

### 3. Introduction

The Project, which is described further in clause 3.2 (*Project's Scope and Description*) of Part I (*General Requirements, Rules and Provisions*) of this RFP, is in respect of the design, finance, Construction, Operation and Maintenance of the Facility for the purpose of providing the Services to Port Users and following the Concession Period, the handover of the Facility to TNPA.

#### 3.1. Background

3.1.1. Project Phakisa is an initiative of Government, designed to respond to the economic challenges facing South Africa by unlocking the economic potential of South Africa's oceans. It is against this backdrop that the Government implemented the Ocean Economic Strategy which includes the following four focus areas, known as labs:

3.1.1.1. Marine Transport and Manufacturing Activities;

3.1.1.2. Offshore Oil and Gas Exploration;

3.1.1.3. Aquaculture; and

3.1.1.4. Marine Protection Services and Ocean Governance.

3.1.2. TNPA has been tasked with undertaking three initiatives within the Marine Transport and Manufacturing lab of Project Phakisa as follows:

3.1.2.1. Initiative 2 - Establishment of Rig Repair, Ship Repair and Offshore Supply Base facilities (the "OSSB") in the Port of Saldanha;

3.1.2.2. Initiative 7 - Strategic Prioritised Projects in the Port of Richards Bay; and

3.1.2.3. Initiative 8 - Strategic Prioritised Projects in the Port of East London.

3.1.3. Introduction of the Concept of a Generalist and Specialist Services Facility

3.1.3.1. Market research shows that an OSSB typically services a local country specific market. As the South African market

in this regard has weakened since 2014, the need for a fully-fledged OSSB that focuses solely on oil and gas activities has been re-considered. The concept which appears viable at this stage is that of a wider scope of services than those originally envisaged for the OSSB. The wider scope of services that the Facility Operator would provide includes generalist and specialist services in accordance with market demand. These Services have been categorised as Anchor Services, Core Services and the Authorised Services, with the view that the Facility will evolve into an offshore supply base to support local offshore oil and gas activity in the future as the market demand develops.

- 3.1.3.2. The Anchor Services, the Core Services and Authorised Services have been characterised as such in order to create flexibility for the Facility Operator to adapt the service offering to respond to the current market demand and needs. The Services are described in further detail in clause 3.2.3.6 (*Services at the Facility*) of Part I (*General Requirements, Rules and Provisions*) and Annex C (*Scope of Services*).
- 3.1.3.3. The Bidders are encouraged to consider and propose other services and operations that are not explicitly mentioned in this RFP and in particular Annex C (*Scope of Services*) by proposing such services as Proposed Services. In this regard, consideration must be given to the terms and conditions set out in to Part I (*General Requirements, Rules and Provisions*) and Annex C (*Scope of Services*) when proposing the Proposed Services.

## 3.2. Project Scope and Description

- 3.2.1. Bidders are invited to submit Bid Responses to be granted the right to undertake the Project.
- 3.2.2. Bidders are invited to consider all information and documentation provided in the data room and/or annexed to this RFP to inform the preparation of their Bid Responses.
- 3.2.3. The Bidder that is appointed as the Preferred Bidder will undertake the following:

### 3.2.3.1. Compilation of Detailed Designs and Specifications

- 3.2.3.1.1. The Facility Operator will be required to submit detailed designs and specifications for the Facility within 4 (four) months of the Signature Date.
- 3.2.3.1.2. The detailed designs and specifications for the Facility must not deviate from the preliminary designs submitted by the Bidder with its Bid Response and must take into account and comply with, *inter alia*, Annex C (*Scope of Services*).

### 3.2.3.2. Duration of Facility Operator Agreement

- 3.2.3.2.1. The Facility Operator shall be granted the Concession for the Concession Period as detailed further in the Draft Facility Operator Agreement.
- 3.2.3.2.2. Bidders should note that whilst this RFP and the Draft Facility Operator Agreement envisage a 20 (twenty) Contract Year Concession Period, Bidders may suggest a longer Concession Period and in such instance must provide reasons for proposing a longer concession period and shall submit in addition to its Bid Response, a separate

business plan and financial model and shall indicate any associated revisions to the Concession Fee Offer Worksheet and Supplier Development Summary Worksheet. In this regard, TNPA suggests that the Concession Period Extension Guidelines be considered as a mechanism to inform the basis of determining the appropriate concession period.

3.2.3.2.3. For the avoidance of doubt, notwithstanding the proposal of a longer Concession period, the Bidders Bid Responses must in all material respects (including but not limited to, the Mandatory Returnable Documents, in particular the Concession Fee Offer Worksheet, the Supplier Development Value Summary Worksheet, the Supplier Development Plan, the Financial Model, and other aspects of the Business Plan) be prepared in respect of a 20 (twenty) Contract Year Concession Period. Any proposal by the Bidders for a longer Concession period as well as the supplementary information provided shall not form part of the Evaluation Criteria, the Bidders shall not be evaluated in respect of such supplementary documents and TNPA reserves the right to accept or reject such proposal, in accordance with TNPA's prevailing governance processes and requirements.

3.2.3.2.4. In addition to the aforementioned, the Facility Operator and TNPA may agree to the extension of the Operations Period by a period of 10 (ten) Contract Years in accordance with the terms of the Draft Facility Operator Agreement.

**3.2.3.3. Construction Works, Finance and Construction of the Facility Infrastructure and Facility Equipment**

- 3.2.3.3.1. The Facility Operator will be required to undertake the Construction and establish the Facility on the Project Site.
- 3.2.3.3.2. TNPA has undertaken and completed the construction of the quay at the Project Site. For the avoidance of doubt, ownership of the Project Site, the Port Infrastructure and the quay at the Project Site shall at all times, vest in TNPA.
- 3.2.3.3.3. The Facility Operator will be required to raise the capital required to undertake and complete the Construction of the Facility Infrastructure and the procurement and installation of the Facility Equipment in accordance with the Constructions Works Programme.
- 3.2.3.3.4. TNPA will not prescribe to the Bidder, the extent of the Construction Works to be undertaken at the Site. The Bidder will be required to determine the extent of Construction Works, the Facility Infrastructure and Facility Equipment required for the Facility as well as propose a Constructions Works Programme and shall ensure that the Construction Works is complete and the Facility is operational by no later than the commencement of the Operations Period, which shall occur by no later than the Long Stop Date.
- 3.2.3.3.5. The Bidder is required to provide a proposed technical design for the Facility Infrastructure and Facility Equipment in the Business Plan

as detailed further in the Business Plan Guidelines.

- 3.2.3.3.6. The Facility Operator will be required to complete the Construction Works in respect of the Facility Infrastructure and procure and install the Facility Equipment required to provide the Anchor Services in order to ensure that the Facility is operational from the commencement of the Operations Period.
- 3.2.3.3.7. The Facility Operator shall be entitled to extend and/or make alterations, at its own cost, to the Existing Buildings should the Existing Buildings not sufficiently address the needs of the Facility Operator, provided that the Facility Operator shall not commence such works until it has received written approval from TNPA and the Relevant Authority to do so. The Facility Operator shall be entitled to demolish the Existing Buildings provided that the Facility Operator shall not commence such works until (i) it has received written approval from TNPA and the Relevant Authority to do so and (ii) it has paid TNPA an amount equivalent to the current asset value of the Existing Buildings as reflected in the TNPA books of account, as compensation for demolishing the Existing Buildings.
- 3.2.3.3.8. Ownership of the Facility Infrastructure shall vest in TNPA from the date on which the Completion Certificate is issued and ownership of the Facility Equipment shall vest in the Facility Operator.

#### 3.2.3.4. **Operation and Maintenance**

3.2.3.4.1. The Facility Operator will acquire the right to Operate and Maintain the Facility for the duration of the Operations Period. The Facility Operator will be required to maintain the Facility in accordance with the terms of the Facility Operator Agreement to ensure the continuous optimal Operation of the Facility.

3.2.3.4.2. The Facility Operator will be required to maintain the surface of the quay at the Project Site and keep it in good working order and condition, in accordance with International Best Practice and the international standards for a facility comparable to the Facility, including undertaking any repair and cleaning of the surface of the quay at the Project Site.

#### 3.2.3.5. **Handover of the Facility**

3.2.3.5.1. Prior to the end of the Operations Period, TNPA may in accordance with the terms of the Facility Operator Agreement, elect to:

3.2.3.5.1.1. either retain all or some of the Facility Infrastructure Project Site or may on written notice to the Facility Operator, instruct the Facility Operator to demolish and remove all or some of the Facility Infrastructure; and/or

3.2.3.5.1.2. purchase the Facility Equipment.

3.2.3.5.2. Should TNPA elect to purchase the Facility Equipment, the Facility Operator shall hand over, free from encumbrances, the Facility Equipment together with, *inter alia*, all associated manuals and documents.

3.2.3.5.3. Should TNPA notify the Facility Operator to demolish and remove all or some of the Facility Infrastructure, the Facility Operator shall decommission, demolish and remove all or the selected Facility Infrastructure as notified by TNPA.

3.2.3.5.4. At the end of the Concession Period, the Facility Operator will be required to:

3.2.3.5.4.1. give free and vacant possession of the Facility and the Project Site;

3.2.3.5.4.2. hand over all associated manuals, certificates and documents in respect of the Facility Infrastructure and the Facility Equipment, if applicable;

3.2.3.5.4.3. leave the Project Site in a safe, clean and orderly condition in accordance with the terms and conditions contained in the Draft Facility Operator Agreement.

**3.2.3.6. Services at the Facility**

3.2.3.6.1. The Facility Operator will be granted the exclusive Concession to Construct, Operate and Maintain the Facility, including the operation of the quay at the Project Site, and



to provide the Services in accordance with terms and conditions set out in the Facility Operator Agreement.

3.2.3.6.2. The Facility Operator shall provide or procure the provision of the following Services as more fully described in Annex C (*Scope of Services*) in accordance with market demand and consideration must be given to Part I (*General Requirements, Rules and Provisions*) and Annex C (*Scope of Services*) when considering these other Services.

3.2.3.6.2.1. Anchor Services which are services that the Facility Operator is obliged to provide from the commencement of the Operations Period and such services shall continue for the duration of the Operations Period and includes:

3.2.3.6.2.1.1. a material loading and offloading facility and storage facilities; and

3.2.3.6.2.1.2. ancillary bunkering, fuel, oil and lubricants refill services, water refill services; and

3.2.3.6.2.1.3. office facilities.

3.2.3.6.2.2. Core Services, which the Facility Operator is obliged to provide as and when the oil and gas market demands in

accordance with the terms and conditions of the Facility Operator Agreement or earlier if elected by the Facility Operator, and which includes:

- 3.2.3.6.2.2.1. the provision of warehousing and facility yard management that optimises the safe storage and flow of off-shore oil and gas related materials and equipment;
- 3.2.3.6.2.2.2. cleaning, maintenance and preservation of off-shore oil and gas related materials and equipment;
- 3.2.3.6.2.2.3. the handling of slops/oil waste (this service relates only to the receipt of slops/oil/waste and does not include the treatment of slops/oil/waste. In addition, the Facility Operator is required to ensure that such slops/oil/waste shall be collected and disposed of by appropriately licenced

waste treatment  
companies that are  
contracted by the  
Facility Operator);  
and

3.2.3.6.2.2.4. a pipe yard including  
storing, racking and  
coating facilities.

3.2.3.6.2.3. Authorised Services include  
the Approved Services and  
the Proposed Services.  
Bidders may elect to provide  
one or more Approved  
Services which may be  
provided on a temporary  
basis should a commercial  
opportunity arise or for the  
duration of the Operations  
Period. In addition, Bidders  
may propose additional  
Services that are not explicitly  
set out in Annex C (*Scope of  
Services*), to be provided at  
the Facility which are  
regarded as Proposed  
Services. Authorised  
Services may only be  
provided to the extent that  
they do not have a negative  
impact on the delivery of the  
Anchor Services and the  
Core Services nor the  
existing activities at the Port.  
The Approved Services  
include:

3.2.3.6.2.3.1. customs and clearing services;

3.2.3.6.2.3.2. maintenance and repair services to vessels including the provision of a floating dock; and

3.2.3.6.2.3.3. undertaking boat building services.

3.2.3.6.3. The Facility Operator's rights and obligations in respect of undertaking the Project are set out in the Facility Operator Agreement.

**3.2.3.7. Common-User Principle, Non-discrimination and Open Access**

3.2.3.7.1. The Facility Operator will be required to operate and manage the Facility on a common-user basis meaning, that the Facility shall be available on an open-access and non-discriminatory basis to users and the Facility Operator shall:

3.2.3.7.1.1. have exclusive rights to Operate and Maintain the Facility;

3.2.3.7.1.2. be required to provide reasonable equality of access to any user or potential users wishing to utilise the Services of the Facility and shall provide the requested Service provided that the Facility has available capacity;

3.2.3.7.1.3. be required to provide Services on reasonably the same commercial terms to all Port Users and shall not unreasonably discriminate, in its tariff structure or in its trading conditions, between various users or potential users of the Facility. For the avoidance of doubt, the Facility Operator shall not be restricted from negotiating service agreements with customers in the ordinary course of business.

3.2.3.7.2. The principles contained above are included as obligations in the Facility Operator Agreement and non-compliance by the Facility Operator will be regarded as a breach of the Facility Operator Agreement.

### 3.2.3.8. **Concession Fee**

3.2.3.8.1. As consideration for the grant of the Concession, the Facility Operator shall be required to pay TNPA the Concession Fee on a quarterly and annual basis as described in clause 52.2 (*Concession Fee Offer*) of Part III (*Evaluation Criteria*) of this RFP.

3.2.3.8.2. Bidders will be required to propose the Concession Fee payable to TNPA in response to clause 52.2 (*Concession Fee Offer*) of Part III (*Evaluation Criteria*) of this RFP.

## 4. **Purpose of this RFP**

4.1. The purpose of this RFP is to: