

# CABO VERDE'S PORTS OF THE FUTURE



## Subconcession of Port Services

PUBLIC CONSULTATION

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## A. Objective and Scope of the Public Consultation

1. The Grantor, the State of Cabo Verde, intends, through the Concessionaire, ENAPOR, S.A., to sub-concession port services in all 9 of the country's ports, by means of an International Limited Tender by Prior Qualification.

2. The sub-concession is part of the privatization, partial divestment, concession or public-private partnership agenda approved by the Government of Cape Verde in Resolution 104/2022 of 16 November, as part of the reform of the State's Public Business Sector, in line with PEDS II. The agenda aims to attract capital and the market, skills and capabilities, modernize the national business fabric, reduce the fiscal risk of companies in the Public Business Sector, reduce the state's participation as an economic agent and boost the capital market.

3. The Government of Cabo Verde has decided to carry out a public consultation prior to the launch of the pre-contractual procedure, with the aim of interacting with Cape Verde residents and the diaspora, development partners, companies, experts, potential stakeholders and any citizen of the world, in order to collect comments and contributions on the port services sub-concession process. The results of the public consultation may enable the government to make any adjustments to the port services sub-concession strategy and to increase the transparency of the process.

4. The State of Cabo Verde therefore welcomes comments and contributions on the process of sub-concession of port services, with a view to collecting general subsidies on the terms set out in point D below, and specifically on:

- (a) Efficiency gains from the sub-concession compared to the current port business model, namely in terms of attracting more ship calls, transshipment cargo, increased volume of domestic traffic in Cape Verde;
- (b) Usefulness/necessity of including maritime services (part or all) in the sub-concession;
- (c) Capacity of current infrastructures and superstructures, as well as investment needs and strategy, replacements and new acquisitions;
- (d) Strategy for absorbing the existing workforce;
- (e) Feasibility of the proposed sub-concession term;
- (f) Feasibility and/or ability to pay for the assets to be transferred and the fixed and variable rents for the sub-concession;
- (g) Regulation of tariffs for the purposes of the sub-concession.

5. The information and disclosures contained in this Public Consultation are intended exclusively for market research, consultation and prospection. The Government of Cabo Verde, as well as ENAPOR, S.A., are not obliged to follow the set of information and assumptions disclosed herein, and may modify the conditions, information and assumptions without being held responsible, and no expectations are created for third parties.

## B. Duration of the Public Consultation

1. Comments and contributions must be made from March 11 to April 10, 2024, by 12 noon (local time).

2. Once received, the Government of Cabo Verde will analyze and make any adjustments to the port services sub-concession strategy that prove to be useful for the underlying public interest purposes and strengthening the transparency of the process.

## C. Summary of the Subconcession Procedure (for information purposes only)

1. A sub-concessionaire for services in Cabo Verde's ports is to be chosen by means of an International Limited Tender by Prior Qualification, regulated by Cabo Verdean law, specifically by the Public Procurement Code, which comprises two phases, namely: phase of application submission and qualification of candidates, in which economic and financial capacity and technical capacity are examined; phase of submission of tenders, which will be evaluated according to objective technical and financial criteria that guarantee the transparency of the procedure, to be included in the tender documents, and individual and group applications and tenders will be admitted.

2. All non-excluded candidates who meet the minimum technical, economic and financial criteria will be considered qualified and invited to submit a tender.

3. It is estimated that the qualified candidates will have 60 days to submit the proposal, after the respective invitation has been sent, and that it should contain the following documents, among others:

- (a) Identification of the Bidder and their address or registered office, as well as their legal representatives;
- (b) Declaration of acceptance of the Tender Specifications, drawn up in accordance with the model to be made available in the tender documents;
- (c) Declaration of no impediments, in accordance with the model to be made available in the tender documents;
- (d) Declaration of commitment to form a commercial company in the event of an award, in accordance with the model to be made available in the tender documents;
- (e) A document proving the provision of a security for the maintenance of the tender, in the amount in euros (€) to be specified in the tender documents, which may be provided by a cash deposit, securities issued or guaranteed by the State or by a bank guarantee or surety bond-guarantee, in accordance with the models provided in the tender documents;
- (f) Indication of: (i) the volume of investment envisaged for the term of the sub-concession, (ii) the annual container transshipment traffic envisaged, (iii) the proposed KPIs, (iv) the Up-front Fee and the acquisition value of the existing equipment to be paid up-front to the Sub-grantee and (v) Annual Fixed and Variable Counterparts in favor of the Sub-grantee throughout the period

of the sub-concession, in accordance with the model to be made available in the tender documents;

