

Terms of Reference Port of Rijeka, Croatia

RIJEKA GATEWAY II PROJECT

Loan No. 7638 - HR

Terms of Reference:

CONSULTING SERVICES FOR THE MARKET EVALUATION AND PREPARATION OF COMPETITIVE BIDDING FOR THE CONCESSION OF NEW ZAGREB PIER CONTAINER TERMINAL

1. Background

Due to increasing container throughput demand and lack of available public funds in the Port of Rijeka, the Port of Rijeka Authority (PRA) is seeking advisory assistance to explore ways to mobilize private capital to operate and to complete the civil works and equipment of the new Zagreb Container Terminal, with the final intention that PRA signs a Concession Contract with a competent container operator.

The Port of Rijeka has experienced a steady growth of container volumes with almost 215,000 TEU handled in 2016. The growth in the container segment has been mainly attributed to increased containerization of general cargo in the region, upgraded inland hinterland road and rail access, modernized port facilities, and improved Customs facilitation procedures that have allowed the Port of Rijeka to compete against other Northern Adriatic ports for both domestic traffic and trade volumes to/from landlocked hinterland countries, especially Hungary.

As a result of the increased trade volumes a port modernization project (Rijeka Gateway Project) financed by the loan from the World Bank, is being implemented. The overall objective of the port component of the project is to support the transformation and modernization of the port of Rijeka thereby increasing both its competitiveness and traffic. The project involves transforming the port from the service port model to the landlord port model thereby increasing private sector involvement and capital in the port.

The PRA intends to concession the operations of a new container terminal, to be constructed on the Zagreb Pier, in a way that the PRA will finance the infrastructure and the Concessionaire should finance the equipment and superstructure as well as operate and maintain the terminal facilities.

New container terminal on Zagreb pier is being constructed because there is a demand for container handling capacity in the port area, while the extended Brajdica Container

Terminal will not have enough capacity for the foreseen future throughput. New container terminal on Zagreb pier will have pier length of 680 m, of which PRA is financing the construction of the first 400 m¹, and optionally finance an additional 280 m.

2. Objectives of the Consultancy Services

The main objectives of the present Advisory Services to be provided to the PRA are to carry out market evaluation and prepare the competitive bidding for the concession of new Zagreb Pier Container Terminal. Part of this process involves the organization of a Road Show in consultation with PRA inviting all interested investors and potential concessionaire and execution of the competitive bidding process based on the best model to be used for the concession of the new Zagreb Container Terminal.

For that reason, the Consultant shall: (1) explore and evaluate the best model to be used for the concession of the new Zagreb Container Terminal (ZCT), under the existing legal framework governing the port sector and concessions in Croatia, while meeting the development objectives of the PRA; (2) prepare a “teaser” for the proposed ZCT concession and organize the Road show; and (3) design and execute the competitive bidding process based on the best model to be used for the concession of the new Zagreb Container Terminal, while meeting the development objectives of the PRA, and to enable PRA to successfully execute the transaction through competitive bidding all the way to the financial and legal closure with the selected private partner.

3. Scope of Work

The scope of work is divided into two main parts with totally of eight primary activities. The first part comprises: (i) Zagreb Pier Container Terminal concessioning process due diligence; (ii) Market evaluation - identifying potential investors among the container operators and/or shipping lines; as well as organization of a Road Show to promote new Zagreb Container Terminal by providing comprehensive and well structured information to potential investors, and based on the Road Show results; (iii) Analysis of possible instruments for the concession of the Zagreb Container Terminal; whilst the second part includes; (iv) Updating of bidding documents including a draft Concession Agreement for the transaction in compliance with Croatian law, building on international best practice, organization of the Data Room, and Assistance to the PRA procurement committee and preparation of the Report on Evaluation of Bids including the proposal for concession award; (v) Assist the PRA to obtain the Administrative Board (AB) and Government of Croatia (GoC) approval of proposed Concession Agreement; and Support the PRA during the negotiation process and signing the Concession Agreement.

