

## **PART C: PRE-QUALIFICATION CRITERIA**

50. The Pre-Qualification Criteria encompass the four categories listed below, all of which the Applicant (whether acting alone or in a Consortium) must meet or exceed, in order to be pre-qualified to participate in the Selection Process.
51. The Pre-Qualification Criteria categories are as follows:
- a) Ownership and Control Criteria;
  - b) Legal Criteria;
  - c) Financial Criteria; and
  - d) Technical Criteria.
52. If any qualifying Financial and/or Technical Criteria has been or is to be met through an entity which is an Affiliate of the Applicant or a member of a Consortium that is an Applicant, the Auditor's confirmation to be provided pursuant to Legal Criteria hereunder must include confirmation that such entity satisfies the definition of an Affiliate of the Applicant or a Consortium member that is an Applicant.

### ***Ownership and Control Criteria***

53. Applicants may either be: (i) a Port Operator acting on its own; or (ii) a Consortium led by a Port Operator.
54. No Person may submit, or be a participant in, more than one application in response to this RFQ; in particular no Person may participate directly or indirectly in more than one (1) Consortium making application in response to the RFQ. No applying Consortium may have common shareholders, members or beneficiaries, whether directly or indirectly, with another applying Consortium i.e. no person (whether directly or indirectly) may participate in competing Consortia. If that happens, then each affected Consortium must, when notified, rectify the situation within the period so notified, or risk disqualification from the Selection Process.
55. Any Port Operator that submitted a stand-alone application and is pre-qualified will have the flexibility to elect to continue to bid on its own or as Lead Member of a Consortium during the RFP stage, on condition that the Applicant continues to meet the qualification criteria.

56. The successful Bidder will be required to incorporate a limited liability company (to serve as the special purpose SP Company) under the laws of the Republic of Mauritius within the timeframe specified in the RFP. The SP Company shall execute the Share Sale and Shareholders Agreement with CHCL.
57. The Port Operator, as Lead Member, will be required to hold **no less than** forty percent (40%) of the voting shares and rights to economic interest in the Consortium at the Bid Date. A Port Operator submitting an application in response to the RFQ in its name may sell down, transfer or otherwise dispose of its interests in the vehicle through which it has submitted an application in response to the RFQ, provided that as at the Bid Date it holds **no less than** forty percent (40%) of the voting shares and rights to economic interest in the formulated Consortium.
58. **If the Port Operator forming part of a Consortium intends to hold less than fifty-one percent (51%) of the voting shares and rights to economic interest in the Consortium, the Consortium will be required by the Bid Date to provide evidence satisfactory to the Agency that, if the Consortium is declared the winning Bidder, an agreement satisfactory to the Agency, will be executed between the members of the Consortium in order to ensure that the Port Operator is able to effectively provide operations at the Port as required under and for the duration of the Proposed Concession Contract. The agreement to be executed between the members of the Consortium to undertake the operation of the Port will form part of the set of documents to be submitted as part of the RFP response on the Bid Date.**
59. The minimum shareholding restrictions relating to the Port Operator and the restrictions relating to the introduction of new members to a Consortium that is a pre-qualified Applicant shall apply equally to the shareholding in the SP company throughout the term of the Proposed Concession Contract between CHCL and the MPA.

### ***Legal Criteria***

60. Where an Applicant is a Port Operator seeking to be pre-qualified on its own as a stand-alone Applicant, the Applicant shall submit a letter of application in the form of Annex A signed by an Authorized Representative. The letter of application sets out the Port Operator's intention to participate in the pre-qualification process and its acceptance of all the terms and conditions set out in this RFQ. The Authorized Representative shall initial all documents submitted as part of the application for pre-qualification, including supporting documents. The Applicant shall include the following documents in its application in response to the RFQ:

- a) as proof of authority, an apostil copy of the resolution of the board of directors or its equivalent of, the Applicant, authorizing the Applicant to participate in the Selection Process as an Applicant and to appoint the Authorized Representative in terms of the Power of Attorney to sign the application and represent the Applicant in the Selection Process;
- b) the original Power of Attorney, prepared using the format provided in Annex C and signed by the Applicant authorizing the Authorized Representative represent the Applicant in the Selection Process. The Applicant may on written notice to the Agency (copied to IFC) replace the Authorized Representative with a new Authorized Representative appointed in terms of a new Power of Attorney, the original of which will be attached to the Applicant's written notice, together with an apostil copy of the relevant resolution of the board of directors or equivalent documentation of the Applicant authorizing such appointment. All actions taken by the Authorized Representative prior to the receipt by the Agency of written notification by the Applicant of the Authorized Representative's replacement shall be valid and binding upon the Applicant;
- c) apostilcopies of certificates issued by the relevant governmental authorities, or other competent authorities of the jurisdiction in which the Applicant is incorporated that attest to the fact that the Applicant is a duly organized and validly existing in such jurisdiction, including a notarised statement to the effect that it has no impending claims, fiscal liabilities or legal action with the governmental authorities with respect to any tax issues (e.g. property or income tax) - except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided for. The certificates must be dated no earlier than the date of the most recent audited financial statements of the Applicant. If the Applicant is using an Affiliate to meet this criterion, it must also provide a similar certificate(s) for such Affiliate;
- d) apostil copies of the Applicant's Articles and Memorandum of Incorporation, and Certificate of Incorporation (or equivalent constitutional and registration documents);
- e) a Sworn Declaration by the Applicant, using the format provided in Annex E, signed by the Authorized Representative, providing the information listed below:
  - (i) names and nationalities of all shareholders of the Applicant that control more than five percent (5%) of its capital and of the entities that directly or indirectly are the beneficial shareholders of such capital. The beneficial shareholders of the Applicant shall mean those that directly or indirectly own the shares or the voting rights or that otherwise control such Applicant, as applicable;
  - (ii) names and nationalities of each member of the Applicant's board of directors;

- (iii) names of all of the stock exchanges on which the shares of the Applicant are traded;
- (iv) a statement that all the information and documentation submitted in connection with the application is true, accurate and complete;
- (v) a statement that the Applicant is not in default (whether for non-payment of purchase consideration, concession fees or otherwise) under any agreements relating to previous divestitures or other port contracts and that there are no conflicts of interest, statutory or other prohibitions or restrictions that would prevent the Applicant or any of its Affiliates from contracting with the Republic of Mauritius;
- (vi) a statement from the firm that prepares audited financial statements for the Applicant certifying that, since the date of the Applicant's last audited reports and financial statements, there have not been any material adverse changes to the Applicant's financial condition,

All such information shall further be provided in respect of each Affiliate used by an Applicant to meet certain of the Pre-Qualification Criteria.

61. If a Port Operator elects to participate in the pre-qualification process as a member of a Consortium, the Port Operator shall serve as the Lead Member of the Consortium and shall submit a letter of application, for and on behalf of the Consortium, in the form of Annex B. The Lead Member shall be the only person authorized to make statements on behalf of and receive instructions for the members of the Consortium represented by the Lead Member. The letter of application shall be signed by an individual person (the **“Lead Member Authorized Representative”**) nominated by the Lead Member and authorized in terms of the powers of attorney (described in paragraph d) below) to represent the Applicant in the pre-qualification process. The Lead Member Authorized Representative shall initial all documents submitted as part of the application for pre-qualification, including supporting documents. The following documents must be included in the application:
- a) a copy of the agreement entered into by the Consortium members for the purposes of forming a Consortium, which agreement must clearly set out the relationship between the parties thereto and authorize the Port Operator to be the Lead Member for that Consortium;
  - b) as proof of authority by the Port Operator, an apostil copy of the resolution of the board of directors or its equivalent of, the Port Operator, authorizing it to (i) form part, and serve as Lead Member, of the Consortium participating in the pre-qualification process as Applicant; (ii) submit an application in response to the RFQ in the name of the Consortium; (iii) appoint the Lead Member Authorized Representative for the Consortium for purposes set out in c) below;

- c) as proof of authority by each of the Consortium members other than the Port Operator, an apostil copy of the resolution of the board of directors or its equivalent of, each such Consortium member authorizing it (i) to participate in the Selection Process as a member of the Consortium submitting an application in response to the RFQ; (ii) to appoint the Port Operator as the Lead Member of the Consortium; and (iii) appoint the Lead Member Authorized Representative for the Consortium for purposes set out in d) below;
- d) using the format set out in Annex D, each Consortium member constituting the Applicant shall appoint the person nominated by the Lead Member of the Consortium to act as the Lead Member Authorized Representative in terms of a power of attorney to represent and irrevocably bind the Applicant in all matters connected with the pre-qualification and Selection Processes, including but not limited to the submission of the pre-qualification application, on behalf of the Consortium. The Applicant may on written notice by the Lead Member to the Agency (copied to IFC) replace the Lead Member Authorized Representative with a new Lead Member Authorized Representative appointed in terms of new powers of attorney made by each of the Consortium members. If so requested, the Lead Member shall deliver to the Agency the originals of each new power of attorney issued by the Consortium Members and/or apostil copies of the relevant resolution of the board of directors or equivalent documentation of the Consortium Members authorizing such appointment. All actions taken by the Authorized Representative prior to the receipt by the Agency of written notification by the Applicant of the Lead Member Authorized Representative's replacement shall be valid and binding upon the Applicant;
- e) apostil copies of certificates issued by the relevant governmental authorities, or other competent authorities of the jurisdiction in which each Consortium member is incorporated that attest to the fact that the Consortium member is a duly organized and validly existing in such jurisdiction, a notarised statement to the effect that it has no impending claims, fiscal liabilities or legal action with the governmental authorities with respect to any tax issues (e.g. property or income tax) - except those which are being contested in good faith by appropriate proceedings and for which adequate reserves. The certificates must be dated no earlier than the date of the most recent audited financial statements of the Applicant. If the Consortium member is using Affiliates to meet any of the stated Pre-Qualification Criteria, it should also provide similar certificates for each such affiliate;
  - (i) apostil copies of Memorandum and Articles of Incorporation, Certificate of Incorporation and Registration details (or equivalent constitutional and registration documents) of each of the Consortium members;

- (ii) a statement that the Consortium members and their respective Affiliates are not in default (whether for non-payment of purchase consideration, concession fees or otherwise) under any agreements relating to previous divestitures or other port contracts and that there are no conflicts of interest, statutory or other prohibitions or restrictions that would prevent the Applicant, the Consortium members constituting the Applicant or any of the Consortium members' Affiliates from contracting with the Republic of Mauritius;
- (iii) a statement that neither the Applicant, nor the Consortium members constituting the Applicant and their respective Affiliates have been the subject of any bankruptcy proceedings, reorganizations for the benefit of creditors or similar proceedings in the three (3) years preceding the Submission Deadline; and
- (iv) a statement from the firms that prepare audited financial statements for the Consortium members certifying in respect of each Consortium member that, since the date of the such Consortium member's last audited reports and financial statements, there has not been any material adverse changes to such Consortium member's financial condition.

All such information shall further be provided in respect of each Affiliate of a Consortium member.

### ***Financial Criteria***

62. Each Applicant must include the following documents in their application submission:
- a) a properly completed experience declaration in the form of Annex F, executed by the Authorized Representative or Lead Member Authorized Representative (as applicable), evidencing that such Applicant directly and/or through an Affiliate (as defined below), has invested through debt and/or equity finance of at least US\$60 million in a container terminal project in the last five years; and
  - b) a narrative project description for each of the projects set forth in the experience declaration recording details on the project name, location, size, total cost, and equity and debt financing sources for each such project, as well as contact information for key project managers, tenants or users of the container terminal and authorizing the Agency and its representatives to contact and speak to such persons. The narrative should describe the Applicant's role in each such project. Pictures and illustrations of the projects may be submitted to supplement the narrative description;

- c) a certificate issued by the Applicant's independent auditor certifying that the Applicant has made the minimum \$60 million investment described in paragraph (a)(i) above;
- d) evidence that the Applicant has participated in the projects cited in the experience declaration, including documentary evidence (such as, but not limited to, construction permits, certificates of occupancy or use, public registration documents, contracts or other certifications by public building officials) detailing the Applicant's role in each project and that each project satisfies the requisite technical criteria;
- e) evidence in the most recent audited balance sheet that demonstrates ownership of total assets (including current and non-current assets) equivalent to at least US\$100 million; and
- f) evidence in the form of audited profit and loss statements for the most recent five year financial year period demonstrating profitability, in terms of operating income, in no less than three years of this period

### ***Technical Criteria***

- 63. The Applicant must be operating and managing more than one container terminal, with at least one of these container terminals having a throughput of no less than 1,000,000 TEUs. In addition, the Applicant must be operating a total throughput at all its operated and managed container terminals of no less than 3,000,000 TEUs.
- 64. The Applicant must provide the description of technical and operational experience at all the ports under its management and/or operation, in the form of Annex F and shall provide documentary proof of its experience referred to in Annex F.

### ***Pre-Qualification Criteria***

- 65. The Pre-Qualification Committee will evaluate the responses received by the Agency on a "pass or fail" basis. To pre-qualify, an Applicant must: (i) comply with all of the provisions and conditions of this RFQ; (ii) present all the documents and information requested; and (iii) meet or exceed the Pre-Qualification Criteria.

### ***Exclusion Criteria***

- 66. Applicants shall be disqualified in any of the following events:

- a) non-compliance with any of the evaluation criteria and/or the requests and/or conditions provided in this RFQ or failure by an Applicant to provide the Agency with any of the required information or documentation;
- b) any of the information submitted by the Applicant is inaccurate or misleading;
- c) incomplete presentation of the documents or information requested;
- d) submission of the information requested in this RFQ on an untimely basis; or
- e) failure by the Applicant to provide clarifications, explanations or additional documents requested by the Pre-Qualification Committee.

67. If the Agency determines that any of the information provided by the Applicant is inaccurate, false or misleading, it may, in accordance with applicable law, at any stage of the process revoke the right of the Applicant to participate or continue its participation (as applicable) in the Selection Process.