OLVIA AND KHERSON CONCESSION PROJECTS
DESCRIPTION OF THE TENDER PROCESS AND KEY TERMS OF THE CONCESSION AGREEMENT

May 31, 2019
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DESCRIPTION OF THE TENDER PROCESS
Adapting the tender process to existing legislation

- Candidates submit their PQ applications, which have to be reviewed within 14 days
- Prequalified candidates receive access to confidential information and prepare their bids
- PQ applications must be prepared in Ukrainian

Within 35 days after the Deadline, bidders may submit updated tender bids with better parameters

Within 45 days after the Deadline, Tender Committee must evaluate the bids and determine the best bid

- PQ application can be submitted on any day during 60 days from the formal announcement of the tender together with tender bid
- However we recommend to observe the proper sequence and submit tender bids only after being prequalified and getting acquainted with confidential information
Non-confidential information is already available in the dataroom. The dataroom include:

- Full list of information included and to be included
- Non-confidential (already uploaded)
- Confidential (to be uploaded)
- SE SC Olvia / SE KSCP
  - Financial (including the preliminary list of assets to be transferred to concession)
  - Tax
  - Legal
  - Technical
- USPA branches (Olvia and Kherson)
  - Financial
  - Legal
  - Technical

Olvia:  [https://mtu.gov.ua/content/proekt-koncesii-u-portu-olviya.html](https://mtu.gov.ua/content/proekt-koncesii-u-portu-olviya.html)
Kherson:  [https://mtu.gov.ua/content/proekt-koncesii-u-portu-herson.html](https://mtu.gov.ua/content/proekt-koncesii-u-portu-herson.html)
Candidates must meet pre-qualification criteria to be admitted to tender

<table>
<thead>
<tr>
<th>Category</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Technical</strong></td>
<td></td>
</tr>
<tr>
<td>Olvia</td>
<td><strong>№1</strong>: Experience of operating for at least three (3) consecutive years at least one cargo handling complex (sea or river terminal) for handling any type of cargo with an annual throughput of 1.75 million tons or a support letter from a bank showing commitment to lend the amount of US$ 60 million.</td>
</tr>
<tr>
<td>Kherson</td>
<td><strong>№1</strong>: Experience of operating for at least three (3) consecutive years at least one cargo handling complex (sea or river terminal) for handling any type of cargo with an annual throughput of 200,000 tons or a support letter from a bank showing commitment to lend the amount of US$ 60 million.</td>
</tr>
<tr>
<td></td>
<td><strong>№2</strong>: Direct/indirect experience in construction of infrastructure for handling any type of cargo over the last fifteen (15) years with the following minimum project size:</td>
</tr>
<tr>
<td></td>
<td>- US$ 42 million or Annual volume of cargo handling – 1.4 million tons or One-time storage capacity – 100,000 tons</td>
</tr>
<tr>
<td></td>
<td>- US$ 6 million or Annual volume of cargo handling – 225,000 tons or Storage capacity – 20,000 tons</td>
</tr>
<tr>
<td></td>
<td><strong>№3</strong>: Candidate’s experience should cover at least two of the three requirements presented below:</td>
</tr>
<tr>
<td></td>
<td>- Construction of new / rehabilitation / technical re-equipment of existing cargo handling complexes</td>
</tr>
<tr>
<td></td>
<td>- Construction of new / rehabilitation / technical re-equipment of existing specialized cargo superstructure / infrastructure</td>
</tr>
<tr>
<td></td>
<td>- Installation of cargo handling equipment</td>
</tr>
</tbody>
</table>

| **Finance** |                                                                                               |
|            | **№1.1**: Equity – US$ 20 million                                                                 |
|            | **№1.2**: Cash flow – US$ 20 million                                                            |
|            | **№1.3**: Liquid assets – US$ 60 million or Support letter from a bank showing commitment to lend the amount – US$ 60 million |
|            | **№1.1**: Equity – US$ 2.5 million                                                              |
|            | **№1.2**: Cash flow – US$ 2.5 million                                                           |
|            | **№1.3**: Liquid assets – US$ 8 million or Support letter from a bank showing commitment to lend the amount – US$ 8 million |
|            | **№3**: Candidate may confirm its compliance by adding up its own indicators with indicators of Consortium members and related companies |

| **General** |                                                                                               |
|            | **№2**: Direct/indirect experience in construction of infrastructure for handling any type of cargo over the last fifteen (15) years with the following minimum project size: |
|            | - US$ 42 million or Annual volume of cargo handling – 1.4 million tons or One-time storage capacity – 100,000 tons |
|            | - US$ 6 million or Annual volume of cargo handling – 225,000 tons or Storage capacity – 20,000 tons |
|            | **№3**: Candidate’s experience should cover at least two of the three requirements presented below: |
|            | - Construction of new / rehabilitation / technical re-equipment of existing cargo handling complexes |
|            | - Construction of new / rehabilitation / technical re-equipment of existing specialized cargo superstructure / infrastructure |
|            | - Installation of cargo handling equipment |

1 active management or supervision of subcontracted construction as a client or contractor
2 Similar to privatization limitations