(g) Model and amount of the Economic and Financial Proposal, in accordance with the model to be made available in the tender documents;

(h) Activity plan and multi-annual budget, in accordance with the Cape Verdean Accounting and Financial Reporting Standardization System (SNCRF), for each port, for the entire period of the sub-concession, containing an indication of the actions and goals proposed to be achieved in the sub-concession, namely:

i. Investment Plan (including the acquisition of existing equipment, the purchase of new equipment at the start of the Subconcession Project, including a minimum of (...) new quay cranes and (...) tugboats in the option with maritime services, as well as the replacement of equipment during the term, including investments in sustainability and electrification and sources of funding);

ii. Operational plan (including a plan to increase efficiency and reduce operating costs, containing a system of operations and technical solutions, equipment and personnel teams, which are adopted for the operation of the Subconcession in each port);

iii. Market study for both gateway and transshipment cargo (including competitive analysis, market trends, growth opportunities and risk factors, expected customers, traffic forecasts, lines and commercial and marketing policy);

iv. Superstructure, pavement and equipment maintenance plan (including preventive and corrective maintenance plan);

v. Staffing plan by function for each year of the sub-concession;

vi. Training plan (indicative training plans for workers);

vii. A proposal for the Tariff Regulations to be applied;

viii. Subconcession Insurance Program;

ix. Sustainability plan.

4. It is estimated that the International Limited Tender for Prior Qualification procedure can be concluded in 180 days.

5. All bids that have not been excluded are subject to evaluation and scoring. The competitors' scores are ranked in descending order.

6. With the award decision, ENAPOR will notify the successful tenderer to submit the following documents, in addition to others, within a maximum of 10 days:

(a) Criminal record certificate of the members of the management or administrative bodies in office;

(b) Licenses or authorizations required by Cape Verdean legislation for the operation of ports;

(c) Proof of the provision of a guarantee of proper perfor-

mance of the contract, in an amount corresponding to a minimum of 5% and a maximum of 30% of the value of the contract to be defined in the tender documents;

(d) A sworn statement to the effect that the conditions of technical and/or financial capacity previously proven in the qualification remain valid;

(e) Declaration confirming third-party commitments;

(f) Proof of incorporation of the commercial company that will be the sub-concessionaire, wholly owned by the successful tenderer.

7. The sub-concession contract shall be concluded no later than 30 days from the date of acceptance of the draft sub-concession contract.

8. Expenses related to the preparation of the Applications, the Proposals and the conclusion of the Sub-concession Contract, including those derived from the provision of guarantees, constitute costs of the applicants or tenderers.

9. The deadlines set for the submission of applications or tenders are continuous and are not suspended on Saturdays, Sundays or public holidays.

10. The procedure will be governed by the Tender Program, the Specifications and by the provisions of Cape Verdean legislation, namely Decree-Law no. 31/2015, of May 18 (approving the Subconcession for the Operation of the Port of Cape Verde), the Public Procurement Code (approved by Law no. 88/VIII/20015, of April 14) and Decree-Law no. 50/2015, of September 23 (approving the Legal Framework for Administrative Contracts).

11. In exceptional cases provided for by law, ENAPOR may decide not to award the contract or not to conclude it.

12. Applications and tenders must be submitted in Portuguese and some documents may be submitted in English. Application and tender documents submitted in English must be submitted with a certified translation into Portuguese. In the event of a discrepancy, the Portuguese version will prevail.

13. The sub-concession may be subject to sequestration, termination for reasons of public interest and for non-compliance, in addition to the imposition of penalties on the sub-concessionaire, under the terms of the law.

14. Any dispute will be settled by arbitration, under the terms of Cape Verde's arbitration law and the Bases of the Concession.

## D. Strategic Guidelines Submitted for Public Consultation

1. The aim is to establish the following as technical criteria in the qualification phase:

- i. That the Applicant owns at least 3 (three) container terminals or controls at least 3 (three) container terminal concessions with a minimum individual annual throughput of 100,000 (one hundred thousand) TEU/year in each terminal over the last 3 years.

