REQUEST FOR APPLICATION

REFORMING THE ENABLING ENVIRONMENT FOR PPPs
IN THE PORT SECTOR IN UKRAINE

PRIORITY EXPLORATORY STEPS

<table>
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<tr>
<th>Solicitation Date of Issuance:</th>
<th>July 15, 2015</th>
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<tr>
<td>Due Date for Applications:</td>
<td>July 23, 2015, 17:00 Kyiv time</td>
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FHI 360 is committed to providing equal employment opportunity without regard to race, color, religion, gender, sexual orientation, national or ethnic origin, age, disability or status as a veteran with respect to policies, programs, or activities.

1. **Program Background**

The goal of the Ukrainian Public-Private Partnership Development Program (P3DP), implemented by FHI 360 and funded by the United States Agency for International Development (USAID), is to broaden the use of PPPs in Ukraine and expand the role of private sector finance, expertise, and modern technology to improve infrastructure, the quality of public services, and the environment. The program provides assistance to the Government of Ukraine at national and municipal levels to improve the legal and institutional framework, enhances the capacity of individuals and organizations to design and engage in PPP activities, and supports the implementation of pilot PPP projects.

Beginning operations in October 2010, the Program is pursuing the achievement of four interrelated, mutually-reinforcing objectives, each contributing to the development of PPPs in Ukraine in full alignment with USAID’s Country Development Cooperation Strategy for Ukraine:

1. **Create a Legal and Regulatory Framework Conducive to PPPs** by improving legislation, regulations, and policies that support PPP initiatives at national and municipal levels.

2. **Strengthen the MOEDT’s Capacity to Guide and Support PPPs** so that it serves as valuable resource for municipalities and government agencies seeking to improve the efficiency and quality of public services and infrastructure through private sector participation. The MOEDT coordinates much of its PPP support work through the recently established PPP Unit.

3. **Develop PPP awareness and capacity** of municipalities to create and implement PPPs while improving local governance practices. Training, workshops, seminars, conferences, and study tours contribute to the growing body of knowledge on PPPs at the local level. P3DP also demonstrates how strategic communication programs that reach out to the general public and media provide valuable input during the PPP development process.
4. **Implement Pilot PPPs** in key sectors by providing technical assistance to selected municipalities in all phases of development, from initial concept through the transparent, competitive tendering process. Practical experiences and lessons learned provide valuable feedback to further improve the PPP environment and processes in Ukraine.

2. **Context**

Ukraine has 13 sea ports, giving access to two seas (Black Sea and Azov Sea), with a total handling capacity of 149 million tonnes of mixed and bulk cargo. The legal & regulatory regime applicable to Ukrainian ports was transformed in 2013 with the coming into effect of the new Law on Sea Ports. Among other things, the law separated the administrative and commercial functions of the ports, with the former function now being carried out by the new Ukrainian Sea Ports Administration (USPA), which has a subsidiary in each of the ports. Commercial activities are handled largely by stevedoring companies, which can be state owned or privately owned. The government recently decided to privatize the state-owned stevedoring companies.

In addition, the new law enables private companies to lease port infrastructure facilities, such as berths; this had previously been prohibited.

Ukraine’s ports suffer from deteriorating buildings and equipment and poor customer service. They need to attract more investment – which will have to be *private* investment in large part – and become more efficient. Further liberalization (i.e. allowing private companies to participate in competition with others, with minimal state control) and PPPs of various kinds are means to this end.

The Ministry of Infrastructure would like to focus intensively on one port and use it as a pilot for exploring port reforms. It has selected Oktyabrsk port for this purpose for the following reasons:

- The port assets have not been leased and are fully operated by the port authority, providing a blank slate for future PPPs
- The port has a developed railroad infrastructure with excess capacity
- Proximity to the major shippers gives an advantageous logistical situation
- The port has a large land bank and access to land resources

Another area where reforms are needed in the Ukrainian port sector is that of fees & charges for port services and service companies. Optimal pricing policy needs to balance several objectives, including cost-recovery, economic efficiency, predictability, and administrative simplicity. At present, the pricing regime is in many ways arbitrary, nontransparent, and inflexible. Of particular concern are the limitations that the concession law places on the level of fees that a concessionaire pays to the state. There is no good economic or financial justification for these across-the-board limits.

The Ministry of Infrastructure is in the process of planning a program of donor-supported technical assistance for the port sector. They are in dialogue with a number of international and bilateral agencies. It will take some time to agree on the individual programs, mobilize consultants, and begin the work. For this reason, the Ministry asked P3DP if it could support several critical initial activities on a priority basis, focusing on ways to enhance the potential for PPPs in the port sector. The results of the P3DP work will feed into the forthcoming larger program of reforms.
3. **Goal and Objective of the Consultancy**

The broad goal is to improve the enabling environment for PPPs in Ukraine’s sea ports, thus leading to increased investments and greater efficiency of operations.

