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საქართველოს საგარეო საქმეთა სამინისტროს

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დანართი: 33 გვერდი

პატივისცემით,

დავით ჯავახაძე
დირექტორი



**Anaklia New Deep Sea Port
Public and Private Partnership Project**

Statement of Intent for Selection Process of the Private Partner

20 February 2023

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Important Notice

This Statement of Intent ("SOI") does not represent an offer for the Anaklia New Deep Sea Port Transaction but only provides an overview of the qualification requirements regarding the submission of Statements of Qualification ("SOQs"). The contents hereof are not legally binding and shall not give rise to any legally binding obligations.

This SOI does not purport to be all-inclusive or to contain all the information that a prospective investor, partner or interested party requires or might require for their review of the Project. These parties should conduct their own analysis, verification and such other research and enquiries as they consider appropriate.

The Ministry of Economy and Sustainable Development of Georgia (the "**Ministry**") and LEPL Anaklia Deep Sea Port Development Agency (the "**Agency**"), and/or any of their directors, officers, or advisers do not hereby give any representation or warranty, express or implied, in relation to the accuracy or completeness of the information contained herein. No responsibility is accepted for the accuracy or sufficiency of any of the information or opinions communicated and any liability for any direct, indirect or consequential loss or damage suffered by any person arising there from is expressly disclaimed.

This Selection Process is public and shall be open for interested Candidates that meet the requirements set out in this SOI.

List of Definitions

Agency	LEPL Anaklia Deep Sea Port Development Agency
Anaklia Port	Defined in section 2.1 of this SOI.
Authorised Representative	The authorised representative of the Candidate who shall be the principal contact person for this Project.
Candidate	Defined in section 1.1 of this SOI.
Commercial Studies	Means the commercial studies to be released to prospective Candidates during the SOI stage following receipt of a completed and signed Non-Disclosure Agreement, expected to include a Feasibility Study (2021) and Masterplan (2019) in relation to the Project prepared by MTBS.
Concession Agreement	Defined in section 2.1 of this SOI.
Concessionaire/Institutional public-private partnership company	The special purpose project company established with public and private participation in accordance with the laws of Georgia, which is to enter into the Concession Agreement with the Government of Georgia;
Consortium	An association of legal entities under private law and/or an association of legal entities under private law and natural persons on the basis of a joint venture (partnership) agreement who intend to take part in the Selection Process.
Construction Commencement Date	Date on which construction is specified in the Concession Agreement to commence/resume by the Concessionaire.
DBFOM	Means design, build, finance, operate and maintain.
Economic Infrastructure	Means infrastructure in the transport, waste management, energy, communications, utilities, water and sewerage, flood and coastal sectors, which promotes economic activity for the economy of a nation, region or city;
FIZ	Means a free industrial zone.
Lead Member	The entity which, pursuant to any applicable law, legally and fully represents and irrevocably binds all Consortium members and all Subcontractors in all matters connected with the SOQ.
Ministry	The Ministry of Economy and Sustainable Development of Georgia
Non-Disclosure Agreement	Means the form of non-disclosure agreement set out in Form I.
PPP Decree	Defined in section 2.1 of this SOI.
PPP Law	Defined in section 2.1 of this SOI.
Private Partner	Defined in section 2.1 of this SOI.
Project	Defined in section 2.1 of this SOI.
Project Site	Defined in section 2.2 of this SOI.
Proposal	Means a proposal to be submitted in response to the Request for Proposals.
Qualified Candidate	A Candidate that meets the Qualification Requirements and who is invited to submit a Proposal under the Request for Proposal.
Qualification Requirements	Defined in section 4.5 of this SOI.
Request for Proposal (RFP)	The document to be issued by the Selection Commission inviting Qualified Candidates to submit a Proposal for the Project.

Selection Commission	Defined in section 2.1 of this SOI.
Selection Process	Defined in section 2.1 of this SOI.
Statement of Intent (or SOI)	This Statement of Intent for the Selection Process of the Private Partner of the Project.
Statement of Qualification (or SOQ)	A set of documents submitted by the Candidate in response to this SOI.
Subcontractor(s)	These may include EPC contractors, O&M contractors, port operators, and other material subcontractors who would enter into a subcontract with the Concessionaire.
Transaction Advisors	Squire Patton Boggs (MEA) LLP and Maritime & Transport Business Solutions B.V.

Terms defined in the PPP Law will have the same meaning unless otherwise defined in this SOI.

1 Introduction

1.1 Introduction

By this SOI, the Ministry and the Agency invite local and international companies and/or consortiums ("**Candidates**") to submit an SOQ to act as the Private Partner in relation to the Project. The successful Candidate shall act as the Private Partner in the Concessionaire/Institutional public-private partnership company, in which it is envisaged that the Government of Georgia (directly, or through 100% state owned company) shall hold 51 per cent of shares and the Private Partner shall hold 49 per cent of the shares. Although this exact shareholding structure may be subject to Selection Commission's review through the RFP process. Candidates are welcome to invite Subcontractors to support and participate in their submission of an SOQ.

The Agency has appointed law firm, Squire Patton Boggs, and Maritime & Transport Business Solutions B.V. (MTBS) as its Transaction Advisors. The Agency is being assisted in this process by the Transaction Advisors and reserves the right to share and disseminate information and documentation provided by Candidates to them or any other advisors in relation to the project.

1.2 Objective of this SOI

The objective of this SOI is to select Qualified Candidates for the Project and who will then be invited to take part in the RfP stage.

1.3 Structure of this SOI

This SOI contains the following sections:

- In section 2 the introduction to the Project is provided;
- In section 3 the instructions to the SOQ submission are provided;
- In section 4 the required content of the SOQ is provided;
- In section 5 the assessment of the SOQ is described;
- In section 6 the general requirements and conditions of this SOI are provided;
- In section 7 the Forms are enclosed.

2 Introduction to the Project

2.1 Background

Georgia is located on the shortest route from Asia to Europe and is the part of the TRACECA (Transport Corridor Europe-Caucasus-Asia) corridor. Currently there are four ports in Georgia – Batumi (operated through a concession by a wholly-owned subsidiary of JSC NC “KazMunayGas”, mainly concentrates on liquid cargo, however, also handles dry bulk cargo and containers), Supsa (property of BP, oil terminal), Poti (property of APM Terminals, which is an independent business unit within the Danish-based Maersk Group, mostly dry bulk and containers) and Kulevi (property of SOCAR, mostly liquid cargo).

