

Project: Privatization of Small Ports and Marinas

Tender: The concession of the right to use, operate, manage and exploit the cluster of the tourist ports of Alimos, Nea Epidaurus, Hydra & Poros

Phase: Phase A – Pre-qualification stage

Date: May 24th, 2013

Subject: Answers to Requests for Clarifications

Number: 4

No.	Question	Answer
1.	(In reference to Annex A, 1.1.5) For legal entities it is required to state "full details of the shareholding structure of the legal entity, including identification of the natural persons, who are the ultimate owners of legal entities being either shareholders of the Interested Party or shareholders of shareholders of the Interested Party and so on". In case a stake (either minority or majority) in the Legal Entity is held by a fund with diffuse shareholders it may prove impossible to identify the natural persons who are the ultimate owners of the fund. What do you suggest?	The terms and conditions of the Invitation remain in effect.
2.	Is it sufficient for a foreign interested party to submit: 1. A Letter of Expression of Interest in two original copies in English, and the same Letter in two original copies in Greek, and 2. The Supporting Documents in two "folder" of which the first folder will contain the original foreign documents accompanied by a certified translation of the Greek, and the second folder will contain certified copies of the original foreign documents accompanied by a certified translation into Greek.	It is confirmed.
3.	According to the clarification to question no. 28 (May 13, 2013), if a consortium / JV submits an Expression of Interest, a joint solemn declaration must be signed on behalf of the consortium. Taking into account that a) Consortiums / JVs with members from different countries may participate in the Tender Process, and b) such a solemn declaration must be made before a competent administrative authority or notary public in accordance to the Law of origin of each member of the consortium; it follows that the	In such or similar cases, the members of the consortium/joint venture may submit separate solemn declarations. Each solemn declaration should contain the table reflecting financial data of the consortium as per Template 7 of Annex B of the Invitation.



	submission of such joint solemn declaration by members from a different country of origin is practically impossible. Kindly confirm that in such case, instead of the joint solemn declaration, it is permitted to submit separate declarations (one for each member of the consortium / JV) before a competent administrative / judicial authority or a notary public or with a certified signature in case of a member originating from Greece, which will refer to the participation of the consortium / JV in the Tender Process, and which will include a joint table with the consortium's financial data.	
4.	According to the answer to the question No. 36, dated 13/05/2013, the Solemn Declaration of paragraph 3, section 1.1 of Appendix A (criminality etc), should be submitted separately by the Chairman of the Board and the Managing Director of the company, in case of a Société Anonyme. Primarily we ought to underline that this answer comes in direct contrast with the practices followed by the Fund in numerous other tender processes, where the submission of the Solemn Declaration solely by the legal representative (or even by a duly authorized third party) was deemed sufficient. Indicatively, we would like to refer you to the clarifications of the Fund dated 12/06/2012 (Question 31) for the tender process of Afantou-Rhodos, 21/03/2013 (Question 5) for the tender process of Astir Vouliagmeni, and to other similar examples, such as the Invitations of the Fund for the processes of Paliouri and St. Ioannis – Sithonia. Furthermore, it is possible (particularly in the case of listed companies on a Stock Exchange) that the Chairman will be a non-executive member (not representing the company), and therefore, his Solemn Declaration is unnecessary. Additionally, the Chairman's country of residence might differ from the country of the company, and therefore, the submission of the declaration according to the Invitation and under the tight deadline for the submission of the Expression of Interest, will be extremely difficult. Finally, this answer is in direct conflict with the Invitation, where it is explicitly stated that this Solemn Declaration "...signed by the legal representative of the legal entity, stating that...the Interested Party and its legal representative(s) meet the requirements...". Taking the above into consideration, kindly confirm if you could adopt the Fund's general practice and allow the signing of the Solemn Declarations by the legal representative of the Interested Party (with reference to the Interested Party, its legal representative(s), and the Chairman of the Board).	As per section 5.2.1 of the Invitation, as regards sociétés anonymes, the disqualification criteria relating to criminal acts also apply to the president/chairman of the board of directors and the managing director (where existent) based on the articles of association or equivalent document of the legal entity. The relevant solemn declarations should be submitted separately by the Chairman of the Board and the managing director.



5.	It is clear from the Invitation that it is acceptable for a consortium / JV consisting of (a) an existing Société Anonyme (S.A.), and (b) several natural persons, or a S.A. under incorporation with these natural persons as shareholders, to submit an Expression of Interest. 1. In the case of a S.A. under incorporation, should the Supporting Documents pertain only to natural persons since the legal entity of the S.A. has not yet been established? 2. In the same case (participation of an existing S.A. and a S.A. under incorporation), do you require an agreement: (i) only between the natural persons comprising S.A. under incorporation, (ii) only between the two parties of the consortium (the existing S.A. and representatives of S.A. under incorporation), or (iii) both? 3. In general, if one of the members of the consortium is a S.A. under incorporation (i.e. in transition between natural person and legal entity status, as clearly mentioned in the Invitation), kindly provide a list of the required Supporting Documents	Interested parties should submit the applicable supporting documents according to their legal status on the submission date. Specifically: In the case of a S.A. under incorporation, the Supporting Documents that should be submitted must pertain only to natural persons since the legal entity of the S.A. has not yet been established. In such case of a consortium with the participation of an existing S.A. and a S.A. under incorporation, the members of the consortium are the existing S.A. and the natural persons regardless of the fact that they intend to establish a company. Therefore, the agreement between the existing S.A. and the natural persons for the establishment of the consortium must be submitted, as well as all the required Supporting Documents for both the legal entity of the S.A. and for each natural person participating, as per the requirements of the Invitation. It should be pointed out that in case of entry of an under-incorporation legal entity in a consortium after the submission of EOI, the provisions of the Invitation, concerning the conditions under which changes to the consortium are permitted, should be applicable.
6.	Regarding the Supporting Documents of natural persons (Annex A of the Invitation, par. 1.3.) Cases 2 and 3: Are the income tax form, or the income tax return form, or the E9 form, printed from the TAXIS platform of the Ministry of Finance (within a month from the submission of an Expression of Interest) but not actually stamped by the tax office, acceptable? Kindly provide an indicative list of other specific documents that are acceptable as proof for cases 2 and 3, and specify what form of certification they must bear.	The documents mentioned can be submitted to the extent they evidence the required information. As per Annex A, section 1.2 of the Invitation any document issued by a public authority (including a public utility or local authority or tax bill) evidencing the domicile of the Interested Party, issued within the last one (1) month from the submission of the Expression of Interest is acceptable. Documents not issued by a public authority cannot be accepted. As per Annex A, section 1.3, any certificate or other equivalent document issued by the competent tax authority within the last one (1) month prior to the submission of the Expression of Interest evidencing the tax registration number and the tax residency of the Interested Party is acceptable. It should be clarified that relevant forms printed from the TAXIS platform of the Ministry of Finance will be accepted without being actually stamped by the tax office. Documents issued by a Greek public authority should be originals or should be duly certified by the competent administrative authority (KEP) Documents issued by a foreign public authority should also bear the apostille stamp.
7.	According to Annex A, Article 2 (Financial Eligibility Criteria): <i>"The Interested Parties and in case of consortia /</i>	It is reasonable for each member of a consortium/ joint venture to submit a solemn declaration as per Declaration Template 7 of Annex B, given that the data of all members will be weighed for the purpose of fulfilling the



<i>joint ventures, each consortium / joint venture member must submit the following:</i> 1. (...) 2. <i>A solemn declaration regarding the compliance with the Financial Eligibility Criteria (paragraph 5.2.2) together with a table reflecting financial data in accordance with the template 5 (if applicable) and 7 in Annex B."</i> According to 5.2.2.: <i>"In the case of a consortium / joint venture, the Financial Eligibility Criteria must be fulfilled if the weighted sum, calculated by aggregating such financial criteria for each consortium / joint venture member, on a proportionate basis (pro rata) taking into account the relative interest of each member (stake) in the consortium/joint venture exceeds the aforementioned criteria."</i> Since in the case of a consortium / joint venture the Criteria must therefore be fulfilled from the weighted sum of the respective data of each member, kindly clarify the following: 1. Is it reasonable for each member of the consortium / joint venture to submit a solemn declaration as per Declaration Template 7 of Annex B, given that a single member may not fulfill the Criterion in question? 2. Should, therefore, the solemn declaration as per Declaration Template 7 of Annex B be submitted by the consortium / joint venture? 3. In such case, should the solemn declaration as per Declaration Template 7 of Annex B include both tables("Interested Party's Financial Data" & "Consortium Financial Data") of the template or just the second one ("Consortium Financial Data")? It should be noted that if solemn declaration in question must be submitted by each member of the consortium / joint venture, then its wording is not appropriate.	Financial Eligibility Criteria. In case of a consortium/joint venture, a solemn declaration should be submitted, signed by each member/ representative of each member of the consortium. In exceptional circumstances, separate solemn declarations can be submitted (see Answer on Question 3). The aforementioned solemn declaration should in any case contain only the Consortium Financial Data table.
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General remark: Questions relating to the legal, technical and financial characteristics of the assets will be answered to the extent possible during Phase B of the Tender Process. Eligible Investors will also be entitled to perform their own due diligence on the Tourist Ports during Phase B of the Tender Process.

Capitalized terms shall have the meaning attributed to them in section 2 of the Invitation to Submit an Expression of Interest.