



MINUTES OF MEETING – PPP TENDER FORUM

Date: Monday, 8th February 2021

Time: 10:00am

Venue: PAT Board Room

Location: Queen Salote Wharf, Nuku'alofa

Attendees:

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| 1. Mr. 'Alani Schaumkel | NSL |
| 2. Mr. 'Alipate upou | Royco Shipping Ltd |
| 3. Ms. Cordelia Kwok | Royco Shipping Ltd |
| 4. Mr. Manu Mataele | Joe's Stevedoring Ltd |
| 5. Mr. Salesi Mataele | Joe's Stevedoring Ltd |
| 6. Mr. Alfred Cowley | Mataliki Shipping |
| 7. Mr. Francis Cowley | Mataliki Shipping |
| 8. Mr. John Paul Chapman | NSL |
| 9. Mr. Joe Paasi | NSL |
| 10. Mr. Latu Lui | PFL |
| 11. Mr. Meto Vaka | PFL |
| 12. Mr. Lupeni 'Otuhouma | 'Otuhouma Groups Company Ltd |
| 13. Mr. Sione Ika | Acting CEO Corporate Services – MPE |
| 14. Mr. 'Alo Maileseni | ACEO – PAT |
| 15. Mrs. Mele Lavemaau | GM Corporate Services – PAT |
| 16. Mr. Halloween Kisina | GM Operations Manager – PAT |
| 17. Mrs. Jane Fonua | Recording Secretary – TWG/PAT |
| 18. Ms. Laure Darcy | PSDI Team Leader (Co-opted via Zoom) |
| 19. Ms. Julia Flattery | Legal Advisor (Co-opted via Zoom) |
| 20. Mr. Adrian Sammons | Port Specialist (Co-opted via Zoom) |

Apologies:

- | | |
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| 1. Mr. Sione 'Akau'ola | MPE CEO |
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Record of Discussions

1. Welcome and Introduction

The ACEO of PAT and Chairman of the TWG welcomed the participants and introduced the individual members of the TWG. A self-introduction was given by each participant at the beginning of the Tender Forum. The Chairman conveyed that the purpose of the forum is to allow the prospective tenderers to seek clarifications on the tender from the TWG.

2. Composition of Tender Package and Preparing Submissions

- 2.1. Conveyed to the participants that the tender package is composed of six documents. Document 1; Request for Tender (RfT) which provides instructions for preparing submissions. Document 2; Information Memorandum which outlines the investment opportunity. The participants were informed that the throughput statistics for year 2020 as stated in Section 6 of the Info Memo are slightly in variance with what will be in the virtual data room and also in the Tender Response Form, and that the latter are correct.
- 2.2. Document 3; Tender Declaration Form collects the profile of the company/bidder. Document 4; Tender Response Form collects all of the quantitative data related to the submission. Document 5; Draft Concession Contract will be signed by the winning tenderer and PAT. The Contract provides the terms and conditions of the Contract. Document 6; Tender Response Checklist helps the bidders ensure that the submission is complete.
- 2.3. Each submission to include the Tender Response Checklist, Tender Declaration Form, Tender Response Forms and any edits to the Stevedoring Concession Contract and in addition, a copy of the audited Financial Statements for the three most recent financial years. Submissions are to be provided electronically by the 29th of March 2021.
- 2.4. Conveyed to the participants that there is a slight error in Schedule 1, Fee Summary of the Tender Response Form which needs to be amended. Year 2020 and 2021 are to be crossed out and add in years 2030 and 2031.
- 2.5. The Tender Response Form was explained to the participants accordingly:
 - a) Noted that the Minimum Concession Fee will be paid quarterly in advance. At the end of each quarter, the concession fee per container and revenue tonne will be calculated based on actual volumes and if it is higher than the Minimum Concession Fee already paid, an additional payment will be due to PAT. If it is less than the Minimum Concession Fee, then no additional payment will be due to PAT.
 - b) Noted that the concession contract foresees that the Bidder will purchase PAT's equipment to operate the Concession Contract. A proposed purchase price will be required to purchase each piece of equipment offered by PAT. The equipment valuation report was conducted in 2019 and is available in the virtual data room. Bidders are welcome to inspect the equipment.
 - c) Noted that all full time and part time positions for the provision of the service is to be outlined in the manning tab of the Tender Response Form to give the evaluation committee an opportunity to better understand how the bidder will operate the Contract.
 - d) The Profit and Loss Forecast requires each bidder to complete the forecast volume for each cargo category to generate the forecasted revenue based on consolidated tariff levels. Instructions are outlined in Schedule 4 of the Profit and Lost Forecast.
 - e) The mobilization plan is a qualitative description on how the staff and equipment will be deployed to begin operating in 1st January 2022.
 - f) The Equipment and Capital Investment Tab allows the bidders to list all of the cargo handling equipment valued at TOP50,000 or more that the bidders plan to bring to the QSIW for use during the term of the contract and estimated deployment date.

- g) Explained that the Financing Plan should explain how the purchasing of equipment will be financed and other mobilization costs and where the financing will be sourced. If it is debt financing, then the financing costs should be reflected in the Profit and Loss in Schedule 4.
 - h) The Tender Response Form requires a listing of Referees and they should be from three companies not affiliated with the tenderer.
- 2.6. Each Tenderer may request access to supplemental information available in the Virtual Data Room which is listed in details in Section 5.6 of the RfT to facilitate the preparation of their Tenders. Requests must be sent by email to the TWG contact person listed in Section 5.3 of the RfT.

3. Bidder Qualification and Evaluation Criteria

- 3.1. Conveyed to the participants that the transaction advisors will conduct an independent evaluation and score each tenderer submission. The results of this evaluation will then be shared with the TWG for review, adjustment and endorsement. Upon completion of the evaluation, the TWG will present its bid evaluation report to the Working Group. Once the Working Group has endorsed the bid evaluation report, it will be presented to the PAT Board for endorsement and then Cabinet for final approval.
- 3.2. Upon Cabinet approval, the TWG will invite the top-ranked tenderer to negotiate a Stevedoring Concession Contract.
- 3.3. Conveyed to the participants that the Concession Contract was drafted in line with industry standards and similar projects around the world. Proposed amendments to the Contract will be reviewed accordingly, however the fewer the amendments the better from a legal perspective.
- 3.4. Explained that while the most important element in the evaluation will be the proposed concession fee, the following additional factors will also be scored:
 - Percentage of storage revenue to be paid to PAT
 - Purchase price of existing PAT equipment
 - Proposed manning schedule and number of staff to be locally-hired
 - Tenderer's experience in providing international stevedoring services
 - Tenderer's Financial Capacity to make the necessary investments to undertake the services
 - Commercial Compliance with draft Stevedoring Concession Contract
 - Proposed Methodology for providing the services

4. Bidder Qualifications and Evaluation Criteria

Noted that the details on how the tenders will be evaluated is found in Section 5.9 of the request for tender documents. The transaction Working Group Advisors will independently evaluate each of the tender and each one will be given a score.

5. Equipment Inspections and Communicating with Bidders

Conveyed to the participants that tenderers may schedule a visit to the QSIW and inspect all relevant plant and equipment during the period commencing 9am Wednesday 17 February and ending 4pm Friday 26 February. A total of 8 working days. Requests for site inspections must be sent to the TWG Contact Person at least 2 business days before the proposed date for the visit to inspect the equipment.

6. Question (Q) & Answer (A)

Q.1

An attendee proposed that it will be important to provide more audited financial years (5 or 10 years instead of the minimum of 3 financial years as indicated in the Tender Declaration Form) from all the tenderers given the significance of this project as the concession period is 10 years. Tax statements should be included in the criteria to ensure that all the tenderers comply with their tax compliance throughout the years.

