

**STRICTLY PRIVATE AND CONFIDENTIAL**

**TRANSNET SOC LTD**

**ACTING THROUGH ITS OPERATING DIVISION**

**TRANSNET NATIONAL PORTS AUTHORITY**

**("TNPA")**

**REFERENCE NUMBER: TNPA/2022/12/0002/19592/RFP**

**REQUEST FOR PROPOSALS FOR THE APPOINTMENT OF A TERMINAL OPERATOR TO OPERATE AND MAINTAIN PORT AND COMMON USER INFRASTRUCTURE FINANCED, DESIGNED AND CONSTRUCTED BY THE TNPA, AND TO DESIGN, DEVELOP, FINANCE, CONSTRUCT, OPERATE, MAINTAIN TERMINAL INFRASTRUCTURE AND TERMINAL EQUIPMENT REQUIRED FOR THE HANDLING OF LIQUID NATURAL GAS AT SOUTH DUNES IN THE PORT OF RICHARDS BAY FOR A MINIMUM PERIOD OF 25 (TWENTY-FIVE YEARS).**

<b>REFERENCE NUMBER</b>	<b>TNPA/2022/12/0002/19592/RFP</b>
<b>ISSUE OF RFP</b>	<b>15 DECEMBER 2022</b>
<b>COMPULSORY BRIEFING</b>	<b>25 JANUARY 2023 AT 10:00 CAT</b>
<b>CLOSE FOR BIDDER QUESTIONS</b>	<b>15 FEBRUARY 2023</b>
<b>TNPA RESPONSES TO BIDDER QUESTIONS</b>	<b>28 FEBRUARY 2023</b>
<b>BID SUBMISSION DATE</b>	<b>14 APRIL 2023</b>
<b>CLOSING TIME</b>	<b>10:00 AM - CENTRAL AFRICAN TIME</b>
<b>BID VALIDITY PERIOD</b>	<b>365 DAYS</b>

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Annexure	II	Port of Richards Bay Berthing Policy
Annexure	JJ	TNPA Tariff Book FY 2022/23

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<sup>1</sup> Bidders to note that the Annexures are included separately in the folder together with the RFP and is not attached to the Body of this RFP.

Annexure	KK	Certificate of Attendance of RFP Briefing
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Annexure	SS	Economic Development Guidelines
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Annexure	VV	Draft Terminal Operator Agreement

## 1. DISCLAIMER

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

- 1.6. TNPA reserves the right to amend, modify, withdraw, terminate, amend and/or cancel this RFP or any of the procedures, procurement processes or requirements detailed in this RFP document or any part of it at any time after the issue thereof. TNPA shall be entitled to exercise this right without prior notice and without liability to compensate or reimburse any person pursuant to such amendment, modification, withdrawal, or termination.
- 1.7. The terms and conditions set out in this RFP regarding the content of a Bid Response, are stipulated to give effect to TNPA's legal obligation to undertake an RFP process that is fair, transparent, equitable, cost effective and competitive as contemplated in section 56 of the National Ports Act 12 of 2005.
- 1.8. Bidders are hereby advised that TNPA is not committed to any course of action because of its issuance of this RFP and or its receipt of Bid Responses. Please note that TNPA reserves the right to:
  - 1.8.1. modify the Project and request Bidders to re-bid on any such changes;
  - 1.8.2. reject any Bid Response which does not conform to instructions and specifications detailed herein;
  - 1.8.3. disqualify Bid Responses submitted after the Bid Submission Date;
  - 1.8.4. not necessarily award the Project to the highest scoring Bid Response or an Alternative Bid Response subject to the PPPFA;
  - 1.8.5. reject all Bid responses, if it so decides;
  - 1.8.6. withdraw the RFP on good cause shown;
  - 1.8.7. award the Terminal Operator Agreement in connection with this RFP at any time after the RFP's closing date;
  - 1.8.8. award the Project and/or conclude the Terminal Operator Agreement for only a portion of the Project which are reflected in the scope of this RFP;
  - 1.8.9. to split the award of the Project and undertake such Parts of the Project it its own right, should it at TNPA's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
  - 1.8.10. award the Project and/or conclude the Terminal Operator Agreement for only a portion of the proposed services which are reflected in the scope of this RFP;



- 1.8.11. split the award of the Project between more than one Bidder, should it at TNPA's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
  - 1.8.12. make no award of the Project and/or Tender; and
  - 1.8.13. should a contract be awarded on the strength of information furnished by the Bidder, which after the Award, is proved to have been incorrect, TNPA reserves the right to cancel or withdraw the Award; and TNPA shall not be liable to the Bidders or the Preferred Bidder for any consequences, claims or costs arising from any of these actions.
- 1.9. If any Bidder or its constituent members, employees, advisors or agents makes or offers to make any gratuity to any public official or employee of TNPA or consultant to TNPA on the Project either directly or through an intermediary as an inducement or reward for appointing any Bidder as the Preferred Bidder or for showing or omitting to show favour or disfavour to any Bidder, its Members, the Contractors or their Lenders in relation to the Project, then such Bidder or its constituent member may be disqualified forthwith from participating in the Project.
  - 1.10. Any difference in information between documents made available by TNPA to the Bidders during the RFP process with any earlier document shall, unless expressed to the contrary constitute a variation or modification of the earlier documents and will take precedence over the earlier document (s).

## 2. DEFINITIONS AND INTERPRETATION

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

- 2.1.1. **"Administrative Responsiveness"** - means compliance with the administrative requirements set out in in Clause 75 (*Qualification Criteria 1: Administrative Responsiveness*) of Part II of this RFP;
- 2.1.2. **"Advisors"** - any advisors to any Bidder, Member, Contractor, or any other participants in any Bid Responses;
- 2.1.3. **"Alternative Bid Response"** - has the meaning ascribed to it in Clause 18 of Part I (*General Requirements, Rules and Provisions*) this RFP;
- 2.1.4. **"Annexure" or "Annexures"** - any Annexure or Annexures attached to this RFP;
- 2.1.5. **"Applicable Laws"** - means all Local, Provincial, or National statutes, ordinances, regulations, by-laws, and all rules, directives, decrees, decisions, determinations, rulings, rules, judgments orders of any competent court or the Government and other instruments which have the force of law in the Republic of South Africa, from time to time, as well as the South African common law;
- 2.1.6. **"BAFO"** - Best and Final Offer;
- 2.1.7. **"Berth"** - means the berth to be used for the discharge of LNG from a LNG carrying vessel at the Terminal as reflected in Annexure B (Site Map).
- 2.1.8. **"Bidder"** - a juristic person and or a group of such persons in the form of incorporated or unincorporated joint ventures, special purpose vehicles, who submits a Bid Response;
- 2.1.9. **"Bid Notice"** - the notice published by TNPA inviting potential Bidders to acquire the RFP and submit Bid Responses

thereto, which Notice is included in this RFP as a Bid Notice (Annexure A);

- 2.1.10 **"Bid Response"** - any bid submitted by a Bidder in response to the invitation contained in this RFP;
- 2.1.11 **"Bid Submission Date"** - the date for the submission of the Bid Responses to TNPA, which date is set out in this RFP or such later date as may be determined by TNPA in its discretion and communicated to Bidders by way of a Briefing Note with escalations at negotiations in line with CPI indices;
- 2.1.12 **"Bid Submission Phase"** - the period commencing on the Bid Submission Date and continuing until the Terminal Operator Agreement comes into force and effect;
- 2.1.13 **"Bid Submission Annexures"** - those Annexures to this RFP, that are to be completed by the Bidder and or its Members and submitted with the Bid Response;
- 2.1.14 **"Black People" or "Blacks"** - is a generic term defined in the B-BBEE Act to mean natural persons who are Africans, Coloureds and Indians:
  - who are citizens of the Republic of South Africa by birth or decent; or
  - who became citizens of the Republic of South Africa by naturalisation -
  - before 27 April 1994; or
  - on or after and who would have been entitled to acquire citizenship by naturalisation prior to that date;
- 2.1.15 **"Black Ownership"** - the effective ownership of shares in a Bidder by Black People, which shall be determined with reference to the B-BBEE Codes or Amended B-BBEE Codes and evidenced by way of a B-BBEE verification certificate;
- 2.1.16 **"Briefing Note"** - any document issued in writing by TNPA, prior to the Bid Submission Date, that amends or supplements

this RFP in any way. These notes shall be consecutively numbered in the order in which they are issued;

- 2.1.17 **"Business Case"** - the business case to be developed in accordance with the Business Case Guidelines and submitted with each Bid Response as outlined in the Business Case Guidelines (Annexure C);
- 2.1.18 **"Business Case Guidelines"** - the guidelines in accordance with which each Bidder must develop its Business Case (Annexure C);
- 2.1.19 **"Business Day"** - any day other than a Saturday, Sunday or gazetted National public holiday in the Republic of South Africa;
- 2.1.20 **"B-BBEE"** - Broad-Based Black Economic Empowerment: a South African legal requirement that requires all entities operating in the South African economy to contribute to empowerment and transformation;
- 2.1.21 **"B-BBEE Act"** - Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;
- 2.1.22 **"B-BBEE Codes"** - the amended B-BBEE Codes of Good Practice, published under Government Gazette No. 36928, on 10 October 2013, in terms of section 9(1) of the B-BBEE Act;
- 2.1.23 **"Change in Control"** - means any change whatsoever in Control (as defined in the Draft Terminal Operator Agreement), whether effected directly or indirectly;
- 2.1.24 **"Common User Infrastructure"** - means loading arms, pipe racks, pipelines, interconnection manifolds, flow meters and the like as is more fully described in the Concept Infrastructure Design Specification (Annexure C);
- 2.1.25 **"Companies Act"** - the Companies Act, 71 of 2008, as amended;
- 2.1.26 **"Company"** - a Company incorporated in the Republic of South Africa in terms of the Companies Act;

2.1.27	<b>"Competition Act"</b>	-	the Competition Act, 89 of 1998, as amended;
2.1.28	<b>"Completion Certificate"</b>	-	has the meaning as ascribed to this term in the Draft Terminal Operator Agreement;
2.1.29	<b>"Concession"</b>	-	the concession granted by TNPA to undertake the Project in terms of section 56 of the National Ports Act;
2.1.30	<b>"Concession Fee"</b>	-	the concession fee payable by the Terminal Operator to TNPA, in respect of the rights to use the Project Site and the Port as set out in paragraph 12 of this RFP
2.1.31	<b>"Concession Fee Offer"</b>	-	the amount of Concession Fees offered by a Bidder in its Bid Response in terms of clause 12.
2.1.32	<b>"Concession period"</b>	-	a 25 (twenty-five years) period, and such further period as may be agreed to between the TNPA and the Terminal Operator during which period the Terminal Operator is granted the right to undertake the Project in terms of the Terminal Operator Agreement;
2.1.33	<b>"Consents"</b>	-	all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with any Responsible Authority in terms of the Applicable Laws in connection with the Terminal Operator undertaking the Project including Environmental Consents and Safety Consents;
2.1.34	<b>"Constitution"</b>	-	the Constitution of the Republic of South Africa Act, 1996;
2.1.35	<b>"Constitutional Documents"</b>	-	the founding documents of a 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;
2.1.36	<b>"Construction" or "Construct"</b>	-	all work to be performed by the Terminal Operator under the Terminal Operator Agreement which entails the detailed design, construction, installation, testing and completion of the works and the obtaining of the

- Completion Certificate for the Terminal, in terms of the Terminal Operator Agreement;
- 2.1.37 **"Contractors"** - all contractors appointed or to be appointed by the Terminal Operator, for purposes of undertaking a portion of the Project, for or on behalf of the Terminal Operator;
- 2.1.38 **"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;
- 2.1.39 **"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 shareholder loan, intercompany loan or other form of advance to the Bidder and as set out in the Corporate Financing Support Letter;
- 2.1.40 **"Corporate Financing Support Letter"** - the letter that has to be provided by the Bidder its Members or Shareholders as set out in Annexure NN;
- 2.1.41 **"Debt"** - at any date, all amounts due and payable by the Terminal Operator that are outstanding under the Financing Agreements at that date (whether Corporate Finance or External Debt), excluding all cancellation or prepayment penalties or fees thereon, Shareholder Loans or interest thereon and all default interest;
- 2.1.42 **"Development Phase Value Summary Worksheet"** - the worksheet titled – "Development Phase Value Summary Targets" of the Scoring Model, which worksheet is to be completed by the Bidders and submitted as part of the Bid Responses in accordance with Clause 78 of Part IV (*Objective Criteria*) as well as printed and signed by the authorised representative

of the Bidder. In case of inconsistency between the printed version and the electronic copy, the printed and signed copy will prevail;

- 2.1.43 **"DFFE"** - The DFFE is the Department of Forestry, Fisheries, and the Environment;
- 2.1.44 **"DOT"** - the Department of Transport of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.45 **"DPE"** - the Department of Public Enterprises of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.46 **"Draft Terminal Operator Agreement"** - the Draft Terminal Operator Agreement that is issued with this RFP, and Annexures hereto as Annexure VV (*Draft Terminal Operator Agreement*);
- 2.1.47 **"DTIC"** - the Department of Trade, Industry and Competition of the Government of the Republic of South Africa or any successor Department designated by the Government of the Republic of South Africa from time to time;
- 2.1.48 **"Economic Development Objectives"** - has meaning ascribed to it in Clause 28 (*Economic Development Objectives*) of Part I of this RFP;
- 2.1.49 **"Economic Development Plan"** - The Economic Development plan to be developed by a bidder as Annexures in the Operational Phase Value Summary (Annexure UU) to be prepared by the Bidders in accordance with the Development Phase Value Summary (Annexure TT);
- 2.1.50 **"Effective Date"** - has the meaning ascribed to this term in the Draft Terminal Operator Agreement;

- 2.1.51 **"EME"** - exempted micro enterprise, being an entity with an annual turnover of R10 (ten) million or less, in terms of the Amended B-BBEE Codes;
- 2.1.52 **"Environmental Consents"** - any consents, licences, authorisations, permissions or approvals required from a Responsible Authority required in terms of any environmental law, heritage law or any applicable law, dealing with environmental matters, for the purposes of this Project;
- 2.1.53 **"Equity"** - the entire issued share capital of, and Shareholder Loans to, the Terminal Operator;
- 2.1.54 **"Equity Funding"** - funding to be provided to the Project Company by its Shareholders either by way of share capital or Shareholder loans;
- 2.1.55 **"Essential Returnable Documents"** - the bid returnable documents set out in the Bid Response Form (Annexure N) of this RFP;
- 2.1.56 **"Evaluation Criteria"** - the evaluation criteria set out in Part III (*Evaluation Criteria*) of this RFP;
- 2.1.57 **"External Debt"** - any Debt, other than Corporate Finance, raised by the Terminal Operators from external sources;
- 2.1.58 **"Finance Direct Agreement" or "FDA"** - the direct agreement which may be entered into (or to be entered into) between TNPA, the Lenders and the Terminal Operator in terms of the Terminal Operator Agreement;
- 2.1.59 **"Financial Advisors"** - the firm or firms advising a Bidder on the raising of Debt and Equity Funding in respect of its Bid Response and the Project;
- 2.1.60 **"Financial Close"** - has the same meaning as defined in the Terminal Operator Agreement;
- 2.1.61 **"Financing Agreements"** - has the same meaning as defined in the Terminal Operator Agreement;



- 2.1.62 **“FSU”** - a floating storage unit onto which the imported LNG will be loaded and stored by the Terminal Operator
- 2.1.63 **“FSRU”** - a floating storage and regasification unit into which the imported LNG will be loaded and stored by the Terminal Operator to be located at the proposed Berth 207
- 2.1.64 **"Government"** - the Government of the Republic of South Africa and any of its departments, agencies or any other state-owned companies or entities that it manages, owns or controls;
- 2.1.65 **“Guarantor”** - an entity that unconditionally guarantees the obligations of the Terminal Operator with regards to the External Debt or the Corporate Financing;
- 2.1.66 **"Harbour Master"** - an employee of TNPA contemplated in terms of section 74(3) of the National Ports Act and which is, in respect of the port for which he or she is appointed, the final authority in respect of all matters relating to pilotage, navigation, navigational aids, dredging and all other matters relating to the movement of vessels within port limits;
- 2.1.67 **"Legal Advisors"** - the firm or firms advising a Bidder in respect of its Bid Response, and if that Bidder becomes a Preferred Bidder in respect of the negotiation of the Bidder's contractual arrangements and Project Documents with, *inter alia*, its Members, Contractors, equipment suppliers and Lenders (if any);
- 2.1.68 **“Lead Member”** - the Member of a Bidder that (i) is authorised to represent the Bidder and submits a Bid Response on behalf of the Bidder, (ii) will become the majority Shareholder in the Project Company once the Project Company is established and (iii) will be a key contractor;
- 2.1.69 **"Lenders"** - the financiers to a Bidder in respect of the Project;

2.1.70	<b>“LNG”</b>	-	Liquified Natural Gas
2.1.71	<b>“Mandatory Returnable Documents”</b>	-	the bid returnable documents set out in the Bid Response Form (Annexure O) of this RFP;
2.1.72	<b>“Member”</b>	-	any legal entity and/or natural person that is a member of a SPV that will become a Shareholder of the Project Company once it is incorporated;
2.1.73	<b>"National Treasury"</b>	-	has the same meaning ascribed to it in the Public Finance Management Act;
2.1.74	<b>"National Ports Act"</b>	-	the National Ports Act, 12 of 2005;
2.1.75	<b>“NERSA”</b>	-	National Energy Regulator of South Africa established in terms of National Energy Regulator Act, 40 of 2004;
2.1.76	<b>“NERSA Regulations”</b>	-	Legislation including Regulations administered by NERSA;
2.1.77	<b>"NEMA"</b>	-	the National Environmental Management Act, 107 of 1998;
2.1.78	<b>"NDP"</b>	-	National Development Plan 2030 issued by the Government in 2013, aimed at, <i>inter alia</i> , addressing unemployment, reducing inequality and poverty in a strategy that is principally reliant on creating a significant increase in the number of new jobs in the economy by year 2030, mainly in the private sector;
2.1.79	<b>"Occupational Health and Safety Act"</b>	-	Occupational Health and Safety Act, 85 of 1993;
2.1.80	<b>“Operating Rights”</b>	-	Operating Rights as defined in Annexure VV ( <i>Terminal Operator Agreement</i> );
2.1.81	<b>"Operation and Maintenance"</b>	-	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 VV ( <i>Draft Terminal Operator Agreement</i> ) of this RFP;

