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The Republic of South Africa

Department of Home Affairs

**REQUEST FOR PRE-QUALIFICATION FOR THE REDEVELOPMENT OF SIX (6) PORTS
OF ENTRY THROUGH A PUBLIC PRIVATE PARTNERSHIP**

PART A: GENERAL INFORMATION, REQUIREMENTS AND RULES



home affairs

Department:
Home Affairs
REPUBLIC OF SOUTH AFRICA

LIST OF DOCUMENTS COMPRISING THE RFQ

No.	Document	Description
<u>PART A: GENERAL INFORMATION, REQUIREMENTS AND RULES</u>		
1.	<u>Part A – Volume 1</u>	<u>Project Information</u>
	Part A – Volume 1: Schedule A	Treasury Approval I
<u>PART B: QUALIFICATION CRITERIA AND RESPONSE FORMS</u>		
2.	<u>Part B – Volume 1</u>	<u>Qualification Criteria</u>
3.	<u>Part B – Volume 2</u>	<u>Response Forms</u>
	Part B – Volume 2: Schedule A	Form of Response
	Part B – Volume 2: Schedule B	Declaration of Respondent
	Part B – Volume 2: Schedule C	Letter of Intent
	Part B – Volume 2: Schedule D	Confidentiality Undertaking
	Part B – Volume 2: Schedule E	Declaration of Interest Litigation and Past Supply Chain Practises Form
	Part B – Volume 2: Schedule F	SBD 4 – Declaration of Interest
	Part B – Volume 2: Schedule G	SBD 8 – Respondent’s Past Supply Chain Management Practices
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1. **DISCLAIMER**

- 1.1 While all reasonable care has been taken in preparing this document, the information contained herein does not purport to be comprehensive or to have been verified by the Department of Home Affairs of the Government of the Republic of South Africa ("the Department") or any other department, public entity or provincial entity of the Government of the Republic of South Africa ("the Government"), any of its officers, employees, servants, agents, advisors or any other person. Accordingly, neither the Department nor any of its advisors accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated herein.
- 1.2 Save where expressly stipulated otherwise, no representation or warranty (whether express or implied) is or will be given by the Department or any of its officers, employees, servants, agents, Transaction Advisors, advisors or any other person with respect to the information or opinions contained in this RFQ, or in relation to any Briefing Notes issued in relation to this RFQ or the Project.
- 1.3 The Department reserves the right to amend, modify or withdraw this RFQ or any part of it, or to terminate or amend any of the procedures, procurement processes or requirements detailed in this RFQ during the conduct of the Project, at any time, without prior notice and without liability to compensate or reimburse any person pursuant to such amendment, modification, withdrawal or termination.
- 1.4 The Department reserves the right to terminate or amend the Project, at any time, without prior notice and without liability to compensate or reimburse any person pursuant to such termination or amendment.
- 1.5 The terms and conditions set out in this RFQ are stipulated for the express benefit of the Department and, save as expressly stated to the contrary, may be waived at the Department's sole discretion at any time. The Department reserves the right to adopt any proposal made by any person responding to this RFQ at any time and to include such proposal in any documents which may or may not be made available at any stage of the Project to any other persons responding to this RFQ, without the obligation or liability to pay any compensation or reimbursement of any nature to any person pursuant to such adoption.

- 1.6 This RFQ is provided solely for the purpose set out in this document and is not intended to form any part or basis of any investment decisions by the Respondent, Members, Contractors, Key Equipment Suppliers or any other party. Each person to whom this RFQ is made available must make its own independent assessment of the Project in respect of which it intends submitting a Response, taking such advice (whether professional or otherwise) as it deems necessary.
- 1.7 The Department has engaged Transaction Advisors in respect of the Project and this RFQ, who are acting solely as advisors to the Department, to assist the Department in the Project and, accordingly, will not be responsible or owe a duty of care to any person other than the Department in respect of this RFQ or the Project. The Transaction Advisors shall not, nor shall any legal advisor, or advisor to the Department in relation to the RFQ or the Project, provide any opinion to or for the benefit of any Respondent, Members, Contractors, Key Equipment Suppliers or any other party, while acting in their capacity as advisor to the Department.
- 1.8 No Respondent, its Members, Contractors, Key Equipment Suppliers or any other party shall have any claim against the Department, its officers, employees, servants, agents or Transaction Advisors, under any circumstances whatsoever, arising out of any matter relating to the Project or this RFQ of any nature whatsoever, including where such claim is based on any act or omission by the Department, or any of its officers, employees, servants, agents or Transactions Advisors of any nature whatsoever, or where such claim is based on the content of, or any omission from, this document of any nature whatsoever.

2. DEFINITIONS AND INTERPRETATION

2.1 In this RFQ, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings

- 2.1.1 **"Accounting Officer"** the accounting officer of the Department as mentioned in section 36 of the Public Finance Management Act;
- 2.1.2 **"Advisors"** any advisor to any Bidder, Members, Contractors, Key Equipment Suppliers or any other participants in any Response;
- 2.1.3 **"Affordability"** has the meaning as defined in Regulation 16 of the Treasury Regulations;
- 2.1.4 **"Amended B-BBEE Codes"** the amended B-BBEE Codes of Good Practice issued under Government Gazette No. 36928 on 10 October 2013 in terms of section 9(1) of the B-BBEE Act;
- 2.1.5 **"B-BBEE"** Broad Based Black Economic Empowerment;
- 2.1.6 **"B-BBEE Act"** the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.1.7 **"BAFO"** the best and final offer stage as contemplated in section 10.2.5 of Part A of this RFQ (*General Information, Requirements and Rules*);
- 2.1.8 **"Bid Adjudication Committee"** the committee referred to in section 41.4.2 of Part A (*General Information, Requirements and Rules*) of this RFP;

2.1.9	"Bidder"	a Bidder, who having received an RFP, responds thereto by submitting a Proposal to undertake the Project;
2.1.10	"Bid Evaluation Committee"	the committee referred to in section 41.4.1 of Part A (<i>General Information, Requirements and Rules</i>) of this RFP;
2.1.11	"Black Enterprise"	a legal entity with fifty one percent (51%) or more of its equity owned by Black People, participation in its board of directors controlled by Black People and in which Black People are entitled to at least fifty one percent (51%) Exercisable Voting Rights and Economic Interest;
2.1.12	"Black People"	natural persons who are Africans, Coloureds or Indians, limited to those who are citizens of South Africa by birth or descent or are citizens of South Africa by naturalisation and who would have qualified for such naturalisation prior to 27 April 1994. "Black Person" has a corresponding meaning;
2.1.13	"BMA"	the Border Management Authority, to be established pursuant to the promulgation of the Border Management Authority Bill, 2016;
2.1.14	"Briefing Note"	any document issued in writing by the Department that amends or supplements this RFQ in any way;
2.1.15	"Broadband Connectivity Criteria"	the criteria contained in Volume 1 (<i>Qualification Criteria</i>) of Part B (<i>Qualification Criteria and Response</i>)

Forms) of this RFP;

- 2.1.16 **"Business Day"** a day, other than a Saturday or a Sunday or an official public holiday in South Africa;
- 2.1.17 **"Commercial Close"** the date of execution of the PPP Agreement;
- 2.1.18 **"Company"** a private company incorporated in South Africa, in terms of the relevant Companies Act;
- 2.1.19 **"Companies Act"** the Companies Act, 2008 (Act No. 71 of 2008), and where relevant, applicable provisions of the Companies Act, 1973 (Act No. 61 of 1973);
- 2.1.20 **"Compliant Response"** a complete Response that is in the format set out in section 2.5 (*Format of the Responses*) of Part B (*Qualification Criteria and Response Forms*) of the RFQ and meets or exceeds the threshold requirements in respect of every applicable Qualification Criterion in Volume 1 (*Qualification Criteria*) of Part B (*Qualification Criteria and Response Forms*) of the RFQ, including in respect of all of the sub-criteria which are set out under each of the categories of the Qualification Criteria. **"Compliant Respondent"** has a corresponding meaning;
- 2.1.21 **"Consents"** all consents, permissions, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings,

decisions, licences, required to be issued by or made with any responsible authority in connection with the performance of the Project, including Environmental Consents;

2.1.22	"Constitution"	Constitution of the Republic of South Africa, 1996;
2.1.23	"Contractors"	any potential contractor directly engaged or to be directly engaged by the Private Party to undertake the whole or any part of the Project currently anticipated to be the design, construction, operations and maintenance of the Ports of Entry;
2.1.24	"Debt"	any finance that is not Equity Finance;
2.1.25	"Department"	the Department of Home Affairs of the Government of South Africa or any successor department designated by the Government of South Africa from time to time;
2.1.26	"EAPASA"	the Environmental Assessment Practitioners Associations of South Africa appointed in terms of section 24H(3)(a) and (6) of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
2.1.27	"Economic Development"	the development of specific categories of people, enterprises and communities and/or economic sectors by reference to localisation, job creation and B-BBEE;
2.1.28	"Economic Development Qualification Criteria"	the criteria contained in Volume 1

(Qualification Criteria) of Part B (Qualification Criteria and Response Forms) of this RFP;

- 2.1.29 **"Economic Interest"** a claim against an enterprise representing a return on ownership of the enterprise similar in nature to a dividend right, measured using the Flow Through Principle;
- 2.1.30 **"ECSA"** the Engineering Council of South Africa;
- 2.1.31 **"EME"** Exempt Micro Enterprise as defined in the B-BBEE Act, 2003 (Act No. 53 of 2003);
- 2.1.32 **"Environmental Consents"** any consents, licences, authorisations, permissions or approvals required from any organ of state in the local, provincial or national sphere of government or any regulatory agency required in terms of any environmental law or heritage law for the development, construction or operation and maintenance of the Project in South Africa;
- 2.1.33 **"Environmental Impact Assessment"** the systematic process of identifying, assessing and reporting environmental impacts associated with an activity and includes basic assessment, the scoping and environmental impact reporting process contemplated in regulations 21 to 24 of the Environmental Impact Assessment Regulations;
- 2.1.34 **"Environmental Impact Assessment Regulations"** the Environmental Impact Assessment Regulations published under GNR 10328

in Government Gazette 38282 of 4 December 2014, in terms of the National Environmental Management Act;

- 2.1.35 **"Equity Finance"** funding by way of issued share capital or member loans provided to a Company by its shareholders;
- 2.1.36 **"Exercisable Rights"** **Voting** means a voting right attaching to an equity instrument of a participant measured using the Flow Through Principle, that is not subject to any limit other than limitations that may be subject to financing arrangements imposed by lenders providing financing for such equity instruments;
- 2.1.37 **"Financial Close"** for purposes of the RFP, means the date on which the Private Party, as the borrower under the financing agreements, has received confirmation that all suspensive conditions to the financing agreements have either been met to the relevant Lenders' satisfaction or have been appropriately waived by the Lenders;
- 2.1.38 **"Financial Qualification Criteria"** the criteria contained in Volume 1 (*Qualification Criteria*) of Part B (*Qualification Criteria and Response Forms*) of this RFQ;
- 2.1.39 **"Flow Through Principle"** the measurement of ownership in terms of which only rights held by natural persons are considered for such measurement and, in respect of rights of ownership held in a measured entity

through a juristic person, then the rights of ownership held by Black People in that juristic person are considered for measurement. The measurement of ownership shall have regard to every tier of ownership in a multi-tiered chain of ownership until that chain ends with a Black Person holding ownership rights;

- 2.1.40 **"Government"** the Government of South Africa, and any of its departments, agencies or other entities that it manages or controls;
- 2.1.41 **"GTAC"** the Government Technical Advisory Centre, an agency of the National Treasury;
- 2.1.42 **"Guarantee"** an unconditional undertaking issued by an entity in connection with the Bidder's financial and performance obligations under the PPP Agreement;
- 2.1.43 **"Guarantor"** any person or entity either itself providing a Guarantee or providing the financial support required in order to obtain the issue of a Guarantee by a bank, in respect of the Bidder's financial and performance obligations under the Contract. Where there is more than one person or entity named as a Guarantor by the Bidder, the term "**Guarantor**" refers to each of them separately and all of them together
- 2.1.44 **"Immigration Act"** the Immigration Act, 2002 (Act No. 13 of 2002);

2.1.45	"Key Equipment"	risk management equipment or components of risk management equipment required for the functionality of the Port of Entry in respect of operations, which include but is not limited to weigh bridges, biometric scanners, cameras, e-gates;
2.1.46	"Key Equipment Supplier"	any entity or organisation engaged by the Bidder (and ultimately the Private Party), from time to time to supply Key Equipment to the Private Party;
2.1.47	"Law"	means:
2.1.47.1		the Constitution and any statute, ordinance, treaty, decree, proclamation or subordinate legislation or other legislative measure, including all national and provincial statutes and legislation and all municipal by-laws, as well as the common law and customary law and any judgment, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in South Africa; and
2.1.47.2		any present or future directive, requirement, instruction, request, order, condition of or limitation in any necessary approval, permission, permit, approval, consent, licence,

2.1.51.3		Kopfontein Port of Entry located within the borders of the Ramotshere Moiloa Local Municipality;
2.1.51.4		Lebombo Port of Entry located within the borders of the Nkomazi Local Municipality;
2.1.51.5		Maseru Bridge Port of Entry located within the borders of the Thabo Mofutsanyana District Municipality; and
2.1.51.6		Oshoek Port of Entry located within the borders of the Gert Sibande District Municipality;
2.1.52	"Member"	in relation to any Respondent, any legal entity and/or natural person which will become a Shareholder (either itself or through an intermediary entity) once the Private Party is incorporated to undertake the Project, and if the Private Party has already been incorporated, then any Shareholder;
2.1.53	"Minister"	the Minister of the Department, from time to time;
2.1.54	"Operations and Maintenance"	the operation and maintenance of the redeveloped infrastructure at the Ports of Entry;
2.1.55	"Optimisation Process"	the process referred to in section 11.1.1 of this Part A (<i>General Information, Requirements and Rules Information</i> ,

		<i>Requirements and Rules</i>) of the RFQ;
2.1.56	"Organ of State"	as defined in section 239 of the Constitution as - (a) any department of state or administration in the national, provincial or local sphere of government; or (b) any other functionary or institution— (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;
2.1.57	"PFMA"	the Public Finance Management Act, 1999 (Act No. 1 of 1999);
2.1.58	"Phase I RFP"	the Request for Proposals including the PPP Agreement issued by the Department for comment by Pre-qualified Bidders, as set out in section 10.2.1 of Part A (<i>General Information, Requirements and Rules</i>) of this RFQ;
2.1.59	"Phase II RFP"	the Phase II Request for Proposals including the PPP Agreement contemplated to be issued by the Department pursuant to section 10.2.4 of this Part A (<i>General Information, Requirements and Rules</i>) to solicit Proposals on the Project;
2.1.60	"Ports of Entry"	The land border posts being:
2.1.60.1		Beitbridge Port of Entry;

- 2.1.60.2 Ficksburg Port of Entry;
- 2.1.60.3 Kopfontein Port of Entry;
- 2.1.60.4 Lebombo Port of Entry;
- 2.1.60.5 Maseru Bridge Port of Entry;
and
- 2.1.60.6 Oshoek Port of Entry,

and Port of Entry can refer to any one of them;

- 2.1.61 **"PPP"** public private partnership as defined in Regulation 16 of the Treasury Regulations;
- 2.1.62 **"PPP Agreement"** the agreement to be entered into between the Private Party and the Department or the BMA, pursuant to the Project;
- 2.1.63 **"PPPFA"** the Preferential Procurement Policy Framework Act, 2000 (Act No. 1 of 2000);
- 2.1.64 **"PRASA"** the Passenger Rail Agency of South Africa, a company incorporated in South Africa and referred to in section 22 of the Legal Succession to the South African Transport Services Act, 2008 (Act No. 38 of 2008);
- 2.1.65 **"Preferential Procurement Regulations "** the Preferential Procurement Regulations published under GN R225 in Government Gazette 40553 of 20 January 2017, in terms of section 5(1) of the PPPFA;

