



Ministry of Economic Development
Republic of Maldives

Terms of Reference (ToR)

for

DEVELOPMENT OF A TRANSHIPMENT PORT IN THE NORTH OF MALDIVES

TES/2021/W-070

Issued by:
National Tender
Ministry of Finance
Republic of Maldives

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



Ministry of Finance
Male', Maldives

Reference Number: (IUL)13-K/13/2021/92

Procurement Number: TES/2021/W-070

Section 1 - REQUEST FOR EXPRESSION OF INTEREST

1. The Ministry of Finance (MoF) on behalf of Ministry of Economic Development invites interested proponents to indicate their interest for the Development of an International Container Transshipment Port in the North of Maldives under Build Operate Transfer Public Private Partnership Model.
2. A more detailed Terms of Reference (TOR) for the Projects will be available on the Ministry's website **www.finance.gov.mv** from 15th March 2021. Interested proponents may obtain further information by writing to the address below. It is the proponent's responsibility to verify the website for the latest information related to this Request for Expression of Interest.
3. The Employer will prepare a short list of proponents based on the Expression of Interest (EOI)'s and detailed Request for Proposal (RFP) will be released to the shortlisted parties.
4. The Expression of Interest (EOI) must be delivered to the address below (in person, or by mail, or by e-mail) by **1400 hours local time on 29th April 2021.**
5. Proponents may obtain further information from the following address:
National Tender,
Ministry of Finance,
Ameenah Magu, Malé, Maldives,
Tel: (960) 3349125, (960)3349147
E-Mail: ibrahim.aflah@finance.gov.mv
Copy to: tender@finance.gov.mv

15th March 2021

Section 2– Specific Information

1. Introduction:

The Ministry of Finance (MoF) on behalf of the Ministry of Economic Development, invites interested parties, local and foreign with demonstrated financial and technical capability, to register their interest by submitting an Expression of Interest (EOI) for the development of an International Container Transshipment Port in the North of Maldives.

This announcement outlines the objectives of issuing this Request for Expression of Interest (REOI) and the process for review and evaluation of applications received under this announcement.

2. Scope of the Project:

The Terms of Reference (ToR) for the International Container Transshipment Port Maldives is available from **15th March 2021 on the Ministry of Finance** website www.finance.gov.mv for downloading free of cost. The Ministry, its Employees as well as its advisors shall not be liable for any information not received by the Bidder. It is the Bidder's responsibility to verify the website for the latest information related to this REOI.

3. Purpose and Process of REOI

The purpose of issuing the REOI is to gauge the interest of the private sector in the development of the project outlined herein through applicant's private financing without any recourse to the Government, and obtain information on indicative terms at which interested applicants may be open to carry out the project under BOT PPP model.

MoF will review the submissions received under this REOI and shortlist parties with demonstrated financial and technical capacity based on the Eligibility Criteria stipulated in Clause 4.

MoF may approach applicants during the review stages for clarification or queries. All such communication will be in written form.

MoF will depend on documentation submitted, in reviewing and shortlisting of applicants. It is the responsibility of the applicant to submit all the necessary information and documentation noted in this REOI.

The submissions received under this REOI may be used by the Ministry to gauge the level of private sector interest in delivery of the project under a BOT PPP structure.

Only those applicants who have submitted an EOI and are shortlisted as per the provisions of this announcement shall be allowed to participate in any subsequent stages of the project as decided by the Ministry, and shall be as per the terms and conditions that may be specified in such Request for Proposal document.

MoF reserves the right to accept or reject any or all EOIs without assigning any reason thereto.

4. Eligibility Criteria

These criteria comprise general criteria related to:

- Legal Exclusion Criteria (based on Form I)
- Financial Minimum Criteria (Form II), and
- Technical & Operational Minimum Criteria (Form III).