- 2.1.82 **“Operational Phase Value Summary Worksheet”** - the worksheet titled – “Operational Phase Value Summary Targets” of the Scoring Model, which worksheet is to be completed by the Bidders and submitted with the Bid Responses in accordance with Clause 78.6 of Part IV (*Objective Criteria*) as well as printed and signed by the authorised representative. In case of inconsistency between the printed version and the electronic copy, the printed and signed copy of the Experience Worksheet will prevail;
- 2.1.83 **"Port Infrastructure"** - the basic common use structures of the Port of Richards Bay provided by TNPA, including berths, bollards, breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways, capital and maintenance dredging and infrastructure used for the provision of water, lights, power, sewage and similar services;
- 2.1.84 **“Port”** - the Port of Richards Bay, which has been determined as such in terms of the National Ports Act and which is situated at Richards Bay in the Kwa-Zulu Natal province of South Africa;
- 2.1.85 **"Ports Regulator"** - the Ports Regulator, the independent ports regulatory body established in terms of section 29 of the National Ports Act;
- 2.1.86 **"Port Rules"** - the rules made in terms of section 80(2) of the National Ports Act;
- 2.1.87 **"Port Users"** - any Person, other than the Terminal Operator, organisation and/or agency utilising the Terminal and/or conducting business within the Port limits, including shipping lines, vessel agents, licenced 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 Users;

- 2.1.88 **"Preferred Bidder"** - a Bidder which shall comprise, a successful bidder that meets the requirements of this RFP.
- 2.1.89 **"Preferred Bidder Guarantee"** - the guarantee to be provided by the Preferred Bidder to TNPA in terms of clause 38.1(*Preferred Bid Guarantee*) of Part I (*General Requirements, Rules and Provisions*) of this RFP, in the form and content attached as Annexure W to this RFP;
- 2.1.90 **"Preliminary Design"** - the preliminary design of the Terminal plans layout of the full site arrangement as outlined in clause 76.7. of Part III (*Evaluation Criteria*) of this RFP;
- 2.1.91 **"Project"** - the Design, Development, Financing, Construction, Operation, Maintenance of Port Infrastructure, Common User Infrastructure, Terminal Infrastructure and Terminal Equipment as is more fully described in clause 4 of this RFP;
- 2.1.92 **"Project Company"** - a special purpose company that Members of a Bidder that is a Preferred Bidder must incorporate and use as the vehicle to undertake the Project and to be the Terminal Operator in terms of the Terminal Operator Agreement;
- 2.1.93 **"Project Officer"** - the person appointed by TNPA as the project officer in respect of the Project;
- 2.1.94 **"Project Site"** - the portion of land and water space referred to on and at which the Terminal Operator will undertake the Project as set out in the Site Map (Annexure B) located within the proclaimed limits of the Port;
- 2.1.95 **"Public Finance Management Act"** - Public Finance Management Act, 1 of 1999, as amended;
- 2.1.96 **"QSE"** - 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;

- 2.1.97 **"Qualification Criteria"** - the qualification criteria set out in Part II (*Qualification Criteria*) of this RFP;
- 2.1.98 **"Rand" or "ZAR"** - South African Rand, the lawful currency of the Republic of South Africa;
- 2.1.99 **"Related" or "Relation"** - a relationship formed based on any one or more of:
  - family (including spouses and in-laws);
    - friendship;
    - business acquaintance;
    - professional engagement; or
    - employment;
- 2.1.100 **"Reserve Bidder"** - any Bidder that has not been designated as the Preferred Bidder but has been selected by TNPA as an entity with whom the TNPA may conclude the Terminal Operator Agreement, in the event that any of the circumstances in respect of the Preferred Bidder specified in Clause 73 of the RFP occur;
- 2.1.101 **"Responsible Authority"** - any ministry, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, entity, service provider of a utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;
- 2.1.102 **"RFP"** - this Request for Proposals document and all Annexures, schedules and other appendices to it and any Briefing Notes issued in respect of it, from time to time, by TNPA to solicit Bid Responses from the Bidders;
- 2.1.103 **"RFP Process"** - the process that is being conducted by TNPA in respect of the Project, as set out in this RFP;

- 2.1.104 **"Safety Consents"** - any consents, licences, authorisations 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;
- 2.1.105 **"Sector Code"** - a sector code for the maritime transport and service sector published in terms of section 9 of the B-BBEE Act;
- 2.1.106 **"Shareholders"** - the Shareholders of a Company or the Members of the Bidder that will become the holders of Equity in the Project Company once selected as the Preferred Bidder;
- 2.1.107 **"Shareholder Loans"** - Loans advanced by Shareholders to the Terminal Operator;
- 2.1.108 **"Signature Date"** - the date on which the Terminal Operator Agreement is signed by the last party to it, being either TNPA or the Terminal Operator and if signed on different dates that last of such dates;
- 2.1.109 **"Special Purpose Vehicle (SPV)"** - Members constituted in accordance with a joint venture / special purpose vehicle agreement for the purpose of submitting a Bid Response and who if successful, must form a Project Company to undertake this Project.
- 2.1.110 **"Standard Bid Response"** - has the meaning as described to it in Clause 18.1 of Part I (*General Requirements, Rules and Provisions*) this RFP;
- 2.1.111 **"Substantive Responsiveness"** - has meaning ascribed to it in Clause 75 (*Qualification Criteria 2: Substantive Responsiveness*) of Part II of this RFP;
- 2.1.112 **"Terminal"** - the extent of land water space as may be required to undertake the Project by the Terminal Operator and as, agreed to with the TNPA, illustratively demarcated in Annexure B [Site Map] to this RFP;

- 2.1.113 **"Terminal Equipment"** - the assets, including equipment and machinery, tanks (whether affixed to the Project Site or not), including but not limited to the FSU and / or FSRU and any other related regasification facilities that are required in order to operate the Terminal;
- 2.1.114 **"Terminal Infrastructure"** - 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;
- 2.1.115 **"Terminal Operator"** - the Preferred Bidder granted the right to conduct the Project in terms of the Terminal Operator Agreement concluded between the Terminal Operator and the TNPA, pursuant to being selected as the Preferred Bidder under this RFP;
- 2.1.116 **"Terminal Operator Agreement"** - the agreement to be entered into between TNPA and the Terminal Operator, pursuant to the Project, in the form of the Draft Terminal Operator Agreement attached in this RFP in Annexure VV;
- 2.1.117 **"TNPA"** - Transnet National Ports Authority, an operating division of Transnet;
- 2.1.118 **"Terminal Operations"** - services provided at the Terminal, consisting of the conveying of LNG, storing LNG, transshipment of LNG and delivering LNG from and to vessels and such other services ancillary and related thereto;
- 2.1.119 **"Transaction Advisors"** - the firms advising TNPA and/or the Bidders, in respect of this RFP;
- 2.1.120 **"Transnet"** - Transnet SOC Ltd, with registration number 1990/000900/30, a state-owned company, duly incorporated in accordance with the company laws of the Republic of South Africa;
- 2.1.121 **"Valuer"** - a property valuer registered with the South African Council for the Property Valuers; and

2.1.122 "VAT" - the value-added tax levied in terms of the Value-added Tax Act, 89 of 1991.

2.2. . In this RFP:

- 2.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.2.2 words importing the masculine gender include the feminine and neutral genders and vice versa;
- 2.2.3 the singular includes the plural and vice versa;
- 2.2.4 references to a "person" include a natural person, 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 a judicial management, business rescue or winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 2.2.10 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;



2.2.11 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e., the *eiusdem generis* rule) shall not apply and whenever the word "**including**" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;

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

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

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

## **PART I - GENERAL REQUIREMENTS, RULES AND PROVISIONS**

### **3. INTRODUCTION**

The Department of Mineral Resource and Energy's (DMRE) Strategic Plan 2020-25 clearly articulates that:

*"The development of the gas market as an alternative source of energy will be pursued to meet limited and depleting gas supplies. Exploration for gas fields will be increased, and relationships will be forged with other African countries for supply and market access. A just transition to a low carbon-emitting economy will be facilitated by integrating various work streams that relate to transitioning to a low carbon-emitting energy mix as per IRP2019."*

3.2. In alignment to the Department of Mineral Resource and Energy's (DMRE) Strategic Plan 2020-25, TNPA is embarking on the KwaZulu Natal Ports Master Plan in which one of the initiatives is the positioning of the Port of Richards Bay as a Liquefied Natural Gas ("LNG") import point.

### **3.3. Background**

- 3.3.1. In February 2022 TNPA advertised a Request for Information (RFI) to gauge market appetite for LNG terminal development and operations at the Port of Richards Bay. Positive responses were received from industry with all showing appetite for the investment.
- 3.3.2. The responses to this RFI suggest that the demand forecast for LNG via the Port of Richards Bay over the short-to long term is sufficient to support the development of an LNG import facility at the Port of Richards Bay.
- 3.3.3. It is within this context that the TNPA has deemed it necessary to issue of this RFP, in accordance with the provisions of Section 56 of the Ports Act 12 OF 2005, and in terms of which interested parties are invited to submit proposals to be afforded the right to undertake the Project as described in clause 4 below for the import of LNG and the supply thereof to the South African market;
- 3.3.4. As is evident below and for the avoidance of doubt TNPA will design, develop, finance, and construct the Port Infrastructure and Common User Infrastructure, while the Terminal Operator will Operate and Maintain this infrastructure, for the period of the Concession.

## **4. PROJECT SCOPE AND DESCRIPTION**

- 4.1 TNPA will design, develop, finance, and construct the Port Infrastructure and associate dredging and Common User Infrastructure to enable the optimal and efficient use of the Terminal.
- 4.2 Notwithstanding TNPA's deliverables for the Project as outlined in clause 4.1. above, Bidders are still required to submit Bid Responses for the elements listed above in terms providing TNPA with their proposal to undertake the following:
  - 4.1.1. The design, development, financing, construction of Port Infrastructure and associated dredging to enable the optimal and efficient use thereof on behalf of and at the expense of the TNPA, who shall undertake the operation and maintenance thereof on the commissioning of thereof; and
  - 4.1.2. The design, development, financing, construction and commissioning of Common User Infrastructure on behalf of and at the expense of the TNPA and in whom ownership shall vest, hereto with the operation and maintenance being undertaken by the Terminal Operator.

- 4.1.3. The design, development, financing, construction, commissioning / provision, operation and maintenance of a Terminal Equipment and Terminal Infrastructure and associated infrastructure at the Terminal.
- 4.3 Bidders are to consider and take into account the information provided in Annexure D Technical Information Pack which is provided with this RFP in the preparation of its Bid Response and to note all infrastructure required for the Project must be designed to enable the realisation of a minimum annual throughput of 1 million tons per annum scaling up to achieve a throughput of 5 million tons per annum by 2036.
- 4.4 Bidders are to note that the inclusion of the design development and financing of the Port Infrastructure and Common User Infrastructure into the scope for which Bidders must submit Bid Responses for is intended to assess the timely, cost effective and seamless execution of the Project, if TNPA plans to provide the Port Infrastructure and Common User Infrastructure is not responsive to the Terminal Operators requirements in terms of cost and time.
- 4.5 To achieve this Bidders must provide a fixed all-inclusive lump sum capital costs for the design, development, construction and commissioning of both the Port Infrastructure and Common User Infrastructure in its response to the Evaluation Criteria Stage 1 Business Case Criteria and set out in paragraph 76.7 of this RFP.
- 4.6 TNPA's will simultaneously herewith initiate its internal governance processes to secure an independent determination of the anticipated costs for the Port Infrastructure and Common User Infrastructure which will be used for the verification and validation of the Bidders costs estimates for the design, development, construction and commissioning of the Port Infrastructure and Common User Infrastructure for the Terminal.
- 4.7 If, TNPA does not undertake the construction of the Port Infrastructure and Common User Infrastructure it reserves the right is to negotiate with the Preferred Bidder to undertake same on behalf of the TNPA for an all-inclusive lump sum price as may be agreed on and or as may be independently determined by an Independent Certifier.
- 4.8 The Terminal Operator shall, for the avoidance of doubt, be granted the exclusive right to Operation and Maintenance of the Terminal and carry all risks relating thereto as provided for in the Terminal Operator Agreement.
- 4.9 The Terminal Operator shall, in addition to the above be obliged to:
- 4.9.1. Apply for and secure all necessary Consents to enable the Project and will only be reimbursed for the costs incurred for obtaining the Consents related to the Port Infrastructure and the Common User Infrastructure, subject to clause 4.8.5.

- 4.9.2. Be fully conversant with all Regulations and Tariff methodologies relevant and applicable to the Project and the handling and sale of LNG, as the appointed Terminal Operator will be required to comply with these Regulations in providing Services to its customers and any other Port Users.
- 4.9.3. Transfer at no cost to the TNPA, the Consents referred to in 4.8.1 above, in the event that the Terminal Operator fails to commission the Terminal within 36 months of date of signature of the Terminal Operator Agreement.
- 4.9.4. Securing agreements for any rights of way and or use of any land or other services and facilities it may require for the Project which is situated outside the Port's promulgated Port Limits with land owners and other stakeholders.
- 4.9.5. Bidders are to note that the TNPA is contemplating obtaining the required Environmental Consents in its own right and name. Bidders are required to plan and prepare its Bid Response premised on an obligation that it will be required to obtain such consents.

## **5. COMPILATION OF PRELIMINARY DESIGNS AND SPECIFICATIONS**

- 5.1 All Bidders to note that they will be required to submit preliminary designs (pre-feasibility) in respect of the required Port Infrastructure, Common User Infrastructure, Terminal Equipment and Terminal Infrastructure for the Project.
- 5.2 These preliminary designs must be consistent with the relevant South African National Standards (SANS) and International Best Practice standards as described in Technical Engineering Report provided in Annexure D (Technical Information Pack).

## **6. CONSTRUCTION AND COMMISSIONING**

- 6.1 As pointed out in clause 4.1. TNPA will undertake the Construction and commissioning of the Port and Common User Infrastructure, while the Terminal Operator will undertake the Construction and commissioning of the Terminal Infrastructure and Terminal Equipment.
- 6.2 If TNPA requires the Terminal Operator to undertake the design and construction of the Port and Common User Infrastructure, then:
  - 6.2.1. The Terminal Operator will undertake the Construction and commissioning of the Port Infrastructure, Common User Infrastructure Terminal Infrastructure and provide the necessary Terminal Equipment to undertake the Project.

6.2.2. The Terminal Operator will be obliged to conform to the agreed Design and Construction Specifications as agreed to between the Terminal Operator and the TNPA and as recorded in the Terminal Operator Agreement and where not agreed to in accordance with International Best Practice.

6.2.3. The Terminal Operator will be obliged to ensure that its Construction Contractor holds the necessary and relevant Construction Industry Development Board grading to execute a project of this nature if the Construction Contractor is a South African entity or a similar and or equivalent accreditation if it is not a South African Entity.

6.3 All Bidders must in their Bid Response provide the Preliminary Design cost estimate as part of its capital expenditure budget and include a preliminary Bill of Quantities having regard to the Annex RR (Pricing Schedule) and the information in Annexure D (Technical Information Pack) with prices for the Port Infrastructure and the Common User Infrastructure as an Annexure to its Business Case which will be evaluated in Stage 1 of Part III (Evaluation Criteria as more fully described in paragraph 76 of this RFP.

## **7. OPERATION AND MAINTENANCE**

7.1 Bidders to note that the Terminal Operator will, on the commissioning of the Terminal, be responsible and accountable for the Operation and Maintenance of the Terminal in accordance with the provisions of the Terminal Operator Agreement, the National Ports Act, International Best Practice and generally in compliance with all relevant and applicable legislation.

7.2 The Terminal Operator and the TNPA shall agree on the minimum performance norms and standards for the Operation and Maintenance of the Terminal. An overview of the process for setting of Terminal Operator Performance Standards is provided in Annexure E .

## **8. DURATION OF TERMINAL OPERATOR AGREEMENT**

8.1 The duration of the Terminal Operator shall be for a minimum period of 25 (twenty-five) years, and all Bid Responses must be based on this tenure, as this will form the basis for the evaluation of a Bidders Bid Response.

8.2 All Bidders to note that the TNPA reserves the right to extend and or not to extend the tenure of the Terminal Operator have due regard to whatever motivation or substantiation a Bidder may include in its Bid Response for a tenure longer than 25 years, on such terms and conditions as the TNPA may deem reasonable and necessary.

## **9. HANDOVER AND TRANSFER OF THE TERMINAL AND PORT INFRASTRUCTURE**

### **9.1 Port Infrastructure**

If TNPA does not develop, finance and construct the Port Infrastructure, the Terminal Operator shall handover the Port Infrastructure to the TNPA on the commissioning thereof and once the TNPA has reimbursed the Terminal Operator for the agreed costs incurred by the Terminal Operator in undertaking such works.

### **9.2 Common User Infrastructure**

If TNPA does not develop, finance and construct the Common User Infrastructure, the Terminal Operator shall handover the Common User Infrastructure to the TNPA on the commissioning thereof and once the TNPA has reimbursed the Terminal Operator for the agreed capital cost incurred by the Terminal Operator in undertaking such works.

### **9.3 Terminal Infrastructure**

9.3.1. On expiry of the Concession Period the Terminal Operator shall transfer all rights title and interest in and to the Terminal Infrastructure developed to undertake the Project, to the TNPA at no cost, alternatively

9.3.2. The TNPA shall on written notice to the Terminal Operator, instruct the Terminal Operator to demolish and remove all or some of the Terminal Infrastructure.

9.3.3. Should TNPA notify the Terminal Operator to demolish and remove all or some of the Terminal Infrastructure, the Terminal Operator shall decommission, demolish and remove all or the selected Terminal Infrastructure at its cost as well as rehabilitate the land as notified by TNPA.

### **9.4 Terminal Equipment**

9.4.1 Prior to the expiry of the Concession Period and on written notice to the Terminal Operator, TNPA may purchase the Terminal Equipment.