In the event that the Applicant has lost control of a legal entity that has experience that meets these technical criteria, the Applicant may rely on such experience, provided that the management team (at least 3 (three) persons) who managed the relevant project is still with the Bidder.
## Financial proposal evaluation criteria

<table>
<thead>
<tr>
<th>Category</th>
<th>Max Score</th>
<th>Bidder’s proposal</th>
<th>Max Proposal</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of variable component of the concession fee</td>
<td>$X_1$</td>
<td>5%</td>
<td>7%</td>
<td>$(X_1/7%) \times 5% = Y_1$</td>
</tr>
<tr>
<td>Amount of fixed concession fee</td>
<td>$X_2$</td>
<td>UAH 70 million</td>
<td>UAH 80 million</td>
<td>$(X_2/80) \times 70 = Y_2$</td>
</tr>
<tr>
<td>Additional investment commitment</td>
<td>$X_3$</td>
<td>US$ 5 million</td>
<td>US$ 8 million</td>
<td>$(X_3/8) \times 5 = Y_3$</td>
</tr>
<tr>
<td>Investment into local social infrastructure</td>
<td>$X_4$</td>
<td>US$ 400,000</td>
<td>US$ 480,000</td>
<td>$(X_4/480) \times 400 = Y_4$</td>
</tr>
<tr>
<td>Confirmation of sources of financing</td>
<td>$X_5$</td>
<td>Candidate presented documents as required by tender</td>
<td>$X_5 = Y_5$</td>
<td></td>
</tr>
<tr>
<td>Shortening of concession period</td>
<td>$X_6$</td>
<td>by 3 years</td>
<td>by 5 years</td>
<td>$(X_6/5) \times 3 = Y_6$</td>
</tr>
<tr>
<td>Shortening of construction period</td>
<td>$X_7$</td>
<td>by 3 months</td>
<td>by 6 months</td>
<td>$(X_7/6) \times 3 = Y_7$</td>
</tr>
<tr>
<td>Percent of local Ukrainian staff above 90% in the total headcount</td>
<td>$X_{8.1}$</td>
<td>3%</td>
<td>7%</td>
<td>$(X_{8.1}/7) \times 3 = Y_{8.1}$</td>
</tr>
<tr>
<td>Additional period without forced lay-offs</td>
<td>$X_{8.2}$</td>
<td>2 years</td>
<td>3 years</td>
<td>$(X_{8.2}/3) \times 2 = Y_{8.2}$</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$X_1 + X_2 + X_3 + \ldots + X_{8.2} = 100$</td>
<td><img src="image-url" alt="Image" /></td>
<td>$Y_1 + Y_2 + Y_3 + \ldots + Y_{8.2} \leq 100$</td>
<td></td>
</tr>
</tbody>
</table>

1 Evaluated using NPV at 17.26% discount rate
DESCRIPTION OF THE KEY TERMS OF THE CONCESSION AGREEMENTS
Concession Agreement will be signed by four parties

SIGNATURES

IN WITNESS THEREOF, the Parties make this Agreement signed by their respective duly authorized representatives on this date indicated above.

MINISTRY OF INFRASTRUCTURE OF UKRAINE

Signature

UKRAINIAN SEA PORTS AUTHORITY

Signature

Winning bidder

Signature

Project company (Concessionaire)  ProjectCo

Signature

Concession Object does not include

- Non-current tangible assets and current tangible assets
- Accounts payable and accounts receivable
- Movable property purchased by the Concessionaire during concession period

Concession Object

Existing facilities*

New facilities

Transferred for use

Sold to Concessionaire
Some of the port assets will not be transferred to concession

**Olvia**
- Administrative and auxiliary buildings of USPA
- Bank fortification
- Berth #1 and nearby open storage area
- Special purpose warehouses territory
- Cash and cash-like items

**Kherson**
- Administrative and auxiliary buildings of USPA
- Assets that are used by Dniprocargo, railway line #19
- Riverport berths
- Backwater №2
- Cash and cash-like items
The Concession period is 30 / 35 years from the Commencement Date.

- **Concession Agreement signing**
- **Commencement Date**
- **Investment Obligations fulfilment deadline**
- **Beginning of the Concession Object Handover Procedure**
- **End of the Concession period and Handover of the Concession Object**

**Transition period**
- ~ from 1 to 2 years
- Investments Obligations
  - Minimum requirement (3.5 years)
  - Additional (10 years)

**Operational period**
- 10 years
- 15 years (Kherson)
- 20 years (Olvia)

**Handover**
- 5 years

**Concession period - 30 /35 years**

**Term of Concession Agreement**
The objective of the Principal Transfer is to enable the transfer of the Concession Object to the Concessionaire and conclude labor agreements with port staff (1/2)

**Transition period**

**Principal transfer**

- Signing of financing agreements
- Payment of project preparation costs
- Concept design of the Facility (Olvia)
- Signing of land lease agreement
- Inventory and stock taking
- Valuation of low-value assets
- Providing the Grantor with Investment obligations security and Operational security
- “Zero” cycle estimation of berths by USPA

**Final Transfer**

**Step 1:** Concession object handed over for possession and usage, staff transfer and buyout of low-value assets

- **Date of the Principal transfer**

**During Transition Period the Concession Object will be operated by SE SC Olvia / SE KSCP**

18 (12 + 6) months, extendable subject to agreement of the parties
The objective of the Principal Transfer is to enable the transfer of the Concession Object to the Concessionaire and conclude labor agreements with port staff (2/2).