4.1 Legal exclusion criteria

- Bidders (either single bidders or all consortium members) must not be in bankruptcy or liquidation proceedings.
 - Neither the Bidder, nor any connected person, has been convicted of fraud, corruption, collusion, or money laundering, or for a criminal act involving dishonesty, physical violence or harm to human life, nor is the subject to credible and/or persistent allegations related to, or is under investigation for, such criminal activities.
 - There exists no conflict of interest or potential conflict of interest arising from prior or existing contracts, agreements or relationships which affects or could affect its or (upon formation) the Concessionaire's (as applicable) potential involvement in the Project, including any conflict of interest or potential conflict of interest which arises from a relationship between:
 - it or its directors, employees, consultants or advisers, and
 - any Government Ministry, department, agency or body or their officials or employees which has or have direct or indirect influence in the scope or manner of execution of the Project, or the conduct of the EOI Process,
 - where such a relationship can give rise to reasonable concerns about the impartiality (in relation to it) of the EOI process.
 - The Bidder has no tax liabilities or liabilities in respect of judgements awarded by any court or similar proceedings in the period of three years prior to the date of the REOI, save in each case to the extent that such liabilities are the subject of bona fide disputes for which it has made a suitable accounting provision for such liabilities in accordance with applicable accounting regulations.
 - Neither the Bidder, nor any connected person, has previously been barred from participation in a bid or other public procurement process in Maldives or has any contract terminated by any public entity or authority inside or outside of Maldives for breach by such Prospective Bidder or Consortium Member.
 - Neither the Bidder nor any connected person is:
 - debarred from financing by any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decision of 9 April 2010 (www.crossdebarment.org) for the activities required to carry out the obligations of the Concessionaire and to build and operate the Project; or
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- listed on any financial sanctions lists promulgated by the UN Security Council or its Committees pursuant to any resolution under Chapter VII of the Charter of the United Nations; or

engaged in operations (directly or through any subsidiary) or transactions that are not in compliance with the sanctions promulgated by the UN Security Council or its Committees pursuant to any resolution under Chapter VII of the Charter of the United Nations or national sanctions in Maldives.

4.2 Financial minimum criteria

Bidders must show that they have sufficient financial capacity to attract the required funding for the investments in the International Container Transshipment Port Maldives. Bidders must therefore submit the most recent consolidated financial statement(s). A Bidder is deemed to have sufficient financial capacity, when the following criteria are met:

- (1) Solvency after investment exceeds [0.2], as calculated by the following formula:

$$\text{Financial Minimum Criteria: } \frac{\text{Total Equity}^1}{(\text{Total Assets} + 510 \text{ million USD})} > [0.2]$$

- (2) The profit, EBITDA and operational free cashflow of the last three years were positive².

Further, the Bidders must declare, that since the publishing of the latest financial statement, the Bidder's situation has not materially changed, such that the criteria will not be met in the financial statements of the current and subsequent financial years.

Finally, the Bidder must declare that the Bidder has, to date, not engaged in commitments to the extent to which such commitments might affect the Bidder's ability to finance or complete the Project. In case of a Consortium, the Consortium Members shall collectively satisfy the financial minimum criteria.

¹ Both Total Equity and Total Assets will be expressed in USD, using the IMF Historic Exchange Rate for the relevant currency, as of the date of publication of the financial statement. The relevant exchange rates may be found through: https://www.imf.org/external/np/fin/data/param_rms_mth.aspx

² MED reserves the right to admit Bidders that can provide a convincing explanation for a negative profit, EBITDA or operational free cashflow.

4.3 Technical & Operational minimum criteria

The Evaluation of the Bidders' EOIs will be carried out based on the Bidders' container terminal operating experience and terminal infrastructure development experience. Amongst others, the Evaluation will consider:

- Bidder's terminal portfolio (number of terminals and terminal location)
- Individual terminal capacity and throughput (in TEU)
- Total container terminal portfolio throughput (in TEU), and
- Terminal infrastructure developed: the Bidder was responsible for the development of terminal infrastructure (quay wall, landfill/creation, dredging, etc.).