9.4.2 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.

## **10. ACTIVITIES AT THE TERMINAL**

10.1 The Terminal Operator shall manage and operate the Terminal for the purpose of:

- 10.1.1 receiving and dispatching of LNG at the Terminal via vessels, pipeline, tankers;
- 10.1.2 temporary storage of LNG in an FSU and or FSRU and or storage tanks as per available area marked Site 1 and 2 (Annexure B) as required by the bidder;
- 10.1.3 transfer of LNG to, in and from the Terminal via pipeline, tankers or rail;
- 10.1.4 transfer of LNG from the vessel into the storage tanks of an FSU and/or FSRU and the distribution and/ or transfer of refined Gas products therefrom;
- 10.1.5 regasification of LNG to Gas
- 10.1.6 distribution of LNG to inland customers through rail, road, pipeline; and;
- 10.1.7 perform maintenance related activities that the Terminal Operator may deem necessary.

## **11. COMMON-USER PRINCIPLE, NON-DISCRIMINATION, AND OPEN ACCESS**

11.1 The Terminal, including the Common User Infrastructure, Terminal Infrastructure, and Terminal Equipment such as the loading facilities shall be used, managed and operated on a common-user open access basis and on an equal footing in terms of the NERSA Regulations, meaning that:

- 11.1.1 the Terminal Operator shall have the exclusive right to Operate and Maintain 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 the Terminal Operator; and
- 11.1.2 the Terminal Operator shall not unreasonably discriminate, in its tariff structure or in its trading conditions (including but not limited to all commercial terms and conditions) between various users or potential users of the Terminal and the loading facilities; and
- 11.1.3 the Terminal Operator shall use and afford all Terminal users who require access and use of the Terminal the right to use the Terminal, on a first come, use it or lose it, basis, open access to the Terminal and the loading facilities available and uncommitted;
- 11.1.4 The TNPA require the incorporation the principles outlined in 11.1.1 to 11.1.3 in the Terminal Operator Agreement and non-compliance by the Terminal Operator to these terms and the engagement in any anti – competitive behaviour will be regarded as a breach of the Terminal Operator Agreement.

11.1.5 If the Terminal Operator fails and or refuses to grant a third-party access to Terminal, TNPA rights to grant such access to and use of the Common User Infrastructure to such third party shall remain reserved, notwithstanding the Terminal Operator's exclusive right to Operate and Maintain the Terminal.

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

## **12. TERMINAL CONCESSION FEE OFFER**

12.1. As consideration for the grant of the Concession, the Terminal Operator shall be required to pay TNPA the Concession Fee for the use of the Project Site on a monthly basis as described in Clause 76 (Concession Fee Offer) of Part II (Evaluation Criteria) of this RFP. Bidders will be required to propose the Concession Fee payable to TNPA in response to Clause 76 (*Concession Fee Offer*) of Part II (*Evaluation Criteria*) of this RFP.

12.2. TNPA's rights to request the re – negotiation the final Concession Fee and the terms of payment remain reserved and will include the negotiation of the an upfront Concession Fee payment to the TNPA by the appointed Terminal Operator.

## **13. OTHER KEY ROLE PLAYERS IN THE SOUTH AFRICAN PORTS SYSTEM**

### **13.1. The Department of Public Enterprises (DPE)**

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

### **13.2. Department of Mineral Resources and Energy (DMRE)**

The DMRE is responsible for ensuring exploration, development, processing, utilisation and management of South Africa's mineral and energy resources. As the country's economy continues to grow, energy is increasingly becoming a key focus. Bidders, are best advised to familiar themselves with the DMRE's Gas to Power Programme.

### **13.3. 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.

#### **13.4. The Department of Trade, Industry and Competition (“DTIC”)**

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

#### **13.5. The Ports Regulator of South Africa**

The Ports Regulator is primarily responsible for the economic regulation of the ports system and for promoting equity of access to ports, facilities and services provided in the ports. The Ports Regulator monitors the activities of TNPA to ensure that it performs its functions in accordance with the National Ports Act. The Ports Regulator, as the independent ports regulatory body has oversight in respect of the RFP in order to ensure that the regulation of the Port's system is compliant with the National Ports Act.

#### **13.6. National Energy Regulator of South Africa (NERSA)**

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

#### **13.7. The Department of Forestry, Fisheries, and the Environment (“DFFE”)**

The DFFE is responsible to set policies and guidelines on environmental management, conservation, and protection towards sustainability for the benefit of South Africans and the global community. Part of their duties is the approval of Environmental Impact Assessments (EIA) for capital projects in South Africa. In terms of the Richards Bay LNG Terminal, an EIA will need to be applied for with the DFFE, and the port will not allow any construction or building to take place in the port with an EIA being approved by the DFFE.

## 14. PURPOSE OF THE RFP

14.1 The purpose of this RFP is to:

- 14.1.1 Procure a Terminal Operator to undertake the Project in fair, equitable, transparent, competitive cost-effective manner as prescribed by Section 56 of the National Ports Act for a minimum concession period of at least 25 (twenty – five) years.
- 14.1.2 Formally invite Bidders to submit competitive Bid Responses to this RFP;
- 14.1.3 Providing information to Bidders in relation to the RFP and TNPA's broader vision in respect of the framework of the Project;
- 14.1.4 Set the binding rules for participation in this RFP. Particular attention is drawn to the provisions of the RFP relating to contact with TNPA, confidentiality, canvassing, non-collusion and Bidder changes. Failure to comply with any one or more of these provisions may result in exclusion from participation in this RFP within the discretion of TNPA;
- 14.1.5 Set out the key assumptions and constraints that need to be independently verified, considered and understood by the Bidders in preparing competitive and comparable Bid Responses for the Project;
- 14.1.6 Set out the framework and information requirements within which Bid Responses to this RFP should be made;
- 14.1.7 Request detailed, comprehensively priced, competitive, binding, underwritten Bid Responses to undertake the Project, which Bid Responses comply with the requirements set out in this RFP; and
- 14.1.8 Set out the Qualification Criteria, Evaluation Criteria and Objective 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.

## 15. STRUCTURE OF THIS RFP

15.1 The Structure of this RFP is as follows:

- 15.1.1 Part I (*General Requirements, Rules and Provisions*) of this RFP provides the general information to the Bidders and includes, *inter alia*, the glossary of terms detailing the defined terms used within this RFP, explanation 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.

- 15.1.2 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 based on 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.
- 15.1.3 Part III (*Evaluation Criteria*) of this RFP sets out the Evaluation Criteria that will 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.
- 15.1.4 Part IV (*Objective Criteria*) sets out the Objective Criteria that will be used by the TNPA in to determine if there exists any objective grounds which obliges the TNPA not to process with the award of the Project to the Preferred Bidder selected in Part III (Evaluation Criteria) and instead, select the Preferred Bidder.

## 16. STRUCTURE OF THE EVALUATION OF BID RESPONSES

- 16.1 As alluded to above, and for the avoidance of doubt, 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 the Part II (*Qualification Criteria*) will it be evaluated in Part III (*Evaluation Criteria*) and thereafter, be subjected to Part IV (*Objective Criteria*), evaluation.
- 16.2 Qualification Criteria 1: Administrative Responsiveness detailed in Part II (Qualification Criteria Assessment) of this RFP, will be checked by the TNPA before the evaluation process commences. The requirements for these criteria are set out under Clause 75.2 (Qualification Criteria 1: Administrative Responsiveness) of Part II (Qualification Criteria Assessment) of this RFP. Non-submission of the Mandatory Returnable Documents required for Administrative Responsiveness will result in the Bidder not being a compliant Bidder and the Bidder's Bid Response will not be evaluated further against Qualification Criteria 2: Substantive Responsiveness.
- 16.3 Qualification Criteria 2: Substantive Responsiveness detailed in Part II (Qualification Criteria 2: Substantive Responsiveness) of Part II (Qualification Criteria Assessment) 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 75.3 (Qualification Criteria 2: Substantive Responsiveness) of Part II (Qualification Criteria 75 of this RFP).

- 16.4 If a Bidder's Bid Response complies with the requirements and conditions set out in Clause 75 of Part II (Qualification Criteria Assessment) of this RFP, it will proceed to be evaluated under Part III (Evaluation Criteria) of this RFP. For avoidance of doubt, Substantive Responsiveness in Part II (Qualification Criteria Assessment) of this RFP will be checked by the TNPA before the evaluation of Part III (Evaluation Criteria).
- 16.5 Upon qualification on the Substantive responsiveness, the Bidder's Bid Response will be first be evaluated on the Evaluation Criteria as set out in Clause 76.
- 16.6 The Evaluation Criteria as set out in Part (III) comprises of 2 (two) stages. Stage 1 entails the evaluation of the functionality of a Bidders Bid Response. In terms hereof 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, in order to be eligible for further evaluation under Stage 2 of the Evaluation Criteria. Stage 2 of the Evaluation Criteria entails the evaluation of the Bidders Bid Response in respect of its Concession Fee Offer (Price) and B-BBEE Contributor Level (Preference). The evaluation will be undertaken in accordance with a 90/10 points system. For more information, please see Clause 76 of Part III (Evaluation Criteria) of this RFP.
- 16.7 The points for Concession Fee Offer (Price) (scored out of 90 (ninety) and B-BBEE Contributor Level (Preference) (scored out of 10 (ten), will be added together to determine the total points (scored out of 100 (one hundred) earned in respect of the Evaluation Criteria Assessment.
- 16.8 A Bidder who meets the threshold score of 140 points in Stage 1 of Part III (Evaluation Criteria) and scores the highest points in Stage 2 of Part III (Evaluation Criteria) shall become eligible for appointment as the Preferred Bidder unless Objective Criteria justify the award to another Bidder.
- 16.9 For the avoidance of doubt all Bidders who score 140 points and more be subjected to the Objective Criteria assessment (Part IV) prior to making the final selection of the Preferred Bidder. A Bidder, whose Bid Response does not meet the minimum score of 140 will not be considered.
- 16.10 The TNPA has set objective criteria to which it will apply its mind, prior to making the final appointment of the Preferred Bidder. The Objective Criteria accordingly entails the evaluation of the following:

- 16.10.1 the completion of a comprehensive due diligence which entails further verification and testing of the Bidders Bid Response to confirm the Bidders technical and financial capabilities to successfully execute the Project;
- 16.10.2 the further consideration of the Bidder's Stage 1 Evaluation Criteria functionality assessment, is to determine if there are indeed objective criteria that will justify the award of the Project to another Bidder; and
- 16.10.3 the consideration of the Bidders economic development commitments in furtherance of the TNPA's Economic Development Objectives and which requires that Bidder's submit with its Bid Response the Annexure TT Development Phase Value Summary, and Annexure UU Operational Phase Value Summary.

16.11 If there are no Objective Criteria which justifies the appointment of another Bidder other than the Preferred Bidder, the Bidder who scores the highest points will be appointed as the Preferred Bidder.

#### **17. BEST AND FINAL OFFER ("BAFO")**

- 17.1 If, after the evaluation of the Bid Responses, in TNPA's view, there is no clear Preferred Bidder, 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 there is a variance of less than 10% (ten percent) between the scoring of their Bid Responses.
- 17.2 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.

#### **18. ALTERNATIVE BID RESPONSE**

- 18.1 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**").
- 18.2 To allow sufficient opportunity for innovation, Bidders may submit additional Bid Responses ("**Alternative Bid Response**") that:
  - 18.2.1 improve and do not compromise the timeframes for the delivery of the Project;
  - 18.2.2 improve and does not compromise other port marine and land infrastructure of the port;

- 18.2.3 does not require TNPA to provide any additional bulk services above the ports capacity;
  - 18.2.4 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
  - 18.2.5 offer better value for money to TNPA and the bidder.
- 18.3 However, Bidders should note that the submission of an Alternative Bid Response is not a requirement and TNPA is under no obligation to consider an Alternative Bid Response.
- 18.4 No Alternative Bid Response will be considered unless a Standard Bid Response is also submitted. The benefits of deviation from the RFP requirements shall be motivated by a Bidder who submits an Alternative Bid Response, particularly against the Standard Bid Response and the Project objectives and such Alternative Bid Response must demonstrate increased efficiency and better value for money for TNPA.
- 18.5 All Alternative Bid Responses will be evaluated in a similar manner to the Standard Bid Response.
- 18.6 Bidders should note that any change to the Standard Bid Response contained in the Alternative Bid Response that is not fully motivated and which does not result in a quantified saving for TNPA will be disregarded by TNPA and will adversely affect the assessment by TNPA of the Bidder's Standard Bid Response.
- 18.7 Should a bidder's Standard Bid Response be disqualified or is non-responsive, an Alternate will not be considered by TNPA.
- 18.8 TNPA reserves the right to reject or accept any of the proposed changes to the Standard Bid Response contained in the Alternative Bid Response in its discretion.

## **19. PROJECT STRUCTURE AND CONTRACTS**

- 19.1 The Preferred Bidder will be invited to enter into the Terminal Operator Agreement and, if required, a Finance Direct Agreement with the relevant counterparties. The Draft Terminal Operator Agreement is attached to this RFP in Annexure VV (*Draft Terminal Operator Agreement*). The rights and obligations of the Terminal Operator for the term of the Project are set out in the Draft Terminal Operator Agreement. The Terminal Operator Agreement will be required to be finalised and entered into with TNPA within 4 (four) months (or such

extended period as may be determined by TNPA in its sole discretion) of a Bidder being appointed as Preferred Bidder.

- 19.2 If the Preferred Bidder fails to undertake all steps, reasonably required for the conclusion of the Terminal Operator Agreement within this 4 (four) month period (or such extended period as may be determined by TNPA in its sole discretion), then TNPA may, in its discretion, disqualify the Preferred Bidder or revoke its status as Preferred Bidder. If the Preferred Bidder is disqualified or has its status as Preferred Bidder revoked by TNPA, TNPA may appoint a Reserve Bidder as the Preferred Bidder in accordance with the provisions of Clause 73 of this RFP. TNPA shall subsequently enter into negotiations with such Reserve Bidder for the conclusion of the Terminal Operator Agreement within a period of 4 (four) months.
- 19.3 Bidders should note that the Draft Terminal Operator Agreement has been prepared on the assumption that the Preferred Bidder will:
  - 19.3.1 Incorporate a Project Company with the sole purpose of undertaking the Project as the Terminal Operator and enter into the Terminal Operator Agreement with the TNPA;
  - 19.3.2 Raise finance for purposes of undertaking the Project;
  - 19.3.3 Complete the Construction and commence Operation of the whole Terminal within 24 (twenty-four) months on 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 and approval of the detailed designs by the terminal operator to TNPA;
  - 19.3.4 TNPA expects the Preferred Bidder to deliver this Project based on the following timelines;
    - 19.3.4.1 Conclude the Terminal Operator Agreement within 4 (Four) months of appointment as the Preferred Bidder;
    - 19.3.4.2 As Terminal Operator obtain all Consents within 12 (Twelve) months of conclusion of the Terminal Operator Agreement;
    - 19.3.4.3 As Terminal Operator, secure Financial close within 4 (four) months of the conclusion of the Terminal Operator Agreement - Confirmation of funding; and

19.3.4.4 As Terminal Operator complete the Construction and Commissioning of the Terminal with 24 months of receipt of the necessary Environmental Consents.

19.3.5 To the extent that the Preferred Bidder's bid is not consistent with the assumptions made above, the provisions of the final Terminal Operator Agreement shall be revised to be consistent with such Bid Response.

19.4 Bidders are to note that certain provisions of the draft Terminal Operator Agreement are negotiable. Bidders are required to provide a tracked mark-up of proposed amendments to the clauses in the Draft Terminal Operator Agreement and include same in its Bid Response. Once a Preferred Bidder has been appointed, the mark-ups made by the Preferred Bidder, as at Bid Submission Date, will be negotiated between TNPA and the Preferred Bidder. Notwithstanding the restrictions imposed by the non-negotiable provisions as set out below, TNPA reserves the right to amend the final terminal operator agreement such that it is consistent with or aligned to the final accepted Bid Response of the Preferred Bidder.

19.5 Bidders are required to supply a mark-up of the Draft Terminal Operator Agreement in Microsoft Word format to indicate any amendments which the Bidder and its Lenders wish TNPA to consider if appointed as Preferred Bidder. TNPA will not evaluate the extent of the mark-up of the Draft Terminal Operator Agreement at the time of the submission of the Bid Response, but submission of a marked-up Draft Terminal Operator Agreement is a Mandatory Returnable Document and the failure to submit a comprehensive and fully considered Draft Terminal Operator Agreement could result in disqualification of the Bid Response. TNPA will not consider mark-up to the Clauses specified in the table in Clause 19.6 below and shall only entertain amendments thereto in the case of obvious errors or in instances when an amendment is required to give practical effect to a negotiable clause of the Draft Terminal Operator Agreement.

19.6 TNPA regards the Clauses listed in the Draft Terminal Operator Agreement as being non-negotiable and these are:

No.	Clause number	Description
1	Clause 1	Definitions and Interpretation
2	Clause 2	Introduction
4	Clause 7	Indemnity



5	Clause 8 (save for Clause 8.2 ( <i>single purpose company with no subsidiaries</i> ))	Terminal Operator's warranties and undertakings
6	Clause 9	Compliance with D&C Specifications and Operating Specifications
7	Clause 11	Environmental
8	Clause 16	Port Users and Port Rules
9	Clause 17	Shareholding in the Terminal Operator
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 35	Foreign exchange risk
18	Clause 36	Default Interest
19	Clause 37	Consequences of a Relief Event
20	Clause 38	Consequences of a Compensation Event
21	Clause 39	Force Majeure
22	Clause 41	Terminal Operator Default
23	Clause 44	Invalidation in terms of section 67 of the National Ports Act

24	Clause 49	No Termination Amount for termination for Force Majeure
25	Clause 52	Corrupt gifts and fraud
26	Clause 54	Dispute Resolution
27	Clause 55	Information and audit access
28	Clause 56	Miscellaneous matters

#### 19.7 The Preferred Bidder:

19.7.1 will be required to enter into the Terminal Operator Agreement with TNPA, pursuant to which TNPA will grant the Preferred Bidder the right to undertake the Project on the terms and conditions of the Terminal Operator Agreement; and

19.7.2 in addition to the Terminal Operator Agreement, may be required to enter into a Finance Direct Agreement with its Lenders and TNPA in respect of the Terminal Operator Agreement.

