

Project: Privatization of National Ports

Tender: 67% participation in the share capital of the Piraeus Port Authority SA

Phase: First Phase (pre-qualification phase)

Date: 16 April 2014

Subject: Answers to Requests for Clarifications

Number: 2

Question 1
Regarding the Technical Eligibility Criteria, do they have to be satisfied before the Second Phase?
Answer 1
Pursuant to Section 4.2 of the Invitation, the Technical Eligibility Criteria need to be satisfied as of the submission of a binding offer and throughout the remainder of the Process.
Question 2
Could two companies that express interest on April 28 join forces at a later stage? And if yes do they have to be both qualified to stage 2 of the tender or the one qualified can jv with another?
Answer 2
According to Section 3.6 of the IEoI any changes to the persons/Members of Interested Parties already confirmed as Qualified Parties will be subject to the prior written approval of the Fund. The Request for Proposal will specify whether and to what extent Interested Parties that qualify to the Second Phase may be permitted to join forces with other parties. In determining whether to allow parties to team up (and, if applicable, on what terms) the Fund will assess any adverse effects to the competitive nature of the Process.
Question 3
According to Answer 6 of the Answers to Requests for Clarifications document issued by the Fund on April 4, 2014: <i>“Audited financial statements need not be converted into EURO (€). However, when stating figures of “equity”, as defined in the IEoI, these should be provided in their original currency and in EURO (€), together with an indication of the exchange rate applied. For the avoidance of doubt [...]”</i> . Please clarify what foreign exchange rate should be used for local currency conversion in Euro. For example, should we use (i) the latest Foreign Exchange rate spot price available; (ii) average Foreign Exchange rate for each fiscal year; (iii) December 31 Foreign Exchange rate spot price of each fiscal year; (iv) other.
Answer 3
Following HRADF’s reply no. 6, dated 4/4/2014, when stating figures of “equity”, as defined in the IEoI, these should be provided in their original currency and in Euro (€), together with



an indication of the exchange rate applied. The exchange rate applied should be the December 31 foreign exchange rate of each fiscal year, as officially reported by the European Central Bank.

Question 4

According to Section 9.1.3 of the IEoI: "... Copies of the financial statements of the Interested Party of the last three audited (3) financial years. If the Interested Party is a parent company, consolidated financial statements of the last three (3) audited financial years should also submitted.

In the case of a Consortium, copies of the financial statements of the last three (3) audited financial years for each Consortium member. If a member of an Interested Party is a parent company, consolidated financial statements of the last three (3) audited financial years should also submitted.

In the case of a private equity firm or a fund or a fund manager, copies of the financial statements of the last three (3) financial years of the private equity firm or fund or fund manager and copies of the financial statements of the last three (3) financial years of its investment manager / general manager.

In the event that an entity does not produce consolidated financial statements and its average consolidated net assets include those of other legal entities being controlled by such entity, it must also provide adequate proof of control over the entities consolidated, as well as financial statements of such legal entities, in line with the requirements of this section.

If the law in the country of current establishment of the entity does not require the compilation of audited financial statements, the entity shall submit a declaration confirming that auditing is not required, accompanied by the unaudited financial statements.

If an entity (either in itself an Interested Party or as a member of a Consortium) has been incorporated for less than three (3) fiscal years, the years that such entity is in operation will be taken into account, provided that at least one set of audited financial statements is submitted and such set pertains to the most recent period of the ones reported..."

Please clarify if we only need to submit the annual financial statements of the last three fiscal years and whether these three statements should be sufficient or any other additional financial information needs to be submitted (i.e. annual reports, annual accounts etc).

Answer 4

Submitting the annual financial statements (balance sheet, profit and loss statement or equivalent) of the last three fiscal years, in compliance with the Invitation, is sufficient.

Question 5

Does the Fund intend to provide any specific template for the bank reference letter required under Section 9.1.5 of the IEoI? If negative, would the Fund require any minimum specific information to be included in "such information as is customarily expected to be set forth" in such bank reference letters for purposes of complying with Section 9.1.5 of the IEoI?

Answer 5

The Fund does not intend to provide a template of the letter required under Section 9.1.5 of the IEoI. The Fund expects a bank reference letter to attest to a satisfactory and current banking relationship. It is not a requirement for purposes of the First Phase that a bank reference letter submitted pursuant to Section 9.1.5 of the IEoI refer to and/or confirm the levels of equity and/or debt capital available to any person.



Question 6

Does the Fund intend to provide any specific template for purposes of the statement according to which a Third Party Supporter will declare that it will provide its technical support to the bidding Interested Party? If negative, would a relevant solemn declaration by such Third Party Supporter to be attached to the letter of submission of interest of the Interested Party sufficiently serve this purpose?

Answer 6

The Fund does not intend to provide a template of the respective statement. Please note that, pursuant to Section 5.4 of the IEoI, an express and appropriately unqualified undertaking by the Third Party Supporter must be produced, to the effect that the Interested Party will have at its disposal the resources necessary.