### Conditions of the Principal transfer

- Signing of financing agreements
- Payment of project preparation costs
- Concept design of the Facility (Olvia)
- Signing of land lease agreement
- Inventory and stock taking
- Valuation of low-value assets
- Providing the Grantor with Investment obligations security and Operational security
- “Zero” cycle estimation of berths by USPA

**Step 2:** Temporary lease back of the Concession Object along with staff by State-owned stevedoring companies until the end of Transition Period.

- This measure is needed to ensure uninterrupted operation of the port, as after receiving the Concession object the Concessionaire will need time to obtain all required permits and approvals to start Concession activity.

During Transition Period the Concession Object will be operated by SE SC Olvia / SE KSCP.

18 (12 + 6) months, extendable subject to agreement of the parties.
The objective of the Final transfer is for the Concessionaire to obtain all required permits and buy out the remaining assets.

**Conditions of Final Transfer**

- Licenses and permits
- Validation of inventory take
- Low cost assets and repurchase value
- Value of accounts payable and receivable

**Principal Transfer date**

- During Transition Period the Concession Object will be operated by SE SC Olvia / SE KSCP

7 (4 + 3) **months**, extendable subject to agreement of the parties.
The final total value of investment obligations depend on the winning bidder’s financial proposal

<table>
<thead>
<tr>
<th>Investment obligations</th>
<th>Investment value, UAH¹</th>
<th>Term from the Start date</th>
<th>Minimum share of equity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum investment obligations</td>
<td>X</td>
<td>3.5 years</td>
<td>30%</td>
</tr>
<tr>
<td>Investment obligations (amount saved)</td>
<td>Olvia: 1.56 Bln – X</td>
<td>3.5 years</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td>Kherson: 0.22 Bln - X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investments in local social infrastructure</td>
<td>Olvia: 78 Mln</td>
<td>3.5 years</td>
<td>Not regulated</td>
</tr>
<tr>
<td></td>
<td>Kherson: 11 Mln (contribution)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Financial proposal</td>
<td>10 years²</td>
<td></td>
</tr>
<tr>
<td>Additional investment commitments</td>
<td>Financial proposal</td>
<td>10 years</td>
<td>Not regulated</td>
</tr>
</tbody>
</table>

- If the Concessionaire fulfilled minimum investment obligations having spent less than UAH 1.56 Bn / UAH 0.22 Bn, the remaining balance will be invested into port at the Concessionaire’s discretion as Voluntary investment Obligations.

- An independent engineer will check whether the obligations have been fulfilled.

- Failure to meet investment obligations entails penalties.

- Concessionaire may build new immovable property on the port site, both to fulfill investment obligations and additionally at its own discretion.

¹ VAT included
² Details to be approved with Municipality
Concessionaire is entitled to build new property, with the least strict requirements to construction of facilities directly related to port operations.

<table>
<thead>
<tr>
<th>Type of New real estate¹</th>
<th>Grantor approval requirements</th>
<th>Period for consideration by the Grantor</th>
<th>Grantor’s rights</th>
<th>Entitlement to build even if the Grantor objects</th>
<th>Compensation for the property built without Grantor’s authorization after termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directly Related to port infrastructure and port operations</td>
<td>• Feasibility study to be presented for information only</td>
<td>• 22 business days</td>
<td>• Present to Concessionaire well-reasoned objections</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Auxiliary property for port infrastructure and port operations</td>
<td>• Feasibility study to be presented for consideration</td>
<td>• 33 business days</td>
<td>• Provide comments and well-reasoned denial to approve</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Not related to port infrastructure and port operations</td>
<td>• Feasibility study to be presented for approval</td>
<td>• 33 business days</td>
<td>• Extend approval or well-reasoned refusal</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

¹ Type of planned property is defined by independent engineer
OLVIA ONLY: Concessionaire may use Northern area to expand the port, but this option is valid only for 10 years.

Conditional investment obligation

- Concessionaire keeps the Northern area until the end of concession period
- Concessionaire returns to the Grantor technical property of the Northern area
- Waives lease rights to the land plot of the Northern area
The Concession fee is based on net revenue of the Concession Object, not the Concessionaire.

**Concession fee calculation**

\[
\text{Concession fee} = R_{\text{net}} \times X\% + F_{\text{fee}} - A_n
\]

- \(R_{\text{net}}\) – net revenue from Concession activity
- \(X\%\) - variable fee rate based on financial proposal
- \(F_{\text{fee}}\) – fixed fee rate based on financial proposal
- \(A_n\) – depreciation, equal to UAH 0

- Concession fee is payable annually no later than 31 May
- Untimely payment of the concession fee entails a penalty equal to double refinancing rate of the National Bank of Ukraine, in effect in the period of delay, calculated on the Concession fee amount in arrears, for each day of the delay.