## 20. TNPA'S RIGHTS

20.1 TNPA reserves the right, for the avoidance of doubt and for purposes of absolute clarity, to:

20.1.1 modify the Project and request Bidders to re-bid on any such changes;

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

20.1.3 disqualify Bid Responses submitted after the Bid Submission Date;

20.1.4 select or not to select any Bidder as the Preferred Bidder;

20.1.5 select one or more than one Bidder as the Reserved Bidder in terms of this RFP to undertake the Project;

20.1.6 not necessarily award the Project to the highest scoring Bid Response or an Alternative Bid Response subject to the PPPFA;

20.1.7 cancel or suspend the process for the appointment of the Terminal Operator in respect of the RFP;

20.1.8 cancel, suspend or change the RFP contained in this RFP at any stage;

- 20.1.9 request a BAFO or not;
  - 20.1.10 amend the RFP, Terminal Operator Agreement and the Finance Direct Agreement at any time prior to the signature of these agreements;
  - 20.1.11 supplement the information provided as part of the RFP, as and when additional information becomes available
  - 20.1.12 reject all Bid Responses if it so decides;
  - 20.1.13 award the Project and/or conclude the Terminal Operator Agreement for only a portion of the Project which are reflected in the scope of this RFP;
  - 20.1.14 to split the award of the Project and undertake and such Parts of the Project it its own right, should it at TNPA's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
  - 20.1.15 make no award of the Terminal Operator Agreement; and
  - 20.1.16 cancel the Terminal Operator Agreement should a contract be awarded on the strength of information furnished by the Bidder, which after conclusion of the Terminal Operator Agreement, is proved to have been incorrect, and TNPA shall not be liable to the Bidders or the Preferred Bidder or any other person for any consequences, claims or costs arising from any of these actions.
- 20.2 TNPA reserves the right to award the Project to the highest scoring Bidder unless objective criteria justify the award to another Bidder.

**21. TIMETABLE FOR THE RFP**

<b>Activity</b>	<b>Timeline</b>
<b>ISSUE OF RFP</b>	<b>14 DECEMBER 2022</b>
<b>COMPULSORY BRIEFING</b>	<b>27 JANUARY 2023</b>
<b>CLOSE FOR BIDDER QUESTIONS</b>	<b>15 FEBRUARY 2023</b>
<b>TNPA RESPONSES TO BIDDER QUESTIONS</b>	<b>28 FEBRUARY 2023</b>
<b>BID SUBMISSION DATE</b>	<b>14 APRIL 2023</b>
<b>CLOSING TIME</b>	<b>10:00AM Central African Time</b>
<b>BID VALIDITY PERIOD</b>	<b>365 DAYS</b>

**22. EXTENSION OF RFP BID SUBMISSION DATE**

TNPA may, in its discretion, extend the Bid Submission Date by issuing a Briefing Note in accordance with Clause 64 (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.

## **23. GOVERNING LAW, COMPETITION AND OTHER STATUTORY REQUIREMENTS**

### **23.1 GOVERNING LAW**

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

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

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

## **24. COMPETITION ACT**

Each Bidder must satisfy itself that any aspect of its Bid Response in respect of the Project is not a notifiable transaction as contemplated under the Competition Act and to the extent that it is a notifiable transaction that all necessary requirements to comply with the provisions of the Competition Act have been complied with or will be complied with by it prior to the signature of the Terminal Operator Agreement and the Finance Direct Agreement. Bidders will be required to submit Annexure F (*Breach of Law Form*) in terms of which they certify whether they have been found guilty during the preceding 5 (five) years of a serious breach of law, including but not limited to a breach of the Competition Act by a court of law, tribunal or other administrative body.

## **25. OTHER STATUTORY REQUIREMENTS**

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

## 26. THE RFP SOCIO-ECONOMIC OBJECTIVES AND REQUIREMENTS

### 26.1 B-BBEE

- 26.1.1 TNPA fully endorses and supports the Government's B-BBEE requirements and it is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.
- 26.1.2 Since there has also been a lack of investment in infrastructure, skills development and inequality in income distribution, there have been a number of Government initiatives developed to address these challenges.
- 26.1.3 In terms of the proposed B-BBEE evaluation framework for the Project, prospective Bidders, will be expected to have a minimum BEE certificate B-BBEE in accordance with the Amended B-BBEE codes as per October 2013 rating. This requirement supports the Government's objective and therefore any Bidder who does not hold a minimum BEE certificate rating will not qualify for any further evaluation on any other criteria in the RFP. This Clause 26 (The RFP Socio-economic Objectives and Requirements) provides an overview to Bidders of what will be required of them in terms of the B-BBEE Criteria and what steps can be taken to meet those requirements.
- 26.1.4 Black Economic Empowerment ("**BEE**") is a process driven by the Government through legislation and policy which aims at remedying the historical imbalances and achieving economic transformation by increasing a number of Black People who participate in the mainstream South African economy.
- 26.1.5 BEE is fundamental to economic activities in South Africa and aims, through a mix of economic persuasion and incentive, to encourage the opening up of the economy to those disadvantaged by the past system.
- 26.1.6 The B-BBEE Act is intended as an enabling legislative framework which allows the Government to develop and issue the B-BBEE Codes. The B-BBEE Codes are intended to provide a standard framework for the measurement of B-BBEE across all sectors of the economy. The intention of the B-BBEE Codes is therefore to level the playing field for all entities operating within the South African economy by providing clear and comprehensive criteria for measurement of B-BBEE.
- 26.1.7 Companies which are governed by Sector-specific Codes will be measured in terms of those Sector Codes.

- 26.1.8 Bidders are to take note that failure to submit a valid and original B-BBEE verification certificate or a certified copy thereof at Bid Response will result in a Bidder's automatic disqualification.
- 26.1.9 TNPA would, therefore, prefer to do business with local and or international business enterprises which share the same values, and which are prepared to contribute to meaningful B-BBEE initiatives (this includes, but is not limited to, operations subcontracting and joint ventures) as part of their Bid Responses.
- 26.1.10 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.
- 26.1.11 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](http://www.sanas.co.za)
- 26.1.12 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 towards Black People in its business.
- 26.1.13 A typical B-BBEE verification certificate would contain the following information:
- 26.1.13.1 company name and number;
  - 26.1.13.2 type of certificate (group, entity or division);
  - 26.1.13.3 B-BBEE category (Qualifying Small Enterprises or generic);
  - 26.1.13.4 B-BBEE level (1 (one) to 8 (eight));
  - 26.1.13.5 procurement recognition percentage (%);
  - 26.1.13.6 black ownership percentage (%);
  - 26.1.13.7 black women ownership percentage (%);
  - 26.1.13.8 value adding supplier (yes or no);
  - 26.1.13.9 certificate issue date; and

26.1.13.10 certificate expiry date.

26.1.14 As a result of the minimum BEE certificate B-BBEE requirement in Clause 75 of Part II (Qualification Criteria) of this RFP, the legal structure a Bidder adopts is crucial because if a Bidder is an international Company with no South African membership, that Bidder will not have a B-BBEE Contributor Status Level and will therefore be disqualified. International business enterprises will need to partner with local entities in order to achieve a minimum BEE certificate Contributor Status to have their Bid Responses considered in terms of this RFP.

26.1.15 Bidders are to note that a Bidder who is an SPV will qualify for points for its B-BBEE Contributor Status Level as a legal entity, provided that the entity submits its consolidated B-BBEE verification certificate.

26.1.16 A SPV will qualify for points for their B-BBEE Contributor Status Level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE verification certificate as if they were a group structure and that such a consolidated B-BBEE verification certificate is prepared for every separate bid

## **27. B-BBEE SPV'S**

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

27.2 Bidders are to note the requirements for B-BBEE compliance as required by Clause 26.1. of Part I (*General Requirements, Rules and Provisions*) of this RFP and submit proof of their B-BBEE Contributor Status Level in the form of a B-BBEE verification certificate in order to obtain preference points for their B-BBEE status.

27.3 Failure to submit a valid and original B-BBEE certificate or a joint sworn affidavit for the Bidder or a certified copy thereof at the Bid Response Date of this RFP will result in automatic disqualification.

## 28. ECONOMIC DEVELOPMENT OBJECTIVES

28.1 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 NDP developed in 2013 aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa. TNPA fully endorses and supports NDP.

28.1.2 The key focuses of the NDP include:

28.1.3 increasing employment intensity of the economy;

28.1.4 addressing competitiveness;

28.1.5 balancing spatial development of rural areas and poorer communities;

28.1.6 reducing the carbon intensity of the economy;

28.1.7 creating opportunities in improving regional and global cooperation; and

28.1.8 enabling transformation that benefits a wider range of social actors in society e.g., workers, rural communities, youth and women.

28.2. TNPA, as a State-Owned Company ("SOC"), plays an important role to ensure these objectives are achieved. Therefore, commercial agreements concluded with Government need to be aligned to 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 localisation and industrialisation whilst providing meaningful opportunities for Black People with a particular emphasis on:

28.2.1. Black Youth;

28.2.2. Black Women

28.2.3. People with Disabilities;

28.2.4. Small Businesses;

28.2.5. Rural Integration

28.3. To facilitate the implementation of Economic Development Objectives, TNPA has adapted an existing framework from the DPE. This framework allows for a basic set of principles to be applied to appropriately targeted Economic Development Objectives. Economic



Development Objectives aim to build local suppliers who are competitive through building capability and capacity. Hence, the framework has been termed the "Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix (*IC<sup>3</sup> Matrix*) Annexure TT (*Development Phase Value Summary*) of this RFP. Currently there are 4 (four) quadrants of Economic Development Objectives which TNPA considers according to the Annexure (*Economic Development Guidelines*) of this RFP. This RFP has been identified as small enterprise development (Development phase) and focused (Operational phase). Further detail pertaining to the Annexure SS (*Economic Development Guidelines*) of this RFP can be found under Clause 78.5 *Objective Criteria*, Part IV (*Objective Criteria*) of this RFP.

28.4. In terms of the Terminal Operator Agreement, failure by the Terminal Operator to achieve the targeted Economic Development Objectives proposed in the Development Phase Value Summary and Operational Phase Value Summary will result in penalties being incurred under the Terminal Operator Agreement, as set out in Draft Terminal Operator Agreement.

## **29. ENVIRONMENTAL, SAFETY, HEALTH AND SECURITY COMPLIANCE**

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

## **30. BIDDERS' EXPERIENCE AND CAPACITY**

30.1 The prospective Bidders (and or their individual Members, as the case may be) should have a proven track record of successfully executing projects of a similar complexity and magnitude as the Project.

30.2 The prospective Bidders (and/or their individual Members, as the case may be) would therefore be required to demonstrate:

30.2.1 industry specific experience, particularly, their professional and technical qualifications and experience in the design construction, operation and maintenance of the LNG Terminals;

30.2.2 financial capacity, to fund and or raise the funding required for the Project;

30.2.3 access to or use of Terminal Equipment and infrastructure necessary for the design, construction, Operation and Maintenance of the Terminal;

- 30.2.4 adequate personnel to perform their obligations under the Terminal Operator Agreement and related contracts, as envisaged in Part II (Qualification Criteria) of the RFP.
- 30.2.5 Contractors that the Bidders intend contracting to undertake Construction need to be accredited in terms of Construction Industry Development Board rating and the bidders need to indicate the Construction Industry Development Board (CIDB) level of all contractors.

### **31. GENERAL BID RULES**

- 31.1 The RFP is open to the worldwide public and is not restricted to Bidders who are South African nationals and South African entities. All Bidders are subject to the B-BBEE requirements set out in Clause 26. International business enterprises will need to partner with local entities in order to achieve a minimum BEE certificate Contributor Status Level to have their Bid Responses considered in terms of this RFP. The roles and responsibilities of the partners shall be declared specifically and clearly in a separate document. The Bidders are invited to submit Bid Responses to be appointed as the Preferred Bidder for consideration by TNPA.
- 31.2 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.
- 31.3 Only Bid Responses that comply with the minimum requirements and criteria specified in the Qualification Criteria of this RFP to TNPA's satisfaction, will 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 and conditions of this RFP.
- 31.4 The Bidder appointed as the Preferred Bidder shall be afforded a period of time, specified under Clause 21 (Timetable for the RFP) of this General Requirements, Rules and Provisions section of the RFP, to negotiate and finalise their contractual arrangements and project documents with, *inter alia*, their Members, Contractors, equipment suppliers and Lenders, and apply for the Consents required to be held by them, by the date specified in the table under Clause 21 (Timetable for the RFP) of this General Requirements, Rules and Provisions section of the RFP.
- 31.5 TNPA reserves the right to appoint a Reserve Bidder simultaneously with, or at any time subsequent to, the announcement of the Preferred Bidder in accordance with Clause 73 (Selection of Preferred and Reserve Bidder) of Part I (General Requirements, Rules and Provisions) of this General Requirements, Rules and Provisions section of the RFP.

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

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

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

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

## 32. ELIGIBILITY CONSIDERATIONS

32.1 Bid Responses will only be considered by TNPA, in accordance with the Qualification Criteria, Evaluation Criteria and Objective Criteria set out in this RFP which generally set out the TNPA's requirements in respect of experience, track record, financial strength, and strategy to undertake the Project, noting the provision of Clause 74 (Information Verification).

32.2 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.

32.3 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 U (Declaration of Interest) of this RFP.

32.4 TNPA may, in its discretion, reject a Bid Response if it includes the involvement of any person:

32.4.1 blacklisted by the office of the National Treasury or internationally; or

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

32.4.3 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

- 32.4.4 who has been found guilty in any court of law of fraud or corruption related crimes; or
  - 32.4.5 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.
- 32.5 The participation of Not-for-Profit entities in a Bid Response is in the discretion of a Bidder and shall be at its sole risk.
- 32.6 A person, Member, other participant 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, in 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 H (Supplier Integrity Pact) of this RFP.

### **33. ACKNOWLEDGEMENT OF THE LAW**

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

- 33.4 After being selected as Preferred Bidder, a Preferred Bidder will be required to obtain any relevant licences 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 licence and/or permits by the Responsible Authority in terms of the relevant legislation.

### **34. LEGAL PERSONALITY OF BIDDER AND CHANGES**

- 34.1 If a Preferred Bidder is an SPV, it will be required to establish a Project Company with the sole purpose of undertaking the Project and entering into the Terminal Operator Agreement. All Shareholders of that Project Company are required to be Members of the Bidder (as from the Bid Submission Date) that is appointed as Preferred Bidder.

- 34.2 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.

- 34.3 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.

- 34.4 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:

34.4.1 full details of the reason for the change;

34.4.2 full details of the parties involved;

34.4.3 full details of the overall impact on the Bidder, the Project Company, the Bid Response and the Project;

- 34.4.4 in respect of a change in Members, detailed information and all returnable schedules and/or documents in respect of such new Member as was required to be submitted in respect of the Bidder and/or its Members at the time of submission of the Bid Response;
  - 34.4.5 in respect of any change related to a sale of Equity in the Project Company, full details in respect of the transaction, including full disclosure of any premium that will be paid in relation to the sale of Equity; and
  - 34.4.6 full details on how the Bidder proposes to share any improvement or benefit that results from a change to a Bidder's Bid Response or Project with TNPA.
- 34.5 If a Bidder or any of its Members notifies TNPA that it intends undergoing a change in its membership and or structure (including but not limited to a Change in Control), TNPA reserves the right to require the Bidder to supply such further information as TNPA may, in its discretion, request with regard to such change so as to enable TNPA to consider fully the impact of such change.
- 34.6 If a Bidder or any of its Members notifies TNPA that it intends undergoing a change in its membership and/or structure (including but not limited to a Change in Control), the Bidder shall be reassessed for qualification in accordance with the terms of this RFP, which re-qualification shall be in TNPA's discretion but in respect of which TNPA shall apply the same Qualification and Evaluation Criteria. If satisfactory, TNPA will advise the Bidder in writing.
- 34.7 If an event contemplated in this Clauses 34 of this General Requirements, Rules and Provisions, Part I (*General Requirements, Rules and Provisions*), occurs and TNPA, in its discretion, has not approved the relevant change, TNPA shall be entitled to advise the Bidder or any of its Members, as the case may be, in writing that its request was not approved and may, in its discretion, provide a reasonable amount of time for the Bidder or any of its Members, as the case may be, to propose a restructuring of the Bidder or any of its Members, as the case may be, that is to TNPA's satisfaction, in its discretion. Failing this or if the proposed restructuring is not to TNPA's satisfaction (in its discretion), TNPA may, in its discretion, disqualify the Bidder from participating any further in the Bid Submission Phase, or to allow the Bidder to continue in the RFP, subject to such conditions as TNPA (in its discretion) determines appropriate.
- 34.8. 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.

### **35. AUTHORISATION OF TNPA AND THE TERMINAL OPERATOR**

- 35.1 The Bidder, its Members and its advisors are required to satisfy themselves as to the legal authority of TNPA to issue this RFP, to undertake the procurement processes set out in this RFP and to undertake all other actions envisaged by this RFP including entering into the Terminal Operator Agreement and the Finance Direct Agreement.
- 35.2 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.

### **36. CONFIDENTIALITY**

#### **36.1 CONFIDENTIALITY BY THE BIDDERS**

- 36.1.1 This RFP contains confidential information regarding the Project and/or the TNPA. By collecting this RFP, the Bidders agree that:
- 36.1.1.1 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
  - 36.1.1.2 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.
- 36.1.2 Each Bidder agrees to maintain the confidentiality of all information supplied to it in connection with the Project (whether in text, chart, picture, electronic or other form), and agrees to keep its own Bid Response confidential in accordance with this Clause and section 86 of the National Ports Act No. 12 of 2005.
- 36.1.3. Bidders are required to provide TNPA, together with their Bid Response, a copy of the Non-Disclosure Agreement Annexure AA (Non-Disclosure Agreement) of this RFP, signed by a duly authorised representative on behalf of the Bidder.

