

**HELLENIC REPUBLIC**

MINISTRY OF DIGITAL POLICY TELECOMMUNICATIONS AND MEDIA

GENERAL SECRETARIAT OF TELECOMMUNICATIONS AND POST

EXECUTIVE AGENCY FOR ICT

**OPEN TENDERING PROCEDURE**

**COMPETITIVE DIALOGUE**

**TO AWARD THE PUBLIC – PRIVATE PARTNERSHIP AGREEMENT**

**ON THE NATIONAL SYSTEM FOR ONLINE PUBLIC CONTRACTS**

**ULTRA FAST BROADBAND INFRASTRUCTURES**

**PHASE A OF THE PROCUREMENT PROCESS**

**REQUEST FOR THE EXPRESSION OF INTEREST**

Notice No: 2/2019

Date of transmission of the Notice to the

Publications Office of the European Union

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20.05.2019

Athens, 20.05.2019

1. General Information
	1. Public-Private Partnership (PPP) Contract Notice

The Ministry of Digital Policy, Telecommunications and Media announces an open, international tender for the selection of a Private Partner for the implementation of the project "ULTRA-FAST BROADBAND" and invites all interested economic operators to submit their Expression of Interest (Phase A’ of the Competitive Dialogue) pursuant to the present Request and its Annexes. Participants selected during phase A’ will continue to the next phases of the tendering procedure. apply to the The Partnership is governed by the provisions of law 3389/2005, by decision of the Interministerial Committee for Public Private Partnerships (article 3 of law 3389/2005), included in the minutes of session 40 / 17.1.2019 (ref. no ΑΔΑ Ω6ΩΥ465ΧΙ8-ΘΘ1).

* 1. Contracting Authority

|  |  |
| --- | --- |
| Contracting Authority | Greek Public Sector Ministry of Digital Policy, Telecommunications and Media / General Secretariat of Telecommunications and Post (GSTP) / Executive Agency for ICT |
| Responsible Agency Unit | Unit Β’: Support, Inclusion and Implementation of ICT projects  |
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* 1. Ministry of Digital Policy, Telecommunications and Media
		1. The Ministry of Digital Policy, Telecommunications and Media was established by the provisions of PD 123/2016 (FEK 208/A/4.11.2016) “Reconstitution and renaming of the Ministry of Administrative Reform and Electronic Government, reconstitution of the Ministry of Tourism, institution of the Ministry of Immigration Policy and the Ministry of Digital Policy, Telecommunications and Media, renaming of the Ministries of Interior and Administrative Reconstruction, Finance, Development and Tourism and Infrastructure, Transport and Networks”.

According to Article 1 of PD 82/2017 “Statute of the Ministry of Digital Policy, Telecommunications and Media” (FEK Α’ 117/10.08.2017), the Ministry’s mission is:

a. Developing and implementing national policy and taking part in shaping the appropriate institutional framework, at European and international level, to develop communications and digital policy as well as high-quality telecommunications and postal services, under conditions of fair competition. Also, coordinating government work in this field, and monitoring the implementation of relevant policies.

b. Specialization and implementation of national policy on media, telecommunications, information and communication technologies and e-government

c. Developing and implementing policies to develop infrastructure at national level to enhance accessibility to information, distance communication, information processing through special signals, strengthening of the economy, improving competitiveness and promoting economic and social cohesion in the areas of competence of the Ministry

d. Promoting security in telecommunications, digital information and information media

e. Setting out telecommunications market guidelines with emphasis on telecommunication terminal equipment, telecommunications networks and telecommunications services (mobile telephony and Internet) and of legislative initiatives in the field, in cooperation with the National Telecommunications and Post Commission (EETT).

f. Coordinating supervised entities and overseeing their action programs

g. Promoting:

i) Information Society, with an emphasis on interoperability and best practices on public sector e-services for citizens and businesses

ii) public information, with emphasis on the Government and its agencies, by providing public consultancy services on information related issues, monitoring and formulating proposals on press and media legislation, shaping the state policy in the field of audiovisual media, in line with technological developments, and by organizing overall state communications at home and abroad

iii) the National Digital Strategy, with an emphasis on Information and Communication Technologies (ICT), including eGovernment and broadband infrastructures, as well as on the Digital Single Market by monitoring the implementation and coordination of Ministries with regard to the particular actions for the implementation of the NDS, by presenting relevant proposals to the relevant Ministries and bodies and by representing the country internationally on issues related to the NDS

iv) access to next-generation broadband networks

h. The design of public sector projects in relation to digital technologies and dealing with them in a unified way

i. Coordination of eGovernment policies and the design of relevant projects

g. Formulating eAccessibility policies with emphasis on the unhindered access to digital public services.

k. Drafting Memoranda of Cooperation and Framework Agreements with Universities, Technological Educational Institutes (TEIs) and Research Centers, national and foreign, to promote the country's digital policy in accordance with the provisions in force.

* + 1. The General Secretariat for Telecommunications and Posts (GGTT) is the owner of the Project.

The GGTT is the public body responsible to prepare, implement and monitor the National Broadband Next Generation Access Plan 2014-2020 ("NGA National Plan"), submitted to and approved by the relevant EU services, in 2015. The NGA Plan is the roadmap for increasing the availability and the adoption of high and ultra-high speed broadband services and includes a set of interventions to meet the new broadband targets set by the European Commission for 2025 (Gigabit Society). The GGTT has embarked on the design and implementation of a series of projects in addition to the present project (Super-Fast Broadband (www.sfbb.gr), Rural Broadband) which aim to empower citizens to obtain high / ultra-high speed internet access and to develop broadband infrastructure in the country.

At the same time, it is preparing other projects for the development and utilization of ultra-high speed broadband services.

By Decision no OIK.84037/809/Φ.Α.7/23.11.2017 of the Minister of Digital Policy, Telecommunications and Media, the Executive Agency for ICT has been appointed as the Beneficiary for this Project, which falls under the scope of the GGTT’s competences (Project Owner).

Executive Agency–ICT (EA–ICT) is the successor scheme of OP Digital Convergence Managing Authority (Special Service for the Management of Sectoral Operational Programs for ICT "Digital Convergence 2007-2013" and "Information Society 2000-2006") and is directly subordinated to the Minister of Digital Policy, Telecommunications and Media. The role of the Executive Agency for the 2014-2020 Programming Period, has been established in accordance with the provisions of article 16 of Law 4314/2014.

In particular, EA–ICT’s main mission is to cooperate with, support and assist the General Secretariats and Ministries to accomplish their mission. Within this framework, its purpose is (a) to support the design of the Ministry's policies, planning, specialization, preparation, implementation and monitoring of projects funded by the European Structural and Investment Funds (GRNET) through the NSRF Operational Programs 2014-2020 and other co-funded programs / financing tools, as well as from any other funding sources and (b) to strengthen the administrative capacity of the Ministry's services in relation to the Operational Programs of the NSRF 2014-2020. Through special assignment, the EA–ICT also undertakes the implementation of State Aid projects.

EA–ICT’s management experience is significant, having successfully managed the "Information Society" OP in the period 2000-2006 and the € 895 million "Digital Convergence" OP (sectoral ICT Program) for the period 2007-2013 which involved 684 projects and 2,575 state aid grants.

In the current programming period, Executive Agency-ICT has undertaken, by decision of the Minister, the implementation of the projects included in the NGA Plan, such as: Superfast Broadband (SFBB) - Ultrafast Broadband (UFBB), Connected Enterprises (CE) - a state aid measure for SMEs, thus ensuring coordination in their implementation.

* 1. Changes

Any change, transformation, substitution or succession of the Contracting Authority or of the bodies and services referred to in this “Request for the expression of interest”, does not affect the progress of the awarding process. In that case, the Contracting Authority will inform participants in the tendering procedure accordingly.

* 1. Scope of the PPP Contract

The scope of the PPP Contract is the implementation of the «**Ultra-Fast Broadband Infrastructure - ULTRA-FAST BROADBAND**» project.

In the framework of the PPP Contract, the Private Partner (PP) will be requested to undertake the following:

* + 1. During the Construction Phase:
			1. Carry out high and low-level design in order to comply with the requirements of the Partnership Contract and the Invitation to Tender
			2. Contribute to the project’s financing through own and loan funds, taking into account public funding, based on contractual terms (milestones).
			3. Build the network infrastructure, install and customize the necessary equipment, provide the necessary services, manage, supervise and ensure the quality of the construction.
			4. Insure the project against risks associated with the construction of the network.
			5. Comply with all the terms of the Partnership Contract and the Tender documents on construction-phase obligations.
		2. During the Operation Phase:
			1. Ensure good operation, maintenance and technical support for the entire installed network, equipment and systems, throughout the duration of the Partnership.
			2. Provide services with full transparency and without discrimination to all retail providers.
			3. Insure the project against risks associated with the operation of the network.
			4. Publish periodic reports on the provided level of service (e.g., rejection of requests, processing times, frequency of failures, etc.)
			5. Comply with all the terms of the Partnership Contract and the Tender documents on operation-phase obligations.
			6. Prior to their activation, all services must be described in detail in a “reference offer” indicating their terms and conditions, including technical, procedural and financial terms. The “reference offer” must be submitted to and approved by the Greek NRA (EETT).

After the concession period, the operation of the Project will be transferred to the Greek State and especially to the Owner of the Project, the General Secretariat for Telecommunications and Post and the Private Partner will transfer to the State all property titles and other property rights that it holds under the terms of the Partnership Contract. The GGTT will implement the relevant procedures for the selection of a new Contractor for the exploitation and operation of the project.

* + 1. Common Procurement Vocabulary(CPV) Codes: Contract CPVcodes as follows:

32412100-5 Telecommunications network

32523000-5 Telecommunications installations

32522000-8 Telecommunications equipment

32521000-1 Telecommunications cables

* 1. Implementation Site of the Partnership Agreement
		1. The project aims to cover most of the country's areas not covered by the plans of private-sector telecommunications providers, complementary to the corresponding infrastructure developed by private providers.
		2. In order to define the intervention areas of the project, a detailed mapping exercise was performed by the GGTT from 04/05/2018 until 30/09/2018, through a public call published on the Ministry’s website. These areas, on which infrastructures that provide NGA services will be deployed by private investment by the end of 2023 and which are reflected in the GGTT mapping consultation process, are excluded from the intervention areas of the UFBB project.
		3. Areas covered by “Superfast Broadband (SFBB”) and “Rural Broadband (RB)” projects will also be excluded from the UFBB intervention areas.
		4. The scope of the project is determined by a conjunction of the list of open-air cabin coverage areas and the list of settlements. The combination of these two lists is necessary because the subject of the UFBB project is defined both in terms of OCCAs (Outdoor Cabinet Coverage Areas) as well as in terms of extra remote settlements (settlements not included within a 550m area of coverage from the nearest open-air cabin).
		5. The indicative list of OCCAs and remote settlements is included in the attached file.
		6. In the event of a future expansion of the subsidized infrastructure through private investment (either by the SPC after the end of the construction phase, or by SPC customers (providers), private or public), specific provisions will be implemented to ensure non-distortion of competition and will be specified in the Invitation to Tender.
		7. The project will be implemented in lots. Each lot consists of a grouping of administrative divisions at the level of Regional Units. The total number of lots will be seven (7) so as to maximize competition and exploit economies of scale. The allocation of each Regional Unit per lot is as follows:

|  |  |
| --- | --- |
| REGIONAL UNIT | LOT |
| RODOPI | 1 |
| DRAMA | 1 |
| EVROS | 1 |
| THASOS | 4 |
| KAVALA | 4 |
| XANTHI | 1 |
| THESSALONIKI | 5 |
| IMATHIA | 6 |
| KILKIS | 5 |
| PELLA | 2 |
| PIERIA | 2 |
| SERRES | 4 |
| CHALKIDIKI | 4 |
| KOZANI | 6 |
| GREVENA | 6 |
| KASTORIA | 2 |
| FLORINA | 2 |
| IOANNINA | 2 |
| ARTA | 6 |
| THESPROTIA | 2 |
| PREVEZA | 2 |
| LARISA | 2 |
| KARDITSA | 6 |
| MAGNESIA | 2 |
| SPORADES | 2 |
| TRIKALA | 6 |
| FTHIOTIDA | 7 |
| VIOTIA | 7 |
| EYVIA | 3 |
| EYRYTANIA | 5 |
| FOKIDA | 5 |
| CORFU | 2 |
| ZANTE | 1 |
| ITHAKA | 5 |
| CEPHALLONIA | 5 |
| LEYKAS | 5 |
| ACHAIA | 5 |
| AITOLOAKARNANIA | 5 |
| ILIA | 1 |
| ARCADIA | 1 |
| ARGOLIS | 6 |
| CORINTH | 1 |
| LACONIA | 6 |
| MESSINIA | 1 |
| ATHENS CENTRAL  | 7 |
| ATHENS NORTH | 7 |
| ATHENS WEST | 7 |
| ATHENS SOUTH | 7 |
| ATTICA EAST | 7 |
| ATTICA WEST | 7 |
| PIRAEUS | 6 |
| ISLANDS | 6 |
| LESVOS | 4 |
| IKARIA | 4 |
| LIMNOS | 4 |
| SAMOS | 4 |
| CHIOS | 4 |
| SIROS | 3 |
| ANDROS | 3 |
| THIRA | 3 |
| CALYMNOS | 7 |
| KARPATHOS | 7 |
| KEA - KYTHNOS | 3 |
| COS | 7 |
| MELOS | 3 |
| MYKONOS | 3 |
| NAXOS | 3 |
| PAROS | 3 |
| RHODES | 7 |
| TINOS | 3 |
| IRAKLIO | 3 |
| LASITHI | 7 |
| RETHYMNO | 3 |
| CHANIA | 3 |

Πίνακας 1: Κατανομή των Περιφερειακών Ενοτήτων της χώρας ανά lot

* + 1. The allocation was made by balancing as equally as possible the level of Total Investment and Public Contribution, taking into account that the IRR on private equity should be equal. Based on this, Table 2 summarises the total number of estimated connections per lot

|  |  |
| --- | --- |
| LOT | Estimated Connections |
| 1 | 117,825 |
| 2 | 125,880 |
| 3 | 111,574 |
| 4 | 103,495 |
| 5 | 123,775 |
| 6 | 114,330 |
| 7 | 115,276 |
| Σύνολο | 812,155 |

Πίνακας 2: Εκτιμώμενες συνδέσεις ανά lot

* 1. Personal Data

The Contracting Authority is responsible for the processing of individuals’ personal data which will be collected during the Tendering Procedure. The processing of such data is done in accordance with the provisions of the data protection legislation as applicable. Such personal data may be disclosed to entities to which the Contracting Authority entrusts the execution of a specific task on its behalf, ie its consultants, executives and other agents, as part of their legitimate activities provided that confidentiality is respected, as well as to public bodies and judicial authorities, within their sphere of competence. The data processing is carried out for the purposes of evaluating the Expressions of Interest folders, fulfilling the statutory obligations of the Contracting Authority, informing the Participants about the evaluation of their submitted Expression of Interest folder, as well as for the overall security and protection of transactions.