Cargo traffic has been increasing significantly over the past years and the ports are congested. Also the depth of existing ports is not sufficient to accept Panamax or VLC vessels. There is a need to build a new deep sea port (the “Anaklia Port”), which will enjoy a strategic location and will have potential to handle increasing throughput between Europe and Asia. The Anaklia Port, which will be developed as a greenfield port, can take a significant position as a transit hub. The location of the Anaklia Port shall be the Black Sea coast of Georgia, adjacent to the village of Anaklia. The expected capital value of the Project is US\$500 million.

The Private Partner will be selected in line with the laws of Georgia, and specifically the 2018 Law of Georgia on Public-Private Partnerships (the “PPP Law”) and the Decree of the Government of Georgia N426 dated 17 August 2018 “on procedures for drawing up and developing public-private partnership projects” (“PPP Decree”).

The Ministry/Agency intend to select an investor/private partner (the “Private Partner”) who will invest in the Concessionaire/Institutional public-private partnership company, that is to develop the Anaklia Port on a DBFOM basis (the “Project”), pursuant to an agreement to be entered between the Government of Georgia and the Concessionaire/Institutional public-private partnership company (the “Concession Agreement”). This shall be as part of an institutional public-private partnership in which it is envisaged that the Government of Georgia (directly, or through 100% state owned company) shall own 51 per cent of shares in the Concessionaire/Institutional public-private partnership company and the Private Partner shall own 49 per cent of the shares. Although this exact shareholding structure may be subject to Selection Commission’s review through the RFP process.

By the Decree #1666 of the Government of Georgia dated 12 September 2022, the Ministry and the Agency were granted an approval to proceed with the development of the Project from the stage of selection of the Private Partner. On 15 December 2022 the Selection Commission for the Project (the “Selection Commission”) was created pursuant to the PPP Law.

Accordingly, by this SOI the Ministry/Agency announces the selection process of the Private Partner in the Concessionaire/Institutional public-private partnership company for the Project and invites interested Candidates to submit their SOQs to participate as bidders in the public selection process (the “Selection Process”).

Candidates are welcome to arrange themselves as a Consortium and also to include Subcontractors.

As discussed in section 4.2, following receipt of signed Non-Disclosure Agreements from Candidates, the Agency will release the Commercial Studies to each Candidate, which will provide further information on the Project. Further project studies will be provided to the Qualified Candidates at the RFP stage upon submission of a further Non-Disclosure Agreement.

Further information in respect of the possible structuring of the financial and investment arrangements for the Concessionaire and also the proposed risk allocation for the Concession Agreement will be provided to the Qualified Candidates at the RFP Stage.

2.2 Project Requirements

Capacity and Construction Phases:

The Anaklia Port shall be constructed in nine (9) phases based on the Masterplan so as to increase capacity.

Phase One (1) of the Anaklia Port must reach a capacity to handle a minimum of six hundred thousand (600,000) TEU per annum, which translates to seven million and eight hundred thousand (7,800,000) ton, assuming an average of 13 tons/TEU. When desired by the Candidate, Phase One (1) may include additional cargo handling capacity. Specific timelines for preparation, construction, and completion of Phase One are to be specified in the RfP, but Phase One (1) must be operational within three (3) years of the Construction Commencement Date.

The developments of Phase 2 (Two) to 9 (Nine) will commence when:

- Annual throughput of the Port reaches 80% of the previous Phase capacity, and;
- Additional feasibility studies are conducted by the Concessionaire; and
- Approval from the IFIs/lenders is received by the Concessionaire.

The table below indicates which capacities must be reached after the development of each phase:

Phase	Total Capacity (tons/TEU)
Phase 1 (One)	600,000 TEU/ *7,800,000 tons
Phase 2 (Two)	14,000,000 ton
Phase 3 (Three)	21,000,000 ton
Phase 4 (Four)	30,000,000 ton
Phase 5 (Five)	40,000,000 ton
Phase 6 (Six)	55,000,000 ton
Phase 7 (Seven)	70,000,000 ton
Phase 8 (Eight)	85,000,000 ton
Phase 9 (Nine)	100,000,000 ton

*assuming 13 tons per TEU

The minimum capacities of Phase 2 (Two) to 9 (Nine) can be reached by additional container and/or other cargo handling capacity.

Cargo:

The Concessionaire will be responsible for handling of cargo volumes for the Anaklia Port.

Commencement of Operations:

Within three (3) years from the Construction Commencement Date.

Construction Commencement Date:

Construction shall begin/resume within 9 (nine) months from the date of signing of the Concession Agreement.

Financing:

The Concessionaire will be responsible for providing equity and procuring debt financing for its obligations on the Project.

Government Support and Participation:

The Concessionaire will be responsible for ensuring the long-term sustainability and profitability of the Project. Notwithstanding this, the Government of Georgia will participate in the Project and provide other support to the Concessionaire as follows:

- In the course of the Selection Process, the Government of Georgia plans to establish a 100% state owned special purpose company (the "State Owned Company"), which will start preparation works for the Project, that may include updating all relevant studies, where needed, obtaining necessary permits and commencing certain construction works. After selection of the Private Partner, the State Owned Company and the selected Private Partner will establish the Concessionaire/Institutional public-private partnership company, where it is envisaged that the State Owned Company shall own 51% and the Private Partner 49% of the shares, and which will later enter into the Concession Agreement with the Government of Georgia. The RfP will set out details of the mechanism for the transfer of all works, studies, lands, permits and related rights and obligations to the Concessionaire/Institutional public-private partnership company and the timing for such transfer.
- the Government of Georgia (directly, or through 100% state owned company) will provide to the Concessionaire up to three hundred forty (340) hectares of land for the Project ("Project Site"); early dredging, land preparation and soil improvement works have already been conducted in the Project Site in the period 2017-2019; The forms of transfer of Project Site and further details will be set out in RfP.
- the Government of Georgia shall consider the possibility of establishing a free industrial zone ("FIZ") for the Project. Further details for the FIZ are to be finalised prior to entry into the Concession Agreement;
- no exclusivity arrangements will be offered with respect to port development and operations in the country;
- the Government may be prepared to assist the Concessionaire's financing and commercial arrangements through the following support:
 - enter into direct agreements with the Concessionaire's funders, to facilitate any financing that the Concessionaire may propose to implement;
 - the Concession Agreement may include protections and appropriate relief in favour of the Concessionaire in connection with certain events that may occur that are outside of the control of the Concessionaire (e.g. events of natural force majeure and certain political risk events);
 - the Project structure may envisage certain compensation arrangements to apply following particular events or grounds of termination, which is expected to give comfort to a Candidate and its funders.

