural/ Underdeveloped areas/ Townships	Military Veterans	
	<input type="checkbox"/>	<input type="checkbox"/>						

Name of Proposed Subcontractor			Address		Nature of work		Amount of Worked	Percentage of work
% Black Owned	EME	QSE	Youth	Women	Disabilities	Rural/ Underdeveloped areas/ Townships	Military Veterans	
	<input type="checkbox"/>	<input type="checkbox"/>						

Name of Proposed Subcontractor	Address	Nature of work	Amount of Worked	Percentage of work

The Bidder is to submit the following document or copy thereof for each of the proposed sub-contractor(s) with this schedule:

- Valid B-BBEE Sworn Affidavit, CIPC B-BBBEE certificate as per DTIC guidelines, or B-BBEE Certificate of each of the proposed sub-contractor(s).
- Agreement or Letter of Intent confirming the Sub-Contracting Agreement/ joint venture agreement between the tenderer and proposed sub-contractor(s)/Joint Venture

NOTE TO TENDERERS: FAILURE TO PROVIDE THE ABOVE DOCUMENT WILL RESULT IN THE PROPOSED SUBCONTRACTOR’S PERCENTAGE BEING DISCOUNTED TO ZERO.

Transnet reserves the right to request additional information about the proposed sub-contractor(s)/ joint venture should it be deemed necessary to verify the compliance to the black ownership percentage or sub-contractor(s)/ joint venture entity size. These may include but are not limited to;

- Copies of the identity documents of the members of shareholders of the sub-contractor(s)/ joint venture;
- Copies of the Audited Financial Statements or Income Statement of the sub-contractor(s)/ joint venture.

Annexure JJ

Draft Terminal Operator Agreement

(To be marked up by the Bidder and submitted with the Bid Response)

Annexure KK

List Of Commodities (*Compatible Break Bulk Cargo*)

[BIDDERS TO NOTE: the List of Commodities below serves as a guide and represents the variety of cargo that may be handled at the Maydon Wharf precinct. Bidders must ensure that selected commodities are aligned with the Fresh Produce and *Break Bulk Cargo* sector, taking into account the necessary permissions from TNPA and Responsible Authority/ies]

Compatible <i>Break Bulk Cargo</i>						
Commodity	Requires Commodity Request/Application	IMDG	Air Emissions	Requires Handling Method Specifications	Requires Storage Specifications	Schedule Activity Permit
Aircraft Parts and Engines	No					
Alumina	Yes		Yes	Yes	Yes	No
Bait	No		No	No	No	
Boilers and Heaters	No		No	No	No	
Bricks	No		No	No	No	
Citrus fruit	No		No	No	No	
Construction Equipment	No		No	No	No	
Excavators	No		No	No	No	
Fertilizers	No		No	No	No	Yes
Fish meal & products thereof	No		No	No	No	
Glass & glassware	No		No	No	No	
Granite & products thereof	No		No	No	No	
Generators	No		No	No	No	
Heavy Transformers and Electrical Equipment	No		No	No	No	
Industrial machinery	No		No	No	No	
Industrial components for large projects	No		No	No	No	



Large-scale engines	No		No	No	No	
Large storage tanks	No		No	No	No	
Lead & products thereof	Yes		Yes	Yes	Yes	Yes
Lime & products thereof	Yes		Yes	Yes	Yes	Yes
Logs	No		No	No	No	
Large Boats and Yachts	No		No	No	No	
Large-scale Industrial Pumps	No		No	No	No	
Over-sized or irregularly shaped machinery or equipment	No		No	No	No	
Paper rolls	No		No	No	No	
Plywood sheets	No		No	No	No	
Pressure vessels	No		No	No	No	
Propellers	No		No	No	No	
Pulp bales	No		No	No	No	
Roofing materials	No		No	No	No	
Salt	No		No	No	No	
Scrap steel	Yes		Yes	Yes	Yes	Yes
Stainless steel (excluding pipes & tubes)	No		No	No	No	
Steel pipes	No		No	No	No	
Structural steel beams	No		No	No	No	
Steel pellets	No		No	No	No	
Steel rebars/sheets/plates/angles	No		No	No	No	
Steel: Cold rolled coils, galvanised, aluzinc coils	No		No	No	No	
Steel: Hot rolled coils, slabs, billets	No		No	No	No	
Timber & products thereof (excluding furniture)	No		No	No	No	
Turbines	No		No	No	No	



Wooden boards	No		No	No	No	
Wind turbine blades	No		No	No	No	
Any other Commodity not listed above	Yes		Yes	Yes	Yes	