2. The aim is to establish the following as economic and financial criteria in the qualification phase:

- i. That the Applicant has an average annual turnover, calculated on the basis of the last 3 (three) audited financial statements, of at least 75 million euros.
- ii. That the Applicant has an EBITDA on turnover of more than 7.5 million euros in the last 3 (three) audited financial statements.

3. It is estimated that in the application submission and qualification phase (1st phase), interested parties will have 30 days to prepare the documentation and send it to ENAPOR, which will have a further 30 days to carry out the evaluation and conclude this phase.

4. It is intended that the technical proposal will be evaluated according to the scoring matrix below, resulting in the technical proposal (PT) score:

Category	Maximum Score
<b>Criterion PT1 - Rational approach to commercial and market strategy and activity plan</b>	<b>18</b>
a. Market strategy, overall traffic level and guaranteed transshipment volume	8
b. Guaranteed minimum KPIs per operation and annual average	5
c. Expected efficiency levels	5
<b>Criterion PT2 - Overall coherence and adequacy of the Operational Plan and Investment Plan with the Company's market strategy and Business Plan</b>	<b>7</b>

5. It is intended that the financial proposal will be assessed in accordance with the scoring matrix below, resulting in the financial proposal (FP) score:

Categoria	Pontuação Máxima
<b>Critério PF1 - Upfront fee e contrapartida dos equipamentos da ENAPOR</b>	<b>10</b>
<b>Critério PF2 - Taxa fixa anual da subconcessão</b>	<b>30</b>
<b>Critério PF3 - Taxa variável por tonelada e por TEU movimentado</b>	<b>5</b>
<b>Critério PF4 - Plano de organização e recursos humanos</b>	<b>10</b>
<b>Critério PF5 - Investimento em bens de capital inicial autorizado (até ao termo do ano 5)</b>	<b>5</b>
<b>Critério PF6 - Serviços marítimos incluídos [15 pontos] ou não [0 pontos] na proposta para a Subconcessão</b>	<b>15</b>

6. The purpose of the contract to be concluded is as follows:

- i. The right to provide to third parties, under a public service regime, the activities of handling fractioned general cargo, including fish and sacks, roll-on / roll-off cargo, containerized cargo and solid bulk and liquid bulk, with the exception of activities for the private use of cargo handling by third parties authorized by the Grantee, to be provided by the Grantee in the sub-concessed areas on a first-come, first-served basis, or other third parties that may be defined by the Grantee.
- ii. Passenger handling is expressly excluded from the sub-concession, these services being the responsibility of the Sub-grantee. The Subconcessionaire is obliged to give priority to the berthing of cruise ships and other passenger ships or regular Cabo Verde inter-island traffic at the berths.

7. The activities to be included in the sub-concession may also, optionally, at the discretion of the Awarding Authority, include the maritime services of ship towing, mooring and pilotage.

8. The activities included in the sub-concession are carried out in the following ports:

- (a) Port of Praia, on Santiago Island;
- (b) Porto Grande, on the island of São Vicente;
- (c) Port of Palmeira, on Sal Island;
- (d) Porto Novo, on the island of Santo Antão;
- (e) Sal-Rei Port, on Boa Vista Island;
- (f) Vale Cavaleiros Port, on Fogo Island;
- (g) Tarrafal Port, on the island of São Nicolau;

- (h) Porto Furna, on the island of Brava;
- (i) Porto Inglês, on the island of Maio.

9. The right to provide port services, under a public service regime, consists of the execution of all cargo handling operations to be embarked or disembarked, with origin and/or destination by sea.

10. The operations into which the services referred to in the previous paragraph may be divided are as follows:

- a) All operations relating to the handling of non-containerized cargo carried on ships or barges berthed at port quays, from the ship until it leaves the port;
- b) Container handling to and from ships or barges berthed at port quays, including:
  - i) Shore and on-board stevedoring operations, traffic, parking, reception and dispatch of containers;
  - ii) Operations relating to goods transported in containers (consolidation, deconsolidation, checking, etc.), as well as the necessary steps to clear them with the competent authorities;
- c) Provision of services complementary to the operations indicated in the previous paragraphs and related to the sub-concessioned activity;
- d) Towing operations of ships or barges in port and to or from port quays and terminals.

11. The sub-concessioned area includes the areas of jurisdiction of the ports included in the scope of the sub-concession, with the exception of the areas under the direct management of the Sub-grantee and the areas attached to other third-party contracts, in accordance with the geo-referenced boundaries to be identified in the procedure.