Further to the above support and participation, the Government of Georgia may consider additional participation in the Project. The details of such additional participation may be specified in the RfP and the draft Concession Agreement.

The Agency expects to discuss all of these and other features with the Qualified Candidates at the RfP and Concession Agreement negotiation stage.

Term:

The envisaged term of the Project is forty-nine (49) years from the commencement of operation of Phase One of the Anaklia Port.

Type of Port:

Mixed cargo (containers, dry bulk, liquid, etc.)

Type of Vessels:

The Anaklia Port must have ability to receive vessels of at least 6500 TEU capacity.

3 Instructions for Submission of SOQ

3.1 Timetable

Activity	Date	Time
Publication of SOI	20-02-2023	
Deadline for Requests for Clarifications	21-04-2023	
Deadline for Submission of SOQ	19-05-2023	18:00h (GMT+03:00) Tbilisi
Deadline for Notification of Qualified Candidates	17-07-2023	
Deadline for Request for Proposals	17-07-2023	

3.2 Instructions for Submission

3.2.1 Manner of Submission and delivery address

All SOQs must be delivered in three (3) hard copy original executed copies and one (1) electronic copy (PDF) in a sealed envelope before 18.00 Tbilisi time 19.05.2023 to the Agency to the following address:

LEPL Anaklia Deep Sea Port Development Agency
7 Bambis Rigi, Tbilisi, 0105 Georgia

In the event that there is any discrepancy between the hard copy original executed copies of any SOQ and the electronic copy, the hard copy original executed copies shall prevail.

3.2.2 Language

The SOQ and all enclosures shall be written in Georgian or English, which should be accompanied by a Georgian translation.

3.2.3 Currency

All amounts and calculations in the SOQ shall be presented in EURO or USD. If case base currency is not EURO/USD, the following exchange rate dates shall be applied by the Candidates:

- For audited financial statements: 31 December of the year covered in the statement
- For project references: 1 January 2023

3.3 Clarification requests and contact address

All Candidates must submit any requests for clarifications by no later than 21.04.2023 by email to the email addresses set out below. The Agency will respond to any clarification raised by a Candidate privately; however, Candidates should be aware that the Agency may be required to make available to all Candidates and/or publicly the responses to clarifications as required by the PPP Law. If a Candidate considers that any information is its intellectual property for the purposes of Article 34 of the PPP Decree and should not be published, it should inform the Agency.

Name: David Javakhadze
Position: Director
Organisation: LEPL Anaklia Deep Sea Port Development Agency
Address: Bambis Rigi 7, Tbilisi, Georgia, 0105
Email: djavakhadze@anaklia.gov.ge

Name: Ketevan Gogua
Position: Deputy Director

Organisation: LEPL Anaklia Deep Sea Port Development Agency
Address: Bambis Rigi 7, Tbilisi, Georgia, 0105
Email: kgogua@anaklia.gov.ge

3.4 Notification

The Agency shall inform each Candidate in writing of the results of the evaluation of SOQs. This is expected to include notification either that a Candidate has been successful and shall be invited to proceed to the RfP stage as a Qualified Candidate or that it has been unsuccessful.

4 Content of SOQ

This section sets out the information and documents requirements of this SOI and also the qualification requirements that the Selection Commission will apply when evaluating the SOQ ("SOI Requirements").

4.1 Information and Documents of the Candidate

The SOQ shall contain all components listed in the table below. All Forms are explained in this document [and are also attached in Word format].

Forms for SOQs

Content	Format
Non-Disclosure Agreement	Form I
General information of the Candidate	Form II
Grounds for exclusion and/or disqualification	Form III
Qualification Requirements	Forms IV - IX

4.2 Non-Disclosure Agreement (Form I)

Each Candidate is entitled to receive the Commercial Studies, but only following receipt by the Agency of a duly signed Non-Disclosure Agreement. If the Candidate is a Consortium and/or includes Subcontractors, the Non-Disclosure Agreement is to be provided by all individual Consortium members and Subcontractors.

4.3 General Information of the Candidate (Form II)

Form II sets out the general information and documentation in respect of the Candidate that must be submitted. If the Candidate is a Consortium, this information is to be provided by all individual Consortium members and any Subcontractors. This includes (in summary) name and contact details and corporate information relating to the Candidate and each Consortium member.

Certified documents should be notarised, legalised or apostilled (where required according to Georgian laws).

Where the Candidate is a Consortium and/or includes Subcontractors, the Consortium members and/or Subcontractors may not change after the submission of the SOQ without the prior written consent of the Agency. In these circumstances, the Agency also has the right to request additional information and documentation to assess the Candidate's position as against the exclusion and disqualification grounds and the Qualification Requirements, as specified in section 6.4.

4.4 Grounds for Exclusion and/or Disqualification (Form III)

Exclusion from the Selection Process

Form III deals with a number of matters which are relevant to whether a Candidate and its Consortium Members and any Subcontractors may be excluded from participation in the Selection Process depending on their circumstances at the date of submitting its SOQ. In the Form, Candidates are required to make a number of declarations.

Candidates are reminded that Article 19.3 of the PPP Law prohibits Candidates from participating in a stage of the Selection Process where such person has been prosecuted for financing terrorism, committing fraud, and/or legalising illicit income.

Further, Article 17(3) of the PPP Decree prohibits certain persons from participating in the Selection Process where they are registered in the register of dishonest persons by the State Procurement Agency or failed to fulfil their obligations in a PPP project. It also deals with conflicts of interest. Specifically:

“Besides the limitations provided for in the Law, the persons included by the Agency into the register of dishonest persons or the persons who during the past 5 years failed to fulfil their obligations in a PPP project are prohibited to participate in the selection process. Besides, those entities, the director, partner, final beneficiary, or supervisory board member of which may have a conflict of interests with a head of the authorized body, shall be prohibited to participate in the selection process. The conflict of interest exists if the relations between persons are those provided for in Article 19 of the Tax Code of Georgia, taking into account the requirements of the Law and these Rules.”