Individuals submitting an Expression of Interest Folder as Participants or as legal representatives of a Participant (being a legal entity or an association/consortium), agree to the processing of the above mentioned personal data for the set purposes and retain all their statutory rights of access, rectification, refusal to the processing and revocation of their consent, in accordance with Annex 9. The relevant statement is signed after the date of publication of the present document and is included in the Expression of Interest Folder (Subfolder A)

* 1. Confidentiality of existing network information and conditions for using such networks
		1. The project encourages the re-use of existing networks infrastructures as a means of reducing the cost of developing new infrastructures, a practice widely used in the EU and in line with the existing institutional framework (Law 4463/2017). Infrastructures that could be exploited include fiber optic cables, pipelines, poles and power transmission pylons, other supporting or cable infrastructure, etc.
		2. A prerequisite for the rental exploitation of existing infrastructure, is transparency - in compliance with Article 4 of Law 4463/2017 - regarding access to the relevant technical data (location and route, type and current use of the infrastructure, point of contact), as well as regarding the conditions for their disposal.
		3. In the context of the implementation of this project, the General Secretariat for Telecommunications and Post has already sent letter No 77168/323 / 10-10-2018 to operators of other (non-telecom) networks to collect the relevant technical data necessary for the disposal of their infrastructures for the purposes of the present Tendering Procedure.
		4. At the time of publication of the present Request for expression of interest, a specific invitation will be sent to Infrastructure Operators to finalize the list of networks available for utilization for the implementation of this project and to send the relevant information to the Contracting Authority. Networks that will not be accordingly declared to the Contracting Authority within the deadline set in the special call, will not be available for use by the Candidate Contractors for the implementation of this project.
		5. Any operator owning or controlling an appropriate infrastructure network (whether or not actually in use) in the target areas, on the date the Contracting Authority sends the relevant invitation and wishing to participate in the tender will have to:
			1. Inform the Contracting Authority and the EETT about that infrastructure and provide all relevant information (including technical and commercial terms and conditions for its disposal) as well as access to the other tenderers, within 2 months of the specific invitation. It is noted that confidentiality issues cannot be invoked to restrict access of any of the participants to this information.
			2. Provide access to that infrastructure to all potential bidders under the same terms and conditions (including price). The same terms and conditions should also apply for the operator’s own bid.
		6. Any bidder intending to make use of an existing infrastructure network in their tender without having fully complied with the above conditions will automatically be excluded from the tender.
		7. After the completion of Phase A’ of the Tender Procedure and in parallel with the Invitation to Participate in the Dialogue, the pre-qualified tenderers will have access to the above information provided by the Contracting Authority.
		8. Due to the confidentiality of this information, during Phase A’ of the Tender procedure all interested parties will be required to sign and submit, together with the application form and other documentation, the Non-Disclosure Declaration in accordance with Annex 10. The declaration must be signed at a date later than the date of publication of the present Request for Expression of Interest. Any interested party who does not submit a signed Non-Disclosure Declaration in accordance with Annex 10 will be excluded from the Tendering procedure.
1. Definitions:

For the purposes of the present Request for the Expression of Interest, the following terms will have the following meaning:

* + 1. "Contractor": is the bidder, to whom the Contract will be awarded, after the completion of Phase B’ of the present Tendering procedure, and who will be invited to set up the Special Purpose Company that will sign the Partnership Agreement as Private Partner.
		2. “Contracting Authority”: is the Greek Public Sector / Ministry of Digital Policy, Telecommunications and Media / General Secretariat of Telecommunications and Post (GGTT) / Executive Agency for ICT, as defined in 1.2 of the present document.
		3. "Independent Auditor": is the individual or legal entity or association thereof suggested by the Private Partner (of each lot) as the independent auditor for the project and who will certify the fulfillment of the essential requirements of the Partnership Contract both during the Construction Phase and during the Operation Phase. The technical and professional capacity criteria under which the Contracting Authority will approve the proposed independent auditor will be specified in the Invitation to Tender.
		4. “Ε.Ε.Τ.Τ. Independent Auditor”: is the individual or legal entity or association thereof designated by the National Telecommunications and Post Commission as an independent auditor (per lot) for matters relating to the EETT institutional framework and responsibilities and assists in the fulfillment of EETT’s obligations as they result from said framework. The technical and professional capacity criteria of the EETT Independent Auditor will be specified in the respective tendering procedure to be conducted by the EETT.
		5. "Proxy/Representative": is the person to be designated as the contact person on behalf of the Candidate in accordance with paragraph [10.2.3](#_10.2.3_Each_Candidate) hereof.
		6. «Competitive Dialogue»: is the Tendering procedure which will be followed in accordance with article 13 of Law 3389/2005.
		7. "Insurer": is the insurance institution or institutions that the Private Partner of each lot will propose, to insure the SPC and others involved in the Partnership against the main risks of the project, including any construction risk, liability to third parties and material loss or damage. The technical and professional capacity criteria under which the Contracting Authority will approve the proposed Insurer will be specified in the Invitation to Tender.
		8. "Phase A": is the current pre-qualification phase of the Tender, which will be conducted in accordance with this Request for Expression of Interest and will be completed with the nomination of the Pre-qualified Tenderers.
		9. "Phase B": It is the phase of the Tendering procedure following the participants’ pre-qualification and lasts until the end of the Private Partner selection process and the awarding of the Partnership Contract. It is subdivided into two stages:
			1. Stage Β.Ι – Dialogue, and
			2. Stage Β.ΙΙ – Submission of binding tenders
		10. "Funds from loans": are all bank and credit institutions liabilities, irrespective of the duration of the relevant contracts, including in any case any bond loans (simple, exchangeable or convertible), as these obligations arise from the Financial Statements of the last three financial years. Funds from loans do not include (a) any loans from shareholders or partners as well as non-recourse subordinated loans, including interest rate swap contracts and related derivative financial instruments, which have been received as part of concession contracts by the respective SPCs, and (b) any loans for financing VAT or/and the public financial contribution (connection funding)
		11. "Binding Investment": is the sum of the SPC’s equity and any subordinated Debt.
		12. "Binding Offer" “Offer” or "Bid" or “Tender”: is the bid/tender to be submitted to the Contracting Authority by the Pre-qualified tenderers in the context of the present Tender procedure, during stage B.II, in accordance with the terms of the Invitation to Tender.
		13. "Subordinated Debt": is the portion of the Binding Investment expressed in subordinated loans and / or other forms of capital provided to the Private Partner (a) by the original shareholders of the SPC (ie the Contractor and, in the case of a Consortium, its members) or companies affiliated with them (within the meaning of Article 32 Law 4308/2014 and Article 2 of Law 4172/2013), for which the original shareholders undertake that these companies will pay and / or (b) from third parties, provided that the original shareholders or affiliated companies guarantee their service.
		14. “Public Sector”: is the Greek Public Sector.
		15. “Tendering Procedure”: is the procedure starting with the publication of the present Request for the purpose of concluding the Partnership Contract.
		16. "Dialogue": is the dialogue to take place between the Contracting Authority and the Pre-qualified Tenderers, during Stage BI of the Tendering procedure (Phase B’), in accordance with the terms of the Invitation to Participate in the Dialogue.
		17. “Documentation": are the documents to be included in the Expression of Interest folder, as described in the Request for the Expression of Interest.
		18. "Reference Network": is one or more telecommunication network(s) with a total length of more than two hundred (200) kilometers.
		19. "Interested/concerned Party": is any natural person or legal entity interested in taking part in the Tendering procedure.
		20. “Group/Association of Persons": is any association, including a temporary partnership, or a consortium of individuals and / or legal entities.
		21. "Tender Evaluation Committee" or "TEC": is the committee, set up by the Contracting Authority for the examination and evaluation of the Expressions of Interest folders, pursuant to paragraph 11 of the Request, as well as the Invitation to Participate in the Dialogue and the Invitation to Tender.
		22. "Project": is the overall scope of the Partnership Contract, ie the implementation and operation of "ULTRA-FAST BROADBAND Infrastructure”
		23. “Date of Submission ": is the last day of the deadline for submission of the Expression of Interest Folder, pursuant to paragraph [13.1](#_13.1_Date_of) of this document.
		24. "Equity": is the total equity, as derived from the Financial Statements of the last three [financial] years.
		25. «Private Party to the Partnership or Private Partner» or «PP»: is the Special Purpose Company (SPC), registered in Greece, which will be formed under Greek Law by the Contractor before conclusion of the Partnership Agreement, with the sole purpose of fulfilling the aims of the Partnership Agreement and the Project. The Contractor, or, in case of Joint Tendering, the members of the Group, will be the founder and sole shareholder of the PP. Participants in a Group will participate in the SPC with the same holding percentages as stated in the Letter for the Expression of Interest, pursuant to the template of Annex 2.
		26. «Financial Statements»: are the unified financial statements of the Candidate or, in case there is no obligation to issue unified statements, the plain (company) financial statements, as published in their complete form (not in abstract) and which have been compiled according to International Financial Reporting Standards or, in case there is no obligation to compile them according to International Financial Reporting Standards, according to the accounting standards imposed or allowed by the respective legislation of the country in which the person submitting them is situated, have been audited by a chartered, or other legal auditor and have been published pursuant to the legal requirements of the country in which the person submitting them is situated. If publication of financial statements is not required by law, a relevant solemn Declaration must be submitted (pursuant to Annex 4 of this Request) in addition to the non-published financial statements and all other documentation provided for in this request. For foreign Candidates, or members thereof, the financial statements must be accompanied by an official translation of their necessary elements, pursuant to par. [16.2](#_16.2_All_documents)
		27. “Financial Statements of the last three (3) financial years”: are the financial statements of the last three (3) consecutive financial years, which have been concluded before the Date of Submission. If the financial statements of one financial year have not been published, candidates will submit a Solemn Declaration pursuant to Annex 4, stating the reasons for no publication, as well as the audited non published financial statements, with all the relevant information required. Also, if the last financial year has been concluded before the Date of submission and financial statements of the last year before the Date of submission have not been compiled and/ or audited, the candidate will submit a Solemn Declaration on the reasons why compilation and/or audit of the financial statements were not possible, as well as the financial statements of the last consecutive three financial years before the last financial year. If a company has been in operation for less than three (3) years, they will submit as many financial statements as exist before the Date of Submission and the required financial data for their years of operation will be extracted from them,.
		28. “Prequalified Tenderer": is any pre-qualified Candidate after the completion of Phase A’ of the Tender and will be invited by the Contracting Authority to further participate in Phase B’ of the Tendering Procedure.
		29. “Request for the Expression of Interest” or “Request”: is the present document.
		30. "Invitation to Tender": is the invitation to submit Binding Offers/Tenders to be sent by the Contracting Authority to the Prequalified Tenderers, during Stage B.II of Phase B’ of the Tendering Procedure.
		31. "Invitation to Participate in Dialogue": is the invitation to participate in the Dialogue to be sent by the Contracting Authority to the Prequalified Tenderers, during stage B.I of Tender Phase B’.
		32. “Bidder": is the Prequalified Tenderer who has submitted a Binding Offer during Stage B.II of Tender Phase B’.
		33. "Partnership Contract/Agreement": is the Partnership Agreement to be concluded between the Contracting Authority and the SPC.
		34. "Solemn Declaration": is the Solemn Declaration of Article 8 of Law 1599/1986, as its content has been determined by Decision no. ΔΙΑΔΠ/Α1/18368 (Official Gazette B 1276 / 01.10.2002) of the Minister of the Interior, Public Administration and Decentralization. For foreigners, a "Solemn Declaration" can also be an affidavit or a declaration before a competent judicial or administrative authority or notary, in accordance with the law of the candidate’s or of the declaring person's country of origin / establishment.
		35. "Candidate": is any economic operator (natural person or legal entity or a group thereof) submitting an Expression of Interest.

In this Request for the Expression of Interest, unless otherwise stated:

1. Headings are only set for the purpose of organizing the text and do not affect interpretation.
2. The definitions contained in this Article 2 or in specific terms herein apply to its entirety.
3. The use of the singular number is considered to include the plural and vice versa, while the use of one gender is considered to include the others.
4. The reference in days is taken to mean calendar days, unless working days are explicitly mentioned.
5. Calculation of set deadlines will be made in accordance with the provisions of the Civil Code and the Code of Civil Procedure.

# **3. Description of the Partnership**

# **3.1 Aim and scope of the Partnership**

### 3.1.1 The aim and scope of the Partnership are described in detail in Annex 1 of the Request.

### 3.1.2 Special provisions for the implementation of the Agreement will be included in the Partnership Contract. Those will pertain to the obligation of the Private Partner to comply with environmental, social security and labour law obligations, as provided for in EU and national Legislation, collective agreements, or relevant international provisions, as described in Annex X , Appendage A’ of law 4413/2016.

# **3.2 Obligations of the Private Partner**

### 3.2.1 The Private Partner will implement the Project according to the detailed provisions of the Partnership Contract.

### 3.2.2 The Private Partner will have to issue, renew and maintain valid all the necessary permissions and approvals needed for the construction, establishment, operation and maintenance of the Project, according to all the legal provisions and the special provisions of the Partnership Contract.

# **3.3. Duration of the Partnership Contract**

### The duration of the Partnership Contract will be at least twenty (20) years and will be specifically determined in the Invitation to Tender of Stage B.II.

# **3.4 Estimated Value of the Partnership Contract**

### 3.4.1 The Project will be awarded in Lots, to be determined by geographical distribution. Phase A of the Project (Construction), will last 36 months at most, starting on the date of conclusion of the Partnership Contract.

### 3.4.2 The Budget total for Phase A of the Project is 700.920.135 euros, not including VAT, distributed per geographical area (lot), as follows:

|  |  |
| --- | --- |
| **Geographical Area (LOT)** | **Estimated total Investment in Euros (Public and Private)** |
| **1**. Regional Units of: Rodopi, Drama, Evros, Ksanthi, Zante, Ilia, Arcadia, Corinth, Messinia  | 105,155,747 |
| **2.** Regional Units of: Pella, Pieria, Castoria, Florina, Ioannina, Thesprotia, Preveza, Larisa, Magnesia, Sporades, Corfu | 106,694,417 |
| **3.** Regional Units of: Evoia, Syros, Andros, Thira, Kea – Kythnos, Milos, Mykonos, Naxos, Paros, Tinos Herakleion, Rethymnon, Chania | 99,255,768 |
| **4:** Regional Units of: Chalkidiki, Thasos, Kavala, Serres, Lesvos, Icaria, Limnos, Samos, Chios  | 95,118,381 |
| **5:** Regional Units of: Thessaloniki, Kilkis, Evrytania, Fokis, Ithaca, Cephallonia, Leykas, Achaia, Aitoloakarnania  | 104,905,604 |
| **6:** Regional Units of: Cozani, Grevena, Arta, Carditsa, Trikala, Imathia, Argolis, Lakonia | 96,828,854 |
| **7:** Regional Units of: Viotia, Fthiotida, Central Athens, Northern Athens, Western Athens, Southern Athens, East Attica, West Attica, Piraeus, Islands, Calymnos, Carpathos, Cos, Rhodes, Lasithi  | 92,961,365 |
| Total | 700,920,135 |
| Total incl. VAT | 869,140,967 |

Table 3. Total Investment Distribution per Lot

### 3.4.3 Public Financing: Public Financing for the Project is 300 million euros (included in the Public Investment Program by Intra-Ministerial Decree (Online Reference Number: Ω6ΩΥ465ΧΙ8-ΘΘ1) and a request for funding by the Structural and Investment Funds of the European Union, specifically the European Structural Development Fund (Operational Program “Competitiveness, Entrepreneurship, Innovation 2014-2020” (EPANEK)) and the European Agricultural Fund for Rural Development (Rural Development Program 2014-2020 (PAA)) has been submitted. The exact amount of the Public Financing and its allocation between Funds will be determined in the “Invitation to Tender”.

### 3.4.4 Private Contribution: The Private Contribution will cover at least 50% of the Budget Total.

# **3.5** A claw-back mechanism will be put in place during the Concession Agreement, to ensure that the exploitation of the conceded infrastructure during the operation period will not lead to the over-compensation of the private partner. The clawback mechanism is foreseen on the basis that any potential profit exceeding the maximum allowable profit margin will be used for further development of the infrastructure to increase coverage. In the case where earnings after tax exceed a threshold of 15% of the revenues, 60% of the amount in excess is to form a special taxable reserve that should only be used for broadband-related focused initiatives in the areas covered. In this way, a normalization of profits should be achieved (between different lots), while the potential surplus is directed to local society, thereby increasing the project’s socio-economic benefits. The specific operation of the claw-back mechanism will be determined in the Invitation to Tender of Stage B.II. EETT is responsible for implementing this mechanism, by externally auditing each private partner annually.

# **4. Procedure Overview**

# **4.1 General**

### 4.1.1 Throughout the Tendering Procedure, the Contracting Authority will comply with the general Principles and Regulations of EU Law, including Free Movement of goods, people and services, Non-discrimination, Equal Treatment, Transparency and Proportionality. The Contracting Authority will provide full and free access to the Contractual Documents from the date of publication of the relevant notice in the following address: www.promitheus.gov.gr

### 4.1.2 Publication of this Request for the Expression of Interest in the Supplement to the Official Journal of the European Union will signal the beginning of the Tendering Procedure to award the Partnership Contract.

### 4.1.3 The Tendering Procedure will comply with the provisions of Law 3389/2005 (“Public Private Partnerships” – FEK A’ 232/22.09.2005), together with the provisions of Law 4413/2016 “On the award of concession contracts – Alignment with Directive 2014/23/EU”, applied by analogy, and complementarily with the provisions of Law 4412/2016 (FEK A’ 147/08-08-2016) “On the Public Procurement of Works, Goods, and Services (Alignment with Directives 2014/24/EU and 2014/25/EU)”.

### 4.1.4 Given the technical complexity of the Project, its legal and financing structure and the inherent risks thereof, and in order to help determine the best means to satisfy the needs of the Contracting Authority, to estimate market capabilities in terms of technical, financing, or legal solutions, and to customize readily available solutions, the Procurement Process will take place as follows.

### 4.1.5 The Procurement Process will take place in two Phases:

i. Phase A’ (prequalification), starting with the present Request for the Expression of Interest, in reply to which Interested Parties will submit their “Expression of Interest” Folder, acc. to art. [10](#_10._Content_of) and

ii Phase B’ (Dialogue and Submission of Tenders), which is comprised of two separate stages

1. Stage B.I: Starting with the Invitation to Participate in the Competitive Dialogue and
2. Stage B.II: Starting with the Invitation to Submit Binding Tenders

# **4.2 Phase A’ (Prequalification)**

### 4.2.1. During Phase A of the Tendering Procedure, economic operators will have to express their interest by submitting the “Expression of Interest” Folder, as detailed in par. [10](#_10._Content_of) of the present Request

### 4.2.2 The aim of Phase A is to prequalify the Candidates who fulfil the Selection Criteria detailed in par. [7.](#_7._Selection_Criteria) The prequalification applies to Candidates for whom exclusion grounds do not apply. Specifically, it applies to those Candidates who fulfil Personal State Criteria and can prove that they possess on one hand the required economic and financial standing and on the other hand the necessary technical ability to participate in the Tendering Procedure and to be awarded the Partnership Contract.

### 4.2.3 The Contracting Authority will examine the “Expression of Interest” Folders submitted and will invite all of the Tenderers who fulfil the Selection Criteria to participate in Phase B’ of the Process, as described below.