### 37. CONFIDENTIALITY BY TNPA

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

### 38. BID DOCUMENTATION FEE AND PREFERRED BIDDER GUARANTEE

#### 38.1 PREFERRED BIDDER GUARANTEE

38.1.1 After the receipt of Bid Responses to the RFP and evaluation thereof, the Preferred Bidder will be required to lodge a guarantee (the "**Preferred Bidder Guarantee**") with TNPA in an amount equal to R20 000 000.00 (twenty million Rand). A Bidder which has been provisionally informed of its Preferred Bidder status will be considered to have been appointed by TNPA as the Preferred Bidder once the Preferred Bidder Guarantee has been submitted to TNPA in accordance with this Clause.

38.1.2 The Preferred Bidder Guarantee must be:

38.1.2.1 an unconditional and irrevocable bank guarantee in the form set out in Annexure W (*Form of Preferred Bidder Guarantee*);



38.1.2.2 lodged with TNPA within 15 (fifteen) Business Days of a Bidder being notified of its provisional Preferred Bidder status;

38.1.2.3 issued by a bank which is licensed to conduct banking business in South Africa under the Banks Act, 94 of 1990 and which has a South African rating of BBB or better by Standard & Poor's or equivalent; and

38.1.2.4 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 61 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 VV of the Draft Terminal Operator Agreement.

38.1.3 If a provisionally appointed Preferred Bidder fails to deliver the Preferred Bidder Guarantee within the time allowed, TNPA shall be entitled to revoke the status of that Bidder as Preferred Bidder. TNPA may substitute the Preferred Bidder with a Reserve Bidder nominated by it and to lodge a Preferred Bidder Guarantee with TNPA within 15 (fifteen) Business Days of being notified of its Preferred Bidder status. The provisions of this Clause 38 (*Preferred Bidder Guarantee*) shall apply *mutatis mutandis* to such new Preferred Bidder Guarantee in each such case.

### **39. RELEASE OF GUARANTEE**

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

### **40. FORFEITURE OF GUARANTEE**

40.1. 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:

40.1.1.1 is in breach of any law relating to the RFP or is disqualified from the RFP because of its actions or omissions;

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

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

40.1.1.4 revokes, repudiates or withdraws its Bid Response.

40.1.1.5 Does not meet the project delivery timelines which are:

40.1.1.5.1 Conclusion of Regulatory Approvals 12 months after being issued the preferred bidder status

40.1.1.5.2 Conclusion of Front-End Engineering Designs (FEED) 3 months after the attainment of Regulatory approvals

40.1.1.5.3 Securing sufficient gas off-takers and suppliers by 1 month after the conclusion of FEED;

40.1.1.5.4 Reaching Financial closure by 2 months after securing gas off-takers;

40.1.1.5.5 Commence Construction by 3 months after reaching financial closure;

40.1.1.5.6 Commission the project 12 months after the commencement of construction;

40.1.1.5.7 Commence Operations 1 month after commissioning.

40.2 In the event of the above being realized, TNPA will have the right to terminate the engagements with the Terminal Operator, and commence engagements with the second preferred bidder.

40.3. All Bidders to note that the Terminal Operator will be required to submit further guarantees in terms of the provisions of the Terminal Operator Agreement, which may be called up by the TNPA in the event that the Terminal Operator fails to meet the delivery timelines and performance requirements.

#### **41. CORRUPT GIFTS AND PAYMENTS**

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

41.2 None of the Bidders, its Members, the Lenders, any other participant in a Bid Response or any of their agents or advisors shall commit an offence in terms of the Prevention and

Combating of Corrupt Activities Act, including directly or indirectly offering or giving any person in the employment of TNPA or any other Government official, who is directly involved in the Project, or any of the Transaction Advisors, any gratuity or consideration of any kind as an inducement or reward for appointing any Bidder as the Preferred Bidder, or for showing or omitting to show favour or disfavour to any Bidder, its Members, the Contractors, or their Lenders in relation to the Project.

41.3. 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.

#### **42. NO CONTRACT**

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

#### **43. NO COLLUSION**

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

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

43.2.1 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;

43.2.2 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;

43.2.3 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

- 43.2.4 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.
- 43.3 If TNPA becomes aware of or is of the opinion that any of the activities detailed in Clause 43.2 have been undertaken by any Bidder or any of its Members, Contractors or participant in another Bid Response or any of their advisors, TNPA shall be entitled to disqualify such Bidder, its Members, Contractors or participant in such Bid Response and their advisors and to bar any or all of them from participating further in the RFP in respect of the Project.

#### **44. NON-COMPLIANCE OF BID RESPONSE RESULTING IN DISQUALIFICATION**

- 44.1 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.
- 44.2 TNPA reserves the right to reject any non-compliant Bid Response without further evaluation.
- 44.3. Non-submission of the Mandatory Returnable Documents required for achievement of Administrative Responsiveness will result in the Bidder not being a compliant Bidder and the Bidder's Bid Response will not be evaluated further against the remaining Qualification Criteria. Bidders will also have to ensure that the Bid Response has been lodged on time and at the correct drop point and that all the RFP documents in the Bid Response have been duly signed by the Bidder. Any Bid Response received without all Essential Returnable Documents requested in terms of this RFP or with insufficient information to enable a substantive evaluation thereof, as contemplated in Clause 75.3. (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.

#### **45. CONTACT POLICY**

- 45.1 All correspondence from a Bidder to TNPA shall be addressed to the Project Officer, shall be signed by the authorised representative of a Bidder and shall be legally binding on the relevant Bidder. All such correspondence must clearly indicate the name of the signatory, his or her position and the name of the Bidder. The Bidders may not contact or correspond with any person at TNPA, Transnet or a Transaction Advisor, other than the Project Officer, in relation to the Project and or the RFP. The Bidder shall not be entitled to rely on any statements, information or correspondence in respect of this RFP or the Project that is not made, given or issued by the Project Officer and that is not contained in a Briefing Note.

45.2 Each Bidder shall give the Project Officer the name and contact details, in writing, of the person whom it appoints to undertake all contact with the Project Officer. It is each Bidder's sole responsibility to ensure that all contact details provided to the Project Officer are correct in every respect, including details of email addresses and telephone numbers etc. TNPA will not be held liable for the incorrectness of any contact details provided by Bidders. Any change to any details of that contact person shall be notified to the Project Officer in writing. The Bidder may only communicate with TNPA through such person and TNPA shall be entitled, at its discretion, to disregard any communication from the Bidder that does not come from such contact person.

45.3 All queries and requests for clarification in respect of this RFP shall be requested by way of Annexure I (RFP Clarification Request Form) of this RFP, addressed, in writing, to the Project Officer. The contact details of the Project Officer are the following:

Area of responsibility	Contact
TNPA Project Manager: Port of Richards Bay	Email: <a href="mailto:Richardsbaygasrfp@transnet.net">Richardsbaygasrfp@transnet.net</a>

45.4 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.

45.5 If a Bidder, its Members, the Contractors or any of its agents, Lenders, other person participating in the relevant Bid Response or advisors make any such prohibited contact, TNPA reserves the right, in its discretion, to disqualify the Bidder, its Members, Contractors, other person or advisors from participating in that Bid Response on the grounds of being in breach of this Clause 40.4, from any further participation in the Project.

45.6 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 45.3 above.

**46. TIME FOR REQUESTS AND CLARIFICATIONS**

The Bidder may request clarification on any item contained within this RFP by no later **than 16:00 Central African Time, 28 February 2023**, 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.

**47. REQUESTS AND RESPONSES TO REQUESTS**

- 47.1 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 as per Clause 45.3.
- 47.2 TNPA will respond to written requests and queries by way of written Briefing Notes distributed by way of email to all Bidders.
- 47.3 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 Bidder an unfair advantage over others. Bidders must take care not to include confidential information in their queries or requests for clarification. The queries or requests for clarification should be limited to any item contained in this RFP.

#### **48. COMPULSORY RFP BRIEFING SESSION AND SITE VISIT**

- 48.1. A compulsory RFP Briefing session will be held on **25 January 2023**. At least one member of the SPV must attend this meeting **physically**.
- 48.2. A site visit will be conducted after the RFP briefing session. Attendance for the site visit will be optional.
- 48.3.** Details of this briefing session are indicated below:

Port of Richards Bay – Date: **25 January 2023**

Employee Care Centre Ventura Road (corner of T-junction) near west gate entrance, Port of Richards Bay,

Time 10h00;

- 48.4. TNPA reserves the right, in its discretion, to require Bidders to attend any additional briefing session and shall ensure that all the Bidders who have collected the RFP shall be informed of any such additional briefing sessions timeously;
- 48.5. 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;

- 48.6. Due to the conditions at the Terminal, Bidders will be required to bring their identity documents, appropriate safety shoes for walking in the terminal and other personal protective equipment such as safety jackets, hard hats and reflective vests;
- 48.7. At least one Member of the Bidder must attend the briefing session either virtually or physically.
- 48.8. TNPA will restrict the number of attendees of the physical session for each Bidder to a maximum number of 3 (three) representatives.
- 48.9. During the COVID-19 or any other global health emergency, TNPA reserves the right to confirm alternative arrangements and require compliance with the country's health and safety regulations, including any COVID-19 approved protective wear to prevent and combat the spread of Coronavirus at gatherings.

#### **49. STATUS OF RESPONSE**

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

#### **50. SUBMISSION OF BID RESPONSE**

- 50.1 Bid Responses in relation to the Bid Submission Date are to be submitted by no later than **10h00 Central African Time on 14 April 2023.**
- 50.2 Transnet has implemented a new electronic tender submission system, the e-Tender Submission Portal, in line with the overall Transnet digitalization strategy where suppliers can view advertised tenders, register their information, log their intent to respond to bids and upload their bid proposals/responses on to the system.
- 50.3 The Transnet e-Tender Submission Portal can be accessed as follows:
- i. Log on to the Transnet e-Tender Submission Portal (<https://www.transnet.net>).
  - ii. Click on "TENDERS".
  - iii. Scroll towards the bottom right-hand side of the page.
  - iv. On the blue window click on "register on our new e-Tender Portal".
  - v. Click on "ADVERTISED TENDERS" to view advertised tenders.

- vi. Click on “SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information).
  - vii. Click on “SIGN IN/REGISTER” - to sign in if already registered.
  - viii. Toggle (click to switch) the “Log an Intent” button to submit a bid.
  - ix. Submit bid documents by uploading them into the system against each tender selected.
- 50.4. The tender offers to this tender will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of tenders, disclose to any other company any confidential details pertaining to the Tender Offers / information received, i.e. pricing, delivery, etc. The names and locations of the Tenderers will be divulged to other Tenderers upon request.
- 50.5. Submissions must not contain documents relating to any Tender other than that shown on the submission.
- 50.6. RFP Responses reaching TNPA later than the date and time specified above may, in TNPA's sole discretion, not be considered by TNPA.
- 50.7. All costs incurred by a Bidder in connection with this RFP and the preparation of its responses hereto shall be borne by the Bidder;
- 50.8. The Bidder will not have to pay any monies in order to submit an RFP Response;
- 50.9. The Bidder is encouraged to submit any additional information that, in its view, would assist TNPA in the further development of the Project and the introduction of LNG import.
- 50.10. A guide to Bidders on how to submit Bids via the e-tender portal in annexed hereto marked Schedule Z1 (How to Guide)

## **51. COPIES OF BID RESPONSE**

- 51.1 Bidders to note that only electronic copies of a Bidders Each Bid Response is required to be delivered in terms of clause 50 of this RFP
- 51.2 The sections of the Bid Response that respond to each of the Criteria selected for this RFP must be clearly delineated and marked as such in the Bid documents uploaded.

## **52. FORMAT OF THE BID RESPONSE**



TNPA shall be entitled, in its discretion, to disqualify any Bid Response that fails in any way to fulfil the requirements of this Clause 53 (*Content of the Bid Response*), and to prohibit the relevant Bidder from participating further.

### **53. CONTENTS OF THE BID RESPONSE**

53.1 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.

53.2 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.

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

53.3.1 the Mandatory Returnable Documents;

53.3.2 the Essential Returnable Documents;

53.3.3 the response to the Qualification Criteria; and

53.3.4 the response to the Evaluation Criteria.

53.3.5 the response to the Objective Criteria. (See clause 78.)

53.3.6 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.

### **54. LANGUAGE OF THE BID**

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

correspondence and any other documentation and oral communication exchanged between the parties shall be in English.

**55. CURRENCY OF THE BID**

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

**56. IDENTIFICATION OF BID RESPONSE**

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

- 56.1.1 Tender Reference Number;
- 56.1.2 Name and Address of Bidder;
- 56.1.3 Master or Copy Number;
- 56.1.4 whether it is a Standard Bid Response or Alternate Bid Response; and
- 56.1.5 Category of Document (namely, the heading of the Part and Clause of the RFP to which the document relates).

56.2 The Bidder shall mark the cover of the Bid Response with the following details:

- 56.2.1 the title of the RFP as detailed on the cover page of the RFP;
- 56.2.2 Tender reference Number; and
- 56.2.3 Name and Address of Bidder.

**57. CORRECTION OF ERRORS**

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

**58. SIGNING OF BID**

58.1 The Bid Response is to be signed by the duly authorised representative of a Bidder authorised in terms of the resolutions of the Bidder and the Members attached to this RFP

as Annexure K (Resolution of Board of Directors) and Annexure L (Resolution of each Member) issued for the purpose of responding to this RFP.

58.2 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.

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

## **59. FURTHER INFORMATION**

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

## **60. 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.

## **61. BID SUBMISSION VALIDITY**

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

## **62. EXTENSION OF BID SUBMISSION VALIDITY PERIOD**

If TNPA requests the Bidder to extend the Bid Submission Validity Period of its Bid Response for any reason, the Bidder must issue its response to TNPA in writing within 20 (twenty) Business Days of the date on which TNPA made the relevant request. Should the extension be agreed to by the Bidder, the Bid Response may not be varied but an extension of the Preferred Bidder Guarantee contemplated in Clause 38 (*Bid Documentation Fee and Preferred Bidder Guarantee*), to match any such extension, may be required

### **63. DECLARATION OF BIDDER**

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

### **64. BRIEFING NOTES AND CHANGES TO BID PROCESS**

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

### **65. ISSUE OF BRIEFING NOTES**

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

65.2 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.

65.3. 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 45 (*Contact Policy*). All Briefing Notes shall be deemed to be part of the RFP.

### **66. INFLUENCE OF BRIEFING NOTES**

66.1. To afford Bidders reasonable time in which to take a Briefing Note into account in preparing their Bid Responses, TNPA may, at its own discretion, extend the Bid Submission Date in accordance with Clause 22 (*Extension of RFP Bid Submission Date*).

66.2. The Bidder shall ensure that its Bid Response is prepared, considering all Briefing Notes issued by TNPA.

### **67. COST OF BIDDING**

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

67.2 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:

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

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

## **68. INCONSISTENCIES**

68.1 If a Bidder identifies any errors or inconsistencies between the various portions of this RFP the Bidder shall notify the Project Officer in writing prior to the date referred to in Clauses 46 (*Time* for requests and clarifications) and TNPA will provide clarification as to the intended position to all Bidders by way of a Briefing Note.

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

## **69. INCORRECT OR MISLEADING INFORMATION**

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

## **70. OPENING OF BID RESPONSE**

TNPA will open the Bid Responses after the Bid Submission Date following receipt of the Bid Responses. TNPA will not disclose prices that the Bidders have bid in their Bid Responses.

## **71. RFP BID RESPONSE REJECTION**

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

## **72. DISPUTES RELATING TO BID PROCESS**

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

## **73. SELECTION OF PREFERRED AND RESERVE BIDDER**

73.1 TNPA will send letters to the Preferred Bidder and the Reserve Bidder on an *ad hoc* basis, notifying them provisionally of their status and requesting the Preferred Bidder to submit Preferred Bidder Guarantee pursuant to Clause 38 (*Preferred Bidder Guarantee*) and to enter into negotiations with, *inter alia*, its Members, Contractors, Lenders and equipment suppliers to finalise its contractual arrangements and Project Documents in order to

conclude the Terminal Operator Agreement and the Finance Direct Agreement with the relevant counterparties.

73.2 If TNPA nominates the Preferred Bidder, the nominated Preferred Bidder will be invited to enter into negotiations with TNPA leading to the signature by the appropriate parties of the Terminal Operator Agreement. Once a Bidder is appointed Preferred Bidder, a period not exceeding 4 (four) months, or such extended period as may be objectively and reasonably necessary, as determined by TNPA in its sole discretion, will be allowed for the negotiation of the Terminal Operator Agreement. If the Preferred Bidder fails to facilitate the conclusion of the Terminal Operator Agreement within this 4 (four) month period, or such extended period as may be objectively and reasonably necessary, as determined by TNPA in its sole discretion, such Preferred Bidder may be disqualified from its status as Preferred Bidder.

73.3 If these negotiations are not successful or if the Preferred Bidder is disqualified in accordance with provisions of this RFP, the Bidder nominated as the Reserved Bidder may be invited to enter negotiations with TNPA in substitution of the Preferred Bidder who will be eliminated from the RFP.

Following signature of the Terminal Operator Agreement, the Terminal Operator will proceed to Financial Close and subsequently implement the Project.

#### **74. INFORMATION VERIFICATION**

74.1 Each Bidder (including its Members, Contractors, advisors and other participants), in submitting a Bid Response, is deemed to consent to and agree that TNPA is entitled to:

- 74.1.1 perform a credit check in respect of such a Bidder, its Members, Contractors and participants by accessing any credit bureau's database and use any information and data obtained from a credit bureau in respect of the evaluation of the Bidder's Bid Response;
- 74.1.2 seek references from any relevant third parties; and
- 74.1.3 verify any information provided by a Bidder (including technical and financial information) with third parties (including banks).