Bidders must show that they have sufficient technical and operational experience in regard to this they should show:

- **Technical Experience:**
 - The Lead Member shall have successfully commissioned (a) port / terminal project(s) over the last fifteen (15) years, including the construction (or supervision of construction works) of new quay walls of an aggregate **capex of at least USD one hundred-fifty (150) Million** (for the avoidance of doubt: any terminal, not necessarily a container terminal, will be considered).
 - The Prospective Bidder (or Members of the Consortium individually or collectively) shall have at least successfully commissioned (or supervised the commissioning of) **one container port / terminal project** over the last ten (10) years in compliance with Good International Industry Practice, with a minimum **capital expenditure of USD one hundred (100) Million**.
 - **Operational Experience:**
 - The Lead Member shall currently operate in compliance with Good International Industry Practice and has operated for a minimum of three (3) previous consecutive years: at least 1 container terminal with a minimum annual traffic of **1 Million TEU** or more.
 - The Lead Member shall have a minimum worldwide annual container throughput (equity TEU) of at least **3 Million TEU**.
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5. Submission Requirements

The EOI submitted shall consist of the following:

1. Name, title address and telephone number of the Investor or Principal who will serve as the Lead Member for this project.
 2. Details of the individual firm, company or consortium, including company profile, expertise and resource capacity.
 3. Documents confirming the the eligibility of the Bidder, including but not limited to Form I, Form II and Form III.
 4. Copies of Annual Audited Financial Accounts of the applicant for the latest three financial years (stamped by the Company).
 5. Brief background and profiles of previous similar projects undertaken.
 6. Detail information the applicant desires to submit to emphasize applicant's strength on investing and delivering the project.
 7. Indicative terms on which the applicant proposes to carry out the project. These may include, but is not limited to the following:
 - a) Development and operation of the port
 - b) Development and operational right of other commercial or economic activities at the identified location (To indicate details inclusive of any concessionary terms sought on such right for development and operation).
 - c) Any other terms proposed by the applicant.
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Any clarifications to the REOI may be sent to below given mail addresses **on or before April 5th, 2021** at **1200 hours**. The Ministry will provide written responses to all of the queries submitted by interested parties on or prior to the deadline for submission of queries.

Ms. Fathimath Rishfa Ahmed,
National Tender,
Ministry of Finance,
Ameenee Magu, Male', Maldives
Tel: (960) 3349125, (960) 3349147, (960) 3349106
Email: ibrahim.aflah@finance.gov.mv
tender@finance.gov.mv

Expressions Of Interest must be delivered in a written form to the above address (in person, or by mail, or by e-mail) by **1400 hours Maldivian time on April 29th, 2021**. The EOI should contain at least the information specified in this REOI and Terms of Reference.

Annex I – List of Definitions

Bidder	An entity, or a Consortium of entities ultimately with the objective of obtaining the Concession Agreement for the International Container Transshipment Port Maldives.
Build Operate Transfer (BOT)	Build Operate Transfer (BOT) is a private port management model, that typically implies a significant investment obligation to the private party to construct or develop the project, operate the project for a specified period of time and thereafter, at the expiry of the operation term, transfer the project back to the owner.
Chart Datum or CD	The charted water at the lowest predicted astronomical tide.
Concession	The Concession granted by the Contracting Authority to the Project Company in accordance with the provisions of the Concession Agreement for implementing the Project.
Concession Fees	The annual fixed concession fees to be paid by the Project Company to the Contracting Authority for the right to conduct the operations of the terminal.
Concession Agreement	The legally binding agreement between MED and the Project Company regarding the designing, financing, developing, constructing, equipping, operating, maintaining, and transferring back of the International Container Transshipment Port Maldives
Concession Term	The period during which the Concession Agreement is in force.
Consortium	Two or more separate legal entities who formally join for the purpose of submitting a Proposal for the Transaction, each of whom is jointly and severally responsible for performing the obligations under the Concession Agreement.