# **4.3 Phase B’ (Dialogue and Invitation to Tender)**

Phase B’ of the Tendering Procedure is comprised of two separate and consecutive stages, Stage B.I (Dialogue) and Stage B.II (Submission of Binding Tenders), as detailed below. The Contractual Documents for the above-mentioned Phases will have to comply with the Approval Decisions of the European Commission.

# **4.4 Stage B.I of the Procurement Process (Dialogue)**

### 4.4.1 Stage B.I will begin with a Letter from the Contracting Authority to the Prequalified Tenderers, which will invite them to receive the Invitation to participate in the Competitive Dialogue. The terms of the Dialogue will be stated in the Invitation. The aim of the Dialogue is to evaluate the technical, financing, or legal solutions offered by the market, as well as to examine and determine the means which best satisfy the needs of the Contracting Authority.

### 4.4.2 The Contracting Authority will conduct a dialogue with each one of the prequalified Tenderers, concerning the basic technical, financing and legal parameters of the project. The Contracting Authority may decide to discuss any aspect of the Partnership Agreement.

### 4.4.3 During this Stage, the Prequalified Tenderers will have at their disposal all useful Data describing the needs of the Contracting Authority, to submit their comments, to make proposals, and to suggest solutions. The extent of this access to information remains at the discretion of the Contracting Authority.

### 4.4.4 During the Dialogue, the Prequalified Tenderers, at the discretion of the Contracting Authority, will be invited to comment on, or to recommend the basic planning parameters of the Project, based on the information available, or/and to make proposals, studies and to suggest solutions for the implementation of the Project, pursuant to the provisions of the Invitation to Participate in the Dialogue, and to present them in meetings with the competent executives of the Contracting Authority.

### 4.4.5 Participation in the Dialogue is a necessary condition for participation in Stage B.II of the Tendering Procedure (Submission of Binding Tenders), as will be specifically described in the Invitation to Tender.

### 4.4.6 During the dialogue, the contracting authority shall ensure equality of treatment among all participants. To that end, it shall not provide information in a discriminatory manner which may give some participants an advantage over others. The contracting authority shall not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue without its agreement.

### 4.4.7 The contracting authority, having chosen the solution, or solutions best suited to its needs, will announce the end of the Dialogue (Stage B.I of the Tendering Procedure) and will inform the Prequalified Participants accordingly.

### 4.4.8 Stage B.I will be concluded with the approval by the contracting authority of the Basic Planning of the Project and the approval of the Invitation to Tender for the next and final Stage B.II of the Process.

### 4.5 Stage B.II of the Procurement Process (Binding Tenders)

### 4.5.1 Stage B.II of the Process will begin after the conclusion of Stage B.I. The contracting authority will send a Letter to the Prequalified Tenderers, which will invite them to receive the finalized Invitation to Tender. The Binding Tenders will be submitted according to the provisions of the finalized invitation. The Invitation to Tender will set an adequate deadline of at least sixty (60) days to receive Tenders.

### 4.5.2 The prequalified Tenderers will have to submit a Tender for all seven (7) Lots. Each prequalified Tenderer will have to state in their Tender the maximum number of lots that they wish to undertake, taking into account that -without prejudice to the relevant approval of the European Commission- the contracting authority will retain the right to award a maximum number of three (3) lots per Contractor.

### 4.5.3 If less than three Participants submit a Binding Tender, the AA will retain the right to appoint an external auditor to evaluate the cost-effectiveness of the winning Tenders for each lot.

### 4.5.4 The partnership Contract will be signed by the contracting authority and the Private Partner, as defined in par. 2.1.25 of the Request for the Expression of Interest (ie the Special Purpose Company - SPC, which the Contractor will have to form). If more than one lot is awarded to the same Private Partner, they will have the option of forming only one SPC for the total number of awarded lots.

### 4.5.5 In case of joint tendering (Association/Consortium), the percentage of each tenderer in the Share Capital of the SPC will be the same as during the Tendering Procedure. The SPC’s sole aim will be to implement the Partnership Contract according to its provisions and the relevant provisions of Greek Law.

### 4.5.6 Conclusion of the Partnership Contract will be conditional on authorization of the state aid scheme by the competent Directorate General for Competition of the European Commission (standstill obligation).

# **5. Award Criteria**

# **5.1** The Partnership Contract will be awarded on the basis of criteria relevant to its scope, to ensure real competition between Tenderers and a total economic benefit to the AA.

# **5.2** The Contract will be awarded to the most economically advantageous tender, based on the best price-quality ratio, assessed on the basis of criteria relevant to the scope of the contract.

# **5.3 The specific award criteria are the following:**

### 5.3.1 The comparative percentage of coverage with Class A service (above the specified obligatory coverage threshold per lot), which will contribute 80% of the total score.

### 5.3.2 The comparative percentage of the requested Public Contribution (under the specific -maximum- upper limit of Public Contribution per lot), which will contribute 20% of the total score.

# **5.4** The total score Ki per lot will be calculated according to the following mathematical calculation:

Κi= 80% \* (Ti/Tmax) + 20% (Omin/Oi)

Where:

Ti: the score of the technical tender i for the lot under consideration, which takes the value of: 100 + 20 \* [(Ci-Cthr)/(100%-Cthr)]

Tmax: the score of the best technical tender for the lot under consideration

Oi: the financial tender (amount of requested public expenditure) of Tender i for the lot under consideration

Οmin: the lowest financial tender submitted for the lot under consideration.

Ci: the suggested coverage with Class A service of tender I for the lot under consideration, as a percentage.

Cthr: the lowest acceptable coverage with Class A service for the lot under consideration as a percentage.

# **5.5** The final allocation of lots between tenderers will be based on their total score per lot, taking into account the maximum number of lots that each tenderer is willing to undertake, acc. to par. [4.5.2](#_4.5.2_The_prequalified) of the Request.

# **6. Participation**

# **6.1. Terms and Conditions for Participation**

### 6.1.1 Natural Persons or Legal Entities or Groups (Associations/Consortiums/their members) are allowed to participate in the Dialogue and to submit an “Expression of Interest” Folder if:

i. they are established in a member state of the European Union (EU) or in the European Economic Area (EEA), or in third countries that have signed and ratified the Agreement on Government Procurement of the World Trade Organization, to the degree that this contract is governed by Annexes 1, 2, 4 and 5 and the general notes of Appendix I of said Agreement or in third countries which have signed bilateral or plurilateral agreements with the EU and

ii. they fulfil the Selection Criteria according to art. 7 of the Request (Personal State Criteria, Economic/Financial Standing Criteria and Technical and Professional Ability Criteria)

### 6.1.2 Group candidates (Associations/ Consortiums) will not be required to assume a specific legal form to submit the “Expression of Interest” Folder. During the Tendering Procedure, and beyond that time, the members of the Group will be jointly and severally liable for their compliance with the conditions of the Process, as will be specified in the Invitation to participate in the Dialogue, the Invitation to Tender and their Appendices.

### 6.1.3 In case of Groups, one of its members will be appointed Head of the Group in the “Expression of Interest” Folder. The Group Head must be legally authorized by the other members to represent the Group in its dealings with the contracting authority for the entire duration of the Tendering Procedure.

### 6.1.4 Without prejudice to par. [6.3](#_6.3_Changes_in) of the Request, the participation share of the members of the Candidate Group, as stated in the “Expression of Interest” Folder is binding for each and every member of the Group if awarded the Contract and that share will form the holding percentage of every member in the SPC, in its capacity as Private Partner.

### 6.1.5 Natural Persons or Legal Entities submitting two or more “Expressions of Interest” will be eliminated from the process. This restriction also applies in case of a Group with members in common, as well as in case of economic operators participating either individually, or as members of a Group.

# **6.2 Linked Enterprises**

### 6.2.1 If an Undertaking linked with a Candidate (as defined below) submits a separate “Expression of Interest” Folder (ie it participates in the Process as a separate Candidate), or participates in a Group which submits a separate “Expression of Interest” Folder, then both Candidates will be eliminated from the Process.

### 6.2.2 For the purposes of the present Request, the term “Linked Enterprise” will mean any person which, directly or indirectly controls, or is controlled by, or is under joint control by the Interested Party. For the purposes of the above-mentioned definition, “control” of a legal entity will be taken to mean the exercise of dominant influence or control over another undertaking. Such is the case when a legal entity (controller) unifies its yearly accounts with another legal entity’s accounts (controlled), acc. to the stipulations of law 4308/2014. In case of entities not in the scope of Law 4308/2014, “control” will be taken to mean the existence on the person of the controller of any of the below mentioned criteria i to v:

i. an enterprise has a majority of the shareholders' or members' voting rights in another enterprise (daughter enterprise)

ii. an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise (daughter enterprise) and at the same time they are shareholder, partner, or member of this entity.

iii. an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

iv. an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise, or if the following conditions are met cumulatively:

1. The majority of the members of the administrative, management or supervisory body of this enterprise (daughter enterprise), managing the entity during the current financial year, as well as during the last financial year and up until the unified financial statements, have been appointed only as a result of exercising those voting rights.
2. The voting rights held by the Candidate represent at least 20% of the total voting rights of the daughter entity.
3. No third party has the rights mentioned under (i), (ii), (iii) for this entity (daughter entity).

v. an enterprise has the right to exercise a dominant influence, or does exercise a dominant influence over another enterprise (daughter enterprise).

# **6.3 Changes in the Composition of a Group**

### 6.3.1 A Change in the Composition of a Group will mean any of the following, or a combination thereof:

i. Reallocation of participation shares in the Group between existing members

ii. Exit of one or more existing members from the Group

iii. Entrance of one or more new members to the Group

iv. Appointment of a different Head of Group

### 6.3.2 Changes to the composition of a Prequalified Group acc. to par. [6.3.1](#_6.3.1_A_Change) are allowed only after finalization of the results of Phase A of the Process, and under the following conditions:

i. The Contracting Authority has to be notified of the change in writing at least thirty (30) days before expiry of the deadline to submit Binding Tenders. The change will be subject to approval by the contracting authority, after consultation with the Tender Evaluation Committee.

ii. After the change, the Group will still comply with all the selection Criteria, as stated in par. [7](#_7._Selection_Criteria) of the Request and any new members to the Group must comply with the Personal State Criteria mentioned in par. [7.2](#_7.2_Personal_State) of the Request.

iii. Any new member to the Group will have to submit all the necessary documentation provided for in this Request.

iv. Only members that had been members of the Group at the time of submission of the “Expression of Interest” Folder, can be appointed as Group Heads.

v. No changes to the Composition of the Group will be allowed during the final thirty (30) days before expiry of the deadline for the submission of Binding Tenders, except for the following: a) changes due to objective circumstances (ie liquidation, bankruptcy etc), or b) changes due to company transformations (ie mergers, divisions, restructuring etc). Any such changes are subject to approval by the contracting authority, provided that the Candidate Group still fulfills the Selection Criteria of par. [7](#_7._Selection_Criteria).

vi. After notification of the change, the Tender Evaluation Committee will reevaluate whether the Prequalified Tenderer still fulfills the selection Criteria of par. [7](#_7._Selection_Criteria). Any Prequalified Tenderer, who does not fulfill the terms and conditions for participation and the selection criteria, will be eliminated from the process.

vii. Conditions i to vi apply cumulatively. Any breach of the above-mentioned conditions will result in the elimination of the Prequalified Group from the process.

### 6.3.3 After selection and announcement of the Prequalified Tenderers, the prequalified tenderer will be placed as head of any Group formed afterwards. In this case, participation of said Group in the Tendering Procedure will be subject to the approval by the Contracting Authority and is allowed under the conditions of par. 6.3.2

### 6.3.4 More details can be provided for, and more conditions added to the ability to change the composition of a Prequalified Group in the Invitation to Tender and/or The Invitation to participate in the Dialogue

# **6.4 Offshore Companies**

### 6.4.1 Offshore Companies, or Groups or natural persons situated or registered in non-collaborating countries, as defined in art. 65 of the Greek Tax Revenue Code (Law 4172/2013, as valid) and listed in Ministerial Decree ΔΟΣ Γ 1188835 ΕΞ (FEK B’ 4569/30.12.2016), do not fulfil the terms and conditions for participation in the Tendering Procedure, either individually, or as partners or shareholders of more than 1% of the Share Capital of an economic operator who is a Candidate or a member of a Candidate Group.

### 6.4.2 The above-mentioned prohibition does not apply to Companies or Groups or natural persons situated or registered in:

i. a member-state of the EU or

ii. a member-state of the EAA or

iii. third countries who have signed and ratified the Agreement on Government Procurement of the World Trade Organization, to the degree that this contract is governed by Annexes 1, 2, 4 and 5 and the general notes of Appendix I of said Agreement or

iv. third countries which have signed bilateral or plurilateral agreements with the EU

# **6.5 Disclaimer**

The Contracting Authority, its consultants, representatives, employees, or executives do not bear any responsibility or liability to compensate expenses of the Group or any member thereof, or of any Candidate, as a result of their elimination from the Process. No participant will acquire a claim for compensation or any other kind of rights against the Contracting Authority, its consultants, representatives, employees, or executives as a result of the present Request, or arising from their participation in the Tendering Procedure, for any reason or cause, including errors, inaccuracies, misleading statements or omissions.

# **7. Selection Criteria**

# **7.1 Foreword**

### 7.1.1 The present article defines the Selection Criteria (“Selection Criteria”), which the Candidates need to fulfil, as follows:

i. Personal State Criteria, as defined in par. [7.2](#_7.2_Personal_State) below,

ii. Economic and Financial Standing Criteria, as defined in par. [7.3](#_7.3_Economic_and) below and

iii. Technical Ability Criteria, as defined in par. [7.4](#_7.4._Technical_Selection) below

### 7.1.2 Compliance with the Selection Criteria is required throughout the Tendering Procedure, from the time of submission of the “Expression of Interest” Folder to the end of the process. Tenderers will have to include in their Binding Tender a statement to the effect that they still fulfil the above-mentioned Criteria.

# **7.2 Personal State Criteria**

### 7.2.1 Candidates must fulfil cumulatively the Personal State Criteria defined below. In cases of Group tendering, fulfilment of Personal State Criteria is examined individually. Candidates who do not fulfil any of the requirements of the present article, or who have made false statements to that effect, will be eliminated from the process.

### 7.2.2 The Contracting Authority shall exclude an economic operator from participation in a procurement procedure where it has established, or is otherwise aware that that economic operator (or a member thereof in case of Groups) has been the subject of a conviction by final judgment for one of the following reasons:

(i) Participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;

(ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the contracting authority or the economic operator;

(iii) fraud within the meaning of Article 1 of the Convention on the protection of the European Communities’ financial inter­ests;

(iv) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;

(v) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;

(vi) child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.

### 7.2.3 The obligation to exclude an economic operator shall also apply where the person convicted by final judgment is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision, or control therein.

i. For Limited Liability Companies, Limited and General Partnerships and Private Companies, the above-mentioned obligation applies to their managers

ii For S.A. companies, the above-mentioned obligation applies to their CEO, as well as to all Board Members

iii. For Cooperatives, the above-mentioned obligation applies to all Board Members.

iv. For Holding Companies or Investment Funds, the above-mentioned obligation applies to the Investment Manager and/or the manager/general partner of said holding company or investment Fund, or to the manager

v. In all other cases of Legal Entities, the above-mentioned exclusion ground applies to their legal representatives.

### 7.2.4 An economic operator shall be excluded from partici­pation in the tendering procedure where the contracting authority

i. is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established and/or

ii. where the contracting authority can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

If the economic operator is a Greek citizen, or is registered in Greece, its social security contributions obligations apply to both main and supplementary social insurance.

This paragraph shall no longer apply when the economic operator has fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines, or by entering into a binding settlement for their payment.

### 7.2.5 An economic operator (or a member of a Group) shall be excluded from partici­pation in the tendering procedure if it is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations.

### 7.2.6 An economic operator (or a member of a Group) shall be excluded from partici­pation in the procurement procedure if the Contracting Authority is aware or can prove by any means appropriate that during the last two (2) years before expiry of the deadline for the submission of the “Expression of Interest” Folder, the candidate has been issued with the following:

i. Three (3) fining orders by competent auditing bodies of the Hellenic Labour Inspectorate, for “serious” or “very serious” breaches of labour legislation, as defined in Presidential Decree 2063/D1632/2011 (B’ 266), arising cumulatively from three (3) performed audits or

ii. two (2) fining orders by competent auditing bodies of the Hellenic Labour Inspectorate, for breaches of labour legislation, concerning unregistered labour, arising cumulatively from two (2) performed audits.

Fines under (i) and (ii) must be final and binding.

### 7.2.7 Furthermore, an economic operator (or Group) shall be excluded from participation in the procedure, in case of its exclusion from public procurement procedures by Ministerial Decree as provided for in art. 74 of Law 4412/2016.

### 7.2.8 An economic operator shall be excluded from participation in the procedure if provisions of par. 4 art. 8 of Law 3310/2005 apply (national grounds for exclusion).

### 7.2.9 The Contracting Authority shall at any time during the procedure exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs [7.2.2 to 7.2.8](#_7.2.2_The_Awarding)

### 7.2.10 If the economic operator intends to rely on the capacities of third entities to fulfil the relevant Selection Criteria, pursuant to par. [8](#_8._Reliance_on) of the present Request, the third entity will have to fulfil the Personal Selection Criteria defined above.