- (i) Zagreb Pier Container Terminal concessioning process due diligence shall include, *inter alia*:

¹ To be completed by end 2018

1. ***An update of the legal and regulatory environment*** shall be carried out by the consultant to establish an inventory of legal issues the Concessionaire would be exposed to. A similar review was done approximately five years ago and its update shall -- amongst others -- include:
 - a) Legal framework including a list of constraints resulting from the laws currently in force;
 - b) Regulations governing port tariffs;
 - c) Procedures to be followed by foreign investors;
 - d) Identification of tax law impediments or incentives to be considered; and
 - e) Overview of the privileges, duties, responsibilities and obligations bestowed on the Concessionaire, according to Croatian law².

2. ***Revisit the data related to interface between concession process and D&B (Design & Build) process for the Zagreb pier:*** Keeping in mind that the Concessionaire will have to provide finance and build all required superstructure, whereas the PRA will provide infrastructure, it is essential to outline precisely who does/pays for what and how risks are allocated. The contents of infra- and super- structure for the purpose of this specific process must be clearly and exhaustively defined in advance by the consultant, especially in the areas of interface between respective responsibilities of the PRA and Concessionaire.

It is understood that the Concessionaire will provide for, among others, paving, terminal administrative and operational buildings, rail siding equipment, gates, reefer area, HSSE (Health, Safety, Security & Environment) facilities and a yard & terminal layout. In order for the project to benefit from the concessionaire's know-how contribution, the concessionaire will be given the possibility to communicate their plans in terms of superstructure, and the underlying requirements arising therefrom for implementation in the D & B contract.

3. ***Update of operational and technical review*** shall be completed by the Consultant to assess the operational feasibility of the project including:
 - a) Assessment of current and future container handling capacity in the port of Rijeka;
 - b) Recommended technology to be used in the new facility;
 - c) Recommendations for technical specific requirements to reduce the port impact on the environment. Since the port of Rijeka is a city port, the PRA wishes to take all affordable initiatives and precautions to minimize the environmental impact of the terminal, among others, in terms of noise and emissions of greenhouse gases and particles. To this effect, the Consultant will prepare a review of the existing trends and best practices in the container terminal industry, the related technological solutions, evaluate their respective cost impact, feasibility, applicability and relevance in the Rijeka context, and advise PRA on how to formulate appropriate provisions to be included in the Concession Agreement. These features

² It is intended that the terminal will be operated by the Concessionaire as a public (common user) port facility.

include, but are not limited to, cold-ironing, all-electric RMGs (Rail-Mounted Gantry cranes), hybrid engines, anti-idling procedures, etc....

4. ***Update of financial Analysis:*** The consultant shall review and eventually upgrade the existing PRA financial model to analyze the financial viability, bankability and potential attractiveness of the project to prospective private investors and operating companies, based on present and future operating costs and investments in infrastructure and superstructure. The model should be designed in a flexible way so as to easily simulate multiple scenarios to be used in the bidding process for determining the structure and level of fees and evaluation of bids.
- (ii) Organization of the Road Show and identification of potential investors; The identification of potential investors shall be done through a market evaluation among the container operators and/or shipping lines to determine the interest in participating in the tender process. The Road Show inviting all interested investors will be organized in consultation with the PRA. For that reason, the Consultant shall prepare comprehensive and well-structured promotional documents (“teasers”) for the new Zagreb Container Terminal and a brochure for the investment required in the ZCT.
- (iii) Analysis of possible instruments; The Consultant, together with the PRA, will explore and conduct an analysis of relative instruments (legal and financial) that comply with the relevant Croatian laws. The analysis will also include a preliminary assessment and allocation of major risks and recommendations on how the project can best be designed so that the future private investor’s incentives will be in line with public objectives.
- (iv) Upgrading of bidding documents³ and support to the PRA in conducting the bidding process; The Consultant will identify all critical parameters and present them to PRA together with his recommendations for the best procurement procedure in accordance with the Public Procurement Law and Concession Law. Based on PRA’s feedback, the Consultant will prepare the draft bidding documents in compliance with Croatian law and to the satisfaction of the PRA. The bidding documents should include, but are not limited to:
- Instructions to Bidders.
 - Financial model.
 - Format and content of all relevant documents, e.g. Bid, Letter of Acceptance, Guarantees, etc.
 - Concession Agreement in accordance with the Croatian law, including all necessary annexes and schedules.