2.1.66	"Preferred Bidder"	any Bidder that is selected by the Department as such and which, upon acceptance of such appointment, will conclude the PPP Agreement pursuant to the Project;
2.1.67	"Preferred Guarantee"	Bidder the guarantee to be provided by the Preferred Bidder to the Department, to be fully regulated in the RFP;
2.1.68	"Pre-qualified Bidder"	means a Respondent who, following evaluation of its Response, is selected to participate further in the procurement process, and to receive the RFP, upon payment of the RFP Document Fee;
2.1.69	"Private Party"	the Preferred Bidder who is awarded the right to undertake the Project and conclude the PPP Agreement;
2.1.70	"Project"	the proposed project for the design, redevelopment, finance, construction, operation and maintenance in support of the institutional function of the organs of state who have a presence at the Ports of Entry, commissioning of the Ports of Entry and providing broadband connectivity on a PPP basis to be awarded to the Preferred Bidder as one package for all the six (6) identified Ports of Entry;
2.1.71	"Project Awareness"	the criteria contained in Volume 1 (<i>Qualification Criteria</i>) of Part B (<i>Qualification Criteria and Response Forms</i>) of this RFP;

2.1.72	"Project Company"	the special purpose Company or group of Companies that a Bidder proposes using as the vehicle to undertake the Project;
2.1.73	"Project Deliverables"	the Works and Services;
2.1.74	"Project Officer"	the person referred to in section 26.1.4 of Part A (<i>General Information, Requirements and Rules</i>) of the RFQ;
2.1.75	"Proposal"	the bid submitted by a Bidder in response to the RFP;
2.1.76	"Proposal Guarantee"	the guarantee to be provided by the Bidders to the Department on the Proposal Guarantee Submission Date;
2.1.77	"Proposal Guarantee Submission Date"	the submission date to be provided in the RFP, for the submission of the Proposal Guarantee;
2.1.78	"Proposal Submission Date"	the submission date for the submission of Proposals to the RFP;
2.1.79	"Public Finance Management Act"	Public Finance Management Act, 1999 (Act No. 1 of 1999);
2.1.80	"QSE"	Qualifying Small Enterprise as defined in the B-BBEE Act, 2003 (Act No. 53 of 2003);
2.1.81	"Qualification Criteria"	the qualification criteria set out in Part B (<i>Qualification Criteria and Response Forms</i>) of this RFQ;
2.1.82	"Related"	a relationship formed on the basis of any 1 (one) or more of (i) family (including spouses and in-laws), (ii) friendship,

(iii) business acquaintance, (iv) professional engagement, or (v) employment;

- 2.1.83 **"Reserve Bidder"** any Bidder that has not been designated as the Preferred Bidder but has been selected by the Department as an entity which can designate a Project Company with which the Department may possibly conclude the PPP Agreement;
- 2.1.84 **"Respondent"** means any entity or consortium that submits a Response, which is anticipated to be a consortium of legal entities, that wish to be pre-qualified to submit a Proposal in terms of the RFP;
- 2.1.85 **"Response"** a response submitted by a Respondent in response to this RFQ;
- 2.1.86 **"Response Submission
Date"** the submission date referred to in section 12.3 of this Part A (*General Information, Requirements and Rules*) of this RFQ for the submission of the Responses;
- 2.1.87 **"Responsible
Authority"** any ministry or department, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, institution, entity, service 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. Responsible Authorities shall have a corresponding meaning;

2.1.88	"RFP"	Phase I RFP and Phase II RFP, including the PPP Agreement;
2.1.89	"RFP Document Fee"	the fee referred to in section 12.2.1 of Part A (<i>General Information, Requirements and Rules</i>) of the RFQ;
2.1.90	"SACAP"	the South African Council for the Architectural Profession;
2.1.91	"SACNASP"	the South African Council for Natural Scientific Professionals which recognises and registers natural scientific practitioners;
2.1.92	"SACPCMP"	The South African Council for Project and Construction Management Profession;
2.1.93	"SACQSP"	the South African Council for Quantity Surveyors;
2.1.94	"SANRAL"	South African National Roads Agency SOC Limited, a company incorporated in South Africa in terms section 2 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);
2.1.95	"Sector Code"	a code designated as such, and issued in terms of section 9(1) of the B-BBEE Act, developed by major stakeholders in a particular industry;
2.1.96	"Services"	the operation, maintenance, site and facilities management services to be provided by, or on behalf of the Private Party to the Department, to ensure that the Ports of Entry are fully functional in

of 20 February 2007, in terms of section 76(1) of the PFMA;

- 2.1.103 **"Unitary Payment"** amount (as a cost to the Department and derived from commercial users, as applicable), to be paid by Department to the Private Party for the delivery of the Project Deliverables in terms of the PPP Agreement set up as a single, split or whole payment for the full Services requirement; subject to the provisions of the PPP Agreement;
- 2.1.104 **"Value for Money"** the provision of the Project deliverables (including the use of state property) by a Private Party in terms of the PPP Agreement which results in a net benefit to the Department in terms of cost, quality, quantity, risk transfer or a combination thereof by using the strategy intended to achieve the best life cycle cost of the design, construction and operation of the Ports of Entry;
- 2.1.105 **"VAT"** value-added tax levied in terms of the VAT Act;
- 2.1.106 **"VAT Act"** the Value-Added Tax Act, 1991 (Act No. 89 of 1991), as amended or replaced from time to time; and
- 2.1.107 **"Works"** the design, construction, fitting out, installation, broadband connectivity and commissioning of works to be undertaken by, or on behalf of the Private Party in respect of the Project, to enable it to meet the output specification and

- jurisdiction, be interpreted in relation to that party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 2.2.11 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 2.2.12 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;
- 2.2.13 the rule of construction that the RFQ be interpreted against the party responsible for its drafting or preparation shall not apply; and
- 2.2.14 unless otherwise specified, all references to any time shall be to the time of day in Pretoria, South Africa.
- 2.3 The expiration or termination of this RFQ shall not affect the provisions of this RFQ 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.

3. INTRODUCTION

3.1 The Department is one of several organs of state which have a legislative mandate and/or presence in the border control environment at the Ports of Entry. The mandates of the organs of state include, inter alia, immigration control, phyto-sanitary and bio-security control, customs, investigating and combating crime, managing the provision of infrastructure and coordinating intelligence activities.

3.2 Below is a list of key organs of state with a mandate related to border management activities at the Ports of Entry:

3.2.1 the Department of Agriculture, Forestry and Fisheries, has a mandate at the Ports of Entry in relation to the importation of animals, plants and products and other products which can carry pests, diseases and other bio-security threats, which could harm the South African agricultural industry, the environment and society. The Department of Agriculture, Forestry and Fisheries also have the mandate to erect and maintain an international animal disease fence, which is located along the borderline with the Republic of Botswana, Kingdom of Lesotho, Republic of Mozambique, Republic of Namibia, Kingdom of Swaziland and the Republic of Zimbabwe. The mandate of the Department of Agriculture, Forestry and Fisheries is exercised in terms of legislation which includes the Animal Diseases Act, 1984 (Act No. 35 of 1984), the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947), the Liquor Products Act, 1989 (Act No. 60 of 1989), Meat Safety Act, 2000 (Act No. 40 of 2000) and the Plant Improvement Act, 1976 (Act No. 53 of 1976);

3.2.2 the Department of Environmental Affairs has regulatory responsibilities in respect of Ports of Entry. The Department of Environmental Affairs regulates, monitors and controls cross border movement of tourists within the trans-frontier conservation areas, indigenous and endangered plants and animals and hazardous and dangerous materials;

3.2.3 the Department of Health is mandated to provide Port Health Services at all designated Ports of Entry into South Africa. The Department of Health is responsible for the control and regulation of the cross-border movement of medication and other health care products, the prevention and control of cross-border transmission of contagious communicable diseases and the

mitigation of any health risks associated with cross-border movement. The National Health Act, 2003 (Act No. 62 of 2003) assigns the responsibility to facilitate and promote the provision of Port Health Services to the Provincial Departments of Health. The Department of Health describes its border management activities as providing Port Health Services in order to protect the citizens of South Africa and travellers from any public health risks associated with international travel and trade and they aim to prevent and protect against, control and provide a public health response to the international spread of diseases with minimum interference with international traffic and trade. The key pieces of legislation and international regulations relevant to port health officials include the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No 54 of 1972), Hazardous Substances Act, 1972 (Act No 15 of 1972), International Health Regulations (2005); Medicine and Related Substances Control Act, 1965 (Act No. 101 of 1965), National Health Act, 2003 (Act No. 61 of 2003), and the Tobacco Products Control Act, 1993 (Act No. 83 of 1993);

3.2.4 the Department of Home Affairs' mandate is to facilitate and regulate the secure movement of persons through the ports of entry into and out of South Africa, confirm and provide enabling documents to foreign visitors legally residing within South Africa, enforcing immigration legislation and effect deportations, determine the status of asylum seekers, regulate refugee affairs and contribute towards realising a positive skills migration trend into South Africa. The Department's mandate in respect of immigration services is informed by legislation, policies and national strategic plans, which include, inter alia, the Constitution and the Immigration Act. According to the Immigration Act, section 9A provides that the Minister has the authority to designate any place in the Republic, which complies with the prescribed requirements, where all persons have to report before they may enter, sojourn or remain within, or depart from, South Africa. The Department of Home Affairs bears both a regulatory and implementation responsibilities in respect to the control of cross-border human movement and derives its mandate from the Immigration Act and the Refugee Act, 1998 (Act No 130 of 1998);

3.2.5 the Department of International Relations and Cooperation is entrusted with the formulation, promotion and execution of South Africa's foreign policy.

The legislative mandate of the Department of International Relations Cooperation is derived from the African Renaissance and International Cooperation Fund Act, 2001 (Act No. 51 of 2001) which established an African Renaissance and International Cooperation Fund to enhance cooperation between the Republic and other countries, in particular African countries, through the promotion of democracy, good governance, the prevention and resolution of conflict, socio-economic development and integration, humanitarian assistance and human resource development. International Agreements (Multilateral and Bilateral), the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001) which provides for the immunities and privileges of diplomatic missions and consular posts and their members, of heads of states, special envoys and certain representatives of the United Nations and its specialised agencies, and other international organisations and of certain other persons. Provision is also made for immunities and privileges pertaining to international conferences and meetings. It enacts into law certain conventions and provides for matters connected therewith, the Foreign States Immunities Act, 1981 (Act No. 87 of 1981) which regulates the extent of the immunity of foreign states from the jurisdiction of the courts of the Republic and provides for matters connected therewith and international agreements concluded by South Africa in terms of sections 231(2) and 231(3) of the Constitution;

3.2.6 the Department of Public Services and Administration draws its mandate from section 195(1) of the Constitution which sets out basic values and principles that the public service should adhere to and the Public Service Act, 1994 (Act No 103 of 1994). The Department of Public Service and Administration is responsible for establishing norms and standards relating to; the functions of the public service, organisational structures and establishments of departments and other organisational and governance arrangements in the public service; labour relations, conditions of service and other employment practices for employees; the health and wellness of employees, information management; electronic government in the public service; integrity, ethics, conduct and anti-corruption, and transformation, reform, innovation and any other matter to improve the effectiveness and efficiency of the public service and its service delivery to the public;

- 3.2.7 the Department of Public Works is mandated with the management, provision and maintenance of accommodation (operational and residential) and required infrastructure in order to support border control operations at land ports of entry. The Department of Public Works has regulatory and implementation responsibilities in respect of infrastructure at land ports of entry. The Department of Public Works contributes to the provision of targeted fencing and patrol roads along the borderline. The mandate of the Department of Public Works stems from the Government Immovable Asset Management Act, 2007 (Act No 19 of 2007);
- 3.2.8 the Department of Tourism is mandated to create conditions for the sustainable growth and development of tourism in South Africa. The Tourism Act, 2014 (Act No. 3 of 2014) makes provision for the promotion of tourism to and in the Republic and for regulation and rationalisation of the tourism sector, including measures aimed at the enhancement and maintenance of the standards of facilities and services utilised by tourists; and the co-ordination and rationalisation of the activities of those who are active in the tourism sector.;
- 3.2.9 the Department of Trade and Industry is mandated to facilitate the transformation of the economy to promote industrial development, investment, competitiveness and employment creation, to build mutually beneficial regional and global relations to advance South Africa's trade, industrial policy and economic development objectives, facilitate broad-based economic participation through targeted interventions to achieve more inclusive growth, create a fair regulatory environment that enables investment, trade and enterprise development in an equitable and socially responsible manner; and promote a professional, ethical, dynamic, competitive and customer-focused working environment that ensures effective and efficient service delivery;
- 3.2.10 the Department of Transport is mandated to maintain fairness and equity in all operations conducted by the Department of Transport and to strive for quality and affordable transport for all, stimulate innovation in the transport sector, and to ensure transparency, accountability and monitoring of all operations. The Department of Transport is closely linked to the Cross Border Road Transport Agency ("C-BRTA") which mandated to regulate

access to the market by the road transport freight and passenger industry in respect of cross-border road transport by issuing of permits, and to facilitate the unimpeded flow of passenger and freight movements by road across the borders of South Africa to contribute to the social and economic development initiatives as announced by Government. The C-BRTA promotes regional integration through progressive market freight liberalisation; the establishment of cooperative and consultative relationships and structures; improving safety, security, reliability, quality of cross-border road transport; ensuring informed decision-making and policy development and enhancing the capacity of the public sector in its strategic planning and monitoring functions;

3.2.11 National Treasury's legislative mandate is based on Chapter 13, Section 216(1) of the Constitution, which calls for the establishment of a national treasury to ensure transparency, accountability and sound financial controls in the management of the country's public finances. This role is further elaborated in the PFMA. The department is mandated to promote the national government's fiscal policy and the coordination of macroeconomic policy; ensure the stability and soundness of the financial system and financial services; coordinate intergovernmental financial and fiscal relations; manage the budget preparation process; and enforce transparency and effective management in respect of revenue and expenditure, assets and liabilities, public entities and constitutional institutions. The Minister of Finance is responsible for the financial management of government affairs, drawing up the budget, and developing economic policy and responsible for the South African Revenue Services ;

3.2.12 the South African National Defence Force derives its mandate from Section 200 of the Constitution, which provides that the primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force. The South African National Defence Force is entrusted with borderline responsibilities to protect the territorial integrity and sovereignty of South Africa and supporting other departments and complying with international obligations. The primary piece of legislation is the Defence Act, 2002 (Act No. 42 of 2002);

- 3.2.13 the South African Revenue Services is mandated to collect all revenue due, to ensure maximum compliance with tax and customs legislation and to provide customs services that will maximise revenue collection, protect our borders and facilitate trade. The South African Revenue Services is responsible for the regulation of all movement of goods through all ports of entry in South Africa and provides for the prevention and detection of contraband substances and currency. The South African Revenue Services bears both regulatory and implementation responsibilities with respect to cross-border movement of goods. The South African Revenue Services has a permanent presence at the 40 ports of entry but retains custom oversight over those ports of entry where it is not permanently stationed should cargo ever be required to move through them under exceptional circumstances and with the prior approval of the South African Revenue Services. The mandate of the South African Revenue Services is derived from the Customs and Excise Act, 1964 (Act No. 91 of 1964); and
- 3.2.14 the State Security Agency which is mandated to provide the government with intelligence on domestic and foreign threats or potential threats to national stability, the constitutional order, and the safety and wellbeing of the people of South Africa.
- 3.3 In addition to the above, in June 2013, the Cabinet of South Africa resolved to establish a Border Management Authority (hereinafter referred to as the BMA) under the leadership of the Department, to facilitate the movement of goods and people, under the following guiding principles, that the:
- 3.3.1 BMA should be responsible and accountable for the entire border environment;
- 3.3.2 role of the BMA should be to ensure co-ordination, collaboration, oversight, control and effective management at the Ports of Entry; and
- 3.3.3 establishment of the BMA can be achieved through integrated systems and co-operation within an appropriate legal framework that specifies roles and responsibilities.