### 7.2.11 Any economic operator that is in one of the situations referred to in paragraphs [7.2.2](#_7.2.2_The_Awarding) and [7.2.4](#_7.2.4_An_economic) may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure. For this purpose, the economic operator shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating auth­orities and taken concrete technical, organisational and personnel measures that are appropriate to pre vent further criminal offences or misconduct. The measures taken by the economic operators shall be evaluated taking into account the gravity and particular circum­stances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the economic operator shall receive a statement of the reasons for that decision. An economic operator which has been excluded by final judgment from participating in procurement or concession award procedures shall not be entitled to make use of the possibility provided for under this paragraph during the period of exclusion resulting from that judgment, in the member states where the judgement is effective.

# **7.3 Economic and Financial Standing Criteria**

### 7.3.1 During the First Phase (Phase A) of the Tendering Procedure each Candidate must prove that they possess adequate Economic and Financial Standing to guarantee the funding for the project’s implementation (Economic and Financial Standing Criteria). To this end, Candidates must provide proof that they fulfill the below mentioned requirements in the “Expression of Interest” Folder.

### 7.3.2 If the candidate is a natural person, they need to show that they have direct personal ownership and possession of available, liquefiable and unencumbered financial assets (“Net Personal Assets”) of at least 50 million euro (€ 50.000.000) market value. To establish the amount of the Net Personal Assets of a person, only the following will be taken into consideration:

i. Cash deposits in Banks and other Financial Institutions, legally operating in EU/EEA/OECD member states or/and

ii. Liquefiable and transferable securities

### 7.3.3 If the candidate is a Legal Entity (without prejudice to paragraph [7.3.4](#_7.3.4_If_the) below), their average Equity Capital over the last three Financial Years must be over 50 million euro (€ 50.000.000), resulting from and proven by the relevant Financial Statements.

### 7.3.4 If the candidate or a member thereof is a Holding Company or an Investment Fund, the sum total of their Invested and Available for Investment Funds, including undisbursed and committed funds (“Total Funds”) during the last audited financial year before publication of this Request must exceed the amount of fifty million euros (€ 50.000.000).

### 7.3.5 For the purposes of the above-mentioned paragraphs [7.3.3](#_7.3.3_If_the) and [7.3.4](#_7.3.4_If_the),

i. Only financial years from the 1st of January 2015 onwards will be acceptably invoked.

2. The relevant data will be extracted from the economic operator’s Financial statements for the last three Financial Years (as defined in art. 2)

3. As an exception, when applying par. [7.3.4](#_7.3.4_If_the) to a Holding Company or an Investment Fund, if the relevant data cannot be derived from the Financial Statements of the last audited Financial Year, those can be certified by an Affidavit by a Chartered Accountant.

### 7.3.6 In case of Groups, the above-mentioned requirements are fulfilled if the weighted total, calculated as the sum of the average of the Equity Capital of all members (or, if one of the members is a person, their Net Personal Assets, or if one of the members is a fund, their Total Funds), weighted for each member of the Group in proportion to the share of their participation in it (expressed as a decimal number) exceeds 50 million euros.

### 7.3.7 If a candidate (or member thereof) has verifiably not concluded three years of operation from their founding, the above-mentioned requirements will be evaluated for their years of operation, provided that said economic operator has concluded at least one audited financial year at the time of submission of the Expression of Interest.

### 7.3.8 If the candidate (or a legal entity forming a part thereof) has merged with any company from the 1st of January 2015 onwards, the above-mentioned Economic and Financial Standing Criteria can also be fulfilled based on the pro-forma financial statements, compiled on the assumption that the merger or the acquisition was effected at the beginning of said period.

# **7.4. Technical Ability Criteria**

### 7.4.1 Each candidate must prove that they possess recent experience working on an Infrastructure Project that falls under the definition of a “Reference Network” (“Reference Network Infrastructure”).

### 7.4.2 More specifically, each candidate must provide Documentation to show that in the last five years before the date of submission of the Expression of Interest, either individually, or as participant in a Group with a share of at least 15%:

i. They have owned and/or managed and/or operated and/or exploited a “Reference Network Infrastructure” for at least one year or

ii. They have constructed a “Reference Network Infrastructure”

### 7.4.3 If a candidate has acquired the relevant experience as member of a Group, as mentioned above, they have to prove that their participation with the above-mentioned minimum participation share in the Group, took place at the same time as the duration of the minimum required experience.

# **8. Reliance on the capacities of other entities**

# **8.1** With regard to economic and financial standing criteria as set out in par. [7.3](#_7.3_Economic_and), and to technical ability criteria as set out in par. [7.4,](#_7.4._Technical_Selection) an economic operator may rely on the capacities of other entities (Third Entities), regardless of the legal nature of the links which it has with them. Under the same conditions, a group of economic operators may rely on the capacities of participants in the group or of other entities

# **8.2** The above-mentioned Third Entities will be named in the Expression of Interest, following the template of Annex 2 of the Request.

## 8.3 Where an economic operator wants to rely on the capacities of other entities, it shall prove to the contracting authority that it will have at its disposal the resources necessary, throughout the entire duration of the contract, by producing a commitment by those entities to that effect, pursuant to par. [8.5](#_8.5_The_Third) and [8.6](#_8.6_Where_an).

## 8.4 Third Entities can be natural persons or legal entities or Groups, as long as they or their members

i. Are situated as provided for in par. [6.1.1](#_6.1.1_Natural_Persons) section i and

ii they fulfil the Personal Selection Criteria (as defined in par. [7.2](#_7.2_Personal_State) of this Request).

## 8.5 Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the economic operator and those entities will be jointly liable for the implementation of the contract. The Expression of Interest Folder will include a statement, signed by the legal representative of the Third Entity, with which it will commit to making all necessary resources available to the Candidate throughout the procurement process and after that, throughout the concession Agreement, by signing a contract to that effect, and that they will be liable against the Contracting Authority in case that the requirements described in this paragraph are not fulfilled (Annex 3, Template 1, Reliance on the Economic and Financial Capacity of Third Entities), which will constitute adequate proof to that effect.

## 8.6 Where an economic operator relies on the capacities of other entities with regard to criteria relating to technical ability, the Candidate and the Third Entities must prove that the Third Entity will have an active role in the implementation of the contract. The Expression of Interest Folder will include a statement, signed by the legal representative of the Third Entity, with which it will commit to making all necessary resources available to the Candidate throughout the concession Agreement, by signing a contract to that effect, and that they will be liable against the Contracting Authority in case that the requirements described in this paragraph are not fulfilled (Annex 3, Template 2, Reliance on the Technical Abilities of Third Entities), which will constitute adequate proof to that effect.

## 8.7 Furthermore, the Third Entity will submit the Documentation provided for in par. [10.4](#_10.4_Subfolder_B) (Subfolder B- Personal State Documentation) and, where applicable, the documentation relating to the provisions of par. 10.5 (Subfolder C –Economic and Financial Capacity Documentation) or of par. 10.6 (Subfolder D- Technical Ability Documentation).

# **9. Administrative Organization Criteria**

## 9.1 During Stage B.I. of the Procurement Procedure each Tenderer must appoint a team with an adequate number of executives, appropriately qualified (in terms of education, knowledge and experience) to participate in and respond effectively to the Competitive Dialogue (“Dialogue Team”).

## 9.2 More specifically, the Dialogue Team must include as a minimum the following persons/roles:

i. **Project Manager**, holder of a University Degree in one of the following faculties: Telecommunications/IT, Engineering, and documented professional experience of at least twelve (12) years, of which, at least eight (8) years in Project and Programs Management in the Telecommunications sector.

ii. **Project Management Executive**, holder of a University Degree in one of the following faculties: Telecommunications/IT, Science, Engineering, Business Administration and professional experience of at least eight (8) years, of which at least five (5) years in Project and Programs Management.

iii. **Executive for financial and accounting support,** holder of a University Degree in one of the following faculties: Economics, Finance, Accountancy, Business Administration and a professional license for practicing as an Economist or equivalent license of a different country, professional experience of at least eight (8) years and documented knowledge of the Greek tax laws and international accountancy standards, which is proven by work experience of at least 5 years in the above mentioned sectors.

iv **Legal Advisor**, holder of a University Degree in Law and possessing professional experience of at least eight years in public procurement, telecommunications Regulations and Corporate Law.

**v. Network Planning Executive**, holder of a University Degree in one of the following faculties: Telecommunications/Information Technology, Science, Engineering, and professional experience of at least five (5) years in telecommunications network planning and implementation and the relevant infrastructure required.

## 9.3 Without prejudice to the provisions of the Invitation to Participate in the Dialogue, in case the Dialogue Team put forward by the prequalified tenderer does not meet the criteria set out in par. 9.2, the Contracting Authority will provide the prequalified tenderer with an adequate time frame to comply, either adding, or substituting members of the Dialogue Team. In case that the new Dialogue Team does not again comply with the administrative Organization Criteria, the prequalified investor will be eliminated from the Dialogue.

# **10. Content of the Expression of Interest Folder**

## 10.1 General

### 10.1.1 The Expression of Interest Folder will consist of four (4) separate Subfolders, which will contain the documentation described below and will be marked accordingly:

i. Subfolder A will contain the Expression Of Interest Letter, pursuant to paragraph [10.2](#_10.2_Subfolder_A) below, the Non-Disclosure Statement (Annex 10), the GDPR Consent Form (Annex 9) and the legalization documents, pursuant to paragraph [10.3](#_10.3_Subfolder_A) below.

ii. Subfolder B will contain the information/documentation required by par. [10.4](#_10.4_Subfolder_B) to prove compliance with personal state Criteria

iii. Subfolder C will contain the information/documentation required by par. 10.5 to prove compliance with Economic/Financial Standing Criteria

iv. Subfolder D will contain the information/documentation required by par. 10.6 to prove compliance with Technical Ability Criteria.

### 10.1.2 The documentation submitted in accordance with this paragraph 10 of the Request must comply with the following:

i. Either originals or legally certified documents will be submitted, depending on the particular provisions of the Request.

ii. Templates included in the Annexes must be complied with.

iii. Where the Member State or country in question does not issue such documents or certificates, they may be replaced by a declaration on oath or, in Member States or countries where there is no provision for declarations on oath, by a solemn declaration (Annex 6) made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the Member State or country of origin or in the Member State or country where the economic operator is established. The competent Authorities shall, where relevant, provide an official declaration stating that the documents or certificates are not issued or that they do not cover all the cases specified. In the declaration, the Candidate (or the member of a Group of Candidates) shall affirm the facts which would be certified by the certificate or the document.

iv. All documentation specified in this article, will have to present monetary values in Euros, or to be accompanied by annexes, in which values not in euros will be stated in euros indicating the exchange rate applied. The rate applied will be the rate of the last working day of each financial year for instances [7.3.3](#_7.3.3_If_the) and [7.3.4](#_7.3.4_If_the), while for the instance of par. [7.3.2](#_7.3.2_If_the) it will be the rate of the date of issue of the documentation proving Economic and Financial Standing.

v. All documentation must be issued and (where applicable) certified within the last ninety (90) days before expiry of the deadline for submission of the “Expression of Interest” Folder, with the exception of documents or certificates certifying earlier facts (ie certificates of satisfactory execution, contracts etc), and where otherwise specified in this Request. Specifically, the Solemn Declarations have to be compiled after the date of publication of this Request. Declarations under oath will be accepted, as long as they have been compiled up to three (3) months before submission.

vi. In case of Groups, the documentation mentioned below, will be provided in full for each member.

vii. Submission of the relevant supporting documentation is obligatory and non-submission will result in the elimination of the Candidate from the Process. The same applies in case of false or inaccurate attestation by a Candidate, or a Group member.

### 10.1.3 All foreign Documents will be Apostilled in accordance with the Hague Convention of the 5th of October 1961, to verify their authenticity, and will be accompanied by an official translation in Greek. The above mentioned obligation applies to public documents pursuant. to art. 1 of the Convention, and specifically: (i)  documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice"); (ii) administrative documents; (iii)  notarial acts; (iv)  official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

### 10.1.4 Foreign Documents originating (i) in states-parties to the Hague Convention of the 5th of October 1961, but exempt from its scope or (ii) in states not signatory to this Convention, must be legalized by a consular authority. This can be either the Greek Consulate in their country of origin, or the Consulate of that county in Greece. In the latter case, the signature of the consular employee must be authenticated by The Authentication Department of the Translation Service of the Greek Foreign Ministry. Especially as regards documents from countries, for which Greece has expressed reservations as to their accession to the Convention, legalization will be possible only by the Greek Consulate in said Country.

## 10.2 Subfolder A (Part I) – Letter for Expression of Interest

### 10.2.1 The letter for Expression of Interest must include as a minimum the content of the Annex 2 Template, and must be signed as follows:

i. In case of an Individual Candidate, by the Candidate (natural Person), or its legal representative (Legal Entity), with general representative authority, or specifically authorized to this end by the competent body.

ii. In case of Group Candidates:

1. By all members of the Group, either natural persons or legal entities, the latter as represented by their legal representatives, with general representative authority, or specifically authorized to this end by the competent body.
2. Or by the appointed common representative of all members to the Group, who will have been specifically authorized to this end by all members of the Group, before a notary, or other public authority with the power to authorize signatures.

### 10.2.2 The above-mentioned Letter of Expression of Interest will be accompanied by a list of the attached documentation as allocated between Subfolders A to D, according to this article.

### 10.2.3 Each Candidate must appoint one person as proxy/representative, with which the Contracting Authority will be able to communicate for the purposes of this Tendering Procedure. The full name and contact details of the proxy must be stated in the Letter of Expression of Interest, including their postal address, landline number, fax number, and email. A Solemn Declaration of Acceptance by the person appointed as proxy will be attached to the Letter.

### 10.2.4 The Subfolder will include the Non-Disclosure Declaration, according to Annex 10 and the GDPR Consent Form, according to Annex 9.

## 10.3 Subfolder A (Part II) – Legalization Documents

### 10.3.1 Subfolder A will also include the Legalization Documents of the Candidate and the relevant Authorizations, authorizing signature of the Letter of Expression of Interest in the name of the Candidate, as specifically mentioned below:

### 10.3.2 For individual Legal Entities, the minutes of the Board of Directors (in case of an S.A. Company) or the minutes of the Managers (in the case of Limited Liability Companies, Limited and General Partnerships and Private Companies), which:

i. Approve the submission of the Letter of Expression of Interest, according to the provisions of this Request.

ii. Confirm that the Candidate accepts all responsibilities and obligations arising out of the submission of this Expression of Interest

iii. State that the Candidate has taken note of and accepts unconditionally all the provisions of the Request.

iv. State that the Candidate has the right to submit the Expression of Interest and that there are no company limitations, competition law limitations, or other legal limitations impending the submission of the Expression of Interest Folder.

v. State that participation in the Procurement Process will take place under sole responsibility and expense of the participant and that no compensation claims against the Contracting Authority or its advisors will arise out of said participation in the process.

vi. State that all information, statements and certificates, or other accompanying documentation submitted with the Expression of Interest Folder are true and accurate and that no information has been withheld concerning the Candidate and the Process.

vii. Binds the Candidate to form a Special Purpose Company in case it is awarded the contract

viii. Appoints a representative for the Process (Candidate Representative) and a substitute, with the authority to sign all Procurement Process Documents, including the Solemn Declarations required by this Request, as well as to perform all other activities described in this Request.

ix. Appoints a specific person, situated in the Region of Attica, as a proxy, with full contact details (name, address, phone number etc). This can be the same person as the above-mentioned Representative.

Foreign legal Entities will submit the relevant decision by their governing body as provided for in their statute, which will contain the above elements (i) to (ix).

### 10.3.3 For Group Candidates, minutes of the Board of Directors (in case of an SA Company) or minutes of the Managers (in the case of Limited Liability Companies, Limited and General Partnerships and Private Companies), which:

i. Approve of the Submission of the Expression of Interest as a member of the Candidate Group, pursuant to the provisions of this Request

ii. Determine the share of each member to the Candidate Group and approve of the shares of the rest of the members

iii. Accept all responsibility and obligations for every issue concerning the Expression of Interest, jointly and severally to the other members.

iv. State that the member has taken note of and accepts unconditionally the provisions of this Request, jointly and severally to the other members

v. State that the member of the Group has the right to submit the Expression of Interest and there do not exist company, competition law or other legal limitations impending the submission of the Expression of Interest Folder.

vi. State that participation in the Procurement Process will take place under sole responsibility and expense of the participant and no compensation claims against the Contracting Authority or its advisors will arise out of said participation in the process.

vii. State that all information, statements and certificates, or other accompanying documentation submitted with the Expression of Interest Folder are true and accurate and that no information has been withheld concerning the Candidate Group, the member and the Process.

viii. Bind the Member of the Group to form a Special Purpose Company together with the other members of the Group in case they are awarded the contract, and that the shares of each founding member of the company will be the same as the stated percentages of participation as a member of the Candidate Group.

ix. Appoint a common representative for the Process (Candidate Representative) and a substitute, with the authority to sign all Procurement Process Documents, including the Solemn Statements required by this Request, as well as to perform all other activities described in this Request.

x. Appoint a specific person, situated in the Region of Attica, as a proxy, with full contact details (name, address, phone number etc). This can be the same person as the above-mentioned Representative.