Enterprises established by the State and/or a municipality, where the State and/or the municipality directly or indirectly hold an interest/shares which are more than 30% shall not have a right to participate in the Selection Process.

The Candidate agrees to provide evidence and documentation on the request of the Ministry and the Agency in support of the declarations in Form III.

Disqualification during the Selection Process

The Candidate shall inform the Ministry and the Agency immediately if any circumstances occur that cause the declarations made in the completed Form III to be invalid during the Selection Process. Again, the Ministry and the Agency shall have the right to seek evidence or documents from the Candidate and exclude or disqualify a Candidate from the Selection Process after submission of the SOQ, in accordance with this SOI, PPP law and PPP decree.

The Selection Commission has the right to disqualify any Candidate during the Selection Process on the grounds set out in Article 19(2)(d) of the PPP Decree. Those grounds are:

- if the Candidate recalls his/her own proposal
- if the proposal does not meet the conditions required in the selection documents
- if the Candidate does not provide clarifications within the given deadline, the clarifications are not complete and/or after the clarifications materially changes the documents
- if the Candidate refuses or otherwise expresses the refusal to sign the Contract
- if the Candidate commits a dishonest action in order to receive the right to sign the Contract.

The Selection Commission wishes to apply a number of additional grounds for disqualification, which are also set out in Form III. The Selection Commission shall also have the right to disqualify any Candidate on any other grounds envisaged by Georgian laws. Where a Candidate or any of its Consortium members and/or Subcontractors is unable to meet one or more of these criteria, that Candidate may be disqualified from the Selection Process.

4.5 Qualification Requirements (Forms IV – IX)

Forms IV - IX to this SOI set out a number of statements and requirements (“**Qualification Requirements**”) which each Candidate is required to meet or confirm as follows:

- Form IV – Statement of Qualification Requirements;
- Form V – Qualification Requirements: Technical Requirements;
- Form VI – Qualification Requirements: Investment Requirements;
- Form VII – Qualification Requirements: Human Resource and Management Requirements;
- Form VIII – Qualification Requirements: Operational Requirements; and,
- Form IX – Qualification Requirements: Financial Requirements;

Where a Candidate or Consortium members and/or Subcontractors jointly, is or are unable to meet one or more of these requirements, that Candidate will not be qualified to proceed to the RfP stage.

5 Assessment of SOQs

5.1 Assessment Procedure

Submitted SOQs will be opened on 22.05.2023 at the premises of the Agency. The assessment process will be conducted by the Selection Commission following the submission of SOQs in accordance with the PPP Law, the PPP Decree and this SOI.

Only those Candidates who meet all of the SOI Requirements (including the Qualification Requirements) may be qualified to become a Qualified Candidate and be invited to submit a Proposal.

Qualified Candidates will be invited to submit full technical and commercial proposals for the Project including in relation to the design, construction, operation, maintenance and financing of the Anaklia Port. A Request for Proposals (RFP) including conditions and proposed terms for the Concession Agreement and Shareholders Agreement will be released by the Ministry/Agency to Qualified Candidates.

The Ministry/Agency intends to issue the Request for Proposals by 17.07.2023.

5.2 Assessment of SOQs

The SOQ must:

- Be delivered as per the instructions described in Section 3.2
- Meet the content requirements as described in Section 4.3
- Confirm or declare that there are no grounds for exclusion and/or disqualification applicable to the Candidate or any Consortium member and/or its Subcontractors as described in Section 4.4
- Be compliant with the Qualification Requirements as described in Section 4.5

6 General Requirements and Conditions

The following requirements and conditions are applicable regarding this SOI.

6.1 Reporting Obligation of the Candidate

This SOI has been drafted with the greatest possible care. However, it is possible that information in this SOI is unclear, ambiguous, contradictory, et cetera. Candidates are encouraged to contact the Agency to discuss such issues in order to ensure a smooth qualification process.

6.2 No Selection Commitment & Costs of SOQ

It should be noted that this invitation does not constitute a commitment on the part of the Government of Georgia, the Ministry, the Agency, or the Selection Commission to select any Candidate, nor to reimburse any expenses to any Candidate. Furthermore, submission of the SOQ shall not entitle any Candidate to any claims against the Government of Georgia or the Ministry/Agency by virtue of such firm or Consortium having responded to this SOI. All costs incurred by respondents as a result (prior to or after this SOI) of this SOI and/or any Selection Process, and any subsequent requests for information shall be for the Candidate's account only. The Ministry/Agency or the Government of Georgia shall not reimburse any costs to any of the Candidates or to any other party, including the shortlisted Candidates and/or the winner of the Selection Process, incurred prior to signing the Concession Agreement or post signing of the Concession Agreement.

6.3 Improper Influence

Any attempt by any Candidate or their representatives or Subcontractors to influence the Selection process in any way may result in the Candidate being disqualified. Any Candidate who directly or indirectly canvasses any official, representative or employee of the Government of Georgia or the Ministry/Agency in relation to this Selection Process or the Project more widely, or who illegally directly or indirectly obtains or attempts to obtain information from any such official, representative or employee concerning any other Candidate, SOQ submission or proposed SOQ submission will be disqualified.

Any Candidate who: (i) enters into any agreement or arrangement with any other Candidate, or prospective Candidate or other party (save for where such person is to be a legitimate member of a Candidate's Consortium or Subcontractor) to act or not to act in relation to this SOI, or to encourage another party not to submit an SOQ; or (ii) offers or agrees to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party or person for doing or having done or causing or having caused to be done an act or omission in relation to any Candidate's SOQ or proposed SOQ, will be disqualified.