**Example of third party engagement into concession activity**

**Net revenue calculation**

\[
R_{\text{net}} = R_{\text{fs}} - R_{\text{tp}} + R_{\text{tpr}}
\]

- \(R_n\) - net revenue from Concession activity
- \(R_{\text{fs}}\) – net revenue per financial reporting
- \(R_{\text{tp}}\) – revenue of Concessionaire received from third parties
- \(R_{\text{tpr}}\) – third parties’ revenue
Possibility to change Concessionaire’ ownership structure depends on the level of the holding and stage of the concession

### Example: (Option 2)

<table>
<thead>
<tr>
<th>Tender bid submitted by lead applicant on behalf of a consortium</th>
<th>Type of share disposal</th>
<th>Transition period</th>
<th>Investment obligations</th>
<th>Operational period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ultimate beneficiary</td>
<td>Ultimate beneficiary</td>
<td><em><strong>Ultimate beneficiary</strong></em></td>
<td><strong>Controlling stake</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Tender</strong> submitted on behalf of a consortium</td>
<td><strong>Type of share disposal</strong></td>
<td><strong>Operational period</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3.5 years</td>
<td>1.5 years</td>
<td></td>
</tr>
</tbody>
</table>

#### Minimum investments

- Subject to meeting minimum requirements
- Subject to Grantor approval

#### Control does not necessarily mean possession of 50 + % stake

- Subject to meeting minimum requirements

<table>
<thead>
<tr>
<th>Type of share disposal</th>
<th>Operational period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale of control over LA</td>
<td>✗</td>
</tr>
<tr>
<td>Sale of shares in LA without loss of control</td>
<td>✓</td>
</tr>
<tr>
<td>Sale of control over ProjectCo</td>
<td>✗</td>
</tr>
<tr>
<td>Sale of shares in ProjectCo without loss of control</td>
<td>✗</td>
</tr>
</tbody>
</table>

**Ultimate beneficiary**

- LA – Lead applicant
- OCM – Other Consortium member

- Subject to Grantor approval
- Subject to meeting minimum requirements

**Project company (ProjectCo)**

- Maximum 50% - 1 share
- Minimum 50% + 1 share

**Controlling stake**

- Subject to meeting minimum requirements

**Sale of shares in ProjectCo without loss of control**

- Subject to Grantor approval
- Subject to meeting minimum requirements

**Sale of control over ProjectCo**

- Subject to Grantor approval
- Subject to meeting minimum requirements

**Sale of control over LA**

- Subject to Grantor approval
- Subject to meeting minimum requirements

**Sale of shares in LA without loss of control**

- Subject to Grantor approval
- Subject to meeting minimum requirements
The risks associated with historical pollution do not go to the Concessionaire.

Before Concession

- Pre-concession contamination

Concession

- Contamination during concession
- Concessionaire risk
- Grantor risk

• Risks associated with historical contamination do not pass on to the Concessionaire.
• To ensure this, an environmental study is conducted during the Transition Period to establish a baseline level of Contamination.
• The Concessionaire will be responsible for contamination above the baseline.
To implement best E&S Practices, and to facilitate IFI financing, it is necessary to take their environmental and social requirements into account.

### Financing conditions

- Environmental and Social requirements
- ...
Under pessimistic scenario for cargo handling volumes ("no growth"), the branch of USPA in Olvia may be incur losses.

Consultants team and USPA conducted a joint financial analysis of the impact of concession on the branches of USPA.

Berth repair and maintenance costs were one of the main factors of this assessment.

For this analysis, experts from the ChornomorNDIproekt were involved.
<table>
<thead>
<tr>
<th>Options</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Allocate <strong>50%</strong> of the pessimistic scenario risk to the Concessionaire, obliging it to finance the dredging once during the first 3 years for a total of <strong>UAH 57 million</strong></td>
<td>• Require the Concessionaire to compensate <strong>x% of dredging cost</strong> to USPA</td>
<td>• Require a concessionaire to guarantee a minimum cargo handling volume of <strong>x million tons</strong> from the first day of the concession</td>
</tr>
<tr>
<td></td>
<td>• The option currently reflected in draft concession agreement</td>
<td>• Being discussed</td>
<td>• Being discussed</td>
</tr>
</tbody>
</table>
Requirements to handover of Concession Object must ensure port’s business continuity after Concession to a reasonable extent

### Minimum required handling capacity at the time of handover

<table>
<thead>
<tr>
<th>Concession year</th>
<th>Volume of cargo handled (tons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 / 26</td>
<td>$X_1$</td>
</tr>
<tr>
<td>22 / 27</td>
<td>$X_2$</td>
</tr>
<tr>
<td>23 / 28</td>
<td>$X_3$</td>
</tr>
<tr>
<td>24 / 29</td>
<td>$X_4$</td>
</tr>
<tr>
<td>25 / 30</td>
<td>$X_5$</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td>$(X_1+X_2+X_3+X_4+X_5)/5$</td>
</tr>
</tbody>
</table>