Foreign legal Entities will submit the relevant decision by their governing body as provided for in their statute, which will contain the above elements (i) to (x).

If the Candidate Group has formed a Consortium or any other type of legal Association, they must also submit the relevant documentation.

### 10.3.4 For Natural Persons:

i. Certificate of registration in one of the professional or trade registers kept in their Country of establishment, issued within thirty (30) working days before submission of the Expression of Interest Folder, certifying its enrolment in the registry of the competent authority of the country of establishment

ii. If the Natural Person participates in the Process individually, they must submit a Solemn declaration which will include the elements under par. [10.3.2](#_10.3.2_For_individual) i to ix.

iii. If the Natural Person participates in the Process as part of a Group, they must submit a Solemn declaration which will include the elements under par. [10.3.3](#_10.3.3_For_Group) i to x.

### 10.3.5 Legal Entities must also submit:

i. Certificate of registration in one of the professional or trade registers kept in their Country of establishment, issued within thirty (30) working days before submission of the Expression of Interest Folder, certifying the incorporation of the legal entity and its enrolment in the registry of the competent authority of the country of establishment and its existence at the time of issuance of the certificate.

ii. Codified updated Statute or/and certificate of incorporation, issued within thirty (30) working days before submission of the Expression of Interest Folder

iii. Updated Documentation to prove the appointment of managers and the authorization of one or more persons to represent the legal entity (ie, Executive Officers, Executive Directors, Managers, Co-directors etc), issued within the last thirty (30) working days before submission of the Expression of Interest Folder

## 10.4 Subfolder B – Personal State Documentation

### 10.4.1 To show that the requirements of par. [7.2.2](#_7.2.2_The_Awarding) have been met, an extract from the relevant register, such as judicial records or, failing that, of an equivalent document, issued within the last three months before submission of the Expression of Interest Folder will be submitted:

i. For natural Persons by a competent judicial or administrative authority in the country of origin or the country where the economic operator is established, showing that the Candidate has not been the subject of a conviction by final judgment for one of the reasons mentioned in par. [7.2.2](#_7.2.2_The_Awarding)

ii. For legal Entities, by a competent judicial or administrative authority in the country of origin or the country where the economic operator is established, showing that the persons mentioned in par. [7.2.3](#_7.2.3_The_obligation) have not been the subject of a conviction by final judgment for one of the reasons mentioned in par. [7.2.2](#_7.2.2_The_Contracting)

iii. For Holding Companies, or Investment Funds, by a competent judicial or administrative authority in the country of origin or the country where the economic operator is established, showing that the Investment Manager and/or the Manager/General Partner of said Holding Company or Investment Fund have not been the subject of a conviction by final judgment for one of the reasons mentioned in par. [7.2.2](#_7.2.2_The_Contracting)

iv. For Group Candidates, each member of the Group will submit the necessary documentation, according to this paragraph, depending on their legal status.

### 10.4.2 To show that the requirements of par. [7.2.4](#_7.2.4_An_economic) have been met, a certificate issued by the competent authority in the Member State or country concerned shall be submitted, valid at the time of submission, or issued within the last three months before submission

### 10.4.3 To show that the requirements of par. [7.2.5](#_7.2.5_An_economic) have been met, a certificate issued by the competent authority in the Member State or country concerned shall be submitted. Specifically for economic operators established in Greece, certificates showing that it is not bankrupt, it is not in an arrangement with creditors, its assets are not being administered by a liquidator or by the court, or it is not in the process of rehabilitation, are issued by the competent Court of First Instance of the Seat of the economic operator. The certificate to show that the economic operator is not the subject of liquidation proceedings by court order is issued by the competent Court of First Instance of the Seat of the economic operator. The certificate to show that the economic operator is not the subject of liquidation proceedings by decision of the partners is issued by the Hellenic Business Registry, pursuant to the relevant provisions. Natural Persons (Individual Undertakings) do not submit a certificate to show that they are not the subject of liquidation proceedings. Non suspension of business activities for economic operators established in Greece is shown by recourse to the electronic platform of the Independent Authority for Public Revenue.

### 10.4.4 To show that the requirements of par. [7.2.6](#_7.2.6_An_economic) have been met, a certificate issued by the Directorate for Planning and Coordination of the Hellenic Labour Inspectorate will be submitted.

### 10.4.5 To show that the requirements of par. [7.2.7](#_7.2.7_Furthermore,_an) have been met, the economic operator will submit a Solemn Declaration to the effect that they have not been excluded from public procurement procedures by Ministerial Decree as provided for in art. 74 of Law 4412/2016.

### 10.4.6 To show that the exclusion grounds provided for in par. [7.2.8](#_7.2.8_An_economic) do not apply, the Candidates, or their members, have to submit the following documentation for shares registration, as provided for in art. 8 of law 3310/2005:

i. Public Limited (S.A.) Companies established in Greece have to provide:

1. A certificate by the competent supervisory authority, according to law 4548/2018 (Hellenic Business Registry), to show that its shares, based on its current statute are registered. Companies, whose shares based on its statute used to be bearer shares in the past, need to have concluded the amendment of their Statute by the time of submission of the Expression of Interest Folder, in order for the total of their shares to have been converted into registered shares.
2. A List of shareholders’ details and the number of shares per shareholder, as listed in the share book of the company, at most 30 working days before the submission deadline.
3. If it is shown by the shareholders’ list mentioned above under 10.4.6 i. b) that the shareholders of the company are other public limited companies and so on, a special share book for the public limited shareholders. In this special share book, the company will list all details of the shareholders to the last natural person.

If the Candidate or a member thereof is a publicly listed company in the Athens Stock Exchange or in a Stock Exchange of a Member State of the EU or of the EEA, or of the OECD, they are relieved of the obligation to provide the special share book of par. 10.4.6 i. c).

ii. Foreign Companies obliged by law of their country of establishment to have registered shares for all of their activities or for part of their activities, have to submit:

1. A Certificate by the competent authority of the country in which they are registered, to show that their shares are registered based on their current Statute. Companies, whose shares based on its statute used to be bearer shares in the past, need to have concluded the amendment of their Statute by the time of submission of the Expression of Interest Folder, in order for the total of their shares to have been converted into registered shares.
2. A List of shareholders’ details and the number of shares per shareholder, as listed in the share book of the company, according to the law of the country in which they are established, at most 30 working days before the submission deadline.
3. Any other document to show registration of the shares to a natural person, completed at most 30 days before the date of submission.

If the Candidate, or a member thereof is a publicly listed company in the Athens Stock Exchange or in a Stock Exchange of a Member State of the EU or of the EEA, or of the OECD, they are relieved of the obligation to provide the special share book of par. 10.4.6 ii. c).

All documents have to be legalized by the legally competent authority in the country where the Candidate is registered, or where the member of the Group acting as a candidate is registered, and to be accompanied by an official translation in the Greek Language.

iii. Foreign Companies not obliged by law of their country of establishment to have registered shares for all of their activities or for part of their activities, have to submit:

1. A valid and updated list of their shareholders, holding at least one percent (1%) of the shares or of the company voting rights
2. If the company does not keep an updated list of shareholders, they have to provide a list of shareholders holding at least one percent (1%) of the shares or of the company voting rights, according to the last general assembly, provided that these shareholders are known to the company.

If the above is not possible, the company has to justify the reasons why the shareholders’ names are not known and the contracting Authority has no discretion as to the evaluation of this justification. The contracting authority has to prove that the company has the ability to provide the list of shareholders, otherwise non submission of this list will not entail adverse legal consequences for the company.

All documents have to be legalized by the legally competent authority of the country where the Candidate is registered, or where the member of the Group acting as a candidate is registered and to be accompanied by an official translation in the Greek Language.

iv. The above mentioned documentation of this paragraph must also be supplied by any other entities on whose capacities the economic operators rely, pursuant to par. [8](#_8._Reliance_on).

## 10.5 Subfolder C – Economic and Financial Standing Documentation

### 10.5.1 To show that the criteria of Economic and Financial Standing of par. [7.3](#_7.3_Economic_and) have been met, the following documentation will be submitted:

### 10.5.2 Every Candidate who is a Legal Entity and in the case of Group Candidates, their members who are legal entities, have to submit in Subfolder C, copies of their Financial Statements for the past three Financial Years (as stated in par. [7.3.5](#_7.3.5_For_the)).

### 10.5.3 Every Candidate who is a Holding Company or an Investment Fund, and in the case of Group Candidates, their members who are Holding Companies or Investment Funds, can submit an Affidavit by a Chartered Accountant, pursuant to par. [7.3.5](#_7.3.5_For_the) point iii, to prove that they fulfil the criteria set out in par. [7.3.5](#_7.3.5_For_the).

### 10.5.4 For Natural Persons, Subfolder C will include Bank or other Credit Institutions’ Certificates, legally operating in at least one member state of the EU, the EEA or the OECD, issued at the latest 3 months before submission, ascertaining the deposits of the Candidate and/or a certificate, issued at the latest 3 months before submission, from a Bank, Investment Company or a stock market member, Depositary, legally operating in a member state of the EU, the EEA or the OECD, ascertaining the market value of the Candidate’s liquefiable and transferable securities.

### 10.5.5 The Candidate must also submit a Table, following the template of Annex 5. The accuracy of the Table data will be ascertained by recourse to the Financial Statements of the past three Financial Years and/or the submitted Bank Statements etc as described above.

### 10.5.6 In case of reliance on the capacities of other entities, pursuant to paragraph [8](#_8._Reliance_on), the above-mentioned documentation for the third entity must also be included in Subfolder C, depending on whether the third entity is a legal entity or a natural person, as well as the Table pursuant to par. [10.5.5](#_10.5.5_The_Candidate).

## 10.6 Subfolder D –Technical Ability Documentation

### 10.6.1 To show that the Technical Ability criteria of par. [7.4](#_7.4._Technical_Selection) have been met, the following documentation will be submitted:

i. Table, according to Annex 7

ii. Solemn Declaration according to Annex 8, in which it will be stated that all information and data provided in the above-mentioned table, is true and accurate.

iii. Legally certified copy of the contract(s), accompanied by certificates of satisfactory execution and completion, or abstracts thereof, from which the required information will be derived, pursuant to Annex 8. If submission of the above mentioned documentation is not possible, a Solemn Declaration by the Candidate as means of proof of the above mentioned requirements which will also state the reasons, why submission of the documentation is not possible.

# **11. Tendering Committee**

# **11.1** The Contracting Authority will appoint a Tender Evaluation Committee to conduct the Procurement Process and to evaluate the Expression of Interest Folders.

# **11.2** The Tender Evaluation Committee will be responsible for opening and evaluating the Expression of Interest Folders, pursuant to this Request. The minutes compiled by the Tender Evaluation Committee will be forwarded to the Contracting Authority.

# **11.3** The Contracting Authority and the Tender Evaluation Committee can be supported in their work examining and evaluating the Expression of Interest Folders by appropriate advisors to the Contracting Authority.

# **12. Request for information and clarifications**

The Contracting Authority is confident that the information provided in this Request will be sufficient to submit the Expression of Interest Folder and the required documentation. Nevertheless, Candidates have the right to file detailed requests for clarifications through the “Communication” function of ESIDIS (National System for Online Public Contracts), 15 days before submission of the Expression of Interest Folder at the latest, pursuant to par. [13.1](#_13.1_Date_of) of this Request. Clarifications will be uploaded electronically in *“Attachments to Published Procurement Process”,* Category *“To Contractor, Notice and Publication in the Portal”,* within a reasonable time-frame and in any case no later than six days before the expiration of the deadline for submission.

# **13. Submission of the Expression of Interest Folder**

# **13.1 Date of Submission**

The Expression of Interest Folder has to be submitted, pursuant to the requirements of this Request, until 17.07.2019 at 13:00 (Greek Time, GMT+2). An Expression of Interest Folder submitted after the date and time specified above, will not be accepted. Any delays due to circumstantial events or force majeure will not be recognized as a sufficient reason to accept delayed delivery of the Expression of Interest Folder. The risk for delayed submission of the Folder is borne by the Candidate.

# **13.2 Submission via ESIDIS (National System for Online Public Contracts)**

### 13.2.1 Interested Parties need to submit their Expression of Interest Folders online, in the webpage [www.promitheus.gov.gr](http://www.promitheus.gov.gr) of ESIDIS, no later than the Date of Submission, in a systemic electronic Folder.

### 13.2.2 To participate in the Procurement Process, Interested Parties need to have an advanced digital signature, provided by an accredited authority and to register in the National System for Online Public Contracts (ESIDIS – Website [www.promitheus.gov.gr](http://www.promitheus.gov.gr)), following the registration process of art. 5 par. 1.2 to 1.4 of Joint Ministerial Decree n. 117384/26.10.2017 (FEK 3821B) “Regulation of Technical Issues concerning the award of public contracts … using the relevant tools and procedures of the National System for Online Public Contracts (ESIDIS)”.

### 13.2.3 Groups submit a common Expression of Interest Folder, digitally signed, either by all members of the group, of by a legally authorized representative, pursuant to par. [10.3.3](#_10.3.3_For_Group).

### 13.2.4 The Electronic Folder of Expression of Interest will contain four (4) separate Subfolders, with the documentation described in par. [10](#_10._Content_of).

### 13.2.5 The Interested Party will mark confidential information, using the relevant option in the subsystem, pursuant to art. 21 of law 4412/2016. In this case, the Interested Party will submit in the relevant subfolder a digitally signed pdf justification document, stating explicitly all the relevant legal provisions or administrative decrees imposing the confidentiality of said information, as an attachment to the electronic folder.

### 13.2.6 If data is submitted in the form of compressed electronic files (ie zipped files), the data that the Interested Party wishes to mark as confidential have to be submitted as separate electronic files in pdf format, or compressed in a separate folder.

### 13.2.7 The user – Interested Party will submit the above-mentioned Subfolders via the ESIDIS subsystem, as described below. Specifically, data and documentation contained in the Expression of Interest Folder and submitted by the economic operator electronically in pdf format, if issued by the same party, will bear an authorized advanced electronic signature, or advanced electronic signature pursuant to par. 3 art. 8 of Joint Ministerial Decree 117384/26.10.2017.

### 13.2.8 Following that, the Interested Parties will create the electronic files from the subsystem [“print outs” in pdf format of the data and documentation in the Subfolders of the Expression of Interest Folder]. These files will be signed by the interested parties with an authorized advanced electronic signature, or advanced electronic signature pursuant to par. 3 art. 8 of Joint Ministerial Decree 117384/26.10.2017 and will be attached to the relevant subfolders of the Expression of Interest Folder. During systemic submission of the Expression of Interest Folder, the subsystem will effect automated checks on the Folder, in relation to the created electronic files (subfolders) and if those checks are successful, the Expression of Interest Folder will be submitted to the subsystem. Otherwise, the Expression of Interest Folder will not be submitted and the subsystem will inform the interested parties with an error message in the user interface of the interested party, so that they can perform the relevant correction actions.

### 13.2.9 When the data and documentation of the Expression of Interest Folder are not mirrored in full in the special electronic forms of the subsystem, the Interested Parties will attach the relevant files, digitally signed, pursuant to the provisions of this Request.

### 13.2.10 The subsystem will issue an electronic receipt for submission of the Expression of Interest Folder, which will be sent to the Interested Party by email.

### 13.2.11 The Candidates can request withdrawal of their submitted Expression of Interest Folder before the Date of Submission in writing, in the form of a pdf document signed with an authorized advanced electronic signature, or advanced electronic signature pursuant to par. 3 art. 8 of Joint Ministerial Decree 117384/26.10.2017. After the relevant decision by the Contracting Authority accepting the request, a certified user of the Contracting Authority will proceed to reject the electronic Expression of Interest Folder in the subsystem, before the Date of Submission. Following that, the economic operator can resubmit the Expression of Interest Folder until the Date of Submission.

# **13.3 Submission in paper form**

### 13.3.1 Within three (3) working days from the date of electronic submission of the above – mentioned data and documentation, the documents which need to be submitted in original format pursuant to the provision of ar. 11 par. 2 of law 2690/1999 “Code of Administrative Procedure” need to be supplied by the Candidate to the Contracting Authority in hard copy and in a sealed envelope. These are indicatively, original documents issued by private entities and not legalized by an attorney, as well as apostilled documents. Documentation bearing digital signatures, Issues of the Official Government Gazette, technical brochures and the documents that are accepted in copies of the originals pursuant to law 4250/2014, need not be supplied.

### 13.3.2 The Contracting Authority can, at any time during the process, request the submission in hard copy of all or some of the electronically supplied documents, within a reasonable timeframe, if deemed necessary for the smooth conduct of the process.

### 13.3.3 The Candidates must submit the above-mentioned data and documentation to the Contracting Authority’s protocol office, in the following address: 23-25 Lekka str, 10562 Athens, Greece.

### 13.3.4 The above-mentioned data and documentation must be supplied in paper form. In case of differences between the electronic and the hard copy, the hard copy will override the electronic copy. In case of differentiation between the original in paper format and the copy in electronic format, the original will override the copy.

### 13.3.5 To assist in the examination of the Folder, all documents need to be submitted in bounded form (ring binders are allowed).