The specific objective of the consultancy is to support the ports advisory team in the Ministry of Infrastructure in thinking through several initial issues of priority concern.

4. **Scope of Work**

The Consultant will work intensively, through an interactive process, with the ports advisory team in the Ministry of Infrastructure over a two-week period (in Kyiv), advising them on the three topics outlined below.

It should be borne in mind that these are the **starting points** of the discussion. It often occurs in high-level policy discussions that one topic can lead to another (often more fundamental in nature), and the Consultant should feel free to modify the topics below as the discussion proceeds so that they are more relevant, strategic, or fundamental – so long as this is discussed and cleared first with P3DP.

The three topics are as follows:

(a) Examine the regime of **fees and charges** in the context of concessions, leases, contracting out, and other types of PPP (broadly defined) relating to Ukraine’s seaports. Questions to be addressed include (but are not limited to) the following:

(i) What is international best practice (depending on type of service, type of contract, etc.?).

(ii) How to develop a more rational, consistent, and efficient scheme for fees and charges – in terms of cost recovery, creation of good incentives, economic efficiency, and other sound public policy objectives.

The Consultant should think about this at first mainly in conceptual terms (economics, financial viability, typical arrangements in other countries, etc.) without being concerned with whether present Ukrainian law would permit such arrangements. The ultimate result of the work might be proposals for changing certain laws or regulations.

(iii) How should one determine the **values** of the fees and charges (i.e. once their structure has been decided)? For example, in tendering, which components should be set as exogenous variables in the tender process (and on what basis?), and which should be part of the price proposal of the bidder?

(b) Examine how **Oktyabrsk port** could be developed into a “model” or “pilot” port to illustrate best-practice models of port governance, allocation of responsibilities and risks, private-sector participation, logistics, pricing policy, and other aspects. Sub-topics that might be included in the discussion, if appropriate are the following:

(i) Pros and cons of different solutions.

(ii) Develop up an outline “options analysis”. What further information would be needed to carry out an adequate options analysis leading to sound government decisions?
(iii) What laws and regulations would need to be changed to be able to implement the concept most appropriately?

(c) Review the entire scope of advisory assistance planned and envisaged for the Ministry of Infrastructure concerning the ports sector in the coming years. (The Ministry of Infrastructure is working with several international and bilateral donors who are preparing to fund technical assistance for the ports sector. Scopes of work are being developed now.)

(i) Comment on, refine, and flesh out the proposed scopes of work – in the light of the Ministry’s needs and best international practice.

(ii) Identify gaps and suggest other consultancies (and outline the scopes of work) to fill the identified critical gaps.

5. List of deliverables

The written outputs would be short notes, outlines (or similar) intended for the ports advisory team and the Ministry of Infrastructure that would summarize the conclusions and recommendations of the consultant (and, if appropriate, the key points raised in the discussions that took place), and that would point the way to future work that needs to be done.

The written deliverable to be submitted to P3DP will be a report consisting of a compilation of the written outputs, and in addition, a cover memo of a few pages, summarizing the main points addressed and what was accomplished – and focusing on the implications for PPPs in the port sector.

The specific deliverables are as follows:

- Draft report
- Finalized report, taking into consideration comments provided by P3DP on the cover memo prepared for P3DP.

6. Qualifications and Experience

Qualifications:

- At least a Master’s Degree in a relevant subject
- Minimum of 15 years of work experience in (or strongly related to) transport economics
- Minimum of 10 years of work experience in the port sector
- Substantial experience in governance structures, private sector participation, and PPPs in the port sector
- Substantial experience in pricing policies for sea ports
- Substantial experience carrying out studies for (or funded by) international financial institutions or bilateral development agencies
- Minimum of 5 years of work experience involved with developing or transition countries
- Experience providing technical training and consulting in developing and transition countries
- The skills and capability to assess the regulatory and institutional environment in a developing/transition country context
• Excellent interpersonal and coordination skills
• Demonstrated leadership, versatility, and integrity
• English proficiency required

7. **Duration, timing, and location**

The total duration of the consultancy is not expected to exceed 15 work days. The assignment must be completed no later than August 31, 2015.

The proposed timetable for the work is set out in the table below. The Consultant is expected to be flexible with the deadlines.

The assignment will involve mainly interactive work with the ports advisory team in the Ministry of Infrastructure desk in Kyiv. The Consultant may use the office facilities of P3DP also. Some days will be spent at home at the beginning to prepare and at the end to put together the report.