In any case, Minimum required handling capacity should not be lower than 4.57 mln tons for Olvia and 3.25 mln tons for Kherson

### Main handover requirements for Concession Object

- **Actual handling capacity is above or equal to Minimum required handling capacity at the time of handover**
  - ✔

- **Berths** can be used for service provision for at least 10 years after concession without significant investments
  - ✔

- **Port real estate and main equipment** can be used for service provision for at least 10 years after Concession
  - ✔

- **Auxiliary port equipment** can be used for service provision for at least 5 years after Concession
  - ✔

### Concessionaire’s handover obligations

- Ensure no encumbrances to Concession Object
  - ✔

- Make sure all required surveys/diagnostics are done
  - ✔

- Transfer assets
  - ✔

- Transfer documents
  - ✔

- Act upon all recommendations provided by Independent Expert surveys
  - ✔

- Repay any outstanding amounts of concession fees due to the Grantor
  - ✔

- Transfer staff
  - ✔

- Other
  - ✗
Start of restitution procedure in advance will allow sufficient time for Concessionaire to bring concession object in line with the required parameters

<table>
<thead>
<tr>
<th>Survey №1</th>
<th>Survey №2</th>
<th>Survey №3</th>
<th>Survey №4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements met?</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Compliance cost?</td>
<td>Y₁ UAH</td>
<td>Y₂ UAH</td>
<td>Y₃ UAH</td>
</tr>
<tr>
<td>Handover security for the amount of Y₁ UAH</td>
<td></td>
<td>Amount of Handover security adjusted to Y₂ UAH</td>
<td>Amount of Handover security adjusted to Y₃ UAH</td>
</tr>
<tr>
<td>5 years</td>
<td>2 years</td>
<td>2 months</td>
<td></td>
</tr>
</tbody>
</table>

- Independent expert conducts all surveys including inventory takes, evaluation of technical condition, estimation of expenses required to bring Concession object to the level of compliance with Handover criteria.
1 Transition period
2 Investment obligations
3 Operational period
4 Handover
Fulfilment of contractual obligations by the Concessionaire is partially stimulated with securities issued by banks.

**Bid security**
- Olvia: $250,000
- Kherson: $100,000

**Investment obligations security**
- Olvia: UAH 156 mln
- Kherson: UAH 21 mln
- 10% of minimum investments

**Investments obligations**

**Transition period**
- MT
- FT

**Operational period**

**Commencement date**

**Operation security**
- Olvia: UAH 42 mln UAH in year 1
- Kherson: UAH 26 mln in year 1
- Subsequent years 15% of operational costs

**Handover security**
- Amount depends on the Survey results of the Independent expert

**Handover**
- 30 days

**Tender bids submission date**
Concessionaire can write off unnecessary assets before and after the Principal transfer, writing off of assets does not impact concession fee.

**Inventory take during Principal transfer**

**Concession object**

- Fixed assets unfit for operation or unrepairable shall be included into a separate inventory list, and shall not be transferred to Concessionaire and will be written off.

**Within one year after Principal transfer**

- **Write-off at Concessionaire’s decision**
  - Movable property, which was transferred as part of Concession object (in addition to other long-term or short term tangible assets) deemed by Concessionaire unnecessary for carrying out of Concession activity

- **Write-off based on agreement with Concessionaire**
  - Fully amortized fixed assets, other long-term tangible assets, received for concession, with initial (revalued) value under UAH 20,000

- **Return of assets at Concessionaire’s decision**
  - Assets transferred as part of Concession object, unfit for further use (outdated, worn-out, damaged in accident or natural disaster) which is irreparable due to impossibility and lack of economic sense

**Special facilities built during concession**

**During concession period**

- Operational period
- Transition period

- **Write-off requiring Grantor approval**
Concession agreement should envisage an effective dispute resolution process.

Dispute between parties

- Amicable settlement reached?
  - Yes: Dispute resolved
  - No: Independent expert

  - Independent expert delivers his/her reasoned decision: Dispute resolved

International arbitration (Stockholm)

- 44 business days after agreement with independent expert executed
- 27 business days (after agreement with independent expert executed)
Terms of concession with regard to port staff are based on requirements of the labor unions

Transition period

- No layoffs within five years
- No reductions in salaries and inflation adjustments within three years
- No changes to collective agreement worsening staff position within five years
- Concessionaire may incentivize voluntary separation by offering compensation

Investment obligations

- No less than 90% of the total staff of Concessionaire must be citizens of Ukraine

Operational period

ProjectCo

- Concessionaire may terminate collective agreement in cases envisaged by the Labor Code of Ukraine (gross misconduct, embezzlement, showing up at work intoxicated, absenteeism, non-appearance at work, staff’s failure to perform job duties without a clear reason etc.)

Handover

- Concessionaire has the right to take on employees of the Concessionaire upon return, but is not obliged
Under all cases of early termination the amount due to creditors must be paid in full.