- 3.4 The enabling legislation for the establishment of the BMA is undergoing the parliamentary process and has to date been approved by the National Assembly. The BMA Bill is currently pending the consideration of the National Council of Provinces, and once it has been considered by the National Council of Provinces, it will be returned to the National Assembly for final consideration and approval and referral to the president for assent and signature into an Act of parliament. This process is envisaged to be finalised by the end of May 2018.
- 3.5 The purpose of the establishment of the BMA is to enable South Africa to balance the facilitation of legitimate trade and travel while simultaneously addressing the associated security risks.
- 3.6 Pursuant to its mandate, the Department currently administers immigration related services at seventy-two (72) land, sea and air ports of entry throughout South Africa and is the lead department in the procurement of the Project.
- 3.7 Some of these ports were designed prior to the democratic dispensation when their purpose was to restrict movement to and from neighbouring African countries and to bypass international trade embargoes imposed on the apartheid regime and not necessarily to enable trade with neighbouring countries.
- 3.8 Prior to South Africa becoming a democratic state in 1994, the ports were not able to cope with the volumes of people and goods moving through them, which had a significant negative impact on the economy of the country.
- 3.9 Subsequent to South Africa becoming a democratic state, there has been greater focus on developing intra-regional trade, including the North-South Corridor Road/Rail Project (which, in relation to this Project, has an impact on the Beitbridge Port of Entry between South Africa and the Republic of Zimbabwe), which is defined as a multi-modal (road, rail and ports) trans-continental interconnector, ultimately connecting Cape Town in the south and Cairo in the north. South Africa is a supporter of this initiative which will involve numerous countries (South Africa, United Republic of Tanzania, Republic of Botswana, Republic of Malawi, Republic of Mozambique, Republic of Zambia and Republic of Zimbabwe), and regional economic communities. The project entails several components, all of which are in various stages of the development lifecycle. These include road, rail, bridge, ports of entry and energy projects. In the short term, one thousand and forty one kilometres (1 041km) of road must be upgraded, with another five thousand one

hundred and fifty six kilometres (5 156km) of roadworks due for upgrading in the next two (2) to five (5) years. The corridor will ensure easy border crossing for both people and goods and will increase the efficiency and capacity of the transport sector. It is anticipated that this, in turn, will speed up regional integration and will increase regional trade, while leading to cost savings.

- 3.10 In its 2015-2020 strategic plan, the Department set out to:
- 3.10.1 explore and implement innovative ways to physically revamp South Africa's ports of entry to better facilitate trade and revenue, national security as well improve the experience of visitors to the country, particularly visitors from the rest of the continent; and
 - 3.10.2 ensure that, over the planning period, the Department puts in place the people, systems and infrastructure needed for it to play an effective role in support of national priorities and programmes. The objectives of the Department support improved and effective ports of entry through the promotion of:
 - 3.10.2.1 the efficient movement of people and goods across ports of entry;
 - 3.10.2.2 the correct administration of persons entering and leaving South Africa; and
 - 3.10.2.3 investment in infrastructure as an enabler of a secure and efficient port of entry service.
 - 3.11 Consequently, the Minister has designated the six (6) identified Ports of Entry for redevelopment. In addition to infrastructural interventions, the redevelopment of the Ports of Entry will also include the modernisation and digitisation of the border management and information technology systems at the Ports of Entry. As far as possible, the Department wishes to explore the integration and interoperability of the different organs of states' systems, in accordance with an integrated border management model.
 - 3.12 The Project is being developed on the basis that commercial users will be charged a fee when using the redeveloped Ports of Entry. These user fees will fund the redevelopment and operations of the Ports of Entry. The user fee structure, as well as the applicable unitary payment mechanism will be confirmed in the Phase I RFP.

3.13 **Other Key Stakeholders**

3.13.1 **Southern African Development Community ("SADC")**

SADC is the body that facilitates the implementation of SADC programmes and activities to meet its objectives and overall goal of poverty eradication and regional integration. The mission of SADC is to provide strategic expertise and co-ordinate the harmonisation of policies and strategies to accelerate regional integration and sustainable development. SADC states in the SADC Consolidated Treaty that it shall encourage the people of the region to take initiatives to develop economic, social and cultural ties across the region and to participate fully in the implementation of the programmes and projects of SADC.

3.13.2 **SANRAL**

SANRAL has a distinct mandate which stems from the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) to finance, improve, manage and maintain the national road system of South Africa and take charge, amongst others, of the development, maintenance and rehabilitation of national roads within the framework of government policy.

3.13.3 **Transnet Freight Rail**

The mandate of Transnet Freight Rail (which is a division within Transnet) is to assist in lowering the cost of doing business in South Africa, enabling economic growth and ensuring security of supply through providing appropriate port, rail and pipeline infrastructure in a cost-effective and efficient manner, within acceptable benchmarks. The Project will have an impact on the planning of Transnet at the Beitbridge Port of Entry in that the current Port of Entry comprises of a railway line that is under the custodianship of Transnet.

3.13.4 **PRASA**

The main objective of PRASA is to ensure that rail commuter services are provided within, to and from South Africa in the public interest, and to provide, in accordance with the Department of Transport, for long haul

passenger rail and bus services within, to and from South Africa in terms of the principles set out in section 4 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000). The redevelopment of the Ports of Entry may have an impact on the strategic plans of PRASA in respect of rail commuting services across the country especially within routes in the proximity of the six (6) identified Ports of Entry.

3.13.5 **Municipalities**

The municipalities within which the Ports of Entry are situated are the Musina Local Municipality, Setsoto Local Municipality, Ramotshere Moiloa Local Municipality, Nkomazi Local Municipality; Thabo Mofutsanyana District Municipality and the Gert Sibande District Municipality which are mandated to provide for, *inter alia* spatial development framework, processes for rezoning applications as well as the approvals of integrated development and structure plans.

4. **INVITATION**

- 4.1 The Department hereby invites any interested legal entities, with the relevant competencies, capacity and experience to submit Responses to be selected as Pre-qualified Bidders for the Project.
- 4.2 The Department has identified six (6) Ports of Entry for the design, redevelopment, finance, construction, operation and maintenance of the Ports of Entry and providing broadband connectivity on a PPP basis.
- 4.3 Respondents are required to demonstrate their capacity and capability to undertake the design, redevelopment, finance, construction, operation and maintenance of the Ports of Entry and provision of broadband connectivity.
- 4.4 The Department anticipates the inclusion of staff housing in the Project and will undertake a feasibility study on this aspect. The outcome of the feasibility study will be communicated during the period between the issuance of the Phase I RFP and the Phase II RFP. Respondents should take note that the staff housing aspect of the Project will at that RFP stage require Respondents to augment their consortia to comply with the staff housing requirements to demonstrate their experience, capability, capacity, and the ability to raise the required funding respectively. Respondents must note that there are no qualification requirements

for staff housing at this RFQ stage.

4.5 This RFQ process constitutes the first formal step in the procurement process for the Project. The outcome of this first formal step will be the selection of Pre-qualified Bidders.

4.6

5. PURPOSE OF RFQ

5.1 The purpose of this RFQ is to:

5.1.1 solicit Responses from experienced and committed legal entities who wish to be pre-qualified and in due course be given the opportunity to submit Proposals in respect of the Project.

5.1.2 procure a Preferred Bidder to execute the Project which will be undertaken in three (3) stages, namely:

5.1.2.1 the first stage being the Pre-qualification stage;

5.1.2.2 the second stage being the Optimisation Process of the Phase I RFP where a RFP suite of documents will be released to the Pre-qualified Bidders to submit written comments to the Phase I RFP documents and PPP Agreement; and

5.1.2.3 the third stage being the Request for Proposals stage, namely the Phase II RFP, which will entail the optimisation of the RFP suite of documents taking into consideration the Pre-qualified Bidders inputs to the Phase I RFP documents and any clarification process thereto. This RFP stage will culminate in the release of the Phase II RFP documents, and soliciting Proposals from Pre-qualified Bidders.

5.1.3 The Phase II RFP process may include, at the discretion of the Department, a BAFO stage.

5.2 Responses to this RFQ (unless rejected in accordance with the provisions of this RFQ) will be evaluated to produce a shortlist of Pre-qualified Bidders (based on the Qualification Criteria (and any other criteria as set out in this RFQ)) who will then be issued with an RFP in due course, inviting them to submit Responses. A

Preferred Bidder will then be selected who will conclude the PPP Agreement with the relevant counterparties in order to implement the Project. The Department reserves the right to appoint a Reserve Bidder.

- 5.3 This RFQ has, therefore, been prepared and issued for the following purposes:
 - 5.3.1 to set out the rules of participation, in response to the RFQ, for the Project;
 - 5.3.2 to set out the framework for the procurement process and timeframes for the procurement process;
 - 5.3.3 to provide information about the Project and guidance to the Respondents so as to allow them to prepare Responses pursuant to the RFQ;
 - 5.3.4 to enable the Department to determine those Responses that comply with the Qualification Criteria contained in Part B (*Qualification Criteria and Response Forms*) of this RFQ;
 - 5.3.5 to identify and shortlist Pre-qualified Bidders who will be invited to submit Proposals in response to the RFP; and
 - 5.3.6 to provide details of any further aspects of the Project.

6. STRUCTURE OF THE RFQ

- 6.1 The structure of the RFQ is as follows:
 - 6.1.1 Part A (*General Information, Requirements and Rules*) which provides general information to the Respondents and includes, *inter alia*, general information about the Project, glossary of defined terms used in this RFQ, Project scope and structure, the purpose of the Project and the terms and conditions in terms of which each Respondent is required to submit its Response, including the explanation of and background to the procurement process;
 - 6.1.2 Part A - Volume 1 (*Project Information*) contains the Treasury Approval I letter that has been included with this RFQ in order to provide background information to the Respondents;

- 6.1.3 Part B (*Qualification Criteria and Response Forms*), which includes Volume 1 (*Qualification Criteria*) and Volume 2 (*Response Forms*) of the RFQ, provides for the qualification requirements regarding the submission of Responses and details regarding the required format of each Response;
- 6.1.3.1 Part B - Volume 1 (*Qualification Criteria*) contains all the requirements for the Project, which must be complied with by the Respondent in order for a Response to be considered a Compliant Response;
- 6.1.3.2 Part B - Volume 2 (*Response Forms*) contains the response forms and the returnable schedules which must be submitted by the Respondents with their Responses; and
- 6.1.4 Part C- Scoring and Ranking of Compliant Responses.
- 6.2 This Part A (*General Information, Requirements and Rules*) is issued as part of the suite of documents that form part of the RFQ and as such, the RFQ should be read in all of its parts.
- 6.3 Respondents must pay specific attention to Part B (*Qualification Criteria and Response Forms*) and in particular ensure that they provide all of the information required to be submitted in Volume 1(*Qualification Criteria*) and Volume 2 (*Response Forms*) of Part B (*Qualification Criteria and Response Forms*) of this RFQ.

7. PROJECT BACKGROUND INFORMATION AND DESCRIPTION

7.1 Objectives of the Project

- 7.1.1 The primary goal of the Project procurement process is to conclude a PPP Agreement with the Bidder which the Department has determined as best able to deliver the Project Deliverables and to achieve the strategic objectives of the Department through the Project.
- 7.1.2 The strategic objectives of the Project are to:
- 7.1.2.1 develop modern (state of the art), cost-effective and efficient Ports of Entry that:
- 7.1.2.1.1 are in line with global best practice;

- 7.1.2.1.2 are based on an optimal balance between infrastructure and technology interventions;
- 7.1.2.1.3 enable the organs of state to efficiently carry out their mandates and protect their interests at the Ports of Entry; and
- 7.1.2.1.4 facilitate regional trade;
- 7.1.2.2 determine prospects for socio-economic development and job creation that can be implemented for the communities surrounding the Ports of Entry;
- 7.1.2.3 determine the institutional mechanisms to be put in place to implement the project;
- 7.1.2.4 develop a land Port of Entry redevelopment model that can be applied across other land ports with minor modification;
- 7.1.2.5 develop an integrated border management approach for Ports of Entry;
- 7.1.2.6 develop the Ports of Entry taking into account the corridor development initiative; and
- 7.1.2.7 balance four (4) policy imperatives, which include:
 - 7.1.2.7.1 economic development;
 - 7.1.2.7.2 national security;
 - 7.1.2.7.3 efficient management of people; and
 - 7.1.2.7.4 human rights and humanitarian approach to dealing with people.
- 7.1.3 Further objectives of this Project include:
 - 7.1.3.1 the redevelopment of the six (6) identified Ports of Entry in order to provide efficient cross-border services for the movement of persons and goods from South Africa in a manner as will generate the fees which will support the envisioned financing;

- 7.1.3.2 the replacement and/or upgrading of existing infrastructure, the acquisition of additional land, the development and implementation of an information technology system with broadband connectivity that provides for optimal interoperability at each Port of Entry, where such interoperability is extended to all relevant stakeholders;
- 7.1.3.3 subject to the feasibility study currently being undertaken by the Department on staff housing, the provision of staff housing at or within close proximity to the Ports of Entry;
- 7.1.3.4 the maintenance and operation of all redeveloped infrastructure over the term of the PPP Agreement, and
- 7.1.3.5 the facilitation of the development of one stop border posts where appropriate.
- 7.1.4 An essential part of the required support infrastructure is having a border management environment which reflects the character and image of the organs of state which have a presence at the Ports of Entry and the mandate and identity of the BMA in future, encourages and supports effective and efficient delivery of the relevant services, caters for the needs of staff and reflects the relevant organs of state which have a presence at the Ports of Entry as people-orientated organisations. The environment must support and enhance the value chain for delivery and improve service delivery to its clients.
- 7.1.5 The Project is also planned to actively promote a range of Government's and Department's objectives in the transition period while the BMA is being established. The key priorities include the promotion of job creation, development of QSEs and EMEs, private sector participation and transformation.
- 7.1.6 In addition to the overall objectives of the Project, a number of specific Project goals have been identified. In their Responses, Respondents are required to demonstrate how they intend to address each of the specific Project goals. They are:
- 7.1.6.1 procurement of a cost effective, consolidated and compliant working environment within an optimal project structure;

- 7.1.6.2 ensuring the continuity of port of entry operations during the construction period and safe and efficient transitional arrangements;
- 7.1.6.3 achievement of a successful long term strategic partnership between the Department and the Private Party;
- 7.1.6.4 maximising and entrenching the optimal involvement of Black People, Youth and Local Communities in the entire life-cycle of the Project, meeting and exceeding the Department's Economic Development requirements and promoting sustainable local economic development;
- 7.1.6.5 successful management of key stakeholder relationships in the preparation and implementation of the Project;
- 7.1.6.6 achieving Financial Close within the shortest possible timeframe after Commercial Close;
- 7.1.6.7 successful achievement of the output specifications and Service standards which will be developed for the Project in the RFP and underpin the funding model for the Project;
- 7.1.6.8 creation of jobs during both the construction phase and sustainable jobs during the operational phases of the Project, for example, through the utilisation of labour intensive construction methods; and
- 7.1.6.9 achievement of appropriate risk transfer to the Private Party and real Value for Money for the Department.

7.2 **Staff Housing**

- 7.2.1 The Port of Entry staff assessment and staff requirements were based on the operating model developed for the BMA. In order to achieve the agreed service delivery standards and the desired service improvements at each of the Ports of Entry, the deployment of the right level and number of staff is key.
- 7.2.2 The provision of staff housing infrastructure plays a vital role in the success of the Project and has underpinned the Department's decision that staff housing must form part of the Project.

- 7.2.3 The adequacy of the current staff housing should be assessed in line with the overall modernisation of the Ports of Entry. It must be noted that the provision of staff housing will differ at each Port of Entry and will depend on a number of factors, including, but not limited to the following:
- 7.2.3.1 guiding principles of the organs of state with a presence at the Ports of Entry on the type of accommodation to be provided for their staff members and the required layout and design principles;
 - 7.2.3.2 the number of staff members to be deployed at the Ports of Entry, and the required arrangements for seasonal employees over peak travelling periods;
 - 7.2.3.3 the impact on town planning, proximity to urban centres, integration with the local communities and access to transportation, schools, churches, healthcare, shopping centres etc;
 - 7.2.3.4 the current state of staff housing infrastructure at the Ports of Entry;
 - 7.2.3.5 topography surrounding the Ports of Entry and suitable and available land; and
 - 7.2.3.6 the requirements of the BMA operating model on staff housing.
- 7.2.4 The Department is currently undertaking a feasibility study on staff housing for the six (6) identified Ports of Entry.

7.3 **Broadband Connectivity**

- 7.3.1 There is a requirement for the establishment of stable and sustainable fibre optic broadband connectivity to the six (6) identified Ports of Entry with active redundancy to enable the efficient transfer of data between the localised Port of Entry applications and/or systems and central applications and/or systems for all organs of state operating at the Ports of Entry.
- 7.3.2 The broadband connectivity shared among all organs of state operating at the Ports of Entry should receive guaranteed connection speeds with their appropriate security policy and operating protocols in place for each organ of state. There is a need to have adequate line monitoring and redundancy to ensure the required service uptime. There is also a requirement for

support and maintenance for the broadband connectivity infrastructure and equipment.