12. The term of the sub-concession begins and ends as follows:

- a) The sub-concession shall commence at 00:00 on the first working day after which all the following conditions have been cumulatively met, and shall not exceed 90 days after the signing of the contract:
  - i) The Sub-Concessionaire must provide ENAPOR with proof of payment of (i) the Upfront fee, (ii) the Purchase Price for existing Equipment and (iii) the first Sub-Concession Fee;
  - ii) The Sub-Concessionaire is obliged to employ ENAPOR workers assigned to the services to be sub-concessioned;
  - iii) The Subconcessionaire must provide ENAPOR with insurance certificates.
- b) The duration of the Subconcession Contract is 15 years (fifteen) years from the date of its entry into force, with the possibility of extension, depending on the investment plans to be presented by the Subconcessionaire and approved by the Grantor.
- c) The provisions of the previous paragraph are without prejudice to the possibility of early termination of the

Subconcession, by agreement of the parties, or in the other cases provided for by law.

13. The Subconcessionaire must keep nine Operating Codes constantly updated, one for each port, each of which includes:

- a) The Physical Plan of each port, comprising the Plan of the Sub-concessioned Area in each port and a list of all the existing works, installations, goods and equipment of the sub-concession;
- b) The Tariff Regulations to be applied in the nine ports.

14. The Sub-Concessionaire shall be responsible for all repair and conservation works for the proper operation of the ports in the sub-concessioned areas, namely, the Sub-Concessionaire is obliged to implement the measures proposed in the proposal regarding how it proposes to mitigate the visual impacts on the cities in which the ports are located and resulting from its activity, implementing, with ENAPOR's prior approval, a policy and measures for urban and environmental safeguarding and integration.

15. It is ENAPOR's responsibility to pay for and carry out the works to expand and maintain the quays and embankments in the areas not under concession, maintaining a multi-annual plan to maintain the bottoms adjacent to the accesses, maneuvering basins and quay walls in each port at the current levels.

16. It is the Sub-Concessionaire's responsibility to acquire, pay for and maintain, in an adequate state of operation, conservation, safety and functioning, all the properties, goods and equipment included in the sub-concession, until the end of the sub-concession, carrying out all the repairs, renovations and adaptations necessary for the proper execution of the obligations assumed.

17. The Sub-Concessionaire acquires from ENAPOR, on the date the Contract is signed, the existing equipment in each port and undertakes to invest, up to the 5th year of the term of the Sub-Concession, as well as in the following years, when necessary and authorized, in the purchase of new equipment, environmentally sustainable and with a better level of efficiency, in accordance with the Base Case presented with its proposal, analysed with the Sub-Contractor and approved by it.

18. The granting of exclusivity has the following limits:

- a) The granting of the sub-concession implies the exclusive provision of the services included in the sub-concession in the port sub-concession areas;
- b) The handling of cargo by third parties under contracts existing on the date of the signing of the contract is excluded from the Subconcession, until its expiry, including any extensions that may be granted, or other new private uses that may be defined by ENAPOR;
- c) During the term of the Sub-concession, ENAPOR may create, alter, extinguish and/or approve the creation of other ports or new cargo handling terminals in the ports covered by the sub-concession and their neighboring areas, which are not included in the scope of the Sub-concession.

19. Although any service provided to passengers is excluded from the scope of the Subconcession, the Subconcessionaire

is obliged to allow passengers disembarking from a ship and passengers with valid boarding tickets from a ship to cross the Subconcession Area, and ENAPOR will carry out all the necessary actions to verify boarding tickets and allow passengers to enter the Subconcession Area safely and with the least possible disruption.

20. The Subconcessionaire's operational assessment is based on annual performance compared to the minimum values set out in the contract for the key performance indicators (KPIs). Failure to comply with the minimum values entails penalties to be laid down in the procedure.

21. In carrying out its activity and in controlling the activities carried out by third parties, the Subconcessionaire must adopt appropriate organizational procedures and implement the necessary measures to prevent and minimize the risks of noise, air, water and soil pollution and other environmental damage, under the terms of and in compliance with the Environmental Management Plan for each port approved by ENAPOR.