<table>
<thead>
<tr>
<th>Compensation payable by Grantor in case of early termination</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Concessionaire event of default</strong></td>
</tr>
<tr>
<td><strong>Creditor</strong></td>
</tr>
<tr>
<td>Amount due to creditors</td>
</tr>
<tr>
<td>Insurance payments</td>
</tr>
<tr>
<td>0 (or negative value)</td>
</tr>
<tr>
<td>Cost of unapproved new immovable property and other problematic investments</td>
</tr>
</tbody>
</table>

1  Creditor shall claim and collect this part from Concessionaire
DATAPACK
Generally, each key stage of the concession tender has a concrete deadline, same for all candidates

Key stages of the concession tender

1. **Pre-qualification (PQ)**
   - Candidates receive the Instruction for Candidates
   - Candidates submit **PQ applications** to confirm:
     - Relevant experience
     - Financial standing
     - Compliance with other general requirements

2. **Tender**
   - Prequalified candidates get access to confidential information and prepare their **tender bids**
   - Candidates submit their tender bids

3. **Evaluation of tender bids**
   - Opening envelopes with tender bids
   - Tender bid evaluation and determining the best bid and preferred bidder

4. **Winner announcement and negotiations**
   - Negotiations and signing of draft Concession Agreement without change of material terms
   - In case the preferred bidder refuses to accept the terms of the concession agreement, negotiations continue with the second best bidder

- Transition period to fulfill Concession Agreement condition precedents (transfer of the Concession Object, obtaining of permits, land lease agreement signing etc.)
- All terms of **Concession Agreement** come into force
LA exclusivity depends on the objective of attracting OCM to form a Consortium

**Establishment of Consortium**

- Consortium may participate in the tender, however, all Consortium members must be reflected in the PQ application and provide required qualification documents
- Composition of Consortium may not be changed after submission of application

**OCM is needed to pre-qualify**

- LA + OCM
- Consortium 1
  - OCM may be part of only one Consortium

**OCM is needed only for the tender bid purposes**

- LA + OCM
- Consortium 2
  - OCM may be part of more than one Consortium subject to agreement of LAs of Consortiums

- LA + OCM
- Consortium 3

1 LA may attract OCM for tender bid purposes to guarantee additional cargo volume and part of required investment, which will improve bankability of financial proposal.
A Candidate or a Bidder can be either an individual candidate/bidder or a Consortium, consisting of several partners.

Option 1 (individually)

- LA\(^1\)
- PQ Application
- Tender Bid
- Tender Committee
- 100\(^3\) ownership
- Project company: LA
- Concession Agreement
- MIU + USPA

Option 2 (Consortium)

- LA\(^2\)
- OCM\(^2\)
- PQ Application
- Tender Bid
- Tender Committee
- 100\(^3\) ownership
- Project company
- Concession Agreement
- MIU + USPA

At least 50\(^%\) + 1 share

Option 3 (Consortium)

- LA\(^3\)
- OCM\(^3\)
- SPV
- PQ Application
- Tender Bid
- Tender Committee
- 100\(^3\) ownership
- Project company
- Concession Agreement
- MIU + USPA

At least 40\(^%\)

Upon Concession Agreement closure, ownership interests may change in accordance with the Concession Agreement terms.

1. LA – Lead Applicant, most likely, a port operator (40\(\%\) or larger ownership interest in a Consortium)
2. OCM – Other Consortium Member, most likely, cargo owner and/or investor company
3. Upon Concession Agreement closure, ownership interests may change in accordance with the Concession Agreement terms
Lead Applicant may rely on its related companies and/or other Consortium members and their related companies to comply with the qualification criteria (except for technical criterion №1).

### General Criteria

- **Technical criterion №1:**
  - Relevant for Lead Applicant

- **Financial criterion:**
  - Relevant for Other Consortium member and Related company

### Lead Applicant

<table>
<thead>
<tr>
<th>General criterion</th>
<th>LA, OCM, RC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical criterion 1</td>
<td>RC</td>
</tr>
<tr>
<td>Technical criterion 2</td>
<td>OCM</td>
</tr>
<tr>
<td>Financial criterion</td>
<td>LA</td>
</tr>
</tbody>
</table>

### Other Consortium member

<table>
<thead>
<tr>
<th>General criterion</th>
<th>✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical criterion 1</td>
<td>✗</td>
</tr>
<tr>
<td>Technical criterion 2</td>
<td>✓</td>
</tr>
<tr>
<td>Financial criterion</td>
<td>✗</td>
</tr>
</tbody>
</table>

### Related company

- **General criterion:**
  - Relevant for Related company

- **Technical criterion 1:**
  - Relevant for Related company

- **Technical criterion 2:**
  - Relevant for Related company

- **Financial criterion:**
  - Relevant for Related company

---

- Related companies can be:
  - A daughter company/subsidiary controlled by LA or OCM
  - LA’ or OCM’ Parent company
  - LA’ or OCM’ sister company

---

1. Compliance with Technical criterion №1, can not be confirmed through OCM or its related companies, if application is submitted on behalf of a Consortium.

---

1. Compliance with general criteria is required for LM, OCM and their RCs.
Prequalified candidate receives access to confidential information and prepares its tender bid.