Draft Concession Agreement	The version of the Concession Agreement on which the Prospective Bidder is allowed to submit comments.
Form	Any form attached in Annex III of the REOI that must be submitted by the Prospective Bidder as an integral part of the EOI.
International Container Transshipment Port Maldives	The concession area, including the international port and port service area, comprising a 900 metre berth in phase 1 and a total of 1,320 metre in phase 2, at a depth of CD -18.6m. The concession area is to be developed and operated by the Project Company in Ihavandhippolhu Atoll in Northern Maldives, as defined in the International Container Transshipment Port Maldives Concession Agreement.
International Container Transshipment Port Maldives Transaction	See definition of Transaction.
Lead Member	Entity which, pursuant to any applicable law, legally and fully represents and irrevocably binds all Consortium members in all matters connected with the Tender Procedure and any related transactions between Parties. The Lead Member of the Consortium has at least 51% of shares in the consortium joint venture and shall assume responsibility for the operation of the International Container Transshipment Port Maldives.
Ministry of Economic Development (MED)	The Ministry of Economic Development (MED) was formed with a mandate to oversee activities and matters related to trade and the economy. The functions of the ministry include the formulation of economic and trade policies, the regulation and promotion of trade and investment, small and medium enterprise development and labour. MED is the Contracting Authority in this Transaction.
Project Information Memorandum (PIM)	The document issued by MED during the REOI Phase, providing Bidders with information on this Tender Procedure and the Transaction.

Project Company	The legal entity which obtained the right to develop, equip, finance, operate and maintain and returning back the International Container Transshipment Port Maldives regulated by the Concession Agreement.
EOI	The entire set of documents submitted by the Prospective Bidder in response to the Request for Expression of Interest.
EOI Phase	The phase in the Tender Procedure during which Prospective Bidders can submit an EOI.
Prospective Bidder	Bidder who submits an EOI during the EOI Phase.
Request For Expression of Interest(REOI)	The announcement made by the Ministry of Finance (MoF) on behalf of the Ministry of Economic Development (MED) inviting interested proponents to indicate their interest for the Development of an International Container Transshipment Port in the Maldives.
Request For Proposal (RFP)	The document issued by MED and supplied to shortlisted Bidders to submit a Proposal for the Transaction. For issuing the document a purchase price can be asked.
Transaction	The process leading to the execution of the Concession Agreement of the International Container Transshipment Port Maldives by the Project Company as constituted in the Concession Agreement.

Annex II – Project Information Memorandum (Attached Separately)

Annex III - Forms

Form I: Exclusion Criteria / Process Statement

The Process Statement is a declaration dictated by the MED, which every Bidder must sign and submit, together with the EOI. The process statement contains various declarations by the Bidder, which relate to the process but which are not relevant to the assessment of the Bidder's EOI. However, should the Bidder fail to produce a process statement or make changes to it, this could result in exclusion.

1 Bankruptcy, moratorium, merger, take-over and other 'change of control'

- 1.1 The Bidder agrees to notify the MED as quickly as possible of any changes in his enterprise which are relevant to its continued existence. This involves, at all events, filing for bankruptcy or moratorium, declaration of bankruptcy or moratorium, a merger, take-over (both taking over and being taken over) and other changes of control.
- 1.2 The Bidder agrees that the MED may exclude him from the Tender Procedure if drastic changes occur in the Bidder's enterprise. The Bidder agrees that the agreement made between the Bidder and the MED will, in such a case, be transferred to the Bidder enterprise on completion of the merger, the take-over or other change of control. This decision is at the discretion of the MED.

2 In earnest and in good faith

- 2.1 The Bidder declares that he will take part in the Tender Procedure in earnest and in good faith and thereby adhere closely to the rules and requirements prescribed by the MED.

3 Terms and conditions

- 3.1 The Bidder accepts irrevocably the terms and conditions of the Request for Expression of Interest without reserves.

4 General Provisions

- 4.1 The words and terms starting with a capital letter are definitions. The definitions in this statement have the same meaning as in the Request for Expression of Interest.
- 4.2 This statement is subject to Maldivian law. Maldivian Courts shall have the exclusive jurisdiction to settle all disputes arising out of or in connection with this statement.