## PART II - QUALIFICATION CRITERIA

### 75. STRUCTURE OF THE QUALIFICATION CRITERIA

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

75.1.1 Qualification Criteria 1: Administrative Responsiveness; and

75.1.2 Qualification Criteria 2: Substantive Responsiveness.

PART II QUALIFICATION CRITERIA	
<ul style="list-style-type: none"><li>• Qualification Criteria 1 : Administrative Responsiveness<ul style="list-style-type: none"><li>- Timely Submission of Bid Response</li><li>- Bid Response Duly Signed</li><li>- Submission of all Mandatory Returnable</li></ul></li></ul>	
<ul style="list-style-type: none"><li>• Qualification Criteria 2: Substantive Responsiveness<ul style="list-style-type: none"><li>- B – BBEE Contributor Level Certificate</li></ul></li></ul>	
	
Bidders who comply with all the requirements of Administrative and Substantive Responsiveness will be eligible for evaluation under Part III Evaluation Criteria	

### 75.2 QUALIFICATION CRITERIA 1: ADMINISTRATIVE RESPONSIVENESS

75.2.1 The Qualification Criteria for Administrative Responsiveness of the Bid Response will be checked by TNPA before the Bid Responses will be evaluated for Substantive Responsiveness.

75.2.2 In order to determine whether a Bid Response has met the criterion for Administrative Responsiveness, TNPA will consider the following:

75.2.2.1 whether the Bid Response has been lodged on time and at the correct drop point;

75.2.2.2 whether all the documents in the Bid Response have been duly signed by the Bidder. TNPA reserves the right to request a Bidder to

sign an Essential Document (provided it is not a document used for scoring) within 5 days. However, this does not extend to Mandatory Documents; and

75.2.2.3. whether all Mandatory Returnable Documents, as defined in Annexure O have been included in the Bid Response.

### **75.2.3. Mandatory Returnable Documents**

A failure by a Bidder to provide all Mandatory Returnable Documents on the Bid Submission Date will result in a Bidder's disqualification. Bidders are therefore urged to ensure that the following Mandatory Returnable Documents are submitted with their Bid Responses:

75.2.3.1. A valid B-BBEE verification certificate which is not older than 12 (twelve) months and which is issued by a SANAS certified agency, or a valid affidavit or sworn affidavit (in the case of a Qualifying Small Enterprise or Exempt Micro Enterprise) confirming that the Bidder has at least a BBBEE Certificate;

75.2.3.2. A tracked mark-up version of the Draft Terminal Operator Agreement.

75.2.3.3. A comprehensive Business Case which meets the requirements set out in Annexure C.

75.2.3.4. A set of Preliminary Designs and Bill of Quantities for the Port Infrastructure, Common User Infrastructure and Terminal Infrastructure.

### **75.2.4. Essential Returnable Documents**

Bidders are urged to submit the following Essential Returnable documents as listed in Annexure N (Essential Returnable Documents) :

75.2.4.1. Information about the Bidder and the Project

The information requested under this (Information about the Bidder and the Project) will be used to review and evaluate the Bidders for substantive responsiveness. The information requested must be submitted as provided for in the format as set out in Annexure CC (Standard RFP Response Form, Information about Bidder) of this RFP.



75.2.4.2. Bidders are to provide, in respect of the Bidder, the following:

- (i) the name of the Bidder, indicating whether it is incorporated, the date and nature 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 SPV, the Bidder must submit signed joint venture or SPV agreements between the Members clearly stating the percentage split of the joint venture or SPV, the memorandum of incorporation and the associated responsibilities of each Member;
- (ii) the physical address, postal address, e-mail address, telephone numbers of the Bidder;
- (iii) 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 SPV this will be the member of the Bidder who is responsible for the submission of a RFP Bid Response. The contact details are to include the physical address, postal address, e-mail address, telephone and telefax numbers of that person;
- (iv) name of the person and/or Member of the Bidder who is responsible for the submission of the RFP Bid Response. Bidders must also provide such person's physical address, postal address, e-mail address and telephone;
- (v) 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;
- (vi) 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, any other Government official or person with the ability to influence the decision of TNPA and/or other Bidders. Failure by the relevant Advisors to disclose an interest may result in the Bidder being disqualified from the RFP; and

(vii) the entire structure of the Bidder is to be detailed in an organogram with explanatory notes in respect of the identity and role of each Member of the Bidder.

75.2.4.3. Bidders are required to provide the following name and contact detail information in relation to each Member:

- (i) name and legal status of the Member, its registration number, date and country of registration;
- (ii) registered address and website address (if any) of each Member;
- (iii) street address, postal address, telephone number and e-mail address of each Member; and
- (iv) the person dealing with this RFP and the RFP Bid Response on each Member's behalf, and their contact details.

75.2.4.4. Bidders are required to provide the following key personnel information in relation to the entities:

- (i) the full names and addresses of each director or equivalent of each Member;
- (ii) Bidders are required to provide a brief description, comprising of no more than 4 (four) pages of each Member's primary business and main products or services;
- (iii) Bidders are required to provide a brief history, comprising of no more than 4 (four) pages, of each Member, including detail of any parent or associated companies and any changes in ownership of the Member over the last 5 (five) years; and
- (iv) Bidders are required to provide a 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.

75.2.4.5. Bidders are required to provide the following information of each Member:

- (i) certified copies of all Constitutional Documents, including all documents that evidence changes thereto, such as change of name certificates;
- (ii) certified copies of documents that evidence the Member's directorship; and
- (iii) 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.

75.2.4.6. The Bidder is required to provide the following information in relation to either itself or the Member with the appropriate experience:

- (i) a brief description of the leadership and project management capabilities of the Bidder or the Member in operation and:
- (ii) maintenance or similar projects, including the outcomes of those projects and the time periods from development to financial close of those projects;
- (iii) a detailed description of how the Bidder or Member will approach the leadership and control and co-ordination of the Bidder during the bid preparation phase, negotiations phase and the Operation and Maintenance phase of the Project should the Bidder be appointed as the Preferred Bidder and then awarded the Terminal Operator Agreement to implement the Project, as the case may be; and
- (iv) a detailed description of how the Bidder or Member 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.

75.2.4.7. Each Member is required to provide the following information in relation to Government Contracts:

- (i) details of any contracts awarded to the Member by the Government in the last 3 (three) years;
- (ii) brief details of any contracts awarded to the Member by other governments during the last 3 (three) years, highlighting any for

Terminal and/or Port related Construction, Operation and Maintenance of the Terminal Projects;

- (iii) 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 whereas made against the Member by the relevant government in relation to the bid process; and
- (iv) details of any current Terminal concession projects for which any of the Members are bidding and their status in respect of such projects.

75.2.4.8. This section in respect of legal proceedings is to be completed by the Bidder and each of its Members. Bidders and its Members are required to state whether:

- (i) any order of a court for that Bidder and/or 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;
- (ii) that the Bidder and/or its Members have ever been or are currently subject to liquidation, business rescue, insolvency proceedings or equivalent proceedings in South Africa or any foreign jurisdiction. If so, please provide details thereof, including the current status and the outcome of such proceedings;
- (iii) that 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, details thereof to be provided as well as the outcome or status thereof;
- (iv)** that the Bidder and/or its Members 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 status or outcome thereof;

(v) that the Bidder and/or its Members 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

(vi) that the Bidder and/or its Members has had any Government contract cancelled or not renewed for failure to perform in accordance with the terms thereof.

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

75.2.4.10. Bidders are to note that a failure to submit an Essential Returnable may result in a Bidder being awarded 0 (Zero) points if the Essential Returnable is required to score a Bid Response and the TNPA reserves the right to reject a Bidders Bid Response for the non-submission of an Essential Returnable.

### **75.3. QUALIFICATION CRITERIA : SUBSTANTIVE RESPONSIVENESS**

75.3.1. The Qualification Criteria for Substantive Responsiveness of the Bid Response will be checked by TNPA before a Bid Response is evaluated further against the Evaluation Criteria (Clause 76 of Part III).

75.3.2. In order to determine whether a Bid Response has met the criterion for substantive responsiveness, TNPA will consider whether the Bidder holds a B-BBEE Contributor Status Level.

## **PART III – EVALUATION CRITERIA**


### **76. STRUCTURE OF THE EVALUATION CRITERIA**

76.1. The Evaluation Criteria that a Bidder's Bid Response is required to satisfy is detailed below in this Part III (Evaluation Criteria Assessment). The Evaluation Criteria is divided into the following categories and sub - categories under the appropriate headings:

76.1.1. Evaluation Criteria Stage 1: Functionality; and

76.1.2. Evaluation Criteria Stage 2: Price and Preference.

76.2. A schematic illustration of this Part III (Evaluation Criteria is set out below:

Evaluation Criteria - Stage 1 Functionality	Evaluation Criteria - Stage 2 Price & Preference
<ul style="list-style-type: none"> <li>• Previous Exp. &amp; Track Record (40)</li> <li>• SHE &amp; Risk (10)</li> <li>• Financial Capacity (50)</li> <li>• Business Case (100)               <ul style="list-style-type: none"> <li>- Market Analysis (20)</li> <li>- Financial Management Plan (20)</li> <li>- Operating Model (15)</li> <li>- Project Schedule (20)</li> <li>- Preliminary Design (15)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Price:               <p style="margin-left: 20px;">Concession Fee Offer (90) Points Scored = Points out of 100 x 90% = 90 points</p> </li> <li>• Preference:               <p style="margin-left: 20px;">B-BBEE Scorecard (10) Points Scored = Points out of 100 x 10% = 10 points</p> </li> </ul>
	<p>On completion of the evaluation under Stage 2, Bidders will be ranked and be eligible for appointment as the Preferred Bidder provided, there is no objective Criteria which justifies the appointment of another Bidder other than the Preferred Bidder</p>
<p>Minimum Weighted Score of 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 70%, will not receive any further consideration.</p>	

76.3. Evaluation Criteria Stage 1 (Functionality)

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

76.3.1.1. Criteria 1: Experience & Track Record;

76.3.1.2. Criteria 2: Safety Health Environment & Risk;

76.3.1.3. Criteria 3: Financial Capability Criteria; and

76.3.1.4. Criteria 4: Business Case.

76.3.2. TNPA will only consider a Bidder's Bid Response in terms of this Evaluation Criteria assessment if that Bidder fulfils all of the Qualification Criteria Assessment of Part II this RFP.

76.3.3. The Bidder must respond to each and every heading in this Part III RFP (Evaluation Criteria) and in respect to this Clause 76 and provide comprehensive responses and information in respect of each criteria. A failure by a Bidder to respond adequately or at all to any of the headings of this Clause 76 shall have an adverse impact on the evaluation of its Bid Response and may result in (0) zero points being awarded for a particular criterion.

76.3.4. The evaluation of this Stage 1 of the Evaluation Criteria will be undertaken out of a total of 200 (two hundred) with:

- (i) Criteria 1: Experience & Track Record Criteria being scored out of 40 (forty),
- (ii) Criteria 2: Safety, Health, Environment & Risk being scored out of 10 (ten),
- (iii) Criteria 3: Financial Capacity being scored out of 50 (fifty) and Objective
- (iv) Criteria 4: Business Case being scored out of 100 (one hundred) points, as more fully explained below.

76.3.5. A Bidder will be required to meet a minimum threshold weighted score of 70% to be eligible for evaluation under Stage 2 of the Evaluation Criteria.

#### **76.3.6. Criteria 1: Experience & Track Record**

76.3.6.1. A Bidders experience and track record in LNG Terminal and berth infrastructure development, as well as operations must be reflected in the corporate profile of the Bidder, which must be supplemented with proof as mentioned below:

##### **76.3.6.2. Experience**

76.3.6.2.1. This section will be assessed and scored out of 20 (twenty) points and Bidders are required to submit the following:

- (i) At least 1 (one) letter of reference from an industry association e.g., South African Gas Industry Association confirming the number of years the Bidder has been a member.

- (ii) At least 1 (one) letter of reference from an international LNG customer and or supplier of the Bidder indicating the number of years such relationship has existed.
- (iii) At least 1 (one) letter of reference confirming the Bidders previous experience in the design and construction of Port Infrastructure, Common User Infrastructure, Terminal Infrastructure and Terminal Equipment.

as proof in respect of the number of years of experience that the Bidder has or that of their Members, as the case may be, have in operating in any area within which Bidders have handled LNG and developed LNG Port Infrastructure, in addition to the information required under 75.2.4. (Essential Returnable) and will be evaluated on the collective experience of the Bidder and it's members to ensure that TNPA secures the services of competent LNG Terminal Operator and LNG infrastructure berth developer. The above reference letters will be used in the evaluation below.

76.3.6.2.2. The number of years of experience they have in handling LNG and LNG terminal operations, either operated and/or are currently operating, will be assessed and scored out of 5 (five) points as follows:

<b>THE NUMBER OF YEARS EXPERIENCE IN LNG TERMINAL OPERATIONS</b>	<b>POINTS</b>
≤ 2 Years	0
> 2 Years and ≤ 4 Years	1
> 4 Years and ≤ 6 Years	2
> 6 and ≤ 9 Years	4
> 9 Years	5



76.3.6.2.3. The number of years of experience a Bidder has in the design and construction of Common User Infrastructure and Terminal Infrastructure as will be assessed and scored out of 10 (ten) points as follows:

<b>THE NUMBER OF LNG INFRASTRUCTURE DEVELOPMENT PROJECTS SUCCESSFULLY EXECUTED</b>	<b>POINTS</b>
0 LNG Projects	0
1 LNG Project	2
2 LNG Projects	4
3 LNG Projects	6
> 4 LNG Projects	10

76.3.6.2.4. The number of years of experience a Bidder has in the design and construction of Berths and Port Infrastructure that will be assessed and scored out of 5 (five) points as follows:

<b>THE NUMBER OF BERTH AND PORT INFRASTRUCTURE DEVELOPMENT PROJECTS SUCCESSFULLY EXECUTED</b>	<b>POINTS</b>
≤ 2 Years	0
> 2 Years and ≤ 4 Years	1
> 4 Years and ≤ 6 Years	2
> 6 and ≤ 9 Years	4
> 9 Years	5

76.3.6.3. Track Record

76.3.6.3.1. The Bidder will be evaluated on the track record to ensure that the TNPA secures the services of a competent and credible LNG Terminal Operator. Bidders should accordingly provide, a letter of reference, certification or similar document confirming the number

of LNG Terminals operated number of Port Infrastructure Projects successfully executed and the volume throughput for the past 3 years at the terminals operated in respect of their, or their members track record, as the case may be.

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

76.3.6.3.2.1. The number of LNG terminals/ where bidders have handled or stored and/or are currently handling or storing LNG. Bidders will be required to submit proof of their throughput volumes and or that of their Members in respect of the LNG sector in which they previously or currently operate. The number of LNG Terminal operated or currently operating will be assessed and scored out of 5 (five) points as follows:

<b>THE NUMBER OF LNG TERMINALS OPERATED OR CURRENTLY OPERATING</b>	<b>POINTS</b>
0 Terminal Facilities operated	0
1 Terminal Facilities operated or currently operating	2
2 Terminal Facilities operated or currently operating	3
3 Terminal Facilities operated or currently operating	4
4 Terminal Facilities operated or currently operating	5

76.3.6.3.2.2. The number of Projects entailing the design and construction of Berths and Port Infrastructure that will be assessed and scored out of 10 (ten) points as follows:

<b>THE NUMBER OF BERTH AND PORT INFRASTRUCTURE DEVELOPMENT PROJECTS SUCCESSFULLY EXECUTED</b>	<b>POINTS</b>
0 Berth & Port Infrastructure Projects	0
1 Berth & Port Infrastructure Project	2
2 Berth & Port Infrastructure Projects	4
3 Berth & Port Infrastructure Projects	6
4 Berth & Port Infrastructure Projects	8
5 Berth & Port Infrastructure Projects	10

76.3.6.3.2.3. A Bidders or that of their Members relevant and previous and current track record of their throughput volumes handled at the LNG Terminals operated and maintained will be evaluated. Bidders will be required to submit, a letter from an independent registered auditor or similar professional confirming the Bidders throughput volumes and will be evaluated and scored out of 5 (five) points.

<b>COLLECTIVE AVERAGE THROUGHPUT VOLUMES OVER THE PAST 3 YEARS WHERE APPLICABLE Tons Per Annum</b>	<b>POINTS</b>
< 500 001	1
500 001 - 600 000	2
600 001 - 700 000	3
700 001 - 800 000	4
Greater than 800 000	5

76.3.6.4. Summary of Experience & Track Record Requirements

<b>Experience &amp; Track Record Requirements</b>	<b>MAXIMUM NO OF POINTS</b>	<b>RFP REFERENCE</b>
Experience	20	Clause 76.3.6.2. of Part III this RFP
Track Record	20	Clause 76.3.6.3 of Part III of this RFP
<b>TOTAL</b>	<b>40</b>	

76.3.7. Criteria 2 Safety Health Environment & Risk

76.3.7.1. The criteria under this section have an overall point allocation of 10(ten) 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.

76.3.7.2. Environmental Management

76.3.7.2.1. This section has a point allocation of 3 (three) points, and Bidders are required to provide evidence of implementation of an environmental management system (ISO 14001:2015) or equivalent utilized in respect of environmental management and environmental authorisations achieved for similar projects. The Bidder should demonstrate how it will achieve environmental objectives and maintain environmental legal compliance obligations and sustainability. The Bidder must have the following and submit evidence thereof.

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

<b>ENVIRONMENTAL MANAGEMENT</b>	<b>POINTS</b>
A valid ISO 14001:2015 Environmental Management System certificate or equivalent	1.5

Previous environmental authorisations achieved (minimum 1)	1.5
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76.3.7.3. Occupational Health and Safety Management

76.3.7.3.1. This section has a point allocation of (three) points, and Bidders are required to provide evidence of implementation of an Occupational Health and Safety management system (ISO 45001:2018) currently utilized in respect of Occupational Health and Safety management. The Bidder should demonstrate how it will achieve occupational health and safety objectives and maintain occupational health and safety legal compliance obligations. The Bidder must have the following and submit evidence thereof: ISO 45001:2018 Occupational health and Safety Management System certificate or equivalent.