6.4 Qualification Requirements – ongoing assessment

The confirmations made by each Candidate or any Consortium member and/or Subcontractor in their SOQ will be as at the date of the SOQ. The Agency shall have the right to monitor the position of each Candidate as against the Qualification Requirements in this SOI on an ongoing basis. If a Candidate, or any Consortium member and/or Subcontractor, is subject to a change of circumstances such that the Candidate no longer meets the Qualification Requirements, the Selection Commission shall have the right to disqualify the Candidate from this Project. The Candidate agrees to supply evidence and documents relating to its position against the grounds for exclusion or disqualification set out in section 4.4 or the Qualification Requirements in this SOI at the Agency's request. The Candidate shall inform the Agency immediately if any change of circumstances occurs that may impact on its position against such grounds for exclusion or disqualification grounds or the Qualification Requirements (by way of example, this shall include any change in Consortium membership or additional Consortium members, including Subcontractors).

6.5 Rights of the Ministry/Agency

The Ministry/Agency reserves the right to (in its sole discretion):

- a) waive or change the requirements of this SOI (including the Qualification Requirements) from time to time without prior notice being given by it, through an announcement on the official websites of the Ministry, PPP Agency, and State Procurement Agency, except for making amendments to the subject of public-private partnership. In such case, the period of the selection process shall be extended by the period between the announcement of the selection process and the period when the relevant amendments were made, except for cases where the amendment is of a technical character and aims to correct or specify technical matters only;
- b) seek clarification or documents in respect of a Candidate's SOQ;
- c) withdraw this SOI at any time subject to approval of the Government of Georgia, or to re-invite Candidates on the same or any alternative basis, through an announcement on the official websites of the Ministry, PPP Agency, and State Procurement Agency;
- d) choose not to award or enter into any contract as a result of this process or to proceed to qualification or to issue a Request for Proposals to Qualified Candidates; and/or
- e) make whatever changes it sees fit to the timetable for SOQ submission and the Selection Process, or to the structure, or to the content of this SOI, for any reason in compliance with the PPP Law and PPP Decree.

6.6 Conflict of Interest

Candidates are required to confirm no conflict of interest or potential conflict of interest with the heads of the authorised body. A conflict of interest has the meaning given in Article 17(3) of the PPP Decree. This specifies that *"those entities, the director, partner, final beneficiary, or supervisory board member of which may have a conflict of interest with a head of the authorized body, shall be prohibited to participate in the selection process"*. It further states that *"a conflict of interest exists if the relations between persons are those provided for in Article 19 of the Tax Code of Georgia, taking into account the requirements of the Law and these Rules"*.

6.7 Right to apply

Candidates shall not have the right to submit more than one SOQ for this SOI. Consortium members are not permitted to participate in support of more than one Candidate. The position is different however for Subcontractors who will be permitted to participate with more than one Candidate who submits an SOI, but this exception shall not apply for port operators. Further instructions on the later participation of Subcontractors shall be provided to Qualifying Candidates at the RFP stage.

Candidates shall have a right to change their application at any time before the deadline for submission of an SOQ, in which case the Candidate must provide an explanation as to what aspects of its SOQ are being amended, deleted, updated or otherwise changing.

6.8 Governing law

This SOI, the SOQ submission and the Selection Process shall be governed by the laws of Georgia, including (but not limited to) the 2018 Law of Georgia on Public-Private Partnerships and Decree N426 dated 17 August 2018 "on procedures for drawing up and developing public-private partnership projects".

6.9 Prevailing Language

This SOI is drafted in English and Georgian languages. If any discrepancy arises between the English and Georgian versions, the English version will prevail.

Forms

FORM I: NON-DISCLOSURE AGREEMENT

Note: The Non-Disclosure Agreement is to be completed and executed by each Candidate, and in the case of a Consortium by each Consortium member, and all Subcontractors.

Definitions

The definitions used in this Non-Disclosure Agreement refer to the list of definitions of the Statement of Intent of the Anaklia New Deep Sea Port issued by The Ministry of Economy and Sustainable Development of Georgia and the LEPL Anaklia Deep Sea Port Development Agency.

Non-Disclosure Agreement

This Non-Disclosure Agreement is entered into as of this *[insert day here]* day of *[insert month here]* 2023 between:

- LEPL Anaklia Deep Sea Port Development Agency having its principal offices at Bambis Rigi 7, Tbilisi, Georgia, 0105 (the “Discloser”);
- and
- *[Insert name Candidate here]* having its principal offices at *[insert the address here]*, and registration number: *[insert the registration number here]* (the “Recipient”).

Certain confidential information relating to or in connection with the Project and the Selection Process, may be disclosed by one Party (the “Discloser”) to the other Party (the “Recipient”) for the purposes of enabling the Recipient to assess and/or evaluate and/or perform its obligations with regard to the Selection Process and the Project.

The parties hereto agree as follows:

1. The Recipient shall treat as confidential and safeguard all information or data provided by the Discloser relating to the Selection Process and the Project, (including but not limited to projections, analyses, business plans, strategy), whether delivered in written, electronic/computer based, or oral form (the "**Confidential Information**"), and disclosed during the term of this Non-Disclosure Agreement in connection with the Selection Process and the Project.
2. The Recipient agrees to use the Confidential Information disclosed hereunder solely for the purpose of evaluating the Selection Process and the Project.
3. Except as may be required by applicable law or as otherwise provided herein, the Recipient will not distribute, disclose, or disseminate the Confidential Information to anyone, except its affiliates and its affiliates officers, directors and employees (collectively the "**Representatives**") (provided always that the Recipient advises the Representatives of the obligations hereunder and takes reasonable measures to ensure adherence by the Representatives), unless and until such time as:
 - (a) Such information is generally available to the public other than as a result of a breach of this Non-Disclosure Agreement; or
 - (b) Such information is already in the possession of Recipient without restriction prior to any disclosure hereunder; or
 - (c) Such information is or has been lawfully disclosed to Recipient by someone who is free lawfully to disclose the same without confidentiality restrictions; or
 - (d) Such information is independently developed by Recipient or its affiliates and no Confidential Information disclosed hereunder has been used directly or indirectly in such development.
4. The Recipient warrants that it safeguards the unauthorised disclosure of confidential and proprietary information and agrees to protect Confidential Information at least in the same manner and to the same degree that a diligent and professional person acting with due care protects its own confidential and proprietary information. The Recipient may disclose Confidential Information to Permitted Additional Recipients provided always that such Permitted Additional Recipients either sign with Recipient a confidentiality agreement substantially similar hereto or, where applicable, are required to comply with professional codes of conduct ensuring the confidentiality of such information. "**Permitted Additional Recipients**" means the authorised representatives (excluding the Representatives), including auditors, counsel and financial advisors, of the Recipient and the Representatives to whom Recipient needs to disclose such Confidential Information to facilitate its evaluation of the Selection Process and the Project. Permitted Additional Recipients and the Representatives, shall not have any further right, except as required by applicable law, to distribute, disclose, or disseminate such Confidential Information, provided always that such Confidential Information can be distributed, disclosed or disseminated to any of the Representatives. If the Recipient has actual knowledge that a Permitted Additional Recipient has materially breached its confidentiality obligations in respect of the Confidential Information ("**Potential Claim**") then

the Recipient shall (i) promptly advise the Discloser and (ii) follow reasonable instructions by the Discloser to pursue a Potential Claim against such a Permitted Additional Recipient for the benefit of the Discloser.

5. Upon request of the Discloser, all Confidential Information in the possession or under the control of the Recipient shall be returned to the Discloser or destroyed, at the option and instruction of the Discloser provided that the Recipient shall be entitled to retain one copy of the Confidential Information as required for legal, regulatory, or audit purposes.
6. This Non-Disclosure Agreement is not intended to, and does not, obligate either party hereof to enter into any further agreements or to proceed with the Selection Process and the Project, any possible relationship or other Project.
7. All Confidential Information disclosed hereunder shall remain at all times the property of the Discloser and nothing contained in this Non-Disclosure Agreement shall be construed as granting or conferring rights by license or otherwise in any Confidential Information disclosed to the Recipient.
8. The Recipient shall indemnify the Discloser against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or inconsequential losses, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Discloser arising out of or in connection with any breach of this agreement by the Recipient.
9. Except as may be otherwise agreed in writing, the Discloser makes no representation or warranty as to the accuracy or completeness of any information disclosed to the Recipient and gives no undertaking to inform the Recipient of any change in such information. The Recipient agrees that the Discloser and/or any of its affiliates and its and its affiliates officers, directors and employees will have no liability whatsoever resulting from the Recipient's use of such information. The Recipient shall be solely responsible for making any independent credit decision in relation to the Selection Process and the Project without reliance on the Discloser.
10. No failure or delay by either party in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof. A waiver of a party's rights under this Non-Disclosure Agreement shall be effective only if that party agrees expressly in writing.
11. This Non-Disclosure Agreement, and the obligations hereunder, shall be binding upon the parties hereto, their successors, and their permitted assigns. Neither party may transfer or assign any of its rights or obligations under this Non-Disclosure Agreement without the prior written consent of the other (which consent shall not be unreasonably withheld or delayed).
12. This Non-Disclosure Agreement is solely for the benefit of the parties and their respective successors and permitted assigns, and this Non-Disclosure Agreement shall not otherwise be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action, or other right.

13. If any provision of this Non-Disclosure Agreement, or part thereof, is found to be unenforceable, invalid or contrary to law (“**Challenged Provision**”), this shall not affect any other part or aspect of this Non-Disclosure Agreement, and this Non-Disclosure Agreement shall remain in full force and effect pursuant to its terms, minus the Challenged Provision, unless such severance would invalidate the principal purposes of this Non-Disclosure Agreement. If any provision is so severed, the Parties agree to use best efforts to achieve the same result as was intended by such provision.
14. All notices (which term shall include all demands and claims) to a party shall be in writing and sent to its address set forth at the beginning of this Non-Disclosure Agreement or to such other address it may provide the other party in writing for such purpose. Notices may be sent by any commercially common means, including post, courier, electronic mail and fax. A notice shall be deemed given when received, except if received on a day or time the recipient is not open for business, in which case it will be deemed received on the next day the recipient is open for business.
15. This Non-Disclosure Agreement shall be effective for a period of five (5) years from the effective date hereof. The parties hereto confirm and acknowledge that the obligations of the Recipient envisaged hereof shall survive the expiration or termination of this agreement for an unlimited period of time.
16. Any amendment to this Non-Disclosure Agreement must be in writing and duly signed by each party.
17. All disputes arising out of or in connection with this Non-Disclosure Agreement, including the disputes as regards its valid execution, breach or termination, as well as the legal effects arising therefrom, shall finally be settled by the courts of Georgia, according to Georgia laws.
18. This Non-Disclosure Agreement shall be governed by, and construed in accordance with, the laws of Georgia.
19. This Non-Disclosure Agreement may be executed in any number of counterparts, each of which shall be an original. Upon execution by the parties, this Non-Disclosure Agreement shall take effect as of the date first written above.

For and on behalf of

LEPL Anaklia Deep Sea Port Development Agency

Name:

Title:

Date: _____ 2023

Acceptance of Terms

We hereby agree to and accept the terms set out in this Non-Disclosure Agreement.

Signed for and on behalf of

Name:

Title:

Date: _____ 2023

FORM II: GENERAL INFORMATION OF THE CANDIDATE

The following information should be provided by the Candidate or each Consortium member and all Subcontractors (save for II-1, which shall be completed by the Lead Member only).

II-1 General information of the Candidate, or in case of a Consortium the Lead Member of the Consortium:

Name	
Legal form/entity	
Country of registration	
Registered address	
Registration No.	
Office address	
E-mail	
Telephone no.	

Name of Authorised Representative	
Title	
Name of legal entity represented	

Alternate for Authorised Representative	
Title	
Name of legal entity represented	

II-2 Where the Candidate is a Consortium, who are the members of the Consortium? Who are the Subcontractors?

Name	
Legal form/entity	
Country of registration	
Registered address	
Registration No.	
Office address	
E-mail	
Telephone no.	
Role and % of participation in Consortium/Role and participation as Subcontractor	

II-3 Describe the core activities, years in the business, strategy and corporate governance of the Candidate or Consortium members and/or all Subcontractors:

II-4 a duly certified abstract from the company register/Certified copies of the Candidate's Certificate of Incorporation and Articles of Association/charter, and also for each Consortium member and all Subcontractors.

[]

II-5 List of shareholders owning more than 5% of the Candidate's (and each Consortium member and all Subcontractors) shares including information as to the ultimate verified owner.

[]

II-6 The audited financial statements for the years 2017, 2018, 2019, 2020 and 2021 can be submitted in the Candidates' own format and shall be enclosed with the SOQ document. The information should be provided by the Candidate and each Consortium member and all/any Subcontractors.