7.4 Number of Packages which a Bidder can win

The Department intends to appoint one (1) Preferred Bidder to undertake the design, redevelopment, finance, construction, operation, maintenance and provision of broadband connectivity at the six (6) identified Ports of Entry.

7.5 Project Structure and the PPP Agreement

7.5.1 It is anticipated that substantial funding for the Project will be provided by limited-recourse debt to be made available by Lenders (other than the shareholders or related parties of the Private Party) who will look primarily to the cash flows generated from the Project (that is, the Unitary Payments to be made by the Department for the delivery of the Project) to service that debt. Since the cash flows generated in the Project will depend on the sustained delivery by the Private Party of the agreed services at the prescribed performance levels, poor performance by the Private Party will put the servicing of such debt at risk. These Lenders will be able to mitigate such risk in part through step-in and substitution mechanisms provided for in terms of a direct agreement to be concluded between them and the Department.

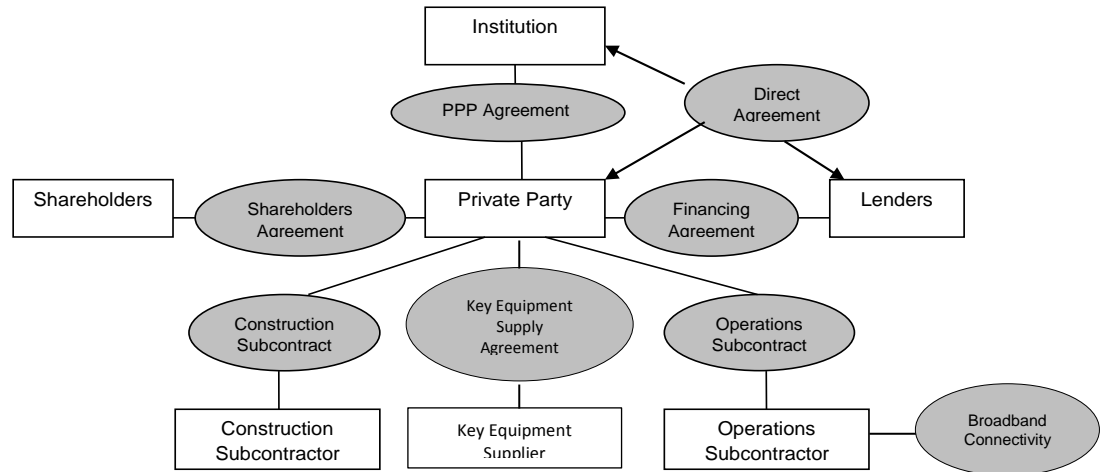
7.5.2 Respondents are advised that the Private Party will not be entitled to encumber the Land or any of the Departments' properties or assets to finance the Project.

7.5.3 The anticipated primary revenue, which will accrue to the Private Party, will be the Unitary Payment, which will be subject to penalty deductions in circumstances where the Private Party delivers services at a level lower than that contracted for in the PPP Agreement. The Department will be entitled to levy penalties for, a specified level/frequency of unavailability or performance failure and if not satisfactorily remedied, terminate the PPP Agreement.

7.5.4 The financial commitments in the PPP Agreement shall be denominated in Rand. The Private Party will be responsible for and take the risk of currency, interest rate, and other fluctuations and will to that extent make

provision within its costs to the Department for any hedging arrangements which the Private Party may require in relation to its obligations under the PPP Agreement.

7.5.5 It anticipated that the contractual structure to be adopted for the Project will be similar to other PPP projects which have been undertaken. The contractual structure is indicated below.



7.5.6 Pre-qualified Bidders will be consulted regarding the envisaged financing structure and related mechanisms in the course of developing the Project RFP, as part of the Optimisation Process.

7.6 **Relationship between different government departments with a mandate and/or presence at the Ports of Entry**

7.6.1 There is currently a Multi-Party Agreement that has been concluded between twenty two (22) government departments with mandates related to border management activities, which is aimed at providing a transitional mechanism pending the operation of the legislation establishing the BMA.

7.6.2 The main objectives of this Multi-Party Agreement are to:

7.6.2.1 strengthen the overall coordination of the management and control of all ports of entry in accordance with the mandate of each party to the Multi-Party Agreement;

7.6.2.2 support and enhance coordination of government-led initiatives in the borderline environment under the operation pyramid which is a

government-wide initiative aimed at enhancing borderline control and coordination in the land, air and maritime domains in the transition period while the BMA is being established;

7.6.2.3 provide a mechanism to test and pilot initiatives aimed at improving joint operations at selected ports of entry in line with the BMA vision endorsed by Cabinet;

7.6.2.4 implement a revised border control operational coordinating committee mandate under the BMA project management office with regard to coordinated management of existing ports of entry;

7.6.2.5 further facilitate the flow of legitimate trade and travellers in alignment with international obligations, standards and best practice; and

7.6.2.6 ensure border processing efficiencies are maintained or improved upon; and ensure the continuation and improvement of effective duty and tax collection.

7.6.3 The Multi-Party Agreement is effective and will remain in existence until the coming into operation of legislation pertaining to the establishment and functioning of the BMA.

7.7 **Bilateral Agreements and Relationships with countries in respect of the Ports of Entry**

7.7.1 Beitbridge: Limpopo Province, between South Africa and the Republic of Zimbabwe.

7.7.1.1 Memorandum of Understanding ("MoU") on cooperation and mutual assistance entered into between the government of the Republic of Zimbabwe and South Africa which was signed on 4 May 2009.

7.7.1.2 One of the objectives of this MoU includes harmonization of laws and information systems between the two countries in relation to the Port of Entry activities and the establishment of a one stop border post.

7.7.2 Lebombo, Mpumalanga Province, borders with the Republic of Mozambique.

- 7.7.2.1 Protocol on the establishment of a "One Stop" border control facility on the Border at Lebombo /Ressano Garcia between the government of the Republic of Mozambique and the government of South Africa dated 15 July 1998.
- 7.7.2.1.1 The protocol is purposed at developing a partnership between the Republic of Mozambique and South Africa, the public and the private sectors.
- 7.7.2.1.2 This is to be done by fostering the design, development and partial financing of border control facilities and the financing for the future maintenance and operation of the border control facilities where there are specifically designed buildings and infrastructure from where border crossing activities are jointly controlled and managed by officials of the parties to the protocol.
- 7.7.2.2 Combined Border Control Posts Agreement between the government of South Africa and the government of the Republic of Mozambique dated 18 September 2007 including Annexures I, II and III which were signed on 11 June 2013.
- 7.7.2.2.1 The purpose of the agreement is the creation of a one stop border post on the Mozambique and South African border for purposes of expediting transit by rail and road across the parties common border.
- 7.7.2.2.2 The aim of the agreement is to provide for the implementation of one stop border posts between the Republic of Mozambique and South Africa as agreed by the parties from time to time.
- 7.7.2.3 The agreements between South Africa and the Republic of Mozambique are well advanced in providing for and regulating matters pertaining to a one stop border post, including without limitation:
- 7.7.2.3.1 partnership over the development and financing of border control facilities;
- 7.7.2.3.2 arrangements for obtaining land as may be required at each

- country's side of the border;
 - 7.7.2.3.3 establishment of joint management authorities;
 - 7.7.2.3.4 arrangements for bearing own costs in relation to future costs of operation and maintenance of border facilities;
 - 7.7.2.3.5 passing of legislation to enable the one stop border post;
 - 7.7.2.3.6 creation of a one stop border post between South Africa and the Republic of Mozambique through the combined border post agreement; and
 - 7.7.2.3.7 common standards of infrastructure and responsibility in respect of infrastructure development and maintenance of the one stop border post.
- 7.7.3 South Africa does not currently have any bilateral agreements with the Kingdom of Lesotho, the Kingdom of Swaziland and the Republic of Botswana which may have an impact on the Project.

7.8 **Contracting Entity**

The Department will conclude the PPP Agreement with the Private Party pending the establishment of the BMA. It must be noted that in the event that the BMA is established prior to the conclusion of the PPP Agreement, the BMA will conclude the PPP Agreement with the Private Party.

7.9 **Activities undertaken by the Department to facilitate the Project**

- 7.9.1 The Department will undertake a number of activities in order to facilitate and enable the Project. These activities have been initiated to assist the Respondents in submitting their Responses demonstrating their readiness to implement the Project. The relevant activities include the following:
- 7.9.1.1 activities undertaken at the project sites; and
 - 7.9.1.2 environmental permitting arrangements.
- 7.9.2 The RFQ and RFP issued by the Department will not contain all the information which may be required by the Respondent or Bidder to develop

a possible Response or Proposal respectively. Every Respondent or Bidder should conduct its own independent analysis of the requirements and the relevant data supplied or referred to herein or that have been obtained during its investigations. Therefore, any party considering responding to this RFQ or the RFP should seek its own independent legal, technical, financial, economic development and any other advice, in order to submit a Response or Proposal.

7.10 Activities Undertaken at the Project Sites

A number of technical studies will be undertaken at the project sites, to determine whether the Project can be located at the project sites. These include the site clearance, town planning and commencement of the land procurement activities.

7.11 Acquisition of additional land

7.11.1 The acquisition of additional land will be necessitated as a result of the redevelopment of the Ports of Entry.

7.11.2 The Department will ensure that all the land is acquired and will make land available to the Private Party, to enable it to undertake the Project.

7.12 Environmental Permitting Arrangements

7.12.1 The Department is currently undertaking pre-application studies and plans to commence with an application for an environmental authorisation. The following Project components will be included in the application:

7.12.1.1 application for environmental authorisation; and

7.12.1.2 required specialist studies for the environmental process; heritage, ecology, soil, aquatic, traffic, and socio-economic.

7.12.2 The Environmental Impact Assessment ("EIA") will be in progress when the RFP is released and documents on the Environmental Impact Assessment in the public domain will be included as part of the RFP . These documents will be accompanied by a detailed summary of the work in progress, specifically including identified significant impacts and proposed mitigation.

7.13 Approach to the Environmental Impact Assessment Process

7.13.1 The National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) and EIA Regulations, 2014 will guide the approach for the six (6) identified Ports of Entry. The EIA regulations describe the EIA process to be followed including the public participation process and the listed activities that may have a harmful impact on the environment which must be assessed.

7.14 **Other Environmental Permits**

7.14.1 A number of environmental permits will be required in addition to the environmental authorisation. The Department with the assistance of the Department of Public Works will be responsible for obtaining the following permits and licences:

7.14.1.1 Water Use Licence for the section 21(a), (b), (c) and (i) of the National Water Act, 1998 (Act No.36 of 1998);

7.14.1.2 Heritage Permits for the removal of graves and buildings, where required;

7.14.1.3 Biodiversity Permit for relocation or removal of protected trees or plants;

7.14.2 The Department with the assistance of the Department of Public Works will conduct the following studies:

7.14.2.1 flood line determinations;

7.14.2.2 site survey plans;

7.14.2.3 comprehensive geotechnical reports;

7.14.2.4 civil services report;

7.14.2.5 heritage impact assessment;

7.14.2.6 traffic impact assessment; and

7.14.2.7 water use licence applications.

7.14.3 The Department will also conduct the following town planning activities for

the six (6) identified Ports of Entry:

- 7.14.3.1 valuations report;
 - 7.14.3.2 township submission and approval preparation of motivational memorandum;
 - 7.14.3.3 advertisements for town planning;
 - 7.14.3.4 notification and circulation;
 - 7.14.3.5 respond to comments/objections;
 - 7.14.3.6 evaluation and approval by municipality;
 - 7.14.3.7 pegging of a township;
 - 7.14.3.8 general plan for a township;
 - 7.14.3.9 opening a township register; and
 - 7.14.3.10 site clearance report.
- 7.14.4 The Preferred Bidder will be responsible for applying for any other relevant environmental permits not mentioned in 7.14.1. Some of the information required to support the applications for these permits would have been collected during the EIA process and will be provided to the Preferred Bidder.

7.15 **BMA Operating Model**

- 7.15.1 A BMA blueprint document has been developed that will serve as the vision and ideal end state for the operationalisation of the BMA. This document outlines a perspective of the ideal BMA after its full establishment envisaged by 2032.
- 7.15.2 A target operating model that has been developed in the blueprint document sets out a common structure, language and set of definitions that can be used to describe how the BMA will be constructed and operated to deliver on its mandate and strategy. The target operating model is focussed on what is functionally required from the BMA.

- 7.15.3 The functional areas of responsibility of the BMA are depicted as a value chain below with three (3) main areas of capability:
- 7.15.3.1 front line functions: These are the functions directly related to the BMA's mandate to facilitate and manage the legitimate movement of persons and goods while preventing and mitigating the illegitimate movement of goods and unauthorised movement of persons. These include ports of entry border law enforcement facilitation and management, border law enforcement within the maritime border law enforcement area; and border law enforcement within the land Border law enforcement area. Specific theatres of operation where core front line functions are being performed are:
- 7.15.3.1.1 ports of entry;
- 7.15.3.1.2 border law enforcement within the land border law enforcement area; and
- 7.15.3.1.3 border law enforcement within the maritime border law enforcement area.
- 7.15.3.2 middle office: The coordination and control of front line functions with a specific focus on integration of the enforcement of policies and legislation pertaining to the border law enforcement area as well as ensuring that all operations are intelligence-led and risk driven. These include:
- 7.15.3.2.1 border intelligence (national border risk management and targeting) and
- 7.15.3.2.2 operational command.
- 7.15.3.3 back office: Corporate support functions that enables the front and middle office to effectively and efficiently execute on capabilities of the BMA. These include: corporate governance, executive management, financial management, human capital management, facilities and infrastructure management, information and communications technology management and operational improvement.

7.15.4 An incremental phased approach will be adopted for the full roll-out and establishment for the short, medium, and long term- operating model over a period of fifteen (15) years.

7.16 **Key Role Players in the Project**

7.16.1 The key role players in the Project are the following:

7.16.1.1 the Department is mandated to facilitate and regulate the secure movement of persons through the ports of entry into and out of South Africa. The Department will, through the BMA project management office, facilitate the planning and implementation of this Project;

7.16.1.2 the Department of Environmental Affairs will issue any consents, licences, authorisations, permissions or approvals required from any organ of state in the local, provincial or national sphere of government or any regulatory agency required in terms of any environmental law or heritage law for the development, construction or operation and maintenance of the Project;

7.16.1.3 National Treasury will oversee the planning and implementation of the Project and is responsible for the issuance of the National Treasury approvals required in terms of National Treasury Regulation 16 and the PPP Manual; and

7.16.1.4 the Department of Public Works is mandated with the management, provision and maintenance of accommodation (operational and residential) and required infrastructure in order to support border control operations at land ports of entry. The Department of Public Works has regulatory and implementation responsibilities in respect of infrastructure at land ports of entry. Upon the enactment of the BMA legislation, this mandate and responsibility for land Ports of Entry infrastructure will be assumed by the BMA. The Environmental Control Officer ("ECO") under the Department of Public Works will monitor the implementation of an Environmental Management Plan ("EMP) at the six (6) identified Ports of Entry for the Project.

7.17 Treasury Approval I (Feasibility Study)

7.17.1 General

7.17.1.1 Regulation 16.4 of the Treasury Regulations states that to determine whether the proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority of that institution must undertake a feasibility study that:

7.17.1.1.1 explains the strategic and operational benefits of the proposed PPP for the institution in terms of its strategic objectives and government policy;

7.17.1.1.2 describes in specific terms in the case of a PPP involving the use of state property, a description of the state property concerned, the uses, if any, to which such state property has been subject prior to the registration of the proposed PPP and a description of the types of use that a private party may legally subject such state property to;

7.17.1.1.3 in relation to a PPP pursuant to which an institution will incur any financial commitments, demonstrates the affordability of the PPP for the institution;

7.17.1.1.4 sets out the proposed allocation of financial, technical and operational risks between the institution and the private party;

7.17.1.1.5 demonstrates the anticipated value for money to be achieved by the PPP; and

7.17.1.1.6 explains the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP.

7.17.1.2 Regulation 16.4 further states that an institution may not proceed with the procurement phase of a PPP without prior written approval of the relevant treasury for the feasibility study.

7.17.2 Conditions to Treasury Approval I

7.17.2.1 After the conclusion of the feasibility study, in line with Regulation 16

of the Treasury Regulations, the Department was granted Treasury Approval I for the Project, subject to certain conditions.