In addition to the above, the consultant will assist PRA in the following activities:

³ In reference of the documentation prepared in 2013

- Establishment of Data Room: The Consultant will assist the PRA in the preparation of a Data Room to be made available to bidders.
 - Competitive Dialogue (if this procedure is applied): The Consultant will assist the PRA procurement committee in conducting competitive dialogue with selected bidders.
 - Bids Clarification: The Consultant will assist the PRA procurement committee with the management of bidders' requests for clarification.
 - Bid Evaluation: The Consultant will support the PRA procurement committee in the evaluation of bids.
 - Execution of Concession Agreement: The consultant will prepare the final concession agreement, annexes and schedules for signature
- (v) Award and signature of the Concession Agreement: The consultant shall assist the PRA procurement committee in drafting of final documentation and legal agreements for signing with the selected Bidder and remain engaged as advisors, until the signature of the Concession Agreement. The Consultant shall be available to review draft notices, documents and agreements for approval by the PRA.

4. Deliverables

Deliverables to be produced by the Consultant shall include the following

- a) Inception Report including confirmation of a PPP approach for the Project, review of the previous bidding process carried out in 2013, assessment of new developments;
- b) Workshop with the PRA to present technical and operational due diligence, market and commercial scanning, updated legal and regulatory review, and financial analyses;
- c) ZCT Project promotional documents ready for the Road Show together with list of container operators and shipping lines to be invited;
- d) Organization of the Road Show and identification of potential investors;
- e) Analysis of possible instruments (legal and financial) to be used in the concession agreement;
- f) Draft Bidding Documents and Concession Agreement;
- g) Organization of the Data Room;
- h) Assistance to the PRA procurement committee and preparation of the Report on Evaluation of Bids including the proposal for concession award;
- i) Administrative Board (AB) and Government of Croatia (GoC) approval of proposed Concession Agreement; and
- j) Final Concession Agreement package for signature in cooperation with the PRA;

Five paper copies of each document will be provided to PRA and one electronic copy to PRA and the World Bank.

5. Duration of Contract and Timetable

The duration of the contract is estimated to be 363 days with possible extension. The timetable for deliverables is as follows:

NO.	DELIVERABLES	DEADLINE	Days ^(*)
a.	Inception Report	December 2017	15
b.	Workshop	January 2018	30
c.	ZCT Project promotional documents	February 2018	50
d.	Organization of the Road Show	March 2018	70
e.	Final Report	April 2018	90
f.	Draft Bidding Documents and Concession Agreement (CA)	July 2018	167
g.	Data Room	August 2018	174
h.	Report on Evaluation of Bids	September 2018	284
i.	AB and GoC approval of proposed CA	November 2018	328
j.	Final Concession Agreement	December 2018	363

(*) Days are counted from the date of the Consultant Contract signature.

6. Qualification of consultants

Only firms will be eligible for being awarded this consultancy assignment. Firms should have a proven track record and successfully completed similar assignments of port related PPP transactions.

Firms will be evaluated on: (i) their general experience in the port sector; (ii) previously successful PPP projects and transactions in seaports for which they provided similar services; (iii) suggested approach and methodology; (iv) regional experience on PPP projects; and (v) expertise and experience of staff proposed.

Key staff proposed for the assignment should consist of the following minimum competencies:

- Senior Transaction Advisor with over 10 years' experience managing and advising infrastructure concessions and transactions with a minimum of 7 years port sector experience.
- Port Specialist with over 10 years' experience in the port sector responsible for advising on technical, operational, commercial, and social aspects of port projects especially on container terminals.
- Croatian Legal Expert with a minimum of 7 years of established experience in Croatian legislation relating to the maritime domain, concessioning procedure and port governance.
- Financial Analyst with over 7 years of professional experience and at least 5 years of port and maritime sector experience.

- Marketing Specialist with over 7 years of professional experience and at least 5 years of port and maritime sector experience in similar infrastructure transactions.
- Civil Engineer with over 10 years of professional experience and at least 7 years of port planning and coastal engineering experience especially on Container terminals.

7. Consultant's comments on the TOR

Consultants are invited to submit, together with their proposals, their comments and suggested improvement/amendments to these TOR. Subject to an approval by PRA, the suggested improvement/amendments can be incorporated into the final TOR. Nevertheless, the consultant will be bound by its proposal on the basis of the TOR included in the Request for Proposal.