II-7 A list of any litigation, arbitration or other investigations or proceedings to which any company in the Candidate's or the Consortium members' or Subcontractors' corporate group has been a party during the last 5 years, in each case with a value of over US \$250,000.

We confirm that the Authorised Representative and his/her replacement are authorised to act as the principal contact person on behalf of the Candidate.

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

Name of authorised signatory of the Candidate: *[name]*

Signature of authorised signatory of the Candidate: *[signature]*

FORM III: GROUNDS FOR EXCLUSION AND/OR DISQUALIFICATION FROM SELECTION PROCESS

The following declaration must be signed by the Authorised Representative of the Candidate, and in the case of a Consortium by each Consortium member and all Subcontractors.

I, the undersigned, authorised to sign on behalf of *[Insert name Candidate here]*, confirm and declare as at the date of the SOQ that the Candidate and all/any of its Consortium members and all Subcontractors comply with the below requirements and grounds:

1. Has not been prosecuted for:
 - a. financing terrorism;
 - b. committing fraud; and/or
 - c. legalising illicit income.

2. Has not:
 - a. been included by the State Procurement Agency of Georgia on the register of dishonest persons;
or,
 - b. during the past 5 years failed to fulfil its obligations on a PPP project.

3. Is:
 - a. not in a state of bankruptcy or liquidation or otherwise insolvent;
 - b. not subject to a bankruptcy application or other statutory or regulatory process applicable to insolvent entities or entities in financial distress;
 - c. not subject to any regulatory investigations or proceedings, or any litigation/arbitration matters which may adversely impact or any of its Consortium members' (including Subcontractors') ability to undertake the Project;
 - d. not applying in this SOQ procedure more than once as a Candidate in their own right or Consortium member of another Candidate;
 - e. not entering and/or has not entered into any contractual agreements or other arrangements with other parties aimed at distorting this Selection Process;
 - f. not involved and/or has not been involved in the preparation of the Selection Process, including any of its personnel or advisors;

or has not:

 - g. intentionally misrepresented or withheld any relevant information provided to the Agency or the Ministry; or,
 - h. influenced the decision-making process of the Agency and the Ministry to obtain confidential information that may confer upon the Candidate undue advantages in the selection procedure, or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

The Candidate, its Consortium members and/or Subcontractors agree to provide additional evidence and documentation on the request of the Agency in support of this declaration. The Candidate, its Consortium members and/or Subcontractors shall inform the Agency immediately if any circumstances occur that cause this declaration to be invalid during the Selection Process.

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

Name of Authorised Representative: *[name]*

Signature of Authorised Representative: *[signature]*

FORM IV: STATEMENT OF QUALIFICATION REQUIREMENTS

The undersigned declares that the Candidate or any of its Consortium members (individually and/or jointly) and/or Subcontractors, fulfil the following criteria as at the date of the SOQ:

- a. **Technical requirement:** the Candidate or any of its Consortium members and/or Subcontractors should have designed, constructed and maintained (either as contractor or as employer of the contractor) at least one (1) deep-sea port/terminal with an annual minimum capacity of 5 million tons. The Candidate must therefore submit Form V.
- b. **Investment requirement:** the Candidate or any of its Consortium members should have invested in at least one (1) Economic infrastructure project with a capital value of equal to or more than 500 million USD. The Candidate must therefore submit Form VI.
- c. **Human resource and management requirement:** the Candidate or any of its Consortium members and/or Subcontractors should have sufficient managerial and organisational capacity to implement the Project. The Candidate must therefore submit Form VII.
- d. **Operational requirements:** the Candidate or any of its Consortium members and/or Subcontractors should currently operate at least two (2) container terminals with an annual minimum throughput of 500,000 TEU per terminal. The Candidate must therefore submit Form VIII.
- e. **Financial requirements:** the Candidate or any of its Consortium members jointly (pro rata) should have sufficient financial standing (as further defined in Form IX) to act as the Private Partner in relation to the Project. Alternatively, the Candidate or any of its Consortium members is required to provide support letters/letters of intent from financiers to demonstrate the capability of attracting 500 million USD of financing for the Project. The Candidate must therefore submit Form IX.

The undersigned confirmation of fulfilment of these criteria shall be accompanied by relevant documents and references and Forms V - IX must also be completed.

The Candidate, its Consortium members and/or Subcontractors agree to provide additional evidence and documentation on the request of the Agency in support of this declaration. The Candidate, its Consortium members and/or Subcontractors shall inform the Agency immediately if any circumstances occur that cause this declaration to be invalid during the Selection Process.

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

Name of Authorised Representative: *[name]*

Signature of Authorised Representative: *[signature]*

FORM V: QUALIFICATION REQUIREMENTS – TECHNICAL REQUIREMENTS

The Candidate or any of its Consortium members and/or Subcontractors should have designed, constructed and maintained (either as contractor or as employer of the contractor) at least one (1) deep-sea port/terminal with an annual minimum capacity of 5 million tons. The Candidates are required to complete and submit Form V. Details of the port development experience of the relevant parent companies may also be submitted. For the avoidance of doubt, a separate form should be completed for each reference project.

Project Information	
Name of Candidate or Consortium Member or Subcontractor	[insert details]
Name of Reference Project	[insert details]
Country	[insert details]
Port	[insert details]
Commencement Year	[Fill in the year of Commencement of Operations]
Referee (independent person who may be contacted to verify the information provided, e.g. a port authority)	Name of organisation Address Name of contact person Telephone number E-mail
Description of technical specifications of the terminal	[Use a maximum of 200 words to describe the terminal dimensions (length of quay wall, berth depth alongside, terminal area, etc.), operational system (type of quayside cranes, type of stacking equipment, horizontal transport equipment, etc.), total investments, etc.]
Maximum depth alongside in CD	[CD - .. meters]
Terminal capacity per annum	[xxx ton/TEU per annum], specify year
Throughput	[Fill in the terminals throughput in ton/TEU], specify year
Candidate's responsibilities in terminal	[maximum 100 words, also identify whether development of infrastructure was part of the Candidate's responsibilities]
Investment obligations	Describe the structure of the project. Describe the investment amount made by the Candidate, and how these investments were financed by the Candidate (debt/equity, financing sources). Describe when the project was completed.
Shareholding structure (%s per shareholder)	[maximum 100 words]

The Candidate, its Consortium members and/or Subcontractors agree to provide evidence and documentation on the request of the Agency in support of this declaration. The Candidate, its Consortium members and/or Subcontractors shall inform the Agency immediately if any circumstances occur during the Selection Process with the effect that the named project should not be considered as a reference project.