7.17.2.2

The conditions were as follows:

7.17.2.2.1

establishment of the acceptability by users of charging toll fees on a subset of the commercial users (trucks). A higher level wider consultation with all stakeholder and approval process would be required to establish at a national level the acceptability of undertaking the Project ("**Condition 1**");

7.17.2.2.2

the legal framework for the DHA to charge, invoice and collect from toll fees needs to be put in place. The level of toll fees that can be chargeable and the Department's ability to effectively carry out this function and channel the resources to the Project has to be established ("**Condition 2**");

7.17.2.2.3

building certainty on output specifications for the Project. The output specifications in the feasibility study are based on considerations on the South African side only but at the same time the semi-one stop border post has been proposed. The need for a consultative process that will inform the infrastructural designs and layout of the border facilitated is required in order to firm up the output specifications. This is important to the Project scope and to derive the costs of the Project ("**Condition 3**"); and

7.17.2.2.4

in tandem with the above point, a legal instrument is required to effect any bilateral agreement that will culminate in the design of the infrastructural requirements for the Ports of Entry ("**Condition 4**").

7.17.2.3

Treasury Approval I is attached to this Part A (*General Information, Requirements and Rules*) of the RFQ as Part A of Volume 1 (*Project Information*).

7.17.3

Progress Towards the Fulfilment of the Conditions

7.17.3.1

Condition 1

Subsequent to the initial engagements with commercial users, further consultations have been held with industry bodies such as the Cross-Border Road Transport Agency (C-BRTA) and the South African Association of Freight Forwarders (SAAFF) to understand their members' sentiments and concerns relating to the proposed user fee. Further consultations will be undertaken with the Pre-qualified Bidders.

7.17.3.2 **Condition 2**

7.17.3.2.1 The Department is currently investigating the most appropriate legislation to amend to enable the collection of commercial user fees at the Ports of Entry.

7.17.3.2.2 The Department is working towards having the user fee legislative framework in place by the commencement of the Service period.

7.17.3.3 **Condition 3**

The Department has sent out formal correspondence to the five (5) neighbouring countries namely, the Kingdom of Lesotho, the Kingdom of Swaziland, the Republic of Botswana, the Republic of Mozambique and the Republic of Zimbabwe informing them of the Project to enable increased and more efficient movement between the countries. The Department will arrange meetings with the neighbouring countries in due course to discuss the objectives and anticipated outcomes of the Project.

7.17.3.4 **Condition 4**

Interactions and consultations with the affected neighbouring countries are underway on the Project. By the time the RFP is issued more details will be made available on these consultations.

7.18 **Risk Transfer, Affordability and Value for Money**

7.18.1 Transfer of risk forms an important consideration for both the Private Party and the Department, with both parties seeking to ensure that risk is

allocated to the party best placed to manage or mitigate against that risk. The Private Party will be required to assume a substantial portion of all forms of project life-cycle risk including design, construction, financing, operation and maintenance risks.

7.18.2 Affordability and Value for Money also form an integral part of this procurement process in that the financial commitments to be incurred by the Department can be met by funds designated for the development of the Project as well as those created by the implementation of the Project, and the Project results in a net benefit to the Department defined in terms of:

- 7.18.2.1 cost;
- 7.18.2.2 price;
- 7.18.2.3 quality;
- 7.18.2.4 quantity; and
- 7.18.2.5 risk transfer.

7.19 **Non-negotiability of the PPP Agreement**

Subject to section 11 of this Part A (*General Information, Requirements and Rules*) of this RFQ, the Department will not be undertaking any negotiation process on the PPP Agreement with any Preferred Bidder once the Optimisation Process is concluded. However, the Department will engage with the Preferred Bidder on key commercial terms during the engagement with the Preferred Bidder prior to the conclusion of the PPP Agreement.

7.20 **Legal Framework**

7.20.1 The principle piece of legislation that regulates public procurement is the Constitution. Section 217 of the Constitution requires that when an organ of state contracts for goods and services, it must do so in accordance with the principles of fairness, equitability, transparency, competitiveness and cost-effectiveness. This constitutional requirement is echoed in section 51(1)(a) of the PFMA, which states that an accounting authority for, among others, a national or provincial department or public entity must ensure that the particular department or entity has and maintains an appropriate

procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective. The PFMA is implemented through the regulations published under it, namely the Treasury Regulations.

- 7.20.2 The Constitution permits organs of state (such as departments of Government and public entities) to implement a preferential procurement policy that advances persons previously disadvantaged by unfair discrimination. Section 217(3) of the Constitution provides for legislation that will prescribe a framework within which the policy must be implemented to be enacted. Thus, the PPPFA and the Preferential Procurement Regulations prescribe requirements regarding B-BBEE considerations for state tenders as well as general provisions regarding tender processes.
- 7.20.3 Respondents' attention is drawn to the PFMA and Treasury Regulations 16 pertaining to PPPs and are advised that:
 - 7.20.3.1 the PFMA and Treasury Regulations 16 create and regulate the competency of departments to implement PPP projects. The Department's competency to implement this Project as a PPP has been established with reference to, *inter alia*, the Constitution, the PFMA and its Treasury Regulations;
 - 7.20.3.2 the Department may enter into a PPP Agreement, but only if the Department can demonstrate that the agreement will:-
 - 7.20.3.2.1 provide Value for Money to the Department;
 - 7.20.3.2.2 be affordable for the Department; and
 - 7.20.3.2.3 transfer appropriate technical, operational and financial risk to the Private Party,
 - 7.20.3.3 the PPP Agreement must comply with any prescribed regulatory framework for PPPs;
 - 7.20.3.4 procurement of the Project will be carried out following the prescribed legislation, which includes the Constitution, the PPPFA, and the PFMA; and
 - 7.20.3.5 the PPP Agreement, once fully concluded shall constitute the entire

agreement between the parties, and serve as the sole basis of determining the relationship between the parties in the implementation of the Project. No right of recourse shall exist other than as contained in the PPP Agreement.

7.20.4 The B-BBEE Act and the Amended B-BBEE Codes also have application in the procurement context due to a requirement that the methodology prescribed in such codes be applied where the state contracts for goods or services.

7.20.5 The Department will implement the Project with due regard to this constitutionally mandated framework.

7.21 **Financing**

7.21.1 The proposed redevelopment (and transformation) of the Ports of Entry infrastructure, technology and operational capabilities (through the implementation of the BMA) is expected to result in measurable improvements in the effective and secure movement of people and goods across the six (6) identified Ports of Entry.

7.21.2 A key benefit of the targeted operational efficiency improvements will be the reduction of the significant delays currently experienced by commercial users at the Ports of Entry. Slow freight processing times result in various delay-related and opportunity costs for commercial users, which can be quite substantial.

7.21.3 Consequently, the Project is being developed on the basis that commercial users will be charged a fee when using the redeveloped Ports of Entry. These user fees will fund the redevelopment and operations of the Ports of Entry. The user fee structure, as well as the applicable unitary payment mechanism will be confirmed in the Phase I RFP.

7.21.4 Similarly, the mechanisms (and parameters) for fee collection, payment of the Private Party and the allowable return on investment, will be defined in the Phase I RFP.

7.22 **Economic Development**

7.22.1 As already defined above, Economic Development is a term used to refer to localisation, job creation and B-BBEE.

7.22.2 **Localisation**

7.22.2.1 Localisation is a policy of Government, which is intended to prevent industrial decline, and support the growth and diversification of South Africa's manufacturing sector. Localisation through manufacturing is the engine of growth and employment of all economies that have achieved high gross domestic product and employment growth. Manufacturing can therefore generate significant job creation directly as well as indirectly in a range of primary and service sector activities.

7.22.2.2 In South Africa, recent national policy frameworks have identified localisation as a way to maximise the benefits from investment in relevant sectors and is intended to be the means through which industrialisation of the local economy is to be achieved. The Project is aligned to national policy frameworks in its promotion of effective localised industrialisation.

7.22.2.3 The intention of the Department is to follow an approach based on strategic choices of what to localise effectively, efficiently and most importantly, sustainably, while simultaneously guarding the strategic objectives of the Project. Furthermore, this approach is mindful of risks often associated with the application of localisation requirements such as inflated local input prices and the entrenchment of monopolistic market structures and conduct. More details on the localisation requirements will be contained in the RFP.

7.22.3 **B-BBEE**

7.22.3.1 B-BBEE is a policy of Government, which aims to achieve the constitutional imperatives of transformation.

7.22.3.2 The objectives of B-BBEE include:

7.22.3.2.1 promoting economic transformation in order to enable meaningful participation of Black People in the economy;

- 7.22.3.2.2 achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;
- 7.22.3.2.3 empowering communities by enabling access to economic activities, infrastructure and skills; and
- 7.22.3.2.4 increasing effective economic participation through ownership and management of enterprises by Black People, including small, medium and micro enterprises and co-operatives and enhancing their access to financial and non-financial support.

7.22.4 **Regulatory Framework for Economic Development**

- 7.22.4.1 In designing requirements pertaining to Economic Development, the Department had regard to the existing policy framework and legislation regarding Economic Development and this was used to design an appropriate approach to Economic Development for this Project. The existing policy framework and legislation includes, the
 - 7.22.4.1.1 Constitution of the Republic of South Africa, 1996;
 - 7.22.4.1.2 B-BBEE Act and the Department of Trade and Industry B-BBEE Codes of Good Practise;
 - 7.22.4.1.3 Amended B-BEEE Codes;
 - 7.22.4.1.4 PPPFA and its regulations;
 - 7.22.4.1.5 PFMA;
 - 7.22.4.1.6 Construction Sector Codes;
 - 7.22.4.1.7 ICT Sector;
 - 7.22.4.1.8 B-BBEE Codes for PPPs;
 - 7.22.4.1.9 National Development Plan Vision 2030;
 - 7.22.4.1.10 New Growth Plan;

7.22.4.1.11 Local Procurement Accord; and

7.22.4.1.12 National Skills Development Strategy.

7.22.5 **Economic Development Objectives**

7.22.5.1 The following Economic Development objectives were derived from the applicable regulatory framework and applicable socio-economic conditions in South Africa and are as follows:

7.22.5.1.1 education and skills development through various initiatives in the Project;

7.22.5.1.2 increased job creation and employment;

7.22.5.1.3 advancement of participation by Black People in equity;

7.22.5.1.4 advancement of small, medium and micro enterprises, through subcontracting and enterprise development;

7.22.5.1.5 socio-economic development initiatives; and

7.22.5.1.6 increased local manufacture and use of local components.

7.22.5.2 The achievement of the Department's Economic Development objectives through the Project is a crucial indicator of the success thereof.

7.22.5.3 The Department's approach to Economic Development is informed by *inter alia*, the:

7.22.5.3.1 opportunity presented by infrastructure development projects such as the current Project; and

7.22.5.3.2 opportunity presented by structuring new project companies and/or entities (private parties) to be created for implementing the Project.

7.22.6 **Elements to address the Economic Development Objectives**

7.22.6.1 The elements which have been identified to achieve the Economic

Development objectives are in line with the PPP Manual Code for B-BEEE in PPPs and are as follows:

- 7.22.6.1.1 Ownership, which is anticipated to include a requirement of forty percent (40%) Shareholding by Black People and twenty two percent (22%) active equity, at RFP stage ;
- 7.22.6.1.2 management control;
- 7.22.6.1.3 subcontracting;
- 7.22.6.1.4 socio-economic development; and
- 7.22.6.1.5 local production and content.

7.23 **Project Term and Phasing of the Project**

7.23.1 Project Term

7.23.1.1 It is anticipated that the Project will be undertaken as follows:

7.23.1.1.1 the construction of each of the Ports of Entry is expected to take between twenty four (24) and thirty six (36) months, and the construction of the Ports of Entry will, as far possible, be carried out as such to all be ready and operational at the same time.

7.23.1.1.2 the operations or concession period has been determined at twenty (20) years. Therefore, the PPP Agreement will be for a period of approximately twenty three (23) years.

7.23.2 **Phasing of the Project**

The phasing of the Project will be necessitated as there is a need to ensure that the Ports of Entry are fully functional during the redevelopment. The Department anticipates that the Respondents will during the Phase I RFP stage propose appropriate, efficient and effective phasing mechanisms When carrying out the extensive redevelopment of the existing Ports of Entry, the construction of the new facilities should always be phased to enable the uninterrupted functioning of the existing Port of Entry.

7.24 **Other principal regulations**

7.24.1 **Environmental Authorisation**

7.24.1.1 There will be a need to obtain a range of Environmental Consents for the Project. Subject to section 7.12 (*Environmental Permitting Arrangements*) of Part A (*General Information, Requirements and Rules*) of this RFQ, these will include an environmental authorisation issued in terms of the National Environmental Management Act and other consents and approvals. Each Respondent, Pre-qualified Bidder or Bidder will be solely responsible for satisfying itself as to the legal requirements applicable to the Project, and shall have no claim against the Department 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 and Environmental Consents required to implement that Project. Failure to do so will be at the entire risk of the Respondent, Pre-qualified Bidder, or Bidder, and no relief will be given for errors, oversights or omissions of the Respondent or its Members or of the Department.

7.24.1.2 The EIA which is undertaken as part of the environmental authorisation process is an important enabler of a number of other Environmental Consents which will be required for the Project.

7.24.1.3 A water use licence issued in terms of the National Water Act 1998 (Act 38 of 1998) may be required for the various water uses that may be undertaken for the Project. The term "water use" is not limited to abstractive uses and includes stream diversions, construction in a drainage line and other activities that may be undertaken during construction. The EIA process will also provide an indication of whether a water use licence for these activities is likely to be required.

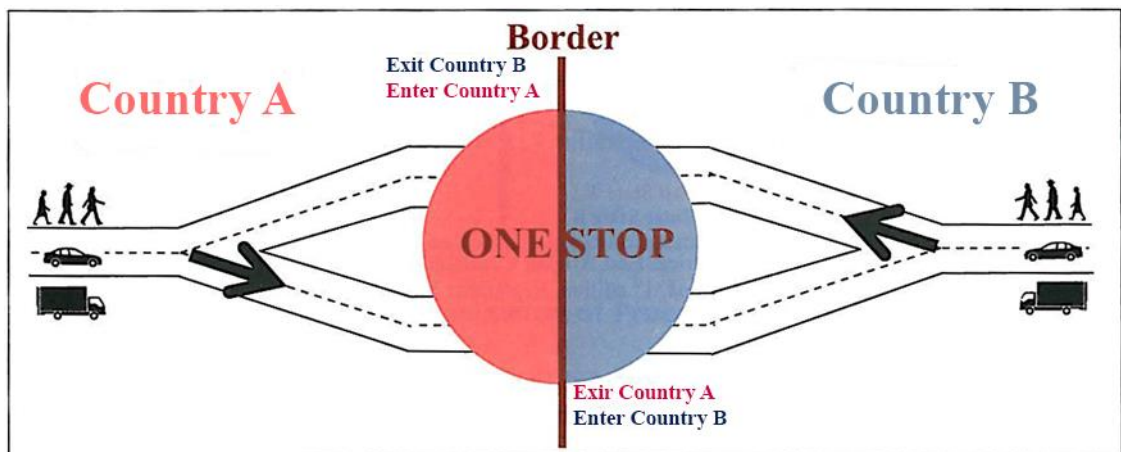
8. **MISCELLANEOUS**

8.1 **One Stop Border Post**

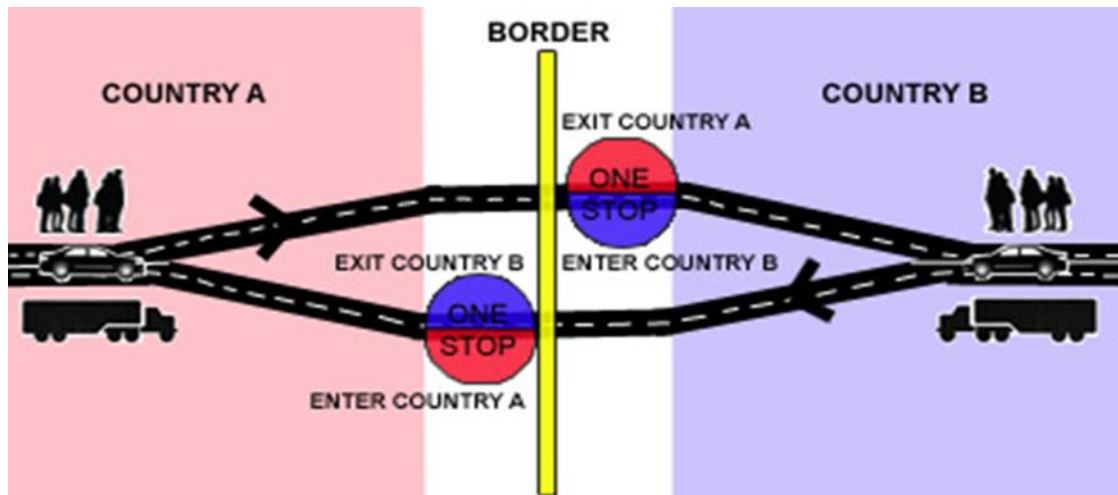
8.1.1 There are different models which exist in relation to one stop border posts and they are the following:

- 8.1.1.1 straddle;
- 8.1.1.2 common country; and
- 8.1.1.3 juxtapose.