- **General criteria**: LA, OCM, RC
- **Technical criterion 1**: RC
- **Technical criterion 2**: OCM
- **Financial criterion**: LA

---

**Non-disclosure agreement (NDA)**

**Site visit**

**Meetings/Q&A**

**Data room**

**Tender Bid**
Tender Bid consists of three parts:

- Envelope with legal documents
- Technical proposal envelope
- Financial proposal envelope

General tender bid envelope
Opening of envelopes

General Tender Bid envelope

General envelope contains:
- Legal documents envelope
- Technical proposal envelope
- Financial proposal envelope

Unopened envelopes returned to tender bidder

The following day after the Deadline

Public opening of general envelope

Private opening of envelopes with legal documents, technical and financial proposals

Legal documents envelope

Envelope contains all required legal documents, compliant with tender requirements

No

Unopened financial proposal envelope returned to bidder

Within 35 days after the Deadline in case of updated application

Technical proposal envelope

Envelope contains a Business plan compliant with all tender requirements

No

Financial proposal envelope

Envelope contains all required documents, compliant with tender requirements

Yes

Financial proposal got the highest score based on evaluation criteria

Yes

Decision of Tender Committee on the Winner of the Tender

MIU's decision on tender results

Notification of the winner

36 days after the Deadline

Yes
Compliance of the package of legal documentation and technical proposal with tender requirements is evaluated on Pass/Fail basis.

### Legal documents
- Bid cover letter
- Bid security
- Conflict of interest statement
- Consortium Agreement
- Shareholding of Project Company
- Information on Candidate’s advisors
- Documents confirming/disproving the need to obtain a permit from Ukraine’s Anti-Monopoly Committee

### Technical proposal
- **Business-plan**, including:
  - Market analysis
  - Projected Cargo volumes
  - Plans to improve operational performance
  - CapEx plan
  - Environmental and social measures
  - Operational indicator plans
  - Corporate Governance and management

### Technical selection criteria

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete business plan</td>
<td>• Business plan complaint with all relevant requirements</td>
</tr>
</tbody>
</table>
| Reliability of concessionaire | • Pre-qualification  
                            • Confirmation of acceptance of Concession Tender terms |
| Concessionaire’s and partners’ commitment | • Business plan complaint with all relevant requirements  
                           • Bid Security (Olvia - US $ 250,000, Kherson – US $ 100,000)  
                           • Consortium agreement |
| Amount of operational expenses that allow optimal profitability and payback of investment | • Availability of financial proposal envelope |
Concessionaire’s performance is monitored and controlled through regular meetings, inspections and reporting (1/2)

**Meetings**

- Concessionaire, Grantor and USPA conduct regular meetings focused on progress of investment obligations fulfillment, presentation and review of reports under the Agreement, recommendations, comments, suggestions related to exercising of rights and fulfilling of obligations, etc.
- **Until** Minimum and voluntary investment obligations are fulfilled (3.5 years)
- **After** fulfilment of Minimum and voluntary investment obligations (26.5 / 31.5 years)
- Quarterly meetings
- Annual meetings

**Inspections**

- **Inspection types**: financial, legal, technical and/or other inspection of concession activity, fulfilment of investment obligations, payment of concession fee, preparation and filing reporting documents and other aspects related to fulfilment of Concessionaire’s obligations under the Agreement
- **Frequency of inspections**: no more than two (2) times per year
Concessionaire’s performance is monitored and controlled through regular meetings, inspections and reporting (2/2)