**Proposed timetable for the work:**

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<tr>
<th>Activity</th>
<th>Suggested dates</th>
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<tr>
<td>Mobilization</td>
<td>July 30</td>
</tr>
<tr>
<td>Work with ports advisory team in Kyiv</td>
<td>August 3–14</td>
</tr>
<tr>
<td>Draft report submission</td>
<td>August 26</td>
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<tr>
<td>Final report submission</td>
<td>August 31</td>
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8. **Submissions**

Submissions must be prepared in English and delivered electronically to [p3dp@fhi360.org](mailto:p3dp@fhi360.org) by 17:00 Kyiv time on July 23, 2015.

All submissions must include:

1) A summary (max. 2 pages) of the applicant’s expertise and experience (see section 6 above);
2) Applicant’s CV (10 pages maximum);
3) Proposed daily fee rate in US$ (supported by FHI360’s Biodata Form, which will be provided by P3DP upon request).

9. **Evaluation Criteria**

All applications received by the stated closing date will be evaluated and ranked according to the selection criteria below:

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<th>Criterion</th>
<th>Weight</th>
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<tbody>
<tr>
<td>Past performance and related experience</td>
<td>40%</td>
</tr>
<tr>
<td>Qualifications of the expert</td>
<td>40%</td>
</tr>
<tr>
<td>Reasonableness of price</td>
<td>20%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
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Following completion of the technical review, a Selection Committee comprised of FHI 360 employees will evaluate the applications.

10. **Timing**

Applications must be received no later than July 23, 2015, 17:00 Kyiv time. It is not anticipated that late applications will be reviewed; however, FHI 360 reserves the right to consider any late applications for review, at its sole discretion.

11. **Disclaimers and FHI 360 Protection Clauses**

   a) FHI 360 may cancel the solicitation and not award.
   b) FHI 360 may reject any or all responses received.
   c) Issuance of solicitation does not constitute award commitment by FHI 360.
   d) FHI 360 reserves the right to disqualify any offer based on offeror failure to follow solicitation instructions.
   e) FHI 360 will not compensate offerors for response to solicitation.
   f) FHI 360 reserves the right to issue award based on initial evaluation of offers without further discussion.
   g) FHI 360 may choose to award only part of the activities in the solicitation, or issue multiple awards based on the solicitation activities.
   h) FHI 360 reserves the right to waive minor proposal deficiencies that can be corrected prior to award determination to promote competition.
   i) FHI 360 will be contacting offerors to confirm contact person, address and that bid was submitted for this solicitation.

**CONSULTANT AGREEMENT GENERAL TERMS AND CONDITIONS**

I. **PERSONAL SERVICES**

   The work to be performed by Consultant under this Agreement relies upon certain specific skills possessed by Consultant. Therefore, unless otherwise approved by FHI 360, any attempt by Consultant to sell, assign or otherwise transfer to a third party any of Consultant’s obligations under this Agreement shall be deemed a termination by Consultant under Section IV of this Agreement, below.

II. **RELATIONSHIP OF THE PARTIES**

   o Independent Contractor. The relationship of FHI 360 and Consultant established by this Agreement is that of independent contractor, and nothing contained in this Agreement shall be construed to (a) give either party the power to direct or control the day-to-day activities of the other, or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint understanding. Consultant is not an employee of FHI 360 and, as such, is not entitled to those benefits, rights or privileges that are accorded to FHI 360 employees. Consultant shall be responsible for the payment of all taxes arising out of Consultant’s activities in accordance with the Agreement, including, by way of illustration but not limitation, federal, state, and local income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as required.
Indemnification. Consultant will indemnify, defend, and hold FHI 360 harmless from any loss, damage, liability, claims, costs, demands, suits, or judgments, including reasonable attorney’s fees, as a result of any damage or injury to FHI 360, its employees, officers, or agents, or injury to the property of FHI 360, its employees, officers, or agents, or for any injury to third persons or their property which is directly or indirectly caused by Consultant in the course of performance of any of the work specified in this Agreement.

Work For Hire. All materials delivered by Consultant to FHI 360 under this Agreement shall be considered a work made for hire under U.S. copyright laws and shall be owned by FHI 360. To the extent that such materials are not considered a work made for hire by operation of law, then Consultant hereby assigns to FHI 360 all rights, title and interest in and to any copyright of any of the materials.

No Agency. This Agreement may not be assigned by Consultant. Consultant shall have no power to sign FHI 360’s name to any agreement or otherwise bind FHI 360. Consultant shall identify herself/himself as a Consultant of FHI 360 when making contact with FHI 360’s clients or others, as may be required in the performance of service under this Agreement.