8.1.2 The straddle model has been identified for the Lebombo Port of Entry considering the legal undertakings in the form of bilateral agreements which have been made by the Republic of Mozambique and South Africa and the local site conditions. In respect of the straddle model, the facilities are shared and operated in a sterile international border post zone in each direction as shown in the diagram below. This model allows for the officials working at the Port of Entry to carry out their functions in the sterile international border post zone. This model requires two separate facilities, with only one stop for all traffic in both directions.



8.1.3 The juxtapose model allows the officials working at the Port of Entry to carry out their functions in the adjoining state. This model requires two separate facilities, with only one stop for all traffic in both directions. Please see the diagram below.



8.1.4 The preferred approach for the Ficksburg Port of Entry, Betbridge Port of Entry, Oshoek Port of Entry, Kopfontein Port of Entry and Maseru Bridge Port of Entry is the redevelopment of the Ports of Entry as traditional Ports of Entry that can be converted to the juxtapose model.

9. OUTLINE OF PROCUREMENT PROCESS

9.1 The Department has elected to employ a three (3) stage procurement process, namely:

9.1.1 Stage 1 - Pre-qualification Stage, which has been initiated in terms of this RFQ; and

9.1.2 Stage 2 – Optimisation Process Stage, which entails soliciting comments on the Phase I RFP documents from the Pre-qualified Bidders in order to finalise the RFP.

9.1.3 Stage 3 - Request for Proposals Stage, which entails the Pre-qualified Bidders submitting Proposals in response to the RFP.

9.2 It is accordingly envisaged that:

9.2.1 responses to this RFQ (unless disqualified in accordance with section 24 (*Disqualification*)) below and/or any other provision of this RFQ will be evaluated to produce a shortlist of Pre-qualified Bidders based on the Qualification Criteria contained in Volume 1 (*Qualification Criteria*) of Part

B (*Qualification Criteria and Response Forms*);

9.2.2 only Pre-qualified Bidders will be invited to submit Responses in response to the RFP; and

9.2.3 one (1) Preferred Bidder and one (1) Reserve Bidder will then be selected from the Pre-qualified Bidders to deliver the Project at the Ports of Entry.

10. PROCUREMENT PROCESS AND TIMETABLE

10.1 Procurement Process

The procurement process is designed to be open, fair and transparent, to ensure effective competition in compliance with constitutional and statutory requirements and any other requirements of the Department relating to procurement, and to produce for the Department the best evaluation and selection process for the Project.

10.2 RFP Procurement Steps

It is currently contemplated that the RFP process may comprise the following steps. These steps may be amended or combined, at the sole discretion of the Department:

10.2.1 Step 1 - Release of the Phase I RFP

In this step, Bidders will receive access to the Phase I RFP documents that will contain the information specific to the Project, in order to solicit the views and comments of the Pre-qualified Bidders on the Phase I RFP ("Optimisation Process");

10.2.2 Step 2 - Briefing Session and Meetings

Step 2 will entail a briefing session to be held with the Pre-qualified Bidders based on the Phase I RFP and the PPP Agreement for the Project. The purpose of this session, should it occur, will be to give an overview and summary of the information contained in the Phase I RFP;

10.2.3 Step 3 - Comments by Pre-qualified Bidders

In this step, Pre-qualified Bidders will be required to submit written

comments to the Phase I RFP. In this regard, the Department may elect to hold meetings with one or more of the Pre-qualified Bidders to better understand their comments;

10.2.4 **Step 4 - Release of Phase II RFP**

Step 4 will entail the optimisation and the finalisation of the RFP, taking into account the inputs from the Pre-qualified Bidders and clarification process. This step will culminate in the release of the Phase II RFP documents, soliciting the Proposal from the Pre-qualified Bidders; and

10.2.5 **Step 5 - Evaluation of Proposals**

Step 5 will entail the submission of Proposals by Pre-qualified Bidders, in response to the Phase II RFP documents. The Department will evaluate the Proposals and as an outcome of this process, select a Preferred Bidder and a Reserve Bidder at the sole discretion of the Department. The Department may elect to undertake a BAFO process, at its sole discretion. This process would then follow Step 5.

10.2.6 **Step 6 – Engagement with Preferred Bidder**

Subject to section 11 of this Part A (*General Information, Requirements and Rules*) of this RFQ, the Department will not be undertaking any negotiation process on the PPP Agreement with the Preferred Bidder on the Project once the Optimisation Process is concluded. However, the Department will engage with the Preferred Bidder on key commercial terms during the engagement with the Preferred Bidder prior to the conclusion of the PPP Agreement.

10.2.7 **Step 7 - Financial Close**

Commercial Close which is the execution of the PPP Agreement and thereafter, Financial Close whereafter the Project will be implemented.

10.3 **Timetable for the Project**

The timetable for the Project is indicated below.

No.	Milestone	Anticipated Date
1.	Issue of RFQ	3 April 2018
2.	Last date for Respondents to submit written questions in terms of section 27 (<i>Time for Information Requests and Clarifications</i>) of this Part A (<i>General Information, Requirements and Rules</i>)	2 May 2018
3.	Response Submission Date	11 May 2018
4.	Announcement of Pre-qualified Bidders	August 2018

11. ENGAGEMENT PROCESS WITH PRE-QUALIFIED BIDDERS

11.1 Purpose of the Optimisation Process

11.1.1 The purpose of the Optimisation Process is to solicit comments on the Phase I RFP documents from Pre-qualified Bidders on key issues and contracting terms related to the Project.

11.1.2 The Department will not be undertaking any negotiation process on the PPP Agreement with any Preferred Bidder on the Project once the Optimisation Process is concluded. However, the Department may elect to engage with Pre-qualified Bidders to inform the final drafting of key commercial terms of the PPP Agreement.

11.2 Nature of Optimisation Process

11.2.1 Pre-qualified Bidders will be invited to submit written comments in response to the Phase I RFP documents.

11.2.2 In this regard, the Department may elect to hold meetings with one (1) or more of the Pre-qualified Bidders to better understand their comments.

11.3 Process for the Submission of Comments

11.3.1 Pre-qualified Bidders will be able to comment by way of mark-up of the Phase I RFP documents and/or written submissions on specific issues to reflect the proposed deletions and insertions required to support its position.

- 11.3.2 In the case of mark-ups invited to the Phase II RFP documents, the Department will not consider any further matters pertaining to the Phase I RFP documents not clearly marked-up as follows:
- 11.3.2.1 documents that have not been marked-up with tracked changes will be considered by the Department to have been accepted by the Pre-qualified Bidder and no further negotiation in respect of these documents will be entertained by the Department;
- 11.3.2.2 in addition to marked changes to the Phase I RFP documents, each mark-up is to be motivated by way of a consecutively numbered footnote to the change. The Phase I RFP should be marked-up and presented electronically in MS Word format, 2003 version or later;
- 11.3.2.3 word processor changes should be in the following format:
- 11.3.2.3.1 deletion - strike through and tracked;
- 11.3.2.3.2 insertions - underlined, in bold and tracked;
- 11.3.2.3.3 comments/ reasons - footnote, to be inserted immediately after the proposed change, and inserted as an "Insertion" (i.e. underlined, in bold and tracked);
- 11.3.2.3.4 where a Pre-qualified Bidder wishes to amend a clause or insert a new clause, full drafting should be provided. The Pre-qualified Bidder should note that comments such as "agreed in principle" or "subject to further discussion" will be assumed to indicate disagreement with the clause and will be assessed as such;
- 11.3.2.3.5 the Pre-qualified Bidder is not allowed to renumber any provision of the RFP. If a Pre-qualified Bidder wishes to delete a clause, an annexure or a paragraph of an annexure, the relevant clause, annexure or paragraph must remain in its allotted position with the words "NOT USED" inserted;
- 11.3.2.3.6 to the extent that a Pre-qualified Bidder wishes to insert an additional clause or annexure forming part of the RFP, the inserted clause or annexure is to be identified by reference to the

immediately preceding clause or annexure number and the words "*bis*", "*ter*", "*quat*" etc. inserted thereafter. Any item of the RFP not marked-up shall be deemed to be accepted by the Pre-qualified Bidder;

11.3.2.3.7 unless otherwise expressly indicated in the RFP, items reflected in [square brackets] or as [?] in the RFP require the Pre-qualified Bidder to state its preferred position on such matter. Should no amendment be made to the item reflected in square brackets, such items shall be deemed accepted by the Pre-qualified Bidder, or where no figure is provided where same is requested, a figure of zero (0) may be implied; and

11.3.2.3.8 unless otherwise expressly indicated in the RFP where the annexures to the draft PPP Agreement have not been included as part of the RFP, Pre-qualified Bidders are required to either (i) provide their proposed annexures; or (ii) provide their response as may be specifically required in terms of the RFP.

11.3.3 The assessment of the mark-up of the Phase I RFP will also take into account, amongst other things, the following areas:

11.3.3.1 compliance with the format of the mark-up in accordance with clause 11.3.2.3 above;

11.3.3.2 the degree of deviation in principle and detail (if any) from the RFP and the Pre-qualified Bidder's proposals on the items and annexures in respect of which it is required to submit proposals;

11.3.3.3 the level of risk transfer to the Department;

11.3.3.4 impact of the proposed mark-up on the Project readiness and bankability;

11.3.3.5 impact of the proposed mark-up on the Project on the regulatory and legal requirements;

11.3.3.6 overall impact on the cost and Value for Money on the Project;

11.3.3.7 overall impact (directly or indirectly) on the objectives of the Project;

and

11.3.3.8 overall impact (directly or indirectly) on the key commercial requirements of the Project; including Economic Development.

11.3.4 The Department reserves the right not to take one or more comments into account, taking into account the above considerations.

11.3.5 After the Optimisation Process, the Department will issue the Phase II RFP, on the basis of which Pre-qualified Bidders will submit their Proposals.

11.4 **Access to and use of the RFP**

Pre-qualified Bidders requiring access to the RFP, will only be granted access to the RFP, on condition:

11.4.1 that they pay the RFP Document Fee; and

11.4.2 representatives of Pre-qualified Bidders comply at all times with the rules and procedures regarding the RFP.

12. **GENERAL BID RULES**

12.1 The RFQ is not restricted to Respondents comprised of only South African citizens and entities.

12.2 **Non-Refundable RFP Document Fee by Pre-qualified Bidders for the RFP**

12.2.1 Pre-qualified Bidders will be required to pay a non-refundable RFP Document Fee of two hundred thousand Rand (ZAR 200 000,00) within ten (10) Business Days after being notified of their Pre-qualified Bidder status, in order to access the Phase I RFP. Respondents should note that no VAT will be payable on this amount.

12.2.2 Pre-qualified Bidders will be required to provide the name of the person, if not the Lead Member, who should be granted access to the RFP.

12.2.3 It is upon this payment, that representatives of the Pre-qualified Bidders will be able to access the RFP.

12.2.4 Representatives will be required to comply with the rules and procedures

referred to in section 11 above.

12.3 **Response Submission Date**

The Responses must be submitted on 11 May 2018 ("Response Submission Date").

13. **THE DEPARTMENT'S RIGHTS**

13.1 The Department reserves the right:

13.1.1 to select or not to select any one (1) or more Respondents as Pre-qualified Bidders;

13.1.2 to terminate the Pre-qualified Bidder status of a Pre-qualified Bidder at any time;

13.1.3 to cancel, suspend or change information, requirements and rules related to the Project contained in this RFQ at any stage; and

13.1.4 not to proceed with the procurement process and subsequent stages after the selection of the Pre-Qualified Bidders.

13.2 The Department shall not be liable to any Respondent for any consequences, claims or costs arising from any of these actions.

14. **NON-ELIGIBLE PERSONS**

14.1 Respondents are required to declare if, from August 2015:

14.1.1 any of their Advisors;

14.1.2 any of their Members;

14.1.3 any individual who is a director, officer, employee or shareholder of any Member;

14.1.4 the Respondent,

is, or is Related to (presently or in the past):

14.1.5 an employee of the Department; or

- 14.1.6 an employee of the National Treasury or the GTAC; or
 - 14.1.7 an employee of the Department of Public Works; or
 - 14.1.8 an employee of the BMA project management office; or
 - 14.1.9 any other member of a working group and task team of the BMA project management office involved in developing the Project, the procurement process and/or the evaluation of the Responses and/or approval of any of the aspects of the Project or the procurement process, or
 - 14.1.10 an employee of the Transaction Advisor;
- by completing and submitting Schedule E (*Declaration of Interest Litigation and Past Supply Chain Practises Form*) provided in Volume 2 (*Response Forms*) of Part B (*Qualification Criteria and Response Forms*) of this RFQ.
- 14.2 In addition, Respondents should note the inclusion, for completion by the Lead Member, as well as each of the Respondent's proposed Members, of the following National Treasury Standard Bidding Documents SBD4 (*Declaration of Interest*), SBD8 (*Declaration of Respondent's Past Supply Chain Management Practices*) and SBD9 (*Certification of Independent Bid Determination*), provided in Volume 2 (*Response Forms*) of Part B (*Qualification Criteria and Response Forms*) of this RFQ.
 - 14.3 If any Respondent includes in its Response the involvement of any person:
 - 14.3.1 who is directly involved (presently or in the past) in the Project;
 - 14.3.2 blacklisted by National Treasury; or
 - 14.3.3 blacklisted, suspended or removed from the roll of practitioners by such person's professional body (if applicable); or
 - 14.3.4 who is, or who is Related to:
 - 14.3.4.1 an employee of the Department; or

- 14.3.4.2 an employee of the National Treasury or the GTAC; or
- 14.3.4.3 an employee of the Department of Public Works; or
- 14.3.4.4 any other member of a working group and task team of the BMA project management office, in terms of section 14.1; or
- 14.3.4.5 an employee of the Transaction Advisor; or
- 14.3.5 who, or who is Related to any other Government official or person who:
 - 14.3.5.1 is directly involved (presently or in the past) in the Project;
 - 14.3.5.2 may be involved or has been involved with the evaluation of RFQ Responses or the Proposals to be submitted in response to the RFP;
 - 14.3.5.3 is, or who is Related to, any other Government official or person with the ability to influence or to have influenced the decision of the Department with respect to the appointment of Pre-qualified Bidders or approval of any elements of the Project or the procurement process; or
 - 14.3.5.4 who or which has been found guilty in a court of law of fraud or corruption related crimes,

such Respondent may, in the sole discretion of the Department, be disqualified by the Department from participating in the RFQ process and/or from any part or all of the Project.

- 14.4 In respect of any person or Government official who was involved in the past in the Project, in the manner set out in section 14.3.4 of this Part A (General Information, Requirements and Rules) of the RFQ, a Respondent should, to avoid the consequence set out in section 14.3.4 of Part A (General Information, Requirements and Rules) of this RFQ, before submitting a Response which includes such person in any capacity set out in section 14.3 of Part A (*General Information, Requirements and Rules*) of this RFQ above, obtain written permission from the Department for the involvement of such person. In considering any such request, the Department shall have regard to (amongst other things) the nature of the person's involvement, the nature of the confidential information regarding the Project which the person has and the time that has elapsed since

they had this involvement.

15. PARTICIPATION IN MORE THAN ONE RESPONDENT AND CHANGES TO BIDDING ENTITIES AND RESPONSES

15.1 Participation in more than one Respondent

15.1.1 No Member, Advisor, or Contractor may in any way participate or be involved, whether directly or indirectly, in more than one (1) Respondent or Pre-qualified Bidder for the Project, at any stage of the procurement process.