A.1

- a) Conveyed that the Tenderers can submit audited financial statements for the past five financial years but three years was all that was required to be able to get a sense of the current financial health of the firm.
- b) Advised that it is fairly standard for tender such as this to only request three years audited financial records as this will be sufficient to show the financial standing of each of the bidders. But there is nothing to prevent more than three years being submitted, but three years is the minimum.
- c) The audited financial statement is sufficient and the tax return will not be needed, however the TWG may contact the Inland Revenue Department for further information if required.

Q.2

An attendee requested clarification whether or not the shipping agents should take part in the tender process as most of the participants are affiliated with shipping lines and are in fact shipping agents. Further, most of the participants currently hold business contracts with a shipping business or company as outlined in Section 5.9 of the RfT.

A.2

The followings were clarified:

- a) Affiliate is where a company or entity share ownership or share control with a shipping company or shipping agency. It is not intended to capture any affiliation a bidder may have with people they know or family members working in the company. It is looking at a corporate ownership. At this stage the tenderers can declare any corporate relationship in the Tender Declaration Form. Further details on the definition of affiliate is in Section 5.9 of the RfT.
- b) If a tenderer who is affiliated with a shipping line or agency is selected for the Concession Agreement, the tenderer would have to terminate this relationship before the Agreement commencement date, i.e. Jan 1 2022. Eg: A Director of your company and a shipping agency would cease being a Director at the end of the year prior to the commencement of the Contract in January 2022. By December 2021 prior to the award of the Contract, all affiliation with any shipping agencies will be ceased. However, it is not advised that this tie or affiliation to the shipping agents and authorities be ceased now as the tenderer may not be the successful bidder.

Q.3

An attendee queried whether a more comprehensive due diligence be given to the referees that is provided by the tenderers given the magnitude of this Contract as it states in the RfT that the TWG is not obliged to contact referees provided by a Tenderer and may seek further information on any issue from sources other than the referees provided.

A.3

The following was conveyed:

The tenderers should alert referees that they will be participating in the tender process and that they will be contacted as part of the process. In addition, the TWG have the ability to have its own enquiries outside of the referees that are provided.

Q.4

An attendee questioned that in terms of the Port Upgrade Project that is planned with this Tender Process and the PPP Reform, how likely are the upgrades of the wharf to happen as per the indicative schedule given the pandemic that we are currently facing.

A.4

The followings were discussed:

- a) The attendees were informed that the Contract for the ADB Port Upgrade Project is planned to be signed in September this year and the mobilization is moved to the first quarter of 2022.
- b) That the latest update on the wharf upgrade timeframe be confirmed by PAT at the earliest convenience and in particular if the update occurs before the tender is due so that everyone is informed and the updated information is uploaded to the Virtual Data Room.

Q.5

An attendee queried how much impact would the wharf upgrade project have on the winning stevedore and their work at the wharf? Would it be best to defer the PPP until the wharf has been repaired as a majority of the stevedores would prefer that?

A.5

The following were conveyed:

- a) The timing of the tender contract has been discussed by Cabinet and they have agreed to maintain this process.
- b) It is not uncommon for Stevedoring Concessions to take place in parallel with upgrades/construction/expansions of terminals. It is more common that the two occur in parallel so that the process of the alignment of the two is part of the development of the terminal. In fact, it enhances the facility as well as the stevedoring operations.

Q.6

An attendee queried whether the green light for this PPP stevedoring reform project was based on the ADB report that was done in 2017 by one of the ADB Port Specialists.

A.6

The attendee was advised that this question was outside of the scope of the tender forum which is focused on questions related to the tender process.

Q.7

Is the tender only for 100% Tongan owned companies?

A.7

Conveyed that this is specified in the tender documents that to be qualified to submit a tender, the tenderer must be incorporated in Tonga and owned 100% by Tongan shareholders. In addition, not be a trust established or settled in a country outside of Tonga and not be a partnership whose center of its administrative management is situated outside Tonga. This is specified in the Cabinet Decision and has the effect of excluding foreign bidders.

Q.8

An attendee queried why there would be a clause to allow late submissions since the potential bidders are based here in Tonga and there should be no reason to allow late submissions?

A.8

- a) Advised that the timeline for the tender process has been clearly set out and it has been done in such a way that ample time have been given to the bidders to submit their responses. Late submissions are not encouraged but will be considered based on very valid reasons.
- b) The evaluation committee/TWG will have the final approval whether to reject or accept a late submission.
- c) There is no need to remove the clause for late submission as the tenderer should be responsible for submitting the bids on time. The risk of the late submission being rejected is the full responsibility of the tenderer.

Q.9

An attendee requested further clarification as to who has the right to tender and access the tender documents as it is stated in Section 5.9 of the RfT that: The negotiated Stevedoring Concession contract will only take effect if the tenderer can demonstrate that:

- a. It is not a shipping company or shipping agency or any Affiliate thereof; and
- b. None of its directors are directors of, hold any shares or business contracts or licenses with a shipping company, shipping agency or shipping business

A.9

Conveyed that anyone who is interested can tender and the evaluation of the bids will be based on the listed evaluation criteria. Any current affiliation with shipping agencies or companies will be ceased in December prior to signing the Agreement with PAT.

Q.10

Does PAT have to enter into a negotiation with the bidder proposing the highest concession fee?

A.10

Conveyed that there are other evaluation criteria that will be considered in order to evaluate and rank the top ranked bidder including the Operation and Mobilization Plans for the next 10 years and other areas that contributes to the successful operation of the service apart from the proposed concession fee only.

Q.11

An attendee requested clarification whether the concession fee is based on the actual volumes.

A.11

Conveyed to the participants that the minimum concession fee is set to be paid quarterly. However, if at the end of the quarter, the concession fee per container and revenue tonne will be calculated based on the actual volumes and if it is higher than the minimum concession fee already paid, than the payment due to PAT will increase as the payment will fluctuate according to the volume. If less than the minimum concession fee, no additional payment will be due to PAT.

Q.12

An attendee queried whether their PAT should specify a certain percentage for the bidders to base their proposed value on to be paid as a concession fee to PAT.

A.12

Conveyed that there is not set percentage for the concession fee to be based on but the bidder is required to specify the value it will pay as a concession fee to PAT by completing the Fee Summary in the Tender Response Form.

Q.13

A similar question was raised pertaining to the reason behind the Cabinet Decision for a bidder not to have an affiliation with a shipping line as the ties with the international shipping lines is critical. The standard of information that will be shared with the stevedores will help with the development of the service standards and contributes to achieving the objectives for the project as set out in Section 1 (a) of the RfT which; Ensure the operation of the Port to international standards

Secondly, objective (b) Ensure long term growth opportunity for the local economy. Freight is an important aspect that needs to be considered as the relationship with the shipping line is critical in the sense that they have control on the freight.

Lastly, objective (c) Develop the Tongan stevedoring services sector. The existing stevedores can be employed locally or internationally. Not only on foreign vessels but also employed at international ports.

The objectives set out in the RfT does not meet the evaluation criteria set out in section 5.9

A.13

One of the attendees added that what Government wants is for a local company to operate and manage the stevedoring services. If there is an affiliation with the shipping lines, there will be conflicts of interest. The international shipping lines are multi-million dollar firms. The authority to control and manage the Port of Nuku'alofa should be via a local owned firm.

Conveyed to the participants that the TWG will compile all the concerns and questions raised during the Forum. After the Tender Forum, any questions or further clarifications are to be sent by email to the TWG contact person listed in Section 5.3 of the RfT. A running list of Q & A related to this tender will be available for all to access on the PAT website.

The Tender Forum closed at 11:47 A.M