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

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

OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT	POINTS
A valid ISO 45001:2018 Occupational health and Safety Management System certificate or equivalent.	1.5
a Valid Letter of Good Standing from the Compensation Fund at the Department of Labour or Federated Employers Mutual Assurance or equivalent	1.5

76.3.7.4. Risk Management

76.3.7.4.1. This section has a point allocation of 4 (four) points.

76.3.7.4.2. Bidders must provide a detailed Emergency Response Plan for both landside and waterside.

76.3.7.4.3. Bidders will be scored, for their Risk Management response as outlined in the Emergency Response Plan, as indicated in the tables below. It is important to note that scoring will be allocated in accordance with the quantitative and qualitative scoring methodologies. With regard to the quantitative methodology in particular, the information provided by the bidder must be relevant to the LNG Sector. In respect of the qualitative scoring methodology, the following table will be used:

<b>Qualitative (QL) scoring methodology</b>		
<b>Poor</b>	<b>Fair</b>	<b>Good</b>
Score between 0% - 19% of the total points allocated per measure	Score between 20%- 69% of the total points allocated measure	Score between 70% - 100% of the total points allocated per measure
<i>Risk Assessment of areas where incidents and emergency situations may occur;</i>	<i>Risk Assessment of areas where incidents and emergency situations may occur.  All possible emergency scenarios  Written procedures for all emergency scenarios</i>	<i>Risk Assessment of areas where incidents and emergency situations may occur.  All possible emergency scenarios  Written procedures for all emergency scenarios  Evacuation routes  Detailed list of emergency response personnel</i>

<b>RISK MANAGEMENT</b>	<b>POINTS</b>	<b>QUANTITATIVE (QN) OR QUALITATIVE (QL)</b>
Emergency Response Plan	4	QL

76.3.7.5. Summary of SHE Requirements

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

SHE REQUIREMENTS	MAXIMUM NO OF POINTS	RFP REFERENCE
Environmental Management	3	Clause 76.3.7.2. of Part this RFP
Occupational Health & Safety	3	Clause 76.3.7.3. of Part III of this RFP
Risk Management	4	Clause 76.3.7.4. of Part III of this RFP
TOTAL	10	

**76.3.8. Criteria 3 Financial Capacity**

76.3.8.1. In order to determine a Bidder's financial strength, Bidders or each of their Members in respect of newly incorporated joint ventures or Project Companies must submit Audited annual financial statements or independently reviewed financial statements and annual reports for the past 3 (three) financial years that it has been in operation and the most recent unaudited financial statements (if the last of the 3 (three) audited annual financial statements is older than 6 (six) months).

76.3.8.2. In the event of the Bidder being a SPV/SPV, TNPA requires audited financial statements of at least one (1) member/s. These financial statements will be consolidated for the purposes of assessment. In the event that a Bidder is an existing company and not an SPV, TNPA will accept audited financial statements for a holding Company and/or any other companies related to the Bidder.

76.3.8.3. Profitability EBITDA

Profitability of the Bidder averaged over the past 3 (three) year period will be evaluated as set out in the table below and will be assessed as follows:

<b>Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA)</b>	<b>10</b>
Bidder EBITDA < R 1BILLION	0
Bidder EBITDA =>R1 BILLION and < R1.5 BILLION	5
Bidder EBITDA => R1.5 BILLION	10

#### 76.3.8.4. Key Financial Ratios

The Key Financial Ratios will be used to assess the Bidder's liquidity and solvency of the company and will be assessed as follows:

##### 76.2.8.4.1. Current Ratio

<b>Current Ratio (Norm is 2:1 – current assets divided by current liabilities)</b>	<b>5</b>
Ratio < 1	0
Ratio $\geq 1 < 1.5$	1
Ratio $\geq 1.5 < 2$	2.5
Ratio $\geq 2$	5

##### 76.2.8.4.2. Solvency Ratio

<b>Solvency Ratio (Norm is 1:1 -Total assets divided by Total Liabilities)</b>	<b>5</b>
Ratio < 0.5	0
Ratio $\geq 0.5 < 0.8$	1
Ratio $\geq 0.8 < 1$	2.5
Ratio $\geq 1$	5

#### 76.3.8.5 The Proposed Funding Model

76.3.8.5.1 The Bidder is required to demonstrate a viable and sustainable funding model to undertake the Project and commence implementation upon the conclusion of the Terminal Operator Agreement.

76.3.8.5.2. The source of the capital investment required and a potential upfront Concession Fee payment must be explained in terms of the debt/equity structure. It is important to note that scoring will be allocated in accordance with the quantitative and qualitative scoring methodologies. With regard to the quantitative methodology in particular, the information provided by the bidder must be relevant to the LNG sector. In respect of the qualitative scoring methodology, the following table will be used:



<b>Qualitative (QL) scoring methodology</b>		
Does not meet requirements	Meets requirements	Exceeds requirements
Score between 0% - 19% of the total points allocated per measure	Score between 20% - 69% of the total points allocated measure	Score between % - 100% of the total points allocated per measure
<p><i>The Funding Model does not demonstrate an integration of capital planning with the capital budget and does not clearly spell out capital amounts to fund the infrastructure, does not clearly separate the build period from the operating period, funding from equity, loans, and others.</i></p> <p><i>The Funding Model does not clearly articulate business, financial and industry risk which will not augur well for the success of the project or demonstrate the ability to fund commitments as they become due. It presents an aggressive scenario with a larger risk should the picture not materialise, the financial risks are clearly visible through the financial ratios presented. The profitability and coverage are a bit suspect (e.g., lower pre-tax interest coverage, EBITDA, Operating profit, lower cash flow ratios (e.g., Debt/EBITDA), stringent covenants with restricted access to capital.</i></p> <p><i>Does not or poorly reflects the Cash Flow Projections, Return on Investment, Internal Rate of Return, Project Net Present Value</i></p>	<p><i>The Funding Model meets the requirements where it includes operational and non-operational expenditure, all capital outlays and where the capital plan integrates capital expenditures with the term and funding from capital providers in terms of equity, loans and others.</i></p> <p><i>The Funding Model clearly presents the business, financial and industry risk, moderate scenarios to meet debt obligations and equity returns, higher profitability and coverage (e.g., lower pre-tax interest coverage, EBITDA, Operating profit), higher cash flow ratios (e.g., Debt/EBITDA), affirming covenants with financial risks not satisfactorily hedged.</i></p> <p><i>Adequately and reflects moderate Cash Flow Projections, Return on Investment, Internal Rate of Return, Project Net Present Value</i></p>	<p><i>The Funding Model exceeds the requirements where it includes operational and non-operational expenditure, all capital outlays, integrates capital expenditures with the term and funding from capital providers in terms of equity, loans and others, fairly demonstrates funders support in terms of sufficient capital to cover unexpected and recurrent expenditures, it demonstrates the ability to derive value in procuring and constructing the infrastructure, it gives a clearer understanding through budgeting to operation phase, it presents a harmonized picture with the Funding Model.</i></p> <p><i>The Funding Model clearly presents of business, financial and industry risk, moderate scenarios to meet debt obligations and equity returns, higher profitability and coverage (e.g., lower pre-tax interest coverage, EBITDA, Operating profit, higher cash flow ratios (e.g., Debt/EBITDA), affirming covenants, access to capital, clear liquidity in the Model, hedged financial risks, higher earning of cash from operating income.</i></p> <p><i>Comprehensively reflects positive Cash Flow Projections, Return on Investment, Internal Rate of Return, Project Net Present Value</i></p>

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

<b>THE PROPOSED FUNDING MODEL</b>	<b>POINTS</b>	<b>QUANTITATIVE OR QUALITATIVE</b>
<p>Proposed funding model in support of project investment</p> <p>The investment must be incorporated into the NERSA tariffing model for Gas and submitted as part of the Business Case (Annexure C)</p> <p>Failure to submit the tariff model will result in non-award of points</p>	20	QL

A written document confirming the Bidder's ability to source funds from a reputable financial institution or within the SPV/group company clearly articulating the Key Financial Indicators		
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76.8.3.6. Past Experience in Raising Capital

76.8.3.6.1. The Bidder's past experience in arranging project funds will be assessed and scored in accordance with their ability to raise capital. The details for each Member relating to its past experience (within the last 20 (twenty) year period) of raising debt on a project finance and or corporate finance basis, which demonstrates an ability to: (i) provide equity; (ii) secure and structure such equity; and (iii) letters from the lenders or funders that provided the finance setting out their role and confirming the Member's past experience in raising the capital disclosed in response to the criterion. In cases where equity funding was used for past projects, audited annual financial statements reflecting investment outflows must be submitted. If the letter is not provided it will negatively affect the bid noting that TNPA within its discretion conduct credit search's, request references from third parties and seek further information from financial members in respect of Bidders, its Members and or Contractors.

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

<b>PAST EXPERIENCE IN RAISING CAPITAL</b>	<b>POINTS</b>	<b>QUANTITATIVE OR QUALITATIVE</b>
Projects with the value below R1 Billion	0	
Projects with a value of up to R1billion	2	QN
Projects with a value in excess of > R1 Billion < R3 billion	4	QN
Projects with a value in excess of R3 Billion < R5 Billion	6	QN
Projects with a value in excess of R5 Billion < R7 Billion	8	QN
Projects with a value in excess of R7 Billion	10	QN

#### 76.3.8.7. Summary of Financial Capacity Requirements

<b>Financial Capacity Requirements</b>	<b>MAXIMUM NO OF POINTS</b>	<b>RFP REFERENCE</b>
Profitability - EBITDA	10	Clause 76.3.8.3 of Part this RFP
Key Financial Ratio's	10	Clause 76.3.8.4 of Part III of this RFP
Proposed Funding Model	20	Clause 76.3.8.5 of Part III of this RFP
Past Experience in Raising Capital	10	Clause 76.3.8.6 of Part III of this RFP
<b>TOTAL</b>	<b>50</b>	

#### 76.3.9. CRITERIA 4 BUSINESS CASE

76.3.9.1. The TNPA wishes to obtain a holistic view of a Bidder's proposal to undertake the Project. In order to do so, a Bidder is required to prepare and submit a Business Case, which will be implemented by the Bidder should it be appointed as the LNG Terminal Operator to undertake the Project of LNG Terminal and Berth Infrastructure. It is imperative that the Business Case reflects credible, realistic and achievable targets as the Bidder will be bound thereby with these proposals being incorporated as binding obligations for the LNG Terminal Operator in the Terminal Operator Agreement.

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

##### 76.3.9.2.1. Market and Sustainability Analysis

76.3.9.2.1.1. It is important to note that scoring will be allocated in accordance with the quantitative and qualitative scoring methodologies. With regards to the quantitative methodology in particular, the information provided by the bidder must be relevant to the LNG Sector. In respect of the qualitative scoring methodology, the following table will be used:

<b>Qualitative (QL) scoring methodology</b>		
<b>Poor response</b>	<b>Fair response</b>	<b>Good response</b>
Score between 0% - 19% of the total points allocated per measure	Score between 20% - 69% of the total points allocated measure	Score between 70% - 100% of the total points allocated per measure
<i>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.</i>	<i>Business Case describes major characteristics of the industry, but analysis is limited or missing a few elements; market attributes are described and their impacts on the business are adequately assessed; Business Case identifies competitive advantages of the company, but a discussion of their contribution to the company's market success is missing or less than fully developed; industry analysis is appropriately developed.</i>	<i>Provides a thorough analysis of industry size, segments, maturity, opportunities and threats in the industry, overall trends and outlook for the industry, and major competitors; specifically identifies target market and consumer demographics, demand, supply, customers and offtakes and fully describes niche in which the company will operate; clearly presents significant competitive advantages and effectively analyzes their impacts on organizational success.</i>

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

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

- (i) Vision and mission clearly articulating major goals and ambitions for the LNG Terminals;
- (ii) Relevant and achievable strategic objectives for the LNG Terminal;
- (iii) Comprehensive Value proposition for the LNG Terminal;
- (iv) Clear understanding of LNG supply chain business operating environment as well as global economic conditions;
- (v) Comprehensive Potential market, suppliers and segment analysis and Supplier Model (example single or multiple aggregator or open market)
- (vi) In depth Global Competitor Analysis for the LNG sector;

- (vii) Gap analysis which comprises an identification of any discrepancy between an actual and a potential market including a plan to mitigate any discrepancy identified;
- (viii) In-depth SWOT analysis specifically for the LNG sector;
- (ix) Measurable Economic spin-offs;
- (x) Short Medium and Long Term projection forecast of LNG volumes over the concession period;
- (xi) Sustainability and growth assumptions over the concession period;
- (xii) Climate change adaptability Plan

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

<b>MARKET ANALYSIS</b>	<b>POINTS</b>	<b>QUANTITATIVE (QN) OR QUALITATIVE (QL)</b>
Vision and mission clearly articulating major goals and ambitions for the LNG Terminal	1	QN
Relevant and achievable strategic objectives for the LNG Terminal	2	QL
Comprehensive Value proposition for the LNG Terminal	2	QL
Clear understanding of business operating environment as well as global economic conditions	2	QL
Comprehensive Potential market, suppliers and segment analysis	2	QL
Gap analysis which comprises an identification of any discrepancy between an actual and a potential market including a plan to mitigate any discrepancy identified	2	QL
In-depth Competitor analysis specifically for the LNG sector	2	QL

<b>MARKET ANALYSIS</b>	<b>POINTS</b>	<b>QUANTITATIVE (QN) OR QUALITATIVE (QL)</b>
In-depth SWOT analysis specifically for the LNG Sector	2	QL
Measurable Economic spin-offs	1	QN
Short, Medium and Long term projection forecast of volumes over the concession period	1	QN
Sustainability and growth assumptions over the concession period	1	QN
Climate Change Adaptability Plan	2	QN
<b>Total</b>	<b>20</b>	

#### 76.3.9.2.2. Financial Management Plan

76.3.9.2.2.1. The business case must incorporate all the relevant costs scored below into the NERSA tariffing model for Gas and submitted as part of the Business Case (Annexure C)

76.3.9.2.2.2. Failure to submit the tariff model will result in non-award of points and TNPA will exercise its right to assess the integrity of the information supplied in the tariff model. This section will be assessed and scored out of 20 (twenty) points as follows:

#### 76.3.9.2.2.3. Operational Costs (25 Year Projection)

The operational costs will be used to assess the Bidder's sustainability of operating the LNG Terminal and will be assessed and scored out of 2.5 (two, five points) on evidence showing the costs outlined in the table below:

OPERATIONAL COSTS (25 YEAR PROJECTION)	POINTS	QUANTITATIVE OR QUALITATIVE
Repairs & Maintenance	1	QN
Labour Costs	1	QN
Other Operating Costs	0.5	QN

76.3.9.2.2.4. Operational Revenue (25 Year Projection)

Bidders will be required to submit details of the projected operational revenue from operating the LNG Terminal assessing the Bidder's capability of earning the revenue from the Project and will be assessed and scored out of 2.5 (two, five) points as follows:

OPERATIONAL REVENUE (25 YEAR PROJECTION),	POINTS	QUANTITATIVE OR QUALITATIVE
Revenue generated from operating the Terminal	2.5	QN

76.3.9.2.2.5. Capital Expenditure

Bidders are required to incorporate in its Business Case a comprehensive Capital Expenditure Plan, clearly delineating the anticipated capital expenditure for Port Infrastructure, Common User Infrastructure, Terminal Infrastructure and Terminal Equipment which will be evaluated and assessed out of 10 (ten) points) the extent to which credibly demonstrates and understanding of the capital requirements for the Project.

Qualitative (QL) scoring methodology		
Poor response	Fair response	Good response
Score between 0% - 19% of the total points allocated per measure	Score between 20% - 69% of the total points allocated measure	Score between 70% - 100% of the total points allocated per measure
<i>Does not demonstrate a credible understanding of the capital requirements with limited detail.</i>  <i>Not aligned to market value of infrastructure required for Project</i>	<i>Demonstrates a basic understanding of the capital requirements of the Project with adequate detail.</i>  <i>Aligned to market value of infrastructure required for Project</i>	<i>Demonstrates a credible and insightful understanding of the capital requirement of the Project with extensive detail.</i>  <i>Realistically competitive in relation to market value of infrastructure required for Project</i>

#### 76.3.9.2.2.6. Financial Model Assumptions

The Bidder must provide assumptions for their financial projections of the Project which will be evaluated and scored out of 5 (five) points as follows:

FINANCIAL ASSUMPTIONS	MODEL	POINTS	QUANTITATIVE OR QUALITATIVE
NERSA Tariff Incorporated	Methodology	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 LNG sector forecasts		1	QN

#### 76.3.9.2.3. Operational Model

- 76.3.9.2.3.1. 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 berth and Terminal Infrastructure, the LNG Terminal handling equipment to be deployed, the logistics plan, operations human



resource plans, SHEQ, Risk and Quality management systems that will be applied to mitigate any operational risks including insurable risks.

76.3.9.2.3.2. The model must include a description of Bidders Organisational Structure, roles and responsibilities and skills profiles of Board of Directors Executive Leadership, key operational personnel, LNG Terminal Equipment plant and machinery acquisition and maintenance strategies.

76.3.9.3.3.3. This criterion has a point allocation of 15 (fifteen) points. It is important to note that scoring will be allocated in accordance with the quantitative and qualitative scoring methodologies. With regard to the quantitative methodology in particular, the information provided by the bidder must be relevant to the LNG Sector. In respect of the qualitative scoring methodology, the following table will be used:

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

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

<b>OPERATIONAL MODEL</b>	<b>POINTS</b>	<b>QUANTITATIVE OR QUALITATIVE</b>
Bidders to demonstrate use of the FSRUs / land-based facilities to receive LNG directly from conventional LNG carrier, storing it in insulated tanks – and regasification capabilities, to convert the LNG back into natural gas when needed.	5	QL

OPERATIONAL MODEL	POINTS	QUANTITATIVE OR QUALITATIVE
Re-gasified LNG from the FSRU flow into the local grid or be transported by pipeline.		
Traffic and Security management plan including but not limited to: Access to the site via rail and road including truck staging area (See Annexure D) LNG split on pipeline, road and rail Logistics Plan Technologies to be used to enhance operational efficiencies.	5	QL
SHEQ, Risk and Quality management systems that will be applied to mitigate any operational risks including a description of Bidders Organisational Structure, roles and responsibilities and skills profiles of Board of Directors Executive Leadership, key operational personnel, Terminal Equipment plant and machinery acquisition and maintenance strategies.	5	QL
Total	15	

#### 76.3.9.2.4. Project Schedule

Bidders are required to articulate a clear and concise Project Schedule which for the delivery and provision of the Port Infrastructure, Common User Infrastructure, Terminal Infrastructure and Terminal Equipment, which outlines how and within what timeframes it will be delivered and commissioned, which will be evaluated and assessed out of 20 (twenty) points using a qualitative scoring methodology, which requires that the information provided by the bidder must be relevant to the LNG 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 0% - 19% of the total points allocated	Score between 20% - 69% of the total points	Score between 70% - 100% of the total points allocated per measure

Qualitative (QL) scoring methodology		
Poor response	Fair response	Good response
per measure	allocated measure	
<i>No Project Schedule or a poor Project Schedule and does not set out clear timeframes, clear milestones, major activities or key deliverable which is not responsive to the targeted timelines of the Project</i>	<i>Basic and Moderate Project Schedule with partially clear timeframes, milestones, major activities or key deliverables which is responsive to the targeted timelines of the Project.</i>	<i>Comprehensive Project schedule with detailed and clear timeframes, milestones, major activities or key deliverables which is exceedingly responsive to the targeted timelines of the Project</i>

#### 76.3.9.2.5. Preliminary Designs & Bill of Quantities

76.3.9.2.5.1. Bidders are required to include distinct Preliminary Designs and Bills of Quantities using Annex RR (Pricing Schedule) and Annexure D (Technical Information Pack) as a guide for the Port Infrastructure, Common User Infrastructure, Terminal Infrastructure and Terminal Equipment in its Business Case making use of the Technical Information Pack which must include technical design brief reports and concepts layout drawings and the like.