15.1.2 A Lender may participate in, advise or be involved (either directly or indirectly) with more than one (1) Respondent at any stage during the Project without the prior written consent of the Department. It shall be the responsibility of each of the Respondents that involve or utilise the services of the same Lender to manage the process and any conflicts of interest that may arise. The Respondents shall ensure that no anti-competitive or collusive behaviour is displayed or engaged in by any Lender participating or involved with more than one (1) Respondent. The Department shall, in its sole discretion, be entitled to disqualify, in terms of clause 24 (*Disqualification*) of Part A (*General Information, Requirements and Rules*) of this RFQ, any Response that displays any anti-competitive or collusive behaviour.

15.1.3 A Key Equipment Supplier is permitted to participate in more than one (1) Respondent, as a supplier. A Key Equipment Supplier is required to disclose its participation in the event that it participates in more than one (1) Respondent. Where the Key Equipment Supplier is participating as a Member in the Respondent, then the Key Equipment Supplier will have to comply with section 15.1.1 of this Part A (*General Information, Requirements and Rules*) of the RFQ.

15.1.4 Nothing contained in this section shall prevent any Member or participant of a:

15.1.4.1 Respondent that is not selected as a Pre-qualified Bidder from being eligible to participate as part of a different Pre-qualified Bidder or Bidder; or

15.1.4.2 Pre-qualified Bidder that elects not to participate in the RFP after the Optimisation Process, from being eligible to participate as part of a different Pre-qualified Bidder or Bidder,

subject to compliance with post-qualification requirements contained in this section 15.2 (*Changes to bidding entities and Responses*) of this Part A (*General Information, Requirements and Rules*) of the RFQ.

15.2 **Changes to bidding entities and Responses**

15.2.1 No change in composition, control or structure of a Pre-qualified Bidder or any one or more of its Members, Contractors, Key Equipment Suppliers, Lenders and Advisors from that set out in their response to the RFQ and/or the RFP will be permissible without the Department's prior written consent.

15.2.2 If there is a proposed change in composition, control or structure of a Pre-qualified Bidder or in one or more of its Members, Contractors, Key Equipment Suppliers, Lenders and Advisors, then the Pre-qualified Bidder must forthwith apply to the Department for consent, prior to any change in their composition, control or structure or in the change in composition, control or structure of one or more of its Members, from that set out in their Response to this RFQ or their Proposal to the RFP.

15.2.3 If a change in the composition, control or structure of a Pre-qualified Bidder, or its Members, Contractors, Key Equipment Suppliers, Lenders and Advisors of the kind referred to in section 15.2.1 occurs without the prior approval of the Department, then such Pre-qualified Bidder and/or its Members may, at the sole discretion of the Department, be disqualified from further stages of the procurement process, or allowed to continue, subject to such conditions as the Department may consider appropriate in light of the possible implications of the relevant change in composition, control or structure.

15.2.4 If a change in the composition, control or structure of a Pre-qualified Bidder or Member of the kind referred to in section 15.2.1 is proposed, the Department may require the relevant Pre-qualified Bidder or Member to supply further information in relation to the relevant change.

15.2.5 If as part of a change in the composition of a Pre-qualified Bidder or in that

of its Members, new entities are proposed to participate in relation to the execution of the Private Party obligations under the PPP Agreement, then such new entities shall be post-qualified in the following manner:

- 15.2.5.1 the party seeking to post-qualify must, at the instance of a Pre-qualified Bidder, submit information in response to the RFQ by completing the relevant sections of the RFQ;
- 15.2.5.2 the format of the submission of the party seeking to post-qualify must comply with the RFQ;
- 15.2.5.3 the post-qualification application must be accompanied by a letter addressed by the party seeking to post-qualify to the Project Officer ("the post-qualification Response letter") stating:
 - 15.2.5.3.1 that it wishes to be post-qualified and the name of the Pre-qualified Bidder through which it wishes to be post-qualified;
 - 15.2.5.3.2 the capacity in which it wishes to be post-qualified, namely Member, Contractor, Key Equipment Supplier;
 - 15.2.5.3.3 that it has read and understood the RFQ and upon being post-qualified undertakes to be bound by the procurement rules set out therein and this post-qualification procedure;
 - 15.2.5.3.4 and declaring that the information furnished by it in its Response is correct;
- 15.2.6 The Pre-qualified Bidder through which the party seeking to post-qualify is applying for post-qualification must:
 - 15.2.6.1 indicate, any change in information in its Response on account of the application for post-qualification;
 - 15.2.6.2 to the extent that any Pre-qualified Bidder or Member is withdrawing, furnish a letter addressed by such withdrawing Member to the Project Officer confirming the cessation of its membership in the Pre-qualified Bidder and the effective date thereof; and
 - 15.2.6.3 address a covering letter to the Project Officer for the Project

indicating its request to post-qualify a new party, the reasons therefore and the impact on the Pre-qualified Bidder of the proposed change.

- 15.2.7 The Department will not consider any request for any extension of any procurement stage or phase on account of a post-qualified party(ies).
- 15.2.8 If the Department, in its sole discretion, considers that the credentials of the post-qualified party are sufficient, it may choose to allow such post-qualification.
- 15.2.9 The RFQ evaluation process and criteria which previously applied to Respondents and/or Pre-qualified Bidders will apply similarly to parties seeking to post-qualify. The Department reserves the right to clarify and/or request further information of the Respondent or Pre-qualified Bidder and the party seeking post-qualification in considering and evaluating a request for post-qualification.
- 15.2.10 The Department will notify a party seeking to post-qualify and the Pre-qualified Bidder concerned, whether or not it has been successful in its application as soon as reasonably possible after receipt of the request for post-qualification. The decision of the Department on this matter will be final and not subject to appeal.
- 15.2.11 The decision to allow a party to post-qualify will be announced to all other Pre-qualified Bidders by the Department.
- 15.2.12 In the event of a Member, Contractor, or Key Equipment Supplier ("the exiting entity") of the Pre-qualified Bidder ceasing to be a Member of the Pre-qualified Bidder, then the Department requires the following -
- 15.2.12.1 a letter addressed by the exiting entity to the Pre-qualified Bidder, copied to the Department, stating that it no longer wishes to participate as a Member of the Pre-qualified Bidder or, alternatively, a resolution passed by the Members at a duly convened and quorate meeting of the Pre-qualified Bidder, wherein it was resolved that the participation of the exiting entity be terminated, in a manner

contemplated in the agreement regulating the relationship between the Members of the Pre-qualified Bidder;

- 15.2.12.2 a letter from the Pre-qualified Bidder indicating how the Equity interest is to be held in the Pre-qualified Bidder occasioned by the departure of the exiting entity;
- 15.2.12.3 a statement from the Pre-qualified Bidder stating which of the remaining Members is going to fulfil the role(s), responsibility(ies) or obligation(s) which were previously allocated to the exiting entity; and
- 15.2.12.4 the submission by the Pre-qualified Bidder, of an amended Consortium agreement if one was previously concluded and provided to the Department and if not so concluded and provided, then the submission of a Consortium agreement from the Pre-qualified Bidder.

16. USE OF TRANSACTION ADVISORS BY THE DEPARTMENT AND ADVISORS BY THE RESPONDENTS

A professional firm or staff member that is a member of the Transaction Advisors may not advise or provide any other service or information to a Respondent, Pre-qualified Bidder, its Members or any other participant involved in any Response or Proposal or be a Member of any Respondent, Pre-qualified Bidder or Preferred Bidder.

17. ACKNOWLEDGMENT OF THE LAW

- 17.1 The Respondent and each of its Members, registered in South Africa and incorporated or registered in a foreign jurisdiction, are required to submit with the Response, a declaration stating, *inter alia*, that they are fully acquainted with the Laws of South Africa (including without limitation all statutes and regulations (on a national, provincial and municipal level)), and if not, will (upon selection as Pre-qualified Bidder) engage South African counsel, which is fully acquainted with the Laws of South Africa to advise them in relation to the Laws of South Africa (including without limitation all statutes and regulations (on a national, provincial and municipal level)) in relation to procurement and the subject matter of the Project and other regulatory matters relating to the Project. The declaration required in respect of the Lead Member is included in Schedule B (*Declaration of Respondent*) of Volume 2 (*Response Forms*) of Part B (*Qualification Criteria and Response Forms*) of this RFQ.

17.2 Each Respondent, Pre-qualified Bidder or Bidder will be solely responsible for satisfying itself as to the legal requirements applicable to the Project, and shall have no claim against the Department 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 and Environmental Consents required to implement that Bidder's Project. Failure to do so will be at the entire risk of the Respondent, Pre-qualified Bidder, or Bidder, and no relief will be given for errors, oversights or omissions of the Respondent or its Members or of the Department.

17.3 The Preferred Bidder will ultimately be required to obtain and be responsible for any other outstanding Consents, permits and/or authorisations required to implement its Project.

18. PROPRIETARY NATURE OF THE RFQ AND CONFIDENTIALITY

18.1 Proprietary nature of the RFQ

18.1.1 This RFQ constitutes information which is proprietary to the Department.

18.1.2 This RFQ may only be used by any third party, including a Respondent, as authorised by the Department. The following uses are authorised without the need to apply for specific permission from the Department for the use of the RFQ:

18.1.2.1 evaluation of the Project by a prospective Respondent; and

18.1.2.2 preparation of a Response.

18.1.3 Subject to section 18.1.2 above, no person may sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, or otherwise use this RFQ and may not divulge or distribute any information in respect of this RFQ or pass on any copies of this RFQ without the prior written approval of the Department and must return this RFQ together with all copies thereof to the Department promptly upon being requested to do so.

18.1.4 Any unauthorised use of this RFQ may violate (amongst others) copyright laws and trademark laws.

18.2 **Confidentiality by the Respondents and Pre-qualified Bidders**

18.2.1 **Confidentiality by the Respondents**

18.2.1.1 In submitting a Response, each of the Respondents, its Members and all other participants in any Response agrees to keep the RFQ and its Response confidential. Nothing in this provision shall prevent a Respondent or Pre-qualified Bidder from making the RFQ and the Response available to:

18.2.1.1.1 potential Members who seek to be post-qualified in accordance with section 15.2.5 of this Part A (*General Information, Requirements and Rules*) of the RFQ to participate in response to the RFP; and

18.2.1.1.2 other participants who seek to participate as part of the Respondent.

18.2.1.2 Respondents are required to provide the Department, together with their Responses, with a copy of the Confidentiality Undertaking letter set out in Schedule D (*Confidentiality Undertaking*) of Volume 2 (*Response Forms*) of Part B (*Qualification Criteria and Response Forms*) of this RFQ, signed by a duly authorised representative on behalf of the Respondent and each Member of the Respondent.

18.2.2 **Confidentiality by the Pre-qualified Bidders**

In participating in the Optimisation Process, each of the Pre-qualified Bidders, its Members and all other participants in the Optimisation Process agrees to keep the RFP confidential.

18.2.3 **Confidentiality by the Department**

18.2.3.1 The Department shall use its reasonable endeavours to keep all data and details submitted by Respondents, Pre-qualified Bidders or Bidders strictly confidential save to the extent that the Department is required to disclose such data and/or details by applicable law or order of a court of competent jurisdiction or 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 Respondent with third parties (other than the Department's Transaction Advisors), the necessary permission will be obtained from the Respondent concerned.

18.2.3.2 Notwithstanding the provisions of section 18.2.3 of Part A (*General Information, Requirements and Rules*) of this RFQ:

18.2.3.2.1 the Department shall be entitled to disclose all data and details submitted by Respondents, Pre-qualified Bidders or Bidders to the Transaction Advisors, National Treasury and their officers, employees, agents, advisors and representatives who are involved in the Project and the evaluation of the Responses;

18.2.3.2.2 the Department shall be entitled to disclose to any person and in any media, the name of any Respondents, Pre-qualified Bidders or Bidder which has been designated as a Preferred Bidder; and

18.2.3.2.3 the Department 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 Respondents, Pre-qualified Bidders or Bidder. Accordingly, the Respondents, Pre-qualified Bidders or Bidder and /or its Members shall not have, and hereby waive, any claim against the Department, its officers, employees, servants, agents or advisors (including the Transaction Advisors) arising out of the disclosure of any information, confidential or otherwise.

19. TAX CLEARANCE CERTIFICATE REQUIREMENTS

19.1 The taxes of a Respondent and its Members must be in order for a Bidder to submit a Compliant Response.

19.2 Each Respondent and its Members, Contractors and Key Equipment Suppliers established or incorporated in South Africa more than three hundred and sixty five (365) days prior to the Response Submission Date, will be required, in response to the RFQ, to submit an original and valid tax clearance certificate with its Response.

19.3 A Respondent and its Members, Contractors and Key Equipment Suppliers established or incorporated in a jurisdiction other than South Africa, will be required, in response to the RFQ, to produce a tax clearance certificate or equivalent certificate translated into English, if applicable, from the local revenue authority where they are established or incorporated to demonstrate that they are in good standing with that authority.

20. PROPOSAL GUARANTEE

20.1 Proposal Guarantee

20.1.1 Each Bidder shall, on the Proposal Submission Date provide the Department with a single Proposal Guarantee (in ZAR) in an amount to be indicated in the RFP. No VAT will be payable on this amount.

20.1.2 Each Bidder will be required to submit a Proposal Guarantee on the Proposal Submission Date.

20.1.3 Further details on the Proposal Guarantee will be provided by the Department in the RFP.

20.2 Preferred Bidder Guarantee

20.2.1 The Preferred Bidder will be required to submit a Preferred Bidder Guarantee on a date specified by the Department.

20.2.2 Further details on the Preferred Bidder Guarantee will be provided by the Department in the RFP.

21. GIFTS AND PAYMENTS

21.1 The attention of Respondents, Pre-qualified Bidders and Bidders is drawn to the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

21.2 None of the Respondents, Pre-qualified Bidders, Members or any other participant in a Response, or any of their agents or Advisors shall commit an offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), including directly or indirectly, offering or giving to any person in the employment of the Department or any other Government official, who is directly involved in the Project or any of the Transaction Advisors, any gift or consideration

of any kind as an inducement or reward for appointing any Respondent as a Pre-qualified Bidder or Bidder as a Preferred Bidder, or for showing or omitting to show favour or disfavour to any Respondent, Pre-qualified Bidder, Member or any other participant in an Response in relation to the Project.

- 21.3 If any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) is committed, the Department shall be entitled to disqualify (in terms of section 24 (*Disqualification*) of this Part A (*General Information, Requirements and Rules*) of the RFQ) the Respondent or Pre-qualified Bidder which committed or which is associated with any person who committed the offence, from the Response Submission Phase and/or to prohibit such Respondent, Pre-qualified Bidder, Bidder, Member or any other participant in the relevant Response or Response, and their agents and Advisors from participating further in any part or phase of the Project.

22. **NO CONTRACT**

This RFQ does not constitute an offer to enter into a contractual relationship with any Respondent, but is merely a solicitation of Responses to enable the Department to select Pre-qualified Bidders, who will submit Proposals in respect of the RFP.

23. **NO COLLUSION**

- 23.1 The attention of each of the Respondents, Pre-qualified Bidders, Members as well as their Advisors and agents is drawn to section 4(1)(b)(iii) of the Competition Act, 1998 (Act No. 89 of 1998), which prohibits collusive bidding.
- 23.2 In submitting a Response, each of the Respondents and all other participants in any Response certifies that:
- 23.2.1 its Response has been prepared without consultation, communication or agreement for restricting competition with any other Respondent of another Respondent or participant in another Response or any other competitor or potential competitor;
- 23.2.2 its Response has not been disclosed, nor will it be disclosed to any other Respondent or participant in another Response, or any competitor or potential competitor;

- 23.2.3 no attempt has been made nor will be made by it to induce any other person not to submit or participate in a Response for the purpose of restricting competition; and
- 23.2.4 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 Response for the purpose of restricting competition.
- 23.3 If the Department becomes aware of, or is of the opinion that any of the activities detailed in section 23.2 of this Part A (*General Information, Requirements and Rules*) of the RFQ have been undertaken by any Respondent, Pre-qualified Bidder, Members or any other participant in an Response, the Department shall be entitled to disqualify (in terms of section 24 (*Disqualification*) of this Part A (*General Information, Requirements and Rules*) of the RFQ) such Respondent, Pre-qualified Bidder or Member and to bar any or all of them from participating further in the Project.

24. **DISQUALIFICATION**

Any material failure on the part of a Respondent or Pre-qualified Bidder to comply with any of the terms of this RFQ, read together with all Briefing Notes, may result in the Respondent or Pre-qualified Bidder, and other persons associated in any relevant way with the Respondent or Pre-qualified Bidder, being disqualified from participating in the Project.

25. **LOSS OF PRE-QUALIFIED BIDDER STATUS**

- 25.1 If a Pre-qualified Bidder:
- 25.1.1 fails to comply timeously with any conditions contained in the letter of appointment as a Pre-qualified Bidder; or
- 25.1.2 breaches any law applicable to any aspect of the Project;
- 25.1.3 fails to participate in the Optimisation Process;
- 25.1.4 material changes its composition without the prior written consent of the Department, after being appointed as a Pre-qualified Bidder; or
- 25.1.5 fails to submit the Proposal Guarantee by the Proposal Submission Date,

the Department will be entitled to terminate such Pre-qualified Bidder's status as Pre-qualified Bidder.

26. CONTACT POLICY

26.1 Contact Policy prior to appointment as a Pre-qualified Bidder

26.1.1 The Department will communicate on matters related to the RFQ and the Project only with Respondents. The Department anticipates to use its website (www.dha.gov.za) for this purpose.

26.1.2 Each Respondent in Schedule A (*Form of Response*) of Volume 2 (Response Forms) of Part B (*Qualification Criteria and Response Forms*) of this RFQ, will confirm or change the above name and contact details of the person or persons appointed to undertake all contact with the Project Officer. Any change to any details of that contact person after the submission of the Response must be notified to the Project Officer in writing.

26.1.3 Any potential Respondent or Respondent may only communicate with the Department through such contact person or persons, as the case may be, and the Department shall be entitled, at its sole discretion, to disregard any communication from a potential Respondent or from a Respondent, that does not come from such contact person or persons, and that does not go directly to the Project Officer in the manner identified below.

26.1.4 All queries and requests for clarification in respect of this RFQ are to be addressed, in writing, to the Project Officers. The contact details of the Project Officers are the following:

Mr Elroy Africa	Mr Vukani Nxasana
Department of Home Affairs	Department of Home Affairs
Border Management Project	Chief Director: Property and Facilities
Management Office	
E-mail: PPP.Ports@dha.gov.za	E-mail: PPP.Ports@dha.gov.za

26.1.5 No information or clarification may be requested by a potential Respondent, a Respondent, its Members nor any of its agents or any person participating

in the relevant Response, from any member of the Transaction Advisors, the employees of the Department or any other Government official who may be associated with the Project, without the prior written consent of the Project Officer.

26.1.6 If a potential Respondent, Members, Contractor or Key Equipment Suppliers and/or any of its agents, other persons participating in the relevant Response or Advisors makes any such prohibited contact, the Department reserves the right, in its sole discretion, to disqualify (in terms of section 24 (*Disqualification*)) of Part A (*General Information, Requirements and Rules*) of this RFQ) the Respondent, Members, and/or other persons participating in that RFQ, or Advisors, from any further participation in the Project.

26.1.7 A potential Respondent, Members and/or any of their Advisors or agents shall not be entitled to rely on any statements, information or correspondence in respect of this RFQ or the Project that is not contained in a Briefing Note or made, given or issued by the Project Officer in writing and addressed to the authorised representative of a Respondent or potential Respondent.

26.2 **Contact Policy following appointment as a Pre-qualified Bidder**

26.2.1 The Department shall communicate with Pre-qualified Bidders through the Project Office. A Pre-qualified Bidder shall not be entitled to rely on communications from the Department which do not emanate from the Project Officer, subject to the reservation of all of the rights of the Department in respect of the Project, as set out in this RFQ, including those rights set out in section 13 (*The Department's Rights*) of this Part A (*General Information, Requirements and Rules*) of the RFQ.

26.2.2 No information or clarification may be requested by the Pre-qualified Bidder, Members, any of its agents, or any other persons participating in the relevant Response or their Advisors from any member of the Transaction Advisors, the BMA, the employees of the Department or any other Government official who may be associated with the Project, other than through emails sent through by the Project Officer.

26.2.3 If the Pre-qualified Bidder, Members or any of its agents, other persons participating in the relevant Response or their Advisors makes any such prohibited contact, the Department reserves the right, in its sole discretion, to disqualify (in terms of section 24 (*Disqualification*) of Part A (*General Information, Requirements and Rules*) of this RFQ) the Pre-qualified Bidder, Members or any other person participating in that Response or their Advisors, from any further participation in the Project.

27. TIME FOR INFORMATION REQUESTS AND CLARIFICATIONS

27.1 The Respondents may request clarification on any item contained in this RFQ by not later than ten (10) calendar days before the Response Submission Date.

27.2 However, Respondents are encouraged to ensure the timeous submission of their requests for clarification in this regard, as the Department cannot guarantee that it will be able to provide adequate responses to any requests for clarification that are received ten (10) calendar days or less before the Response Submission Date in sufficient time so as to enable any Respondents to make the necessary changes, amendments or adjustments to their Responses for submission at the Response Submission Date.

28. REQUESTS AND RESPONSES TO REQUESTS

28.1 All requests and queries from Respondents must be in writing sent to the Project Officer by way of email. Oral requests and queries will not be entertained and will not receive a response.

28.2 The Department will endeavour in good faith to respond to all reasonable written queries and requests for clarification raised by the Respondents by way of written responses, currently anticipated to be uploaded on the website of the Department (www.dha.gov.za). Responses to queries will consist of a written response to a request for clarification and shall be shared with all other Respondents on the Department's website (www.dha.gov.za), except where the Department determines that the response is specific to a particular Respondent and does not affect the other potential Respondents. The Department reserves the right not to answer or respond to any particular question, query or request.

28.3 No response given to a question or request for clarification will have any status or impact on the RFQ, save to the extent that such response is subsequently reflected

in Briefing Notes to the RFQ.

- 28.4 It is the responsibility of a Respondent to identify in its queries or requests for clarification which information it deems to be confidential to its Response and which it does not wish to have communicated to other Respondents. The Respondent must give written grounds for requesting such information to be treated as confidential and a determination will be made in this regard, at the Department's sole discretion. The Respondent's attention is drawn to the requirements of the Constitution; the PFMA; the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) and the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), all of which are relevant to the determination whether the Department shall be entitled to respect the Respondent's request for confidentiality.

29. **RFQ RESPONDENTS' CONFERENCE**

- 29.1 The Department will hold a non-compulsory conference with prospective Respondents. This conference will be held in the Republic of South Africa on a date as notified to prospective Respondents.
- 29.2 The Department reserves the right, in its sole discretion, to request prospective Respondents to attend any additional RFQ Respondents' Conferences, which may be compulsory.

30. **CHANGE IN LEGAL REQUIREMENTS**

Respondents are expected to inform themselves as to the current Laws in force (or published in the Government Gazette and in respect of which the date of commencement has also been published) in South Africa. In addition, they are expected to review all bills, draft bills and draft regulations and rules that have been published in the Government Gazette and are required to assume that the substantive and procedural provisions of such bills and draft regulations will not materially differ from those enacted.

31. **BRIEFING NOTES AND CHANGES TO BID PROCESS**

The Department may, at any time and for any reason, whether at its own initiative, or in response to a clarification requested by a Respondent, supplement, amend, vary or modify any part or aspect of this RFQ by the issue of Briefing Notes. Please note that briefing notes are specifically designed to supplement, amend, vary or modify any part or aspect of this RFQ.

31.1 **Issue of Briefing Notes**

- 31.1.1 The Department may issue additional information regarding the RFQ on an *ad hoc* basis, which information shall be provided to all the Respondents.
- 31.1.2 Briefing Notes will be sequentially numbered and will indicate whether they supplement, vary or amend any portion of the RFQ.
- 31.1.3 Respondents shall be obliged to accept any amendments specified in Briefing Notes. All Briefing Notes shall be deemed to be part of the RFQ. A Respondent must ensure that its Response is prepared taking into account all Briefing Notes issued by the Department.
- 31.1.4 Briefing Notes will only be circulated (at the time when they are issued) to all Respondents.

32. **COST OF BIDDING**

- 32.1 A Respondent shall bear all of its costs (of whatsoever nature) associated with the preparation of its Response and the development of the Project.
- 32.2 No Respondent (including any Pre-qualified Bidder and Preferred Bidder) shall have any claim against the Department (including any claim for the costs of bidding) as a result of:
 - 32.2.1 not being selected as a Pre-qualified Bidder;
 - 32.2.2 not being selected as a Preferred Bidder;
 - 32.2.3 not entering into a PPP Agreement;
 - 32.2.4 the Department altering or abandoning any part or all of the Project; and
 - 32.2.5 the cancellation of any part or all of the Project as a result of any other action or omission of the Department.

33. **INCONSISTENCIES**

If a Respondent identifies any errors or inconsistencies between the various portions of this RFQ, the Respondent shall notify the Project Officer in writing prior to the date referred to in section 27 (*Time for Information Requests and Clarifications*) of Part A

(*General Information, Requirements and Rules*) of this RFQ, and the Department will, if necessary, provide clarification to all Respondents by way of a Briefing Note.

34. INCORRECT OR MISLEADING INFORMATION

The Department may:

- 34.1 disqualify, in terms of section 24 (*Disqualification*) of this Part A (*General Information, Requirements and Rules*) of the RFQ, any Respondent who knowingly or unwittingly provides any incorrect or misleading information in response to this RFQ or in response to any query or clarification question addressed to the Respondent by the Department, from further participation in the Project; and/or
- 34.2 revoke any decision in respect of the selection of a Pre-qualified Bidder, in accordance with section 25 (*Loss of Preferred Bidder status*) of Part A (*General Information, Requirements and Rules*) of this RFQ, if such decision was based on any incorrect or misleading information or representation which the Respondent or its Members or any other participant in the relevant Response and/or agents knowingly or unwittingly provided in response to this RFQ or in response to any query or clarification question addressed to the Respondent or Pre-qualified Bidder by the Department.

35. DUE DILIGENCE BY RESPONDENTS

The Respondent is required to perform an appropriate due diligence on all other matters relevant to the Project to enable the Bidder to submit its Response that is based on verified and accurate information.

36. OPENING OF PROPOSALS

The Department will open the Responses on/or after the Response Submission Date, following receipt of the Responses.

37. REQUESTS FOR FURTHER INFORMATION

The Department reserves the right to seek additional information from any Respondent in respect of its Response, as it may, in its sole discretion, determine, whether such information has been requested under this RFQ or otherwise, and may require the Respondent to make oral presentations for clarification purposes or to present supplementary information, in respect of its Response if so required by the Department.

The Department reserves the right to hold one or more briefing or information sessions in respect of any or all of the Responses. The Respondent may be required to do a presentation of the salient features of its Response to the Department. If required by the Department, the Project Officer will arrange a suitable date and venue with each affected Respondent.

38. RESPONSE REJECTION

The Department shall be entitled to accept or reject any Response or to waive any failure to comply with the requirements set out in this RFQ at any time.

39. DISPUTES RELATING TO BID PROCESS

Each Respondent, Member or any other person participating in a Response or otherwise in the Project, waives the right to bring proceedings in any forum outside of South Africa in relation to this Project. This Project shall be governed by the laws of South Africa and the Respondent and each of its Members and such other participants' consents and submits to the High Court of South Africa, Gauteng Division, Pretoria having exclusive jurisdiction in relation to it.

40. SELECTION OF PRE-QUALIFIED BIDDERS

The Department will send letters to the selected Pre-qualified Bidders after the evaluation process, notifying them of their status, and requesting the Pre-qualified Bidders to submit make payment of the RFP Document Fee which will enable them to have access to the RFP.

41. THE EVALUATION PROCESS

41.1 Evaluation Criteria

41.1.1 The main objective in evaluating Responses is to identify the Respondents who appear most able to provide credible Proposals if pre-qualified to participate in the RFP stage.

41.1.2 The evaluation of Responses will be undertaken in the manner set out in sections 41.3 (*Evaluation Process and Weighting*) of this Part A (*General Information, Requirements and Rules*) of the RFQ and 41.4 (*Evaluation Committee*) of this Part A (*General Information, Requirements and Rules*) of the RFQ.

- 41.1.3 Any material failure on the part of a Respondent to comply with mandatory requirements set out in this RFQ as well as the Qualification Criteria may result in a Response being treated as non-compliant. Non-compliant Responses may be rejected without being further evaluated. Responses to this RFQ will be reviewed and analysed in the following categories, namely:
- 41.1.3.1 Legal, which will include an analysis of the Respondent Structure and Information;
- 41.1.3.2 Technical Deliverability Criteria, which will include an analysis of the Respondents ability to deliver the Works and Services adhering to the criteria below:
- 41.1.3.2.1 technical approach and understanding;
- 41.1.3.2.2 technical experience; and
- 41.1.3.2.3 technical team.
- 41.1.3.3 Due to the complexity of the delivery of the Project, Technical Deliverability must also encompass the major aspects of the Project namely:
- 41.1.3.3.1 design;
- 41.1.3.3.2 construction;
- 41.1.3.3.3 operations and maintenance.
- 41.1.3.4 Broadband Connectivity Criteria will include the assessment of:
- 41.1.3.4.1 technical experience; and
- 41.1.3.4.2 technical team.
- 41.1.3.5 Financial Criteria, which will include an assessment of:
- 41.1.3.5.1 financial standing as demonstrated by financial reporting information;
- 41.1.3.5.2 history of completing and raising capital ("Debt" and "Equity") for

similar transactions; and

41.1.3.5.3 other commitments in the foreseeable future;

41.1.3.6 Project Awareness, which will consider the knowledge of the Respondents' understanding of the project complexities and previous involvement in PPP projects or comparable; and

41.1.3.7 Economic Development Criteria, which will consider the contribution of the Members of the Respondents to B-BBEE by considering the Contributor Status Level of the Respondents. Further the track record of the Respondents in undertaking skills development, preferential procurement and socio-economic development programmes will be undertaken.

41.1.4 Information in relation to each of these categories will be obtained from Respondents, and their respective Members, Contractors and any other participants by way of the Part B (*Qualification Criteria and Response Forms*).

41.2 **Evaluation Methodology**

Respondents will be evaluated as follows:

41.2.1 Step 1 – Compliance of the Respondents with Part B (*Qualification Criteria and Response Forms*) of the RFQ; and

41.2.2 Step 2 – Scoring and Ranking in terms of Part C (*Scoring and Ranking of Compliant Responses*) of the RFQ.

41.3 **Evaluation Process and Weighting**

41.3.1 Each Response will be scored in each category. Each sub category will be allocated a response of “excellent”, “good”, “adequate”, “poor” out of a predetermined maximum number of points. The relative numbers of points available in respect of the various categories will vary to reflect the relative importance of each category. The weighting attributed to each of the following categories of evaluation, for purposes of evaluating each Response to this RFQ, are:

- 41.3.1.1 Legal Criteria – Respondent information and structure (only Qualification Requirements);
- 41.3.1.2 Technical Deliverability Criteria – thirty five (32) points;
- 41.3.1.3 Broadband Connectivity Criteria – three (3) points;
- 41.3.1.4 Financial Criteria – thirty five (35) points;
- 41.3.1.5 Project Awareness – fifteen (15) points; and
- 41.3.1.6 Economic Development Criteria – fifteen (15) points.

41.4 **Evaluation Committee**

The Department has established a three-tier Evaluation Committee comprised of the following two committees and the Accounting Officer of the Department to undertake the evaluation of Responses, namely the:

- 41.4.1 the Bid Evaluation Committee, comprised of representatives of the Department, Department of Public Works and National Treasury, representatives of organs of state that have a presence at the six identified Ports of Entry, assisted by the Transaction Advisors to the Project and any other consultants it may procure from time to time. The Bid Evaluation Committee will report to the Bid Adjudication Committee;
- 41.4.2 the Bid Adjudication Committee ("Award Structure") will review the work of the Bid Evaluation Committee, evaluate the Responses and make a recommendation(s) to the Accounting Officer in respect of the appointment of Pre-qualified Bidders, and
- 41.4.3 the Accounting Officer, who will consider and determine which Respondents, if any, will be selected as Pre-qualified Bidders, subject to the approval of the National Treasury and taking into account the professional advice, inputs and conclusion(s) of the Bid Evaluation Committee and the Bid Adjudication Committee.