Question 7

According to Section 9.1.1(ii) of the IEoI: *"...Details of the Interested Party's shareholding/ownership structure including ultimate legal and beneficial owners holding 5% or more of its share capital.*

In the case of a Consortium, details of shareholding/ownership structure, including the ultimate legal and beneficial owners holding 5% or more of the share capital, in each Consortium member.

In the case of a private equity firm or a fund or a fund manager, details of the ownership of the investment manager/general partner, including any person holding 5% or more of the legal and beneficial ownership of the share capital of the investment manager/general partner...", is required.

Taking into account (a) that the definition of the ultimate legal and beneficial owner is not applicable to corporations the stocks of which are publicly traded in regulated financial markets (i.e., to companies listed on stock exchange markets), and (b) that Section 10.11 of the IEoI provides for the application of Greek law to all contractual and non contractual disputes arising out of or in connection with the IEoI, please clarify:

(A) If para.3 of article 8 of Law 3310/2005 is in any case applicable to all listed corporations in connection with their participation in the tender process and such corporations would be therefore excluded from the obligation provided under Section 9.1.1(ii) of the IEoI. If not excluded, please define the exact procedure and/or documentation which would be deemed necessary to evidence the above, taking into account the nature of such corporations and stock exchange market regulations and functions.

Answer 7

Section 9.1.1 (ii) of the IEoI reflects a requirement of the Fund, that is not to be confused with the requirements of Law 3310/2005. The Fund expects disclosure of ultimate beneficial owners that are individuals (construed in accordance with Decision 281/2009 of the Banking and Credit Issues Committee of the Bank of Greece, as in force, albeit applying a 5% holding threshold) to be properly identified. A declaration of the Interested Party or, as applicable or relevant, Member of a Consortium to that effect meeting the requirements of Section 9 of the IEoI would be sufficient for such purposes.



Question 8

According to Sections 2.8 [*“... Interested Parties wishing to participate in the Process will need to fulfill the relevant Pre-Qualification Criteria and comply with the other terms and conditions set out in this Invitation...”*], 4.1 [*“...The Pre-Qualification Criteria comprise the Financial Eligibility Criterion, the Technical Eligibility Criteria and the Personal Situation Criteria...”*], 4.4 [*“...Interested Parties that do not fulfill the Pre-Qualification Criteria set forth in Sections 5, 6 and 7 as and when applicable to them in accordance with this Section 4 will be disqualified from the Process...”*] of the IEoI read in combination, it is provided that an Interested Party needs to fulfill also the Technical Eligibility Criteria to be eligible, whereas in Section 4.2 of the IEoI, it is provided that *“...All Interested Parties have to meet the Financial Eligibility Criterion and the Personal Situation Criteria upon submission of the Expression of Interest and throughout the Process. In addition, all Interested Parties have to meet also the Technical Eligibility Criteria as from the submission of the binding offers and throughout the rest of the Process...”* (emphasis added). Given that there appears to be a contradiction between the different provisions of the IEoI stated above, please clarify in which Phase of the Tender Process an Interested Party should demonstrate the fulfillment of the Technical Eligibility Criteria and, eventually, in which Phase should the relevant documentation be submitted in order to be evaluated. If the relevant documentation is required to be submitted along with the submission of binding offers (Phase B of the Tender Process) please indicate if any documentation attesting to the Technical Eligibility Criteria must be submitted at all during the EOI (Phase A of the Tender Process).

Answer 8

Part of Section 4.4 of the IEoI reads “Interested Parties that do not fulfill the Pre-Qualification Criteria set forth in Sections 5, 6 and 7 as **and when** [emphasis added] applicable to them in accordance with this Section 4 will be disqualified from the Process”. Consequently it should be clear that all Interested Parties have to meet the Technical Eligibility Criteria as from the submission of the binding offers in the Second Phase and throughout the rest of the Process.

Notwithstanding the foregoing, the Fund has taken the view that the requirement to satisfy the Technical Eligibility Criteria ought to be stated clearly in the IEoI (and not be introduced as part of the Second Phase) to render the requirement more transparent to all potentially interested investors.

For the avoidance of doubt, please note that information concerning satisfaction of the Technical Eligibility Criteria can, at the option of the Interested Party: (a) be submitted in conjunction with the Expression of Interest and subsequently confirmed as part of the Second Phase (in the manner to be specified in the Request for Proposal); or (b) be submitted together with a binding bid, as part of the Second Phase. In each case, the Technical Eligibility Criteria would need to be satisfied by reference to the technical capacities of the Interested Party or (in the case of a Consortium) its Technical Expert Member and/or (as applicable) a Third Party Supporter, each as identified (and in the role identified) as part of the Expression of Interest, subject to such modifications only (if any) as may be permitted by the Request for Proposals.

Capitalized terms have the meaning ascribed to them in the Invitation for the Expression of Interest, unless the context indicates otherwise.