### 13.3.6 If, during examination of the above-mentioned documentation, it is established that the documentation appropriately submitted does not prove the terms and conditions for participation and the Selection Criteria, pursuant to par. [6](#_6._Participation) and [7,](#_7._Selection_Criteria) the Expression of Interest of the Candidate will be rejected.

# **13.4 Electronic Opening of the Expression of Interest Folders**

### 13.4.1 After the submission date, as defined in par. [13.1](#_13.1_Date_of), and before the electronic opening takes place, the contracting authority will inform Candidates of the List of Candidates, as created by the subsystem.

### 13.4.2 Following that, the members of the Tender Evaluation Committee will proceed to open the Expression of Interest Folders electronically, on 18.07.2019 and at 13:00 (Greek time).

# **13.5 Clarifications**

### 13.5.1 The Tender Evaluation Committee retains the right, at its discretion, to ask the Candidates to complete or to provide clarifications on the submitted documents. If a Candidate, after a relevant request by the Tendering Committee, does not complete or clarify the documents in its Expression of Interest Folder within the set deadline, which cannot be less than seven (7) days from notification of said request, then the Candidate will be eliminated from the procedure.

### 13.5.2 Data and elements in the Expression of Interest Folders creating ambiguities or contradictions, except in the case of obvious or trivial errors, will lead to its rejection.

### 13.5.3 Isolated, fragmented and trivial deviations from the provisions of this Request concerning the content of Subfolders A, B, C and D will not result in elimination and the Tender Evaluation Committee will retain the right to invite Candidates to restore said deviations.

# **13.6 Evaluation of the Expressions of Interest**

### 13.6.1 The Tender Evaluation Committee will evaluate the contents of the Expression of Interest Folders in a closed Session and will draft its minutes, which will be forwarded to the contracting authority to make the relevant decisions.

### 13.6.2 The contracting authority will issue its decision as to which candidates will prequalify to participate in Phase B of the Process and which will be eliminated. The contracting authority will notify candidates accordingly.

### 13.6.3 Announcement of the Prequalified Tenderers will conclude Phase A of the Procurement Procedure.

### 13.6.4 Candidates who submitted late or inadmissible Expression of Interest Folders will be invited by the contracting authority to receive their unopened Folders. If nobody takes an interest in retrieving said folders within two (2) weeks of invitation, the folders will be marked as unwanted and will be destroyed.

# **14.Cancellation of the Procedure**

# **14.1** The contracting authority retains the right to repeat, postpone, or modify the procedure, including the right to modify the timetable for any of the procedural Phases, or of the Deadline for the Submission of the Expression of Interest Folders, or of any other deadline of the Procedure, as an absolute prerogative, without bearing any responsibility before interested parties, candidates, prequalified tenderers, tenderers, and/or third parties.

# **14.2** The contracting authority, after consulting with the competent body, will cancel the procurement procedure:

i. if the process has been unsuccessful either because no tenders have been submitted, or because all tenders or expressions of interest have been rejected, or because all tenderers or participants have been eliminated

ii. if none of the tenderers proceed to sign the Partnership Agreement

# **14.3** Cancellation of the Procurement Procedure can also take place with a specially justified decision by the Contracting authority, after consulting with the competent body, in the following cases:

i. because of irregular conduct of the Procurement process

ii. if the economic and technical parameters of the procurement procedure have been modified substantially and the contracting authority is no longer interested in the implementation of the contract

iii. if implementation of the contract is no longer possible because of force majeure

iv. if the winning tender is deemed to not be in the economic interest of the contracting authority

v. if the upper time limit of extension for the validity of the tenders expires

vi. for imperative reasons of public interest

# **14.4** If errors or omissions in any stage of the process are ascertained, the contracting authority can decide to partially cancel the process, or to remodify its result accordingly, or to repeat the process from the point that the error or omission took place, after consulting with the competent body.

# **14.5** Interested parties, Candidates, Prequalified Tenderers or Tenderers are not entitled to any compensation because of the cancelation or repetition of the procurement procedure, for any reason or cause.

# **14.6** Interested parties, Candidates, Prequalified Tenderers and Tenderers will bear all expenses of participation in the process without the contracting authority bearing any relevant responsibility.

# **14.7** Participation of only one Candidate in the process will not impede the award of the contract.

# **15. Publication**

# **15.1** A notice of this Request has been sent for publication:

i. On the 15.05.2019, to the Supplement to the Official Journal of the European Union, where it was published on the 17.05.2019 and given the following Notice Number: 2019/S 095-230929 and

ii. On the 20.05.2019, to the Central Electronic Public Procurement Registry (KIMDIS), where is was published on the 21.05.2019 and given the following Internet Upload Registry Number (ADAM): 19PROC004978025

The full text of this Request has been uploaded in the webpage: [www.mindigital.gr](http://www.mindigital.gr)

# **16. Language of the Procurement Procedure**

# **16.1** Greek is the official language of the procurement procedure and of the Partnership Agreement and all documents by the contracting authority will be compiled in the Greek Language.

# **16.2** All documents included in the Expression of Interest Folder will be in Greek or accompanied by a legal translation in Greek. For the purposes of this Request, a legal translation is a translation by the Translation Service of the Foreign Ministry, or by the competent Consulate, or by an attorney, pursuant to the provisions of art. 454 of the Greek Code for Civil Procedure, law 3712/2008 (FEK A225) and art. 53 of the Greek Lawyers’ Code of Conduct. The Greek text will always prevail.

# **16.3** Informative and technical brochures and other company or other documents of specialized technical content can be submitted in English, without a Greek translation.

# **16.4** Any pre-litigation administrative appeals, pursuant to par. [17](#_17._Review_Procedures), will be lodged in the Greek language.

# **16.5** Written and oral communication between the contracting authority, the tendering committees and the interested parties, candidates, prequalified tenderers, tenderers, contractors and the Private Partner, will take place in the Greek language. All above-mentioned persons need to facilitate communication of their foreign employees with the contracting authority and the tendering committees by appointing translators at their own responsibility and expense.

# **17. Review Procedures**

# **17.1** Pursuant to the provisions of art. 345 par. 2 and of Book IV of law 4412/2016, any concerned party who has or had an interest in the award of the specific contract and has or had incurred damages or is likely to incur damages by an act or omission of the contracting authority in breach of EU or national law, has the right to lodge a pre-litigation administrative appeal before the “Authority for examination of pre-litigation administrative appeals” (AEPP), against the relevant act or omission of the Contracting authority, specifically stating the legal and factual reasons justifying the appeal.

# **17.2** The deadline to lodge an appeal against an act by the contracting authority is:

i. ten (10) days from notification of the act to the interested economic operator if the act was communicated electronically or by facsimile, or

ii. fifteen (15) days from notification of the act if other means of communication were used, otherwise

iii. ten (10) days from full, real or assumed knowledge of the act which is harmful to the interests of the economic operator concerned. Specifically in the case of an appeal against the notice, full knowledge thereof is assumed after fifteen (15) days have elapsed from its publication in KIMDIS.

# **17.3** In case of omissions, the deadline for the appeal is fifteen (15) days starting on the day after the omission.

# **17.4** The pre-litigation administrative appeal, as provided for in Presidential Decree 39/2017, is submitted electronically following the relevant template and through the “Communication” function of the subsystem, by choosing the “pre-litigation administrative appeal” indication and attaching the relevant document pursuant to par. 3 art. 8 of Joint Ministerial Decree 117384/26.10.2017.

# **17.5** Plaintiffs must pay a fee to the Greek Government for their appeal to be admissible, as provided for in ar. 363 of law 4412/2016. The fee will be returned to the plaintiff in case the appeal is partially or totally upheld or in case the contracting authority recalls the contested act or proceeds to the action due, before the AEPP issues a decision on the appeal.

# **17.6** The time limit to lodge an appeal and the appeal itself impend conclusion of the contract on penalty of annulment. Such annulment will be ascertained by a decision of the AEPP following an appeal, pursuant to ar. 368 of law 4412/2016.

# **17.7** Otherwise, the appeal does not impend the continuation of the procurement process, unless injunction measures are sought, pursuant to art. 366 of law 4412/2016.

# **17.8** The contracting authority, through the “Communication” function: (a) communicates the pre-judicial administrative appeal to all parties concerned, pursuant to arr. 365 of law 4412/2016 and art. 9 of PD 39/2017 and (b) notifies, provides access to all files of the procurement process and forwards to the AEPP the elements provided for in the above mentioned legislature.

# **17.9** The AEPP makes a justified decision on the validity of the factual and legal claims of the appeal and of the contracting authority’s claims and, in the case of intervention, of the claims of the intervening party and either upholds (partially or in full) or dismisses the appeal by a judgement, which will be issued within a binding time limit of twenty (20) days from the date of review of the appeal.

# **17.10** Lodging the pre-litigation administrative appeal is a precondition to exercise the judicial remedies (injunction and annulment remedies) provided for in art. 372 of law 4412/2016 against the enforceable acts and omissions of the contracting authority.

# **17.11** All parties with a legitimate interest can seek the suspension of the decision by the AEPP and its annulment before the competent courts. The same remedies are available to the contacting authority, if the AEPP upholds the appeal. The Application for the suspension of enforcement and annulment remedies target all acts and omissions of the contracting authority that are related to the contested decision, provided that they have been issued or concluded until the first session of the Court of Annulment.

# **17.12** An appeal for annulment is not a precondition for the Application for the suspension of enforcement. The application for the suspension of enforcement is lodged before the competent court within a time limit of ten (10) days from the date of notification of from full knowledge of the decision on the pre--judicial administrative appeal and is debated no later than thirty (30) days from the date of submission. To lodge the application for the suspension of enforcement, the fee provided for in art. 372 par. 4 of law 4412/2016 must be paid.

# **17.13** The application for the suspension of enforcement impends conclusion of the contract, unless a different injunction order is issued by the competent judge.

# **18. Legal Framework**

# **18.1** Award and performance of the contract are governed by the relevant laws and administrative decrees and especially the provisions of:

i. Law 3389/2015 (FEK A 232) “Public – Private Partnerships”

ii. Law 4413/2016 (FEK A 148) “Award and Performance of Concession Contracts – Alignment with Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (ΕΕ L 94/1/28.3.2014) and other provisions”, as applied by analogy and to the extent that they do not clash with the special provisions of the contractual framework of the Partnership Agreement,

iii. Law 4412/2016 (A 147) “On the Public Procurement of Works, Goods and Services (Alignment with Directives 2014/24 and 2014/25/EU)”, applied complementarily

iv. Law 4314/2014 (A 265) “On the Management, Supervision and Implementation of developmental interventions for the Programme Period 2014-2020…. and other provisions” and law 3614/2007 (A 267) “On the Management, Supervision and Implementation of developmental interventions for the Programme Period 2007-2013”

v. Law 4443/2016 (FEK A 232), art. 72, par. 4 by which the Managing Authority of Operational Program Digital Convergence is renamed into “Executive Unit for ICT” and belongs from 1.4.2017 to the Ministry for Digital Policy, Telecommunications and Media

vi. Law 4070/2012 (FEK A 82) “Regulation of Electronic Communications, Transportation, Public Works and Other Provisions”, and especially art. 4 thereof

vii. Law 4270/2014 (FEK A 143) “Principles of Financial Management and Supervision (transposition of Directive 2011/85/EU) – public sector accounting and other provisions, as modified by l. 4446/2016 (FEK A 240) “Insolvency Law, Administrative Justice, Duties- Fees, Voluntary revelation of taxable income of previous years, Electronic Transactions, Modifications of l. 4270/2014 and other provisions”

viii. Law 4013/2011 (FEK A’ 204) “Creation of the Hellenic Single Public Procurement Authority and the Central Electronic Registry for Public Contacts”

ix. Law 3861/2010 (FEK A’ 112) “Transparency Reinforcement by obligatory uploading of laws and acts of governmental, administrative and regional bodies on the internet “Diaygeia Program” and other provisions”

x. Law 2690/1999 (FEK A 45) “Validation of the Code of Administative Procedure and other provisions”

xi. Law 4129/2013 (FEK A52) “Validation of the Law Code for the Court of Auditors”, esp. art. 35 thereof

xii. Letter under protocol number REGIO.DGA.G5/PT/28.09.2015 of the European Commission, which approves of the “Next Generation Access (NGA) Plan, Greece”

xiii. Regulation 679/2019 of the European Parliament and the Council “General Data Protection Regulation”

xiv. PD 28/2015 (FEK A 34) “Codification of the provisions for access to public documents and data”

xv. PD 80/2016 (FEK A 145) “Commitments by Authorizing Officers”

xvi. Law 3310/2015 “Measures to ensure transparency and to avoid circumventions during the award of public contracts” (FEK A 30), as modified by law 3414/20015 (FEK A 279), on the cross-checking of the contractors’ details with the data from the National Council for Radio and Television, PD 82/1996 (FEK A 66) “Registration of shares of Greek Public Limited Companies participating in award procedures of the Greek State or of the Legal Entities of the wider Greek Government”, Joint ministerial Decree 20977/2007 (FEK B 1673) on the “Documentation for maintaining the registries of law 3310/2005, as modified by law 3414/2005”.

xvii. Ministerial Decree no. 57654/23.5.2017 (B 1781) “Regulation of particular issues for the function and management of the Central Electronic Registry of Public Contacts (KIMDIS) of the Ministry for the Economy and Development”

xviii. Ministerial Decree no. 56902/215/2.6.2017 (B 1924) “Technical Details and function procedures for the National System for online public Contracts (ESIDIS)”

xix. PD 82/2017 (A 117) “Statute of the Ministry of Digital Policy, Telecommunications and Media”

xx. Joint Ministerial Decree No 40414EYTHY307/17.4.2018 (B 1318) replacing Joint Ministerial Decree No 67107/ΕΥΤΗΥ 650/24.06.2016 (FEK B 1988) “Restructuring, Renaming of the Managing Authority for the OP Digital Convergence 2007-2013 to “Executive Branch of the Ministry of Infrastructure, Transport and Networks, ICT Sector” and replacement of Decrees No 151.606/ΨΣ2482-D/6.5.2014 (FEK B 1290) and No 330/DIOE7/5.1.2001 (FEK B 109), as currently valid”.

xxi. Ministerial Decree 6058/27.4.2018 (B 2024) titled “Appointment of Executive Branch for ICT as competent implementing body – beneficiary for the projects of the National Broadband Plan of the Ministry for Digital Policy, Telecommunications and Media”

xxii. PD 123/2016 (FEK 208/A/4.11.2016) “Reconstitution and renaming of the Ministry of Administrative Reform and Electronic Government, reconstitution of the Ministry of Tourism, institution of the Ministry of Immigration Policy and the Ministry of Digital Policy, Telecommunications and Media, renaming of the Ministries of Interior and Administrative Reconstruction, Finance, Development and Tourism and Infrastructure, Transport and Networks”.

xxiii. PD 125/2016 (FEK 210/A/5-11-2016) “Appointment of Ministers, Deputy Ministers and Vice Ministers”

xxiv. Ministerial Decree No 2900/2018 (B 4493) on the transfer of signature rights”, as modified and completed by Ministerial Decree 3370/2018 (B 5182)

xxv. Ministerial Decree No 137675/EYTHY1016/2018 (B 5928) replacing Ministerial Decree No 110427/EYTHY/1020/2016 (B 3521) on the Modification and replacement of ministerial decree No 81896/EYTHY12/31.7.2015 (B 1822) “National Eligibility Rules for ESPA programmes 2014/202….”

xxvi. Decision of the Interministerial Committee for Public – Private Partnerships of art. 3 Law 3389/2005, which is included in the minutes of session No 40/17.1.2019, with Online Publication Number Ω6ΩΥ465ΧΙ8-ΘΘ1

# **18.2** Provisions explicitly mentioned or derived from the stipulations of the Contract Documents of this Request, as well as all of the provisions of social security, labour, environmental and tax Law and generally every provision and circular applying to the award and implementation of the Project and the Contract, apply, even if not explicitly mentioned.

# **19. General Provisions**

# **19.1** Submission of an “Expression of Interest” will mean total and unreserved acceptance of all terms and conditions of this Request.

# **19.2** Information included in this Request for the Expression of Interest and its Annexes has been compiled in good faith in order to facilitate Interested Parties to form their own opinions on the Procedure and the Project, but it should not be considered complete or independently verified by the Contracting Authority and its advisors. No guarantees, explicit or implicit, are given concerning the accuracy, sufficiency or completeness of this document. In any case, Interested Parties will have to perform their own research and analysis of the factual and legal aspects of the Contract, with the assistance of their own financial, technical and legal advisors.

# **19.3** No person shall acquire any rights or claims for compensation or other claims for damages (nor for the expenses incurred to submit the Expression of Interest Folder) against the Contracting Authority because of receipt of this Request of participation in the Procedure, or for any other reason or cause. Elimination from the tendering Procedure or non-award of the Contract is not a basis for any compensation claims against the Contracting Authority or the above-mentioned persons. All interested parties are responsible for the expenses and the costs incurred to respond to the Request and to prepare and submit the Expression of Interest Folder. The Contracting Authority, its employees, executives, advisors and its agents are not responsible for any costs or expenses or any other damages incurred by the Interested Party or any other recipient of this Request.