FORM VI: QUALIFICATION REQUIREMENTS – INVESTMENT REQUIREMENTS

The Candidate or any of its Consortium members should have invested in at least one (1) Economic infrastructure project with a capital value of equal to or more than 500 million USD. The Candidates are required to complete and submit Form VI. Details of the investment experience of the relevant parent companies may also be submitted. For the avoidance of doubt, a separate form should be completed for each reference project.

Project Information	
Name of Candidate or Consortium Member	[insert details]
Name of Reference Project	[insert details]
Country	[insert details]
Capital value of the Project	[insert details]
Commencement Year	[Fill in the year of Commencement of Operations]
Referee (independent person who may be contacted to verify the information provided)	Name of organisation Address Name of contact person Telephone number E-mail
Description of technical specifications of economic infrastructure project	[Use a maximum of 200 words to describe the technical specifications of economic infrastructure project.]
Candidate's responsibilities in the project	[maximum 100 words, also identify whether development of infrastructure was part of the Candidate's responsibilities]
Investment obligations	Describe the structure of the project. Describe the investment amount made by the Candidate, and how these investments were financed by the Candidate (debt/equity, financing sources). Describe when the project was completed.
Shareholding structure (%s per shareholder)	[maximum 100 words]

The Candidate or its Consortium members agree to provide evidence and documentation on the request of the Agency in support of this declaration. The Candidate or its Consortium members shall inform the Agency immediately if any circumstances occur during the Selection Process with the effect that the named project should not be considered as a reference project.

FORM VII: QUALIFICATION REQUIREMENTS – HUMAN RESOURCE AND MANAGEMENT REQUIREMENTS

The Candidate or any of its Consortium members and/or Subcontractors should have sufficient managerial and organisational capacity to implement the Project. The Candidates are required to complete and submit Form VII.

Information

Human Resources

[insert description of Candidate's corporate policies and strategies]

Management

[insert description of Candidate's corporate policies and strategies]. Also send CVs of Candidate's top management or managers responsible for Anaklia project]

The Candidate, its Consortium members and/or Subcontractors agrees to provide evidence and documentation on the request of the Agency in support of this declaration. The Candidate, its Consortium members and/or Subcontractors shall inform the Agency immediately if any circumstances occur during the Selection Process with the effect that the named managerial and organisational information should not be considered.

FORM VIII: QUALIFICATION REQUIREMENTS – OPERATIONAL REQUIREMENTS

The Candidate or any of its Consortium members and/or Subcontractors should currently operate at least two (2) container terminals with an annual minimum throughput of 500,000 TEU per terminal. The Candidates are required to complete and submit Form VIII. Details of the port operation by the relevant parent companies may also be submitted. For the avoidance of doubt, a separate form should be completed for each reference project.

Project Information	
Name of Candidate or Consortium Member or Subcontractor	[insert details]
Name of Reference Project	[insert details]
Country	[insert details]
Port	[insert details]
Commencement Year	[Fill in the year of Commencement of Operations]
Referee (independent person who may be contacted to verify the information provided, e.g. a port authority)	Name of organisation Address Name of contact person Telephone number E-mail
Description of technical specifications of the terminal	[Use a maximum of 200 words to describe the terminal dimensions (length of quay wall, berth depth alongside, terminal area, etc.), operational system (type of quayside cranes, type of stacking equipment, horizontal transport equipment, etc.), total investments, etc.]
Maximum depth alongside in CD	[CD - .. meters]
Terminal capacity in TEU per annum – 2022	[xxx TEU per annum]
Throughput – 2022	[Fill in the terminal throughput in TEU in 2022]
Candidate’s responsibilities in terminal	[maximum 100 words, also identify whether development of infrastructure was part of the Candidate’s responsibilities]
Investment obligations (if applicable)	Describe the structure of the project. Describe the investment amount made by the Candidate, and how these investments were financed by the Candidate (debt/equity, financing sources).
Shareholding structure (%’s per shareholder)	[maximum 100 words]

The Candidate, its Consortium members and/or Subcontractors agree to provide evidence and documentation on the request of the Agency in support of this declaration. The Candidate, its Consortium members and/or Subcontractors shall inform the Agency immediately if any circumstances occur during the Selection Process with the effect that the named project should not be considered as a reference project.

FORM IX: QUALIFICATION REQUIREMENTS – FINANCIAL REQUIREMENTS

The Candidate or its Consortium members jointly (pro rata) should have sufficient financial standing to act as the Private Partner in relation to the Project. Candidates must therefore submit recent consolidated financial statement(s) as required by Form II. A Candidate shall be deemed to have sufficient financial capacity when one of the following requirements are met:

- a) Solvency after investment exceeds [0.3], as calculated by the following formula:

$$\text{Financial Minimum Requirement} = \frac{\text{Total Equity}}{(\text{Total Assets} + 500 \text{ million USD})} > [0.3]$$

- b) The Candidate or any of its Consortium members provides support letters/letters of intent from financiers to demonstrate the capability of attracting 500 million USD of financing for the Project

The undersigned declares that:

- a. the Candidate or its Consortium members jointly (pro rata) fulfil the above financial capacity requirements;
- b. since the publishing of the latest financial statement, the Candidate's or its Consortium members financial position has not materially changed, such that these requirements will not be met in the financial statement of the current and subsequent financial years;
- c. the Candidate or its Consortium members has, to date, not engaged in commitments to the extent to which such commitments might affect the Candidate's or its Consortium members ability to finance or complete the Project.

The Candidate or its Consortium members agree to provide additional evidence and documentation on the request of the Ministry and the Agency in support of this declaration. The Candidate or its Consortium members shall inform the Ministry and the Agency immediately if any circumstances occur that cause this declaration to be invalid during the Selection Process.

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

Name of Authorised Representative: [*name*]

Signature of Authorised Representative: [*signature*]