Nondisclosure of Confidential and Proprietary Information. During the term of this Agreement, Consultant may receive or have access to data and information that is confidential or proprietary to FHI 360. Confidential or proprietary information may be used by Consultant only with FHI 360’s written consent and only for purposes of performing the obligations under this Agreement. Consultant will not reveal, publish or otherwise disclose FHI’s confidential or proprietary information to any third party without the prior written consent of FHI 360. This provision shall exist in perpetuity.

III. FEES AND EXPENSES

a) Consultant shall be compensated for the services performed and/or materials delivered according to the agreed fee(s) provided in the Agreement. During performance of the work, Consultant shall be entitled to receive payments against the established fee on either i) an hourly or a daily (“day” is defined as an 8 hour equivalent work period, with less or more than 8 hours paid on a proportionate basis) rate basis for work performed up to a maximum number of days provided in the Agreement or ii) on a fixed fee basis for completion and delivery of specific activities and deliverables. Compensation for travel time will be calculated at the hourly rate but such compensation shall not exceed the amount payable for an eight (8) hour day for each day while on travel status.

FEE PAYMENT REQUESTS MUST BE SUBMITTED NO LATER THAN THIRTY (30) DAYS AFTER THE MONTH IN WHICH THE WORK WAS PERFORMED.

b) Consultant shall be reimbursed for authorized expenses incurred. Reimbursement of expenses shall not exceed the amount stated in the Agreement. Requests for reimbursement for all amounts over fifty dollars ($50.00) must be accompanied by a receipt. EXPENSE REQUESTS SHALL BE SUBMITTED NO LATER THAN THIRTY (30) DAYS AFTER THE MONTH IN WHICH THE EXPENSES WERE INCURRED OR NO MORE THAN THIRTY (30) DAYS AFTER RETURN FROM TRAVEL, WHICHEVER IS LATER.

c) Payment of fees and expenses is based on satisfactory performance and subject to FHI 360 Technical Monitor acceptance of services and/or deliverables provided.
Any outstanding travel or other advances will be deducted from fee payment requests. Requests for fees/expenses shall be submitted on the appropriate FHI 360 form. IMPORTANT PAYMENT NOTE TO U.S. CITIZENS OR PERMANENT RESIDENTS: Federal tax, state tax, and Social Security will not be withheld from your payment. Your income will be reported on a 1099 form. You will need to complete the IRS W-9 form entering your SSN or EIN in the space provided when submitting invoices or requests for payment. The W-9 form can be downloaded at: http://www.irs.gov/pub/irs-pdf/fw9.pdf

IV. TERMINATION
FHI 360 may suspend or terminate this Agreement in whole or in part, at any time, and for any reason, by providing five (5) days written notice of the effective date of the suspension or termination to Consultant. Consultant will be responsible for satisfying all of its obligations relative to this Agreement through the effective date of termination or suspension. Consultant will be reimbursed for services provided up to the effective date of termination or suspension. FHI 360 will only be responsible for costs incurred after the effective date of suspension or termination as follows: (a) if FHI 360 expressly authorizes such costs in the notice of suspension or termination or subsequently in writing, or (b) if the costs result from non-cancelable obligations that were properly incurred before the effective date of suspension or termination and are otherwise allowable. Upon termination, Consultant will cease all work under the Agreement, and return or provide to FHI 360 all materials and work product related to this Agreement.

V. OTHER PROVISIONS
a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. Jurisdiction and venue for any dispute related to this Agreement shall be in North Carolina.

b) Corrupt Practices and Gratuities. Consultant represents and warrants that she/he will comply with all applicable local, national, foreign laws and regulations pertaining to performance of obligations under this Agreement. Consultant shall not act in any fashion or take any action that will render FHI 360 liable for a violation of the U.S. Foreign Corrupt Practices Act (“FCPA”), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality to assist Consultant or FHI 360 in obtaining or retaining business or in carrying out the services related to this Agreement. Consultant agrees not to accept any payment, benefit or gratuity from any person associated with the performance of work required under this Agreement. A violation of this provision by Consultant shall result in immediate termination of this Agreement.

c) c) Terrorist Financing. Consultant agrees to comply with Executive Order No. 13224 on Terrorist Financing: blocking and prohibiting transactions with persons who commit, threaten to commit, or support terrorism. Consultant will not engage in transactions with, or provide resources or support to individuals and organizations associated with terrorism, including those organizations and individuals identified in lists promulgated by the U.S. Government, the United Nations and the European Union. It is the legal responsibility of Consultant to ensure compliance with these laws.