76.3.9.2.5.2. It is important to note that scoring will be allocated in accordance with the qualitative scoring methodologies and will be scored out of a point allocation of 15 (Fifteen) points. The qualitative scoring methodology as outlined below table will be used:

Qualitative (QL) scoring methodology		
Poor response	Fair response	Good response
Score between 0% - 19% of the total points allocated per measure	Score between 20% - 69% of the total points allocated measure	Score between 70% - 100% of the total points allocated per measure
<i>Poor preliminary concept design and Bill of Quantities proposal (Examples include: Design &amp; Bill of Quantities) not optimizing capital</i>	<i>Acceptable preliminary concept design proposal and Bill of Quantities (Examples include: Design &amp; Bill of Quantities</i>	<i>Excellent preliminary concept design proposal and Bill of Quantities (Examples include: Design and Bill of Quantities optimizing capital requirements potential</i>

<b>Qualitative (QL) scoring methodology</b>		
<b>Poor response</b>	<b>Fair response</b>	<b>Good response</b>
<i>requirements and potential throughput capacity, basic technical brief reports, basic concepts drawings of elevations and layout plans, basic safety and environmental standards considerations, basic berth, pipeline, rail and road accessibility design</i>	<i>optimizing capital requirements and potential throughput capacity, acceptable technical brief reports, acceptable concepts drawings of elevations and layout plans, acceptable safety and environmental standards considerations, acceptable berth, pipeline, rail and road accessibility design</i>	<i>throughput capacity, Excellent technical brief reports, Excellent concepts drawings of elevations and layout plans, Excellent safety and environmental standards considerations, Excellent berth, pipeline, rail and road accessibility design</i>

#### 76.3.9.2.6. Summary of Business Case

<b>SUMMARY OF BUSINESS CASE</b>	<b>POINTS</b>	<b>RFP REFERENCE</b>
Market and Sustainability Analysis	20	Clause 76.3.9.2.1. of Part III of this RFP
Financial Management Plan	20	Clause 76.3.9.2.2 of Part III of this RFP
Operational model	15	Clause <b>76.3.9.2.3</b> of Part III of this RFP
Project Schedule	20	Clause 76.3.9.2.4 of Part III of this RFP
Preliminary Design & Bill of Quantities	15	Clause 76.3.9.2.5 of Part III of this RFP
Total	100	

#### 76.3.9.3. Summary of Stage 1 Evaluation Criteria

<b>TECHNICAL CRITERIA ASSESSMENT</b>	<b>MAXIMUM NO. OF POINTS</b>	<b>RFP REFERENCE</b>
Previous experience	20	Clause 76.3.6 of this RFP
Track record	20	Clause 76.3.6 of this RFP
SHE requirements	10	Clause 76.3.7. of this RFP
Financial Capacity	50	Clause 76.3.8 of this RFP

Business Case	100	Clause 76.3.9 of this RFP
<b>TOTAL</b>	<b>200</b>	

**NB: Only Bidders that score a minimum of 140 points out of the 200 points which equates to a minimum weighted percentage 70% and above will move to Part III Stage 2 of the evaluation process.**

#### **76.3.10. STAGE 2 EVALUATION CRITERIA**

76.3.10.1. This Part III Stage 2 (*Evaluation Criteria Assessment*) of this RFP contains the requirements for the detailed Bid Response and the evaluation methods, criteria and weighting in respect of those parts of the Bid Response that are subject to evaluation in terms of this Evaluation Criteria Assessment. Those parts are:

76.3.10.1.1. Evaluation Criteria 1: Price (Concession Fee Offer; and

76.3.10.1.2. Evaluation Criteria 2: Preference B-BBEE Contributor Level.

76.3.10.2 TNPA will only consider a Bidder's Bid Response in terms of this Evaluation Criteria Assessment if that Bidder fulfils all of the Qualification Criteria Assessment of Part II this RFP.

76.3.10.3. The Bidder must respond to each and every heading in this clause 76 of this RFP II (Evaluation Criteria Assessment) and in the Annexures referred to in this clause 76 of this RFP (Evaluation Criteria Assessment) 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 76 (Evaluation Criteria Assessment) and the Annexures referred to in this Evaluation Criteria Assessment shall have an adverse impact on the evaluation of its Bid Response and may result in disqualification and or (0) zero points being awarded.

76.3.10.4. The evaluation will be undertaken in accordance with a 90/10 points system. The Concession Fee Offer (Price) will be scored out of 90 (ninety) points and B-BBEE Contributor Level (Preference) will be scored out of 10 (ten) points.

76.3.10.5. The points for Concession Fee Offer (Price) (scored out of 90 (ninety) points) and B-BBEE Contributor (Preference) (scored out of 10 (ten) points) will be added together to determine the total points (scored out of 100 (one hundred)

earned in respect of the Evaluation Criteria Assessment. The total points will be rounded off to the nearest two decimal places if required.

- 76.3.10.6. 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 Assessment) and Part III (Evaluation Criteria Assessment) submitted by that Bidder and the requirements of TNPA as contained in this RFP, together with the overall scoring achieved by that Bidder.

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

- 76.3.11.1. Evaluation Criteria 1 has a weighting of 90 (ninety) percent of the total score for the Evaluation Criteria Assessment and has a point allocation of 90 (ninety) points.

- 76.3.11.2. The Bidder must offer a Concession Fee Offer amount in Rand (land, structures and water), based on annual rental escalation, with the land area carrying a weight of 30 points and water area carrying a weight of 60 points.

- 76.3.11.3. The Concession Fee Offer will be used to calculate the return and will be assessed and scored competitively between the Bidders with a maximum score available out of 90 (ninety) points.

- 76.3.11.4. The Concession Fee offered will be benchmarked to market related and comparable opportunities which may comprise of property valuations and similar terminal valuations. Therefore, TNPA reserves the right to further embark and request BAFO with top 3 highest ranked Bidders to ensure the payment of a market related Concession Fee.

- 76.3.11.5. The Bidder making the highest Concession Fee Offer will be awarded maximum points with the other Bidders with lower rental 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 highest acceptable bid/offer received

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

76.3.11.6.1. 0% (zero percent) of rental fee during the application of Environmental Impact Assessment to a maximum of 24 months,

76.3.11.6.2. 25% (twenty five percent) during construction phase (to a maximum of 18 months), after that 100% rental fee will apply until such time that the terminal is commissioned.

76.3.11.7. Bidders to note that the TNPA reserves the right to negotiate the terms and conditions of payment including the payment of an upfront lump sum Concession Fee by the appointed Terminal Operator which Bidders should contemplate in preparing its Business Case and funding model.

76.3.11.8. Summary of Concession Fee Offer:

Price (Concession Fee Offer)	Points	RFP Reference
Concession Fee Offer (water)	60	Clause 76.3.11 of Part III of this RFP
Concession Fee Offer (Land)	30	Clause 76.3.11 of Part III of this RFP
Total	90	

76.3.12. Preference (B-BBEE Contributor Level)

76.3.12.1. Preference points will be awarded to a Bidder for attaining the required B-BBEE contributor status level of contribution in accordance with the table indicated in clause 76.3.12.3 below and will be scored out of a point allocation of 10 (ten) points.

76.3.12.2. The Bidder must submit a valid B-BBEE Scorecard to confirm adherence to this requirement.

76.3.12.3. Points awarded for B-BBEE Status Level of Contribution:

Summary of Preference Criteria	Points	RFP Reference
B-BBEE Status Level of Contributor	90/10 system	Clause 76.12. of Part III of this RFP
1	10	
2	9	
3	6	
4	5	
A level of 5 and above	0	

**76.13. SUMMARY OF STAGE 2 EVALUATION CRITERIA - PRICE (CONCESSION FEE OFFER) AND PREFERENCE (B-BBEE CONTRIBUTOR LEVEL)**

Summary of Evaluation Criteria	Points	RFP Reference
Price	90	Clause 76.11 of Part III of this RFP
Preference	10	Clause 76.12 of Part III of this RFP
Total	100	

**PART IV OBJECTIVE CRITERIA**

**77. STRUCTURE OF THE OBJECTIVE CRITERIA**

77.1. The TNPA has set the objective criteria, set out below, to which it will apply its mind, prior to making the final appointment of the Preferred Bidder.

77.2. The Objective Criteria accordingly entails the evaluation of the following:

**77.2.1. Due Diligence**

A comprehensive Due Diligence will be undertaken covering the following:

77.2.1.1. The verification of the Bidders Experience and Track Record, SHE and Risk Management Track Record with any customers, industry associations and or regulatory body;



- 77.2.1.2. The verification of the Bidders financial capacity with current funders and potential project funders to confirm that there is indeed confidence in the Bidders Financial Capacity to undertake the project;
- 77.2.1.3. The conducting of a risk analysis of Bidders Business Case to confirm that all enterprise-wide risks have been identified and appropriately mitigated inclusive but not limited to financial risks, technical risks, operational risks, legislative (Compliance) risks, quality management risks, reputational risks, risks associated with dependency on the strategic partners; and holding the partners to accountability and any other important risks to the Project.
- 77.2.1.4. In the event that the Due Diligence exercise establishes that the Highest Scoring Bidder's Bid Response cannot be credibly verified and or that the risk analysis establishes that the Bidder has not considered key business risks, such Bidder will not be eligible for appointment as the Preferred Bidder.

#### **77.2.2. Functionality**

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

#### **77.2.3. Economic Development**

- 77.2.3.1. TNPA requests that each Bidder completes both the Development and Operational Phase Value Summary Worksheets (Annexure TT and Annexure UU respectively) in respect of the Company or the Project Company, as the case may be, and its Key Contractors, demonstrating their commitment and support of the NDP and how an appointment in terms of this RFP would assist in achieving the NDP objectives.

##### **77.2.3.2. Development Phase**

77.2.3.2.1. To facilitate the implementation of Economic Development initiatives during Development phase, TNPA has adapted an existing framework from the DPE and extracted elements applicable to this phase. This framework allows for a basic set of principles to be applied to appropriately targeted Economic Development initiatives.

77.2.3.2.2. Accordingly, TNPA requests all Bidders to submit a Development phase response demonstrating their commitment and support of the NDP and how an appointment in terms of this RFP would assist in achieving the NDP objectives.

77.2.3.2.3. The following focus areas has been identified and is included in the Evaluation Development phase, namely:

Category	Description
Capability and Capacity Building in South Africa	Industrial capability building that focuses on value-added activities of the South African industry through manufacturing or service-related activities.
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract.
Job Creation	Number of jobs created or preserved resulting from the award of contract.
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms.
Rural Integration and Regional Development	Incorporation of the use of rural labour and regional businesses which will contribute to NDP objectives.

77.2.3.2.4. The Development phase response is to be completed in Annexure TT (Development Phase Value Summary). This Development phase response should provide an overview of what the Bidder intends to achieve, when it intends to achieve its objectives, and the mechanisms by which the Bidder will achieve those objectives.

77.2.3.2.5. In terms of the Terminal Operator Agreement, failure to achieve the Development Phase Plan targets will result in breach of the Terminal Operator Agreement and provide TNPA with cause to terminate or cancel the Terminal Operator Agreement.

77.2.3.2.6. In addition, the Terminal Operator will be charged with a penalty of 100% (one hundred percent) of the undelivered value of the Development phase targets, in terms of the Development phase Plan.

**77.2.3.3. Operational Phase Value Summary**

77.2.3.3.1. To facilitate the implementation of Economic Development initiatives during Operational Phase, TNPA has adapted an existing framework from the DPE and extracted elements applicable to this phase. This framework allows for a basic set of principles to be applied to appropriately targeted Economic Development initiatives.

77.2.3.3.2. Accordingly, TNPA requests all Bidders to submit an Operational Phase response demonstrating their commitment and support of the NDP and how an appointment in terms of this RFP would assist in achieving the NDP objectives.

77.2.3.3.3. The focus areas has been identified and is included in the Operational Phase, namely:

Category	Description
Capability and Capacity Building	Industrial capability building that focuses on value-added activities of the South African industry through manufacturing or service-related activities.
Skills development	Skills transfer & skills education which will occur as a result of the award of contract.

Category	Description
Job Creation/Preservation	Number of jobs created or preserved resulting from the award of contract.
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms.
Rural Integration and Regional Development	Incorporation of the use of rural labour and regional businesses which will contribute to NDP objectives.

77.2.3.3.4. The Operational Phase response is to be completed in Annexure UU (Operational Phase Value Summary). This Operational Phase response should provide an overview of what the Bidder intends to achieve, when it intends to achieve its objectives, and the mechanisms by which the Bidder will achieve those objectives.

77.2.3.3.5. In terms of the Terminal Operator Agreement, failure to achieve the Operational Phase targets will result in breach of the Terminal Operator Agreement and provide TNPA with cause to terminate or cancel the Terminal Operator Agreement.

77.2.3.3.6. In addition, the Terminal Operator will be charged with a penalty of 100% (one hundred percent) of the undelivered value of the Operational Phase targets, in terms of the Operational Phase Plan.

77.2.3.4. Economic Development Value Summary: Guidelines for Completion:

77.2.3.4.1. Bidders are required to complete the Development and Operational Value Summary Worksheet which will represent a binding financial commitment on the part of the Terminal Operator and its Key Contractors.

77.2.3.4.2. Bidders are required to complete the Development and Operational Value Indicators section based on the Company or the Project Company's, as the case may be, and their Key Contractor's Economic Development commitments for each of the identified economic development categories.

77.2.3.4.3. Bidders must calculate in respect of the Company or the Project Company, as the case may be, and its Key Contractor's Economic Development commitments as a percentage of the estimated total value of the contract phase (Development and

Operation) over the applicable contract period and indicate their percentage commitment in the appropriately headed column.

77.2.3.4.4. Where applicable, Bidders must provide the number and Rand value of the Company's or the Project Company's and its Key Contractor's Economic Development commitments in the appropriately headed columns.

77.2.3.4.5. To the extent possible, Bidders must ensure that there is no double-counting of percentages and numbers.

77.2.3.4.6. Bidders are required to develop a detailed Economic Development Plan (as per Annexure UU) as part of their deliverables. For ease of reference, each line item completed in the Economic Development Value Summary Worksheet must correspond to a portion of the Bidder's Economic Development Plan with a cross-reference listed in the Economic Development Value Summary under the column heading "ED Bid Document Cross-Reference". The Bidder's Economic Development Plan must include the Economic Development commitments of each of its Key Contractors.

77.2.3.4.7. In terms of the Terminal Operator Agreement, failure to achieve the commitments set out in the Economic Development Plan, the Development Phase and Operational Phase Value Summary will result in breach of the Terminal Operator Agreement and provide TNPA with cause to terminate or cancel the Terminal Operator Agreement.

77.2.3.4.8. In addition, the Terminal Operator may be charged with a penalty as set out in the Draft Terminal Operator Agreement, if the reports submitted by the Terminal Operator in respect of Economic Development reflect that there has been non-compliance with the Economic Development Plan targets. Penalties incurred for non-compliance with Economic Development targets will be due and payable on demand.

## **78. CONSOLIDATION OF EVALUATION AND APPOINTMENT AS PREFERRED BIDDER**

78.1. In Part III Stage 1, a Bidders functional capability to undertake the Project is evaluated. Such capabilities will be assessed by determining whether a Bidder meets a minimum threshold of 70% (seventy percent) of the total 200 (two hundred) points that TNPA has determined as reflective of such capabilities to undertake the Project. A Bidder will therefore be required to score a minimum of 140 (one hundred and forty) points out of the 200 (two hundred) points allocated, in order to determine satisfaction of the minimum functionality requirements and to be evaluated in Part III Stage 2 Evaluation Criteria.

- 78.2. In Part III Stage 2, a Bidders Bid Response is evaluated on Price (Commercial Value) and Preference (BBBEE Scorecard). The evaluation will be undertaken in accordance with a 90/10 points system. During Stage 1, Bidders will be evaluated and ranked on their combined scoring on both Price (Commercial Value) and Preference (BBBEE Scorecard). The points for Price (Commercial Value) (scored out of 90 (ninety) and Preference (scored out of 10 (ten), will be added together to determine the total points (scored out of 100 (one hundred)) earned in respect of this stage of the Evaluation Criteria Assessment.
- 78.3. A Bidder that scores the highest points under Stage 2 and who satisfies the minimum functionality requirements under Stage 1 shall be eligible for appointment as the Preferred Bidder, provided that there are no objective criteria which justifies the appointment of another Bidder.
- 78.4. All Bidder's whose Bid Responses are scored under Stage 2 and who satisfies the minimum technical and functionality requirements under Stage 1, shall be subjected to an objective criteria assessment. In the event that objective criteria is determined to justify the appointment of the another Bidder, the Bidder who scores the highest points will not be eligible for appointment as the Preferred Bidder, in which event consideration will be given to the appointment to the Second Ranked Bidder as the Preferred Bidder and so on.