<table>
<thead>
<tr>
<th>Report Category</th>
<th>Report Title</th>
<th>Concessionaire</th>
<th>Third Parties</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Financial</strong></td>
<td>• Copy of Company’s Audited Financial reports</td>
<td>✓</td>
<td>✓</td>
<td>• Annually</td>
</tr>
<tr>
<td></td>
<td>• Copy of non-audited financial reports</td>
<td>✓</td>
<td>✓</td>
<td>• Annually</td>
</tr>
<tr>
<td></td>
<td>• Report on meeting investment commitments</td>
<td>✓</td>
<td>✗</td>
<td>• Annually</td>
</tr>
<tr>
<td></td>
<td>• Report on prices (tariffs') matching market conditions</td>
<td>✓</td>
<td>✓</td>
<td>• Annually</td>
</tr>
<tr>
<td></td>
<td>• Report on Concessionaire’s related party transactions</td>
<td>✓</td>
<td>✗</td>
<td>• Annually</td>
</tr>
<tr>
<td></td>
<td>• Report on equity</td>
<td>✓</td>
<td>✗</td>
<td>• Annually</td>
</tr>
<tr>
<td></td>
<td>• Calculation of concession fee</td>
<td>✓</td>
<td>✗</td>
<td>• Annually</td>
</tr>
<tr>
<td></td>
<td>• Report on cash liabilities</td>
<td>✓</td>
<td>✗</td>
<td>• Annually</td>
</tr>
<tr>
<td></td>
<td>• Report on payment of Concessionaire’s tax obligations</td>
<td>✓</td>
<td>✗</td>
<td>• Annually</td>
</tr>
<tr>
<td><strong>Operational</strong></td>
<td>• Report on Concession activity and fulfilment of obligations under the Agreement (types of activity, third party transactions, occupational injuries, accidents, fulfillment of environmental plan etc.)</td>
<td>✓</td>
<td>✗</td>
<td>• Quarterly / Annually</td>
</tr>
<tr>
<td><strong>Assets</strong></td>
<td>• Report on Assets and Property (Fixed assets, intangible assets, construction in progress, public, private property, lease etc.)</td>
<td>✓</td>
<td>✗</td>
<td>• Quarterly / Annually</td>
</tr>
<tr>
<td>Concessionaire event of default</td>
<td>Threshold for damage caused to Grantor</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Failure to fulfil investment obligations</td>
<td>Non applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Non payment of concession fee for a total of US$500,000</td>
<td>$500,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Concessionaire’s failure to support investment obligations and/or operation securities and/or handover security</td>
<td>Non applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Withdrawal by the Grantor of the total amount of investments obligations or operation security</td>
<td>Non applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Concessionaire’s material deviation from technical requirements or material violation of environmental commitments</td>
<td>Non applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Failure to meet conditions of financing agreements, direct agreement</td>
<td>Non applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Termination of land lease agreement resulting from Concessionaire’s improper fulfillment of its terms; bankruptcy or another case of Concessionaire’s insolvency</td>
<td>Non applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Breach of warranties and representations</td>
<td>$1,000,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Other material breach of Concession agreement obligations by the Concessionaire</td>
<td>$1,000,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Failure to fulfil obligation to build technical property on the territory of Northern area</td>
<td>Non applicable</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Non-fulfillment of significant obligations may result in early termination of concession agreement (2/2)

<table>
<thead>
<tr>
<th>Grantor event of default</th>
<th>Threshold for damage caused to Concessionaire</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Breach by the Grantor of its obligations under concession agreement</td>
<td>$ 1,000,000</td>
</tr>
<tr>
<td>• Breach of warranties and representations</td>
<td>$ 1,000,000</td>
</tr>
<tr>
<td>• Breach of Grantor’s exclusivity clause</td>
<td>Non applicable</td>
</tr>
<tr>
<td>• Non-fulfilment or improper fulfilment by SE USPA of obligations under concession agreement (dredging)</td>
<td>Non applicable</td>
</tr>
</tbody>
</table>

Grantor is liable for certain risks connected to decisions of other public authorities
Possibility to change Concessionaire’ ownership structure depends on the level of the holding and stage of the concession (1/3)

### Option 1

<table>
<thead>
<tr>
<th>Bid submitted by single lead applicant</th>
<th>Transition period</th>
<th>Investment obligations</th>
<th>Operational period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ultimate beneficiary</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Controlling stake</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale of control over LA</td>
<td>X</td>
<td>X</td>
<td>✓</td>
</tr>
<tr>
<td>Sale of shares in LA without loss of control</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>• Subject to Grantor approval</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale of control over the ProjectCo</td>
<td>X</td>
<td>X</td>
<td>✓</td>
</tr>
<tr>
<td>Sale of shares in ProjectCo without loss of control</td>
<td>X</td>
<td>X</td>
<td>✓</td>
</tr>
<tr>
<td>• Subject to Grantor approval</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project company (ProjectCo)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Control does not necessarily mean possession of 50 + % stake</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. LA – Lead applicant
Option 3

### Possibility to change Concessionaire’ ownership structure depends on the level of the holding and stage of the concession (3/3)

<table>
<thead>
<tr>
<th>Tender bid submitted by SPV on behalf of a consortium</th>
<th>Type of share disposal</th>
<th>Transition period</th>
<th>Mandatory investment</th>
<th>Operational period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ultimate beneficiary</td>
<td>Sale of control over LA / OCM</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Ultimate beneficiary</td>
<td>Sale of shares in LA / OCM without loss of control</td>
<td>✓</td>
<td>✓</td>
<td>✔                  • Subject to Grantor approval</td>
</tr>
<tr>
<td>LA¹</td>
<td>Sale of control over SPV</td>
<td>✗</td>
<td>✗</td>
<td>✗                  • Subject to Grantor approval</td>
</tr>
<tr>
<td>OCM²</td>
<td>Sale of shares in SPV without loss of control</td>
<td>✗</td>
<td>✗</td>
<td>✗                  • Subject to meeting minimum requirements</td>
</tr>
<tr>
<td>Minimum 40%</td>
<td>Sale of control over ProjectCo</td>
<td>✗</td>
<td>✗</td>
<td>✗                  • Subject to Grantor approval</td>
</tr>
<tr>
<td>SPV</td>
<td>Sale of shares in ProjectCo without loss of control</td>
<td>✗</td>
<td>✗</td>
<td>✗                  • Subject to meeting minimum requirements</td>
</tr>
<tr>
<td>Project company (ProjectCo)</td>
<td>Control does not necessarily mean possession of 50 + % stake</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.5 years 1.5 years

1. LA – Lead applicant
2. OCM – Other consortium member