# **19.4** Alternative tenders are not permitted. If submitted they will not be taken into consideration. Also, no counter-tenders or amendments of tenders, or proposals that can constitute counter-tenders are permitted.

# **19.5** This request shall under no circumstances be constituted to mean a proposal to conclude a Contract.

# **Annex 1**

**AIM AND OBJECTIVE OF THE PARTNERSHIP CONTRACT**

**PROJECT** **DESCRIPTION**

UFBB Project is the key public intervention in the implementation of the "National Broadband Next Generation Access Plan 2014-2020" for the development of next generation broadband infrastructure to increase the availability of telecommunication services in rural, semi-urban and urban areas currently lacking ultra-fast internet access . The objective of the action is to develop a Network capable to provide ultra fast broadband connections to end users at speeds of at least 100Mbps or at least 100Mbps - upgradable to 1 Gbps. The intervention will take place in specific areas in a complementary manner to the corresponding infrastructures developed by private providers. The project will be implemented in a way so as not to interfere or distort the functioning of the market and to not crowd out the planned private investments, while ensuring the sustainability of the investments.

Two classes of broadband services are provided to achieve this goal:

• Class A: Connection with a downlink speed of at least 100 Mbps - Upgradable to 1 Gbps

• Class B: Connection with a downlink speed of at least 100 Mbps

These speeds refer to reliable speeds per subscriber, in line with the definition of “reliable” as per the Broadband Guidelines.

The project’s aim is to cover almost the entire available population (> 98% of connections) in the target areas with a service of at least 100 Mbps (by a combination of Class A and Class B services) and cover as much of the population as possible (in average, more than 63% of connections) with a service of at least 100 Mbps, upgradable to 1 Gbps (Class A). In addition, at least 75% of the remote settlements (which are outside the 550m coverage zone of ​​the nearest outdoor cabinet) must be covered, with mandatory coverage for all those remote settlements with a population of at least 100 inhabitants, based on 2011 census.

|  |  |  |  |
| --- | --- | --- | --- |
| **LOT** | **Estimated Number of Connections** | **Estimated Number of Remote Settlements** | **Minimum percentage of connections to be covered by Class A** |
| 1 | 117,825 | 678 | 67% |
| 2 | 125,880 | 523 | 63% |
| 3 | 111,574 | 618 | 61% |
| 4 | 103,495 | 221 | 74% |
| 5 | 123,775 | 515 | 64% |
| 6 | 114,330 | 453 | 61% |
| 7 | 115,276 | 293 | 51% |
| Total | 812,155 | 3,301 | 63% |

At the end of the concession period, the whole intervention area must be covered by Class A services at Layers 2 and 3.

The main socio-economic drivers and locations within the intervention areas (regardless whether the areas are served by Class A or Class B services) must be served by symmetrical ultra-fast speeds of 1 Gbps. The specific locations of those socio-economic drivers and locations will be specified in the Invitation to Tender.

PROJECT CONTRIBUTION

The project is expected to contribute to the:

• Development of next-generation broadband infrastructures, based on broadband targets set by the European Commission for 2025 (Gigabit Society)

• Achievement of "step change" in terms of broadband availability, in areas and markets where there is evidence of no or reduced interest in developing relevant infrastructures and services

• Set-up of a favorable environment for next-generation broadband services penetration

SERVICES AND BENEFITS

The project’s objective is the development of an extensive broadband access network ensuring connections with reliable speeds per subscriber of at least 100 Mbps.

RECIPIENTS OF THE PROJECT RESULTS

The recipients of the project’s benefits will be:

• Citizens and businesses in rural, semi-urban and urban areas throughout the country, currently lacking access to fast / ultra-fast internet speeds.

• Socio-economic drivers and locations, within the intervention areas, which will receive ultra-fast speeds of 1 Gbps

design PRINCIPLeS

The telecommunication infrastructure to be developed should meet the following basic design principles:

• Development of an open-access network that will maximize competition

• Infrastructure dimensioning so that all subscribers in an area can be served according to the intended quality of service

• Maximum exploitation of the existing network infrastructures, provided that this option is economically and technically preferable than the development of new infrastructures.

• Technological neutrality, while ensuring that the required levels of service quality are provided

ARΕAS OF COVERAGE

The project aims to cover the vast majority of the country's areas not covered by the plans of private-sector telecommunications providers, in a complementary manner to the corresponding infrastructure developed by private providers. UFBB scope of intervention also excludes areas within the intervention areas of the other two projects: Superfast Broadband (SFBB) and Rural Broadband (RB). The indicative list of OCCAs and remote settlements is included in the attached file.

INDICATIVE BASIC TECHNICAL AND OPERATING REQUIREMENTS

The general architecture of the network including its nodes and segments is described below:

 

|  |  |  |
| --- | --- | --- |
|   | Meaning | Brief Description |
| **POP** | Point of Presence  | The point of concentration of all subscriber connections of the service area and main point of service delivery to interconnected network providers |
| **RAP** | Regional Aggregation Pοint  | An intermediate point of aggregation between the FCP and the corresponding POP |
| **FCP** | First Concentration Point  | The first point of concentration of end-user connections through which they connect to RAP and POP. |
| **DPSL** | Distribution Point at the Service Location  | The furthest point of the network (closer to the subscriber) from where service distribution is performed. Installation of a **DPSL** is only applicable in the areas where Class A services will be provided. |

The relevant indicative technical and operational requirements for the network infrastructures are summarized in the following table:

|  |  |
| --- | --- |
| Point or Network Part  | Requirement |
| **POP** | Each POP must have concentrate at least 10,000 potential Active Lines. POPs should provide services and the relevant facilities for co-location of active and passive equipment.  |
| **RAP** | RAPs must be located in a distance up to 20 kilometers from the most remote DPSL served (for Class A areas).RAPs must be located in a distance up to 19 kilometers from the most remote FCP served.At least one (1) RAP will be installed on each island.Provided that the maximum distance requirements are met, a RAP can be installed within the corresponding POP node.RAPs must provide services and associated facilities for co-location of active and passive equipment. |
| **FCP** | FCPs serving remote settlements must be located in a distance up to 300m from the center of the served settlement, as defined in the attached file.  |
| **DPSL** | Each DPSL must serve a maximum of 4 buildings, provided that the maximum distance between the buildings and the serving DPSL is not more than 30m in a straight line. As an alternative to DPSL, a duct can be installed from the FCP to the property limit. (see also FCP-DPSL segment).The DPSL or the duct installation is only applicable for areas covered by Class A Services. |
| **POP-RAP segment** | In this segment the following must be ensured:1. Adequate transmission capacity, uncontended in practice, for the connected Class A and B service subscribers. Indicatively, the minimum required capacity at the launch of commercial operation of the network segment serving each particular RAP is defined as:(RA X 1000 Mbps + RB X 100 Mbps) / 20 (expressed in Mbps) [[1]](#footnote-1)2. Four (4) optical fiber pairs, which will connect each RAP with the corresponding POP, end-to-end. These pairs will be over and above the potential optical fibers that the Contractor will use to ensure the capacity referred to in point 1.3. Three (3) empty ducts, available at any point of the underground and aerial network routes. These ducts will be over and above the ducts that the Contractor will use to install the optical fiber cables referred to in point 2. This requirement may be waived or reduced[[2]](#footnote-2) in sections of routes where existing infrastructure will be used.Especially for small islands (eg. with fewer than 200 Active Lines assumed to correspond to 500 inhabitants), regardless of the covering service Class, it is acceptable to implement the POP-RAP segment with other technologies and therefore point 2 above does not apply. |
| **RAP-FCP segment** | In this segment the following must be ensured:1. Number of optical fiber pairs at least equal to (KA +KB)/32[[3]](#footnote-3) 2. Three (3) empty ducts, available at any point of the underground and aerial network routes. These ducts will be over and above the ducts that the Contractor will use to install the fiber optic cables referred to in point 1. This requirement may be waived or reduced3 in sections of routes where existing infrastructure will used.Especially for FCPs serving only Class B subscribers, with fewer than 40 Active Lines (assumed to correspond to 100 inhabitants), it is acceptable to implement the RAP-FCP segment by using other technologies with transmission capacity uncontended in practice, to serve the subscribers connected at any time. Indicatively, the minimum required capacity at the launch of the commercial operation of the network segment serving each specific FCP is set to (ΚB X 100 Mbps) / 20 (expressed in Mbps). In this case, points 1 and 2 do not apply.  |
| **FCP-DPSL segment** | In this segment, for Class A and Class B areas, it is acceptable to use any technology, provided that the network is dimensioned for all potential subscribers located in the covered area in a way that will ensure at least the minimum service level requirements. If optical fiber elements are used in this segment, the optical fiber cable should have at least one (1) pair for each potential subscriber of the DPSL or alternatively, one (1) empty duct to be used for the future installation of an optical fiber cable with sufficient capacity to serve all potential subscribers in the building. |

BASIC SERVICES

During the operation of the network, the Contractor shall provide open-access wholesale services at all Network Levels, in terms of equal and non-discriminatory treatment and respecting the principles of technological neutrality, as follows:

* Long-term and short-term lease of infrastructure (indicatively ducts, optical fiber pairs, poles and antenna masts space) in all network nodes where these infrastructures are available. In general, access to any passive infrastructure, as specified in the Annex II of the BBGL will be ensured (including also ducts, poles, dark fibre, cabinets, etc.). This obviously can only concern access products relevant for the measure. Demarcation points for these services will include both nodes and intermediate points (eg manholes, poles) where technically feasible.
* Co-location of passive equipment at all basic network nodes.
* Co-location of active equipment at all basic electrified network nodes
* Capacity services with speeds corresponding to the Service Class of each area.
* Virtual Loop Unbundling- VLU service with speeds corresponding to the Service Class of each area.
* Bitstream services with speeds corresponding to the Service Class of each area.

It should be noted that regardless of the network topology to be selected (eg point-to-point or point-to-multipoint), full and effective unbundling should be provided (within the meaning of footnote 118 of the EU Guidelines for the Implementation of State Aid rules for the rapid deployment of broadband networks 2013/C 25/01).

In the case of Point-to-Multipoint topology in particular, there will be a clear obligation for full and effective unbundling through Wavelength Division Multiplexing (WDM) when this technology becomes standardized and commercially available. Until then, it will be required to provide a virtually unbundled product (VULA). The WDM demarcation point is the RAP, while the VULA demarcation point is the POP.

In addition to the basic services that the Contractor will be required to provide, there will be an option of offering additional wholesale services, provided that they receive the approval of the EETT.

Wholesale access prices will be determined by EETT, in line with paragraph 78.h of the EU Guidelines for the Implementation of State Aid Rules on the Rapid Deployment of Broadband Networks 2013 /C 25/01.

In addition to the obligations arising from the Concession Contract, if EETT defines the SPV as having Significant Market Power (in compliance with the applicable regulatory framework), the SPV will be subject to compliance with the Electronic Communications Regulatory Framework.

The consistent fulfillment of the Contractor's obligations will be monitored by the Awarding Authority, both during the Construction and the Operation phases of the network. In the event of non-compliance with the deadlines for coverage and availability of service milestones (in the Construction Phase), as well as with the service level agreement and the required upgrading to Class A (during the Operation Phase), penalties will be applied, which will be specified in the Invitation to Tender.

# **Annex 2**

template of the letter OF expression of interest

(in accordance with paragraphs 10.2.1 και 8.2 of the Request for the Expression of Interest)

To: Executive Agency for ICT, 23-25 Lekka str., 105 62 , Athens

Dear Sirs,

1. The undersigned hereby.......................... ........................... ……………………….. (father’s name and surname) …………………… …….........…………. (mother’s name and surname) ………………….. ………………………….., with ID number ………………………. Issued by ……………… (issuing authority) ……………., on.................. (date of issue), ................... citizen, born in. …….............…. (place of birth – Country and Town) ………………… on ………...........……. (date of birth), resident of …………………………. (Country-Town-Street-Post Code), {*in the event of the undersigned acting as a company’s legal representative*}, acting as a legal representative of the legal entity ……………………………………………… *[in case that the company’s legal representatives are more than one, all the data of the representatives signing hereby must be filled in]* under the name ……………………………………. (full company name), (or acting as an authorized representative of the legal entity under the name …………………………………….), that has its registered office at ……………………………………. (address, country) do hereby declare that the aforementioned legal entity is interested in participating in the Tendering Procedure for the award of a partnership agreement contract for the “ULTRA-FAST BROADBAND» project and hereby submits an expression of interest, in accordance to the terms laid out in the Request for the Expression of Interest, issued by the contracting authority on 05.2019.

*In case of a Group (Association/Consortium), the following data must be declared as well:*

The undersigned hereby.......................... ........................... ……………………….. (father’s name and surname) …………………… …….........…………. (mother’s name and surname) ………………….. ………………………….., with ID number ………………………. Issued by ……………… (issuing authority) ……………., on.................. (date of issue), ................... citizen, born in. …….............…. (place of birth – Country and Town) ………………… on ………...........……. (date of birth), resident of …………………………. (Country-Town-Street-Post Code), acting as legal representatives of the legal entities under the name ……………………………………. (full companies’ names), (or acting as authorized representatives of the legal entities under the names …………………………………….), …………………………………….), registered at ……………………………………. (address, country), do hereby declare that the aforementioned legal entities are interested in participating Tendering Procedure for the award of a partnership agreement contract for the “ULTRA-FAST BROADBAND» project and hereby submits an expression of interest, in accordance to the terms laid out in the Request for the Expression of Interest, issued by the contracting authority on 05.2019.

*OR*

The undersigned hereby.......................... ........................... ……………………….. (father’s name and surname) …………………… …….........…………. (mother’s name and surname) ………………….. ………………………….., with ID / passport number ………………………. Issued by ……………… (issuing authority) ……………., on.................. (date of issue), ................... citizen, born in. …….............…. (place of birth – Country and Town) ………………… on ………...........……. (date of birth), resident of …………………………. (Country-Town-Street-Post Code) acting as a common representative, dully authorized, of the legal entities named below, do hereby declare that the aforementioned legal entities are interested in participating as a group to the call for tenders for the award of a partnership agreement contract for the “ULTRA-FAST BROADBAND» project and, having established an association/consortium for that cause, hereby submit an expression of interest, in accordance to the terms laid out in the Request for the Expression of Interest, issued by the contracting authority on 05.2019.

The legal persons named below have established an Association/consortium as following:

i) Members of the Association/ consortium:

a) ……………………………………. (Company name), established by law ……………………………………., registered offices ……………………………………. (Country-Town-Street-Post Code), which holds ………% (units/shares in the Association/consortium).

b) ……………………………………. (Company name), established by law ……………………………………., registered at ……………………………………. (Country-Town-Street-Post Code), which holds ………% (units/shares in the Association/consortium).

c) …..…

Total: 100%

ii) All of the aforementioned legal entities (members of the association/consortium) accept joint and several liability before the Contracting Authority for complying with the terms of the Request for the Expression of Interest and the tendering procedure.

 iii) The Association/consortium is headed by ………………… (Company name), as authorized by its members.

iv) The Head of the Association/consortium is legally authorized to represent it towards the Contracting Authority, throughout the tendering procedure and for all causes related to it.

 *(To be filled in in the event of reliance on the capacities of third parties)*

2. For the purposes of the tendering procedure and the performance of the partnership agreement contract, the following economic operators will provide competence and funding to the tenderer or to any member thereof, as required by the Request for the Expression of Interest, as follows:

|  |  |  |
| --- | --- | --- |
| *Recipient of resources**(tenderer or member)* | *Name of third party*  | *Type of competence**(with reference to the relevant paragraph of the Request)* |
|  |  |  |
|  |  |  |
|  |  |  |

3. Our Expression of Interest is accompanied by the all the necessary information and supporting documents for participating in the tendering procedure, as defined in paragraph 10 of the Request for the Expression of Interest.

I/We appoint Mr/Mrs ………………………………(full name), resident of………………………(full address), telephone number…………………………..(fixed telephone number), FAX number…………………, email address………………………….., as our proxy/representative and contact person, responsible for communicating with the Contracting Authority and their consultants regarding issues referring to the Tendering Procedure.

The terms used here in capital first letter, have the meaning imposed by the Request for the Expression of Interest issued by the Contracting Authority on [●] 2019 (ΑΔΑΜ [●]).

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

# **ANNEX 3**

reliance on the capacities of other entities

(Solemn Declaration under paragraph 2.1.34, in accordance with paragraphs 8.5 and 8.6 of the Request for the Expression of Interest)

TEMPLATE 1

RELIANCE ON THIRD PARTIES’ ECONOMIC AND FINANCIAL STANDING

To: Executive Agency for ICT, 23-25 Lekka str., 105 62 , Athens

The undersigned hereby.......................... ........................... ……………………….. (father’s name and surname) …………………… …….........…………. (mother’s name and surname) ………………….. ………………………….., with ID / passport number ………………………. Issued by ……………… (issuing authority) ……………., on.................. (date of issue), ................... citizen, born in. …….............…. (place of birth – Country and Town) ………………… on ………...........……. (date of birth), resident of …………………………. (Country-Town-Street-Post Code), {*in the event of the undersigned acting as a company’s legal representative*}, acting as a legal representative of the legal entity ……………………………………………… *[in case that the company’s legal representatives are more than one, all the data of the representatives signing hereby must be filled in],* do hereby declare with regards to the submission of Expression of Interest to the tendering procedure for the award of a partnership agreement contract for the “ULTRA-FAST BROADBAND» project, as described in the relevant Request for the Expression of Interest, on behalf of…………………………………….. (Applicant’s name), that:

 (i) The company ............................. (name of the company that will provide economic and financial standing to the Applicant/member of the association/consortium), which I/we represent, is hereby committed to provide ………………………(company name of the Applicant/member of the association/consortium) with all the necessary resources, for the entire duration of the Tendering Procedure and, in case the applicant is awarded the contract, to the Private Party to the Partnership agreement throughout the duration of the Partnership Agreement (as will be further indicated), with the conclusion of a relevant contract.

 (ii) The company ............................. (name of the company that will provide economic and financial standing to the Applicant/member of the association/consortium), which I/we represent, will be jointly and severally liable along with the Applicant to the Contracting Authority for the implementation of the contract and for complying with the terms of paragraph 8 of the Request for the Expression of Interest.

 (iii) The company ............................. (name of the company that will provide economic and financial standing to the Applicant/member of the association/consortium), which I/we represent, is committed not to provide during the same period of time the same resources and competence to another economic entity or use the resources themselves to participate in the tendering procedure.

 (iν) The company ............................. (name of the company that will provide economic and financial standing to the Applicant/member of the association/consortium), which I/we represent, in case of loss or drastic reduction of the aforementioned resources and competence during the period of their allocation, is hereby committed to promptly notify the Contracting Authority.

The terms used here in capital first letter, have the meaning defined by the Request for the Expression of Interest issued by the Contracting Authority on [●] 2019 (ΑΔΑΜ [●]).

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

TEMPLATE 2

RELIANCE ON THIRD PARTIES’ TECHNICAL ABILITY

To: Executive Agency for ICT, 23-25 Lekka str., 105 62 , Athens

The undersigned hereby.......................... ........................... ……………………….. (father’s name and surname) …………………… …….........…………. (mother’s name and surname) ………………….. ………………………….., with ID / passport number ………………………. Issued by ……………… (issuing authority) ……………., on.................. (date of issue), ................... citizen, born in. …….............…. (place of birth – Country and Town) ………………… on ………...........……. (date of birth), resident of …………………………. (Country-Town-Street-Post Code), {*in the event of the undersigned acting as a company’s legal representative*}, acting as a legal representative of the legal entity ……………………………………………… *[in case that the company’s legal representatives are more than one, all the data of the representatives signing hereby must be filled in],* do hereby declare with regards to the submission of Expression of Interest to the tendering procedure for the award of a partnership agreement contract for the “ULTRA-FAST BROADBAND» project, as described in the relevant Request for the Expression of Interest, on behalf of…………………………………….. (Applicant’s name), that:

(i) The company ............................. (name of the company that will provide technical capacity to the Applicant/member of the association/consortium), which I/we represent, is hereby committed to actively participate, where applicable and according to the capacity provided and in particular is committed to provide the ……………………………. (Applicant’s name/member of the association/consortium) with all the necessary technical resources (both material and human) and know-how for the entire duration of the tendering procedure and, in case the applicant is awarded the contract, to the Private Party to the Partnership Agreement, throughout the duration of the Partnership Agreement (as will be further indicated), with the conclusion of a relevant contract, as regards the “ULTRA-FAST BROADBAND” project (as defined in the Request for the Expression of Interest).

 (ii) The company ............................. (name of the company that will provide technical capacity to the Applicant/member of the association/ consortium), which I/we represent, is committed not to provide during the same period of time the same resources and competence to another economic entity or use the resources themselves to participate in the tendering procedure.

(iii) The company ............................. (name of the company that will provide technical capacity to the Applicant/member of the association/ consortium), which I/we represent will be liable to the Contracting Authority for complying to the terms of paragraph 8.6 of the Request for the Expression of Interest.

 (iii) The company ............................. (name of the company that will provide technical capacity to the Applicant/member of the association/consortium), which I/we represent, in case of loss or drastic reduction of the aforementioned resources and competence during the period of their allocation, is hereby committed to promptly notify the Contracting Authority.

The terms used here in capital first letter, have the meaning imposed by the Call for Proposals issued by the Contracting Authority on [●] 2019 (ΑΔΑΜ [●]).

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

*annex 4*

non-publication of financial statements

(Solemn Declaration under paragraph 2.1.34, in accordance with paragraphs 2.1.26 and 2.1.27 of the Request for the Expression of Interest)

To: Executive Agency for ICT, 23-25 Lekka str., 105 62 , Athens

The undersigned hereby.......................... ........................... ……………………….. (father’s name and surname) …………………… …….........…………. (mother’s name and surname) ………………….. ………………………….., with ID / passport number ………………………. Issued by ……………… (issuing authority) ……………., on.................. (date of issue), ................... citizen, born in. …….............…. (place of birth – Country and Town) ………………… on ………...........……. (date of birth), resident of …………………………. (Country-Town-Street-Post Code), {*in the event of the undersigned acting as a company’s legal representative*}, acting as a legal representative of the legal entity ……………………………………………… *[in case that the company’s legal representatives are more than one, all the data of the representatives signing hereby must be filled in],* do hereby declare with regard to the submission of Expression of Interest to the Tendering Procedure for the award of a partnership agreement contract for the “ULTRA-FAST BROADBAND» project, as described in the relevant Request for the Expression of Interest, on behalf of…………………………………….. (Applicant’s name), that:

The Law applicable ……………………………….. *(specific reference to the applicable law)* to the financial statements of the legal entity……………………………………… (company name) does not require the publication of the aforementioned legal entity’s financial statements.

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

ANNEX 5

candidate’s financial information

(in accordance with paragraph 7.3 of the Request for the Expression of Interest)

**Must be submitted for all members of the group, depending on their legal form:**

- in the case of legal entity

|  |
| --- |
| candidate’s financial information |
| NAME | HOLDING PERCENTAGE | YEAR | EQUITY |
| [name of the Candidate] | [holding percentage in the group] | ν\* |   |
|   |   | ν\* -1 |   |
|   |   | ν\* - 2 |   |
|   | *[Candidate’s threeyear average]* |

\* ν stands for last full financial year

- in the case of natural person or Investment Fund

|  |
| --- |
| candidate’s financial information |
| NAME | HOLDING PERCENTAGE | NET PERSONAL ASSETS/ TOTAL FUNDS |
| [name of the candidate] | [holding percentage in the group] |   |

I hereby declare that the information mentioned in the table above is true and correct.

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE

# annex 6

declaration of inability to issue requested documentation

(Solemn Declaration under paragraph 2.1.34, in accordance with paragraph 10.1.2 point iii. of the Request for the Expression of Interest)

To: Executive Agency for ICT, 23-25 Lekka str., 105 62, Athens

The undersigned hereby.......................... ........................... ……………………….. (father’s name and surname) …………………… …….........…………. (mother’s name and surname) ………………….. ………………………….., with ID / passport number ………………………. Issued by ……………… (issuing authority) ……………., on.................. (date of issue), ................... citizen, born in …….............…. (place of birth – Country and Town) ………………… on ………...........……. (date of birth), resident of …………………………. (Country-Town-Street-Post Code), {*in the event of the undersigned acting as a company’s legal representative*}, acting as a legal representative of the legal entity ……………………………………………… *[in case that the company’s legal representatives are more than one, all the data of the representatives signing hereby must be filled in],* do hereby declare with regards to the submission of Expression of Interest to the tendering procedure for the award of a partnership agreement contract for the “ULTRA-FAST BROADBAND» project, as described in the relevant Request for the Expression of Interest, on behalf of…………………………………….. (Applicant’s name), that:

the …………………………………………………….. *(description of the document requested in paragraph …. Of the Call for Proposals)* cannot be issued in ………………….. country of incorporation, and/or in……………………………., country of current establishment of our company, for the following reasons: ………………………………. *(statement of reasons of inability to issue the requested documents).*

Therefore, we ceritfy and declare the following: ………………………………… *(The person concerned must hereby confirm the facts that would have been certified, should the relevant certificate had been issued, as requested by the Request for the Expression of Interest).*

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

# annex 7

table of evidence of experience during the last five years

(In accordance with paragraph 10.6.1 point i. of the Request for the Expression of Interest)

|  |  |
| --- | --- |
| Name of the declared economic operator |  |
| Name of alleged project |  |
| Place of implementation of the alleged project/ Period of implementation |  |
| Name of the economic operator or operators of the association/consortium that have undertaken the project |  |
| Percentage of participation of the declared economic operator in the project |  |
| Summary description of the alleged project  |  |
| Time period of participation in the alleged project |  |
| Subject of the work undertaken in the alleged project | [Ownership, Management, Operation, Exploitation, Construction]  |
| Certification of alleged competence | [List of certificates attached] |

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

# annex 8

accuracy of the information provided on former experience

(Solemn Declaration under paragraph 2.1.34, in accordance with paragraph 10.6.1.ii. of the Request for the Expression of Interest

To: Executive Agency for ICT, 23-25 Lekka str., 105 62, Athens

The undersigned hereby.......................... ........................... ……………………….. (father’s name and surname) …………………… …….........…………. (mother’s name and surname) ………………….. ………………………….., with ID / passport number ………………………. Issued by ……………… (issuing authority) ……………., on.................. (date of issue), ................... citizen, born in …….............…. (place of birth – Country and Town) ………………… on ………...........……. (date of birth), resident of …………………………. (Country-Town-Street-Post Code), {*in the event of the undersigned acting as a company’s legal representative*}, acting as a legal representative of the legal entity ……………………………………………… *[in case that the company’s legal representatives are more than one, all the data of the representatives signing hereby must be filled in],* do hereby declare with regards to the submission of Expression of Interest to the tendering procedure for the award of a partnership agreement contract for the “ULTRA-FAST BROADBAND» project, as described in the relevant Call for Proposals, on behalf of…………………………………….. (Applicant’s name), that:

All the information and data included in the Table produced and submitted in accordance with the requirements of Annex 7 of the Request for Expression of Interest regarding the technical competency of the legal entity …………………………………. (insert company name) during the last five years ( ….. to …… ) is complete, true and accurate.

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

# annex 9

Processing of personal data

The Ministry for Digital Policy, Telecommunications and Media / General Secretariat of Telecommunications and Post / Executive Agency for ICT (“Contracting Authority”), functioning in its capacity as data controller, informs the natural person signing the Expression of Interest as a Candidate or as a Candidate’s Legal Representative that, both the Contracting Authority and/ or third parties, ordered by the Contracting Authority and third parties acting on the Contracting Authority’s behalf, will process the following data as follows:

Ι. The subject of the processing will be personal data contained in the Expression of Interest, submitted to the Contracting Authority, in the context of the present tender procedure, by the legal entity / Candidate themselves or by their Legal Representative.

ΙΙ. The aim of the processing is the evaluation of the Expression of Interest, the award of the Public- Private Partnership Agreement, the protection of the Contracting Authority’s rights, the fulfillment of the Contracting Authority’s obligations under the law and the protection and security of transactions in general. The identification and communication data will be used by the Contracting Authority so as to inform the Candidate on the evaluation of their submitted Expression of Interest.

ΙΙΙ. Recipients of the aforementioned (under Α) data may be:

(a) Third bodies or entities appointed by the Contracting Authority to implement specific actions on its behalf, a.e. Consultants, officials and other agents in general, on the condition that preservation of confidentiality is fulfilled without exception.

(b) The Greek State, other public bodies or judicial authorities or other authorities or jurisdictions, within the framework of their powers.

(c) Other participants to the tendering procedure, in the context of the principle of transparency, and the right to judicial protection of the participants, according to law provisions.

IV. The data described in paragraph I above, will be retained for a period of time of twenty (20) years from the final date of submission of the Expression of Interest or, as far as the Contractor and the Private party to the partnership are concerned, for a time period of twenty (20) years from the expiry or termination of the PPP Contract. After the expiration of the aforementioned periods, all personal data will be destroyed.

V. The legal entity who is either a Candidate or a Candidate’s Legal Representative may exercise any legal right concerning their personal data, by addressing the Contracting Authority via the contact address indicated in the Request for the Expression of Interest.

VI. The Contracting Authority is under obligation to take all reasonable measures appropriate for ensuring the confidentiality and safety of data processing and their protection against accidental or unlawful destruction, accidental loss, alteration, unauthorized disclosure or access, and against all other unlawful forms of processing.

VΙΙ. DATA SUBJECT’S RIGHTS

- Right of access to personal data: You retain the right of access to your personal data, in accordance with Article 15 GDPR. Upon access request you can be informed about the purpose of processing, the categories of personal data concerned, the recipients or future recipients of the data, the envisaged period for which the data will be stored, the right to correct or delete data or the restriction of their processing or the right of opposition to the processing, information on the origin of data.

- Right of rectification: You retain the right to demand the rectification of inaccurate data and the completion of incomplete personal data, in accordance with Article 16 GDPR.

- Right to restrict the processing of the data: You retain the right to demand restriction of the processing of your personal data, under the conditions provided for in Article 18 GDPR.

- Right to oppose to the processing: You retain the right to oppose to the processing of your personal data at any time and for reasons regarding your specific conditions, to the processing of personal data related to you, in compliance with the legal requirements.

- Right to erasure(right to be forgotten): When you no longer desire the processing and retention of your personal data, you retain the right to demand their deletion, in compliance with the legal requirements.

- Right to data portability: You retain the right to receive or to request to transmit your personal data, in a machine readable format, from us to another controller, if you so wish, under the conditions provided for in Article 20 GDPR.

For any issue regarding the processing of your personal data, you may contact directly the Executive Agency’s DPO, Mr. Athanassios Kosmopoulos, via telephone: +302131500571 or via e-mail: skosmo@madc.gr.

You also retain the right to lodge a complaint with the Hellenic Data Protection Authority, in writing (1-3 Kifisias str., 115 23, Athens, Greece) or via e-mail on the website [www.dpa.gr](http://www.dpa.gr).

VΙΙΙ. Being aware of the aforementioned information, I therefore give my unconditional consent for the processing of all of my personal data, as mentioned above, for all the purposes indicated in paragraph II of the present document.

My aforementioned consent is applicable to every future interaction with the Contracting Authority.

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

# annex 10

NON DISCLOSURE declaration

1. The Candidate/Potential Contractor hereby undertakes the obligation to handle all the Confidential Information provided to them or accessed by them due to their status and their participation in the Tendering procedure with the greatest discretion.

2. Definitions

The term “Tendering Procedure” includes the Procedure for the Conclusion of a Contract for the Ultrafast Broadband project by means of a competitive dialogue procedure, from the beginning of the procedure until the award of the contract.

The term “Confidential Information” includes all the data that the candidates will gain access to regarding the network operators’ infrastructures.

3. Candidate’s Obligations

Candidates assume the following obligations:

1. not to use the Confidential Information acquired for any other reason than their participation to the tendering procedure and the drawing up of their tender
2. not to communicate the Confidential Information to other collaborators or third parties, except when necessary to successfully participate in the tendering procedure. They are also obliged to make sure that their staff, subcontractors and any collaborating persons will comply with the aforementioned obligation
3. not to reproduce the Confidential Information or store it in electronic format, for any other reason than concluding their participation in the Tendering Procedure. In case of total or partial reproduction of the information, copies should be stamped with the word “COPY” and a record of all copies must be kept
4. all Confidential Information and any item containing Confidential Information must be kept under safe conditions
5. to return, at any time, following a request by the Contracting Authority, all or part of the Confidential Information acquired
6. not to use the Confidential Information to obtain personal profit

4. In case the Tendering Procedure is cancelled for any reason, or the Candidate is excluded from the tendering procedure, or at any time requested by the Contracting Authority, even before completion of the Procedure, if the Contracting Authority ascertains that there has been an infringement of the aforementioned terms by the Candidate, the Candidate is obliged:

1. to immediately cease using the Confidential Information,
2. to immediately hand over to the Contracting Authority any items or documents that contain Confidential Information held by them, or in breach of the conditions laid down in this declaration, held by others, and to communicate in writing a list of the names and addresses of third parties that the Candidate has communicated the Confidential information to, according to the conditions laid down in the present declaration, or in breach of them.

5. It is explicitly stipulated that the aforementioned obligations continue to be borne by the Candidate even after conclusion of the Tendering Procedure.

6. It is explicitly agreed that in case of infringement of the obligations assumed by the present declaration, the Candidate is liable to remedy any damage caused to the network operator as a result of the infringement.

7. Apart from civil liability, the Candidate is also liable under criminal law, in accordance with the applicable legislative provisions on the protection of Professional and Industrial Confidentiality and where applicable in accordance with articles 16, 17, 18 of law 146/1914 on Unfair Competition.

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

\_\_\_\_\_\_\_\_(Place),\_\_\_\_\_\_\_\_\_\_(Date)

SIGNATURE/S

1. Where RA, RΒ is the number of covered subscribers with Class Α and B services respectively in the area served by the respective RAP [↑](#footnote-ref-1)
2. i.e. depending on the actual capacity of a given existing infrastructure or depending on the technical or legal feasibility [↑](#footnote-ref-2)
3. Where KA, KΒ is the number of covered subscribers with Class Α and B services respectively in the area served by the respective FCP [↑](#footnote-ref-3)