5 Other Statements by the Bidder

I, the undersigned, authorised to sign on behalf of *[Insert name Bidder here]* having its principal offices at *[insert the address here]* and registration number: *[insert the registration number here]*, declare that the Bidder:

- 5.1 Has not been found guilty of an offence which raises doubts about the professional integrity of the Bidder, its shareholders, or member(s).
 - 5.2 Has met its obligations with regards to the payment of social security contributions or taxes, in accordance with the legal requirements in the country in which it is established; and
 - 5.3 Has not been guilty of making false statements in the provision of information, including statements made for the purpose of an application and the information submitted on the basis thereof.
 - 5.4 Has not been found guilty or suspected or investigated for engaging in any money laundering, corruption or bribery activities by any competent body in its jurisdiction;
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5.5 Has only provided information and material in this EOI which is true, accurate and complete.

5.6 Accepts irrevocably the terms and conditions of this Request for Expression of Interest without reserves.

The Bidder accepts to supply evidence if MED would so request to support this declaration and the Bidder shall inform MED immediately if any circumstances occur that cause this declaration to cease its validity during the Tender Procedure.

As drawn up in accordance with the truth and signed

Bidder:

Signed Authorised Representative:

Position:

Date:

Place:

Form II: Financial Minimum criteria

The undersigned declares on the basis of the enclosed consolidated audited financial statement(s), that the Bidder has the financial capacity to conduct the investments for International Container Transshipment Port Maldives. This declaration is substantiated by:

The result of the following formula, which shows that solvency after investment exceeds [0.2]:

$$\frac{[\textit{Fill in Total Equity}]^3}{([\textit{Fill in Total Assets}] + 510 \textit{ million USD})} = [\textit{Fill in result}]$$

The profit, EBITDA and operational free cashflow of the last three years were positive⁴.

Further, the undersigned declares that since the publishing of the latest financial statement, the Bidder's situation have not materially changed, such that the criteria will not be met in the financial statements of the current and subsequent financial years.

Finally, the undersigned declares that the Bidder has, to date, not engaged in commitments to the extent to which such commitments might affect the Bidder's ability to finance or complete the Project.

The audited financial statements of the three most recent financial years have been enclosed for your convenience.

Signed *[place]*, *[date]*

Name of Authorised Representative: *[name]*

Signature of Authorised Representative: *[signature]*

³ Both Total Equity and Total Assets will be expressed in USD, using the IMF Historic Exchange Rate for the relevant currency, as of the date of publication of the financial statement. The relevant exchange rates may be found through https://www.imf.org/external/np/fin/data/param_rms_mth.aspx

⁴ MED reserves the right to admit Candidates that can provide a convincing explanation for a negative profit, EBITDA or operational free cashflow.

Form III Technical & Operational Minimum criteria – Project Experience

Bidders must show a proven track record of their relevant experience in developing and operating container terminals globally. The Bidders are requested to fill in Form III for all the Bidder's terminals in its portfolio which exceed the annual turnover of 250,000 TEU. For avoidance of doubt, a separate form should be filled per each reference project.

Name of Bidder or Consortium Member

Name of reference project

Country

Referee

(independent person who may be contacted by MED to verify the information provided, e.g. a port authority)

Name of organisation

Address

Name of contact person

Telephone number

E-mail

Year of commencement of project

[Fill in the year of Commencement of Operations]

Project CAPEX (USD)

[Fill in the Capital Expenditure for the Project]

Description of technical specifications terminal *Use a maximum of 200 words to describe the terminal dimensions (length of berthing area, berth depth, terminal capacities, etc.), operational system, port/terminal total capex, equity share, total investments, etc.]*

Terminal throughputs (TEU per annum)

[xxx TEU per annum]

Other Commodities handled

2017

2018

2019

[fill in]

[fill in]

Bidder's responsibilities in terminal

[maximum 100 word, also identify whether development of infrastructure (quay wall, landfill, dredging, etc.) was part of the Bidder's responsibilities]

Shareholding structure (%s per shareholder)

[maximum 100 words]