22. The Sub-Concessionaire must have a private staff of workers to ensure the normal operation of each port, including the technical management of cargo handling, ensuring that they have a level of qualifications, qualifications and certifications in accordance with the law, professional experience and appropriate training plans to comply with the procedures, requirements and duties of the Contract, committing to full compliance with labor legislation and providing all necessary information to the competent authorities. The workers used in the operation of the sub-concession must be linked to the Sub-Concessionaire by an individual employment contract, or be recruited by the Sub-Concessionaire in accordance with the legal regime for port work, where applicable.

23. The Sub-Concessionaire undertakes to ensure that the Sub-Concessionaire's facilities, equipment, embankments and activities comply with the legislation in force, port regulations and the Sub-Contractor's determinations in terms of hygiene, cleaning and waste removal, as well as to promote and maintain the external arrangements, constituting specific measures and procedures for this purpose.

24. It is the Sub-Concessionaire's obligation to take measures and install equipment to prevent fires or other accidents and incidents, as well as to equip itself with adequate means and devices to prevent personal injury and material damage, specifically under the terms of each port's Safety Management Regulations.

25. The Sub-Concessionaire is obliged to provide the Sub-Concessionaire with all the elements related to the execution of the sub-concession that it requests, with annual, half-yearly, quarterly and occasional reporting obligations.

26. The Sub-Concessionaire is obliged to pay the Sub-Concessionaire the following sums of money and fees for the sub-concession, in accordance with the model to be made available in the tender documents:

- a) With the signing of the contract, as consideration for the Subconcession Award (upfront fee), an amount of (...) \$00 (...) escudos);
- b) With the signing of the contract, for the Acquisition of

Equipment from ENAPOR, an amount of (...) \$00 (...) escudos);

c) On a monthly basis, a financial component of (...) \$00 (...) escudos); for the physical areas and superstructures under concession.

d) Monthly, the financial value corresponding to the application of the unit value (...) \$00 (...) escudos), for the total number of tons handled, except containers, and the application of the unit value (...) \$00 (...) escudos), for the total number of containers (measured in TEU) handled.

27. The monthly rates referred to in the previous point are subject to annual review, to be carried out on January 1st of each year, based on the previous year's inflation rate, calculated by the National Statistics Institute (INE).

28. The Subconcessionaire undertakes to take out the following insurances:

a) Operating Liability, in accordance with the legal terms (uniform policy for port and stevedoring activity), including but not limited to:

- i) Cross liability;
- ii) Damage caused by billboards;
- iii) Damage caused by fire on the premises;
- iv) Loading and unloading;
- v) Professional Liability;
- vi) Sudden and Accidental Pollution.

b) Multi-risk insurance, with reserved rights in favor of the Grantor for the building, infrastructure and contents, including but not limited to:

- i) Phenomena of Nature, including seismic phenomena;
- ii) Debris removal;
- iii) Fire, lightning and explosion;
- iv) Crash or impact of aircraft, ground vehicles or vessels;
- v) Acts of Vandalism and Terrorism;
- vi) Strikes, riots and changes in public order;
- vii) Water damage.

c) Any other insurance that is mandatory under current legislation.

29. Port Tariff Regulations:

a) The maximum tariffs to be charged by the Sub-Concessionaire in the area assigned to the Sub-Concession will be set out in the Port Tariff Regulations (which will be an annex to the Contract).

b) The Sub-Concessionaire may submit to the Grantor, by August 31st of each year, a project for updating and revising tariffs and, where appropriate, amending the

rules of the regulation to take effect on January 1st of the following year.

c) Tariffs must take into account the general interests of Cape Verde's ports, the economic balance of operations, the basic tariff principles in force, the rate of inflation and competitiveness with other competing port terminals in the region.

d) The Port Tariff Regulations must be adequately publicized so that they can be easily understood by port users.

30. Without prejudice to situations of non-compliance which may give rise to the seizure or termination of the sub-concession contract, due to non-compliance with obligations assumed in the contract, or with orders issued by the Sub-grantee under the terms of the law or the contract, which do not jeopardize the subsistence of the sub-concession relationship, the Sub-grantee may be sanctioned, by decision of the Sub-grantee, having previously heard the latter, by the application of contractual penalties ranging from a minimum of (...)€00 (...)escudos) to a maximum of (...)€00 (...)escudos) depending on the seriousness of the infractions committed. )€00 ((... escudos) to a maximum of (...)€00 ((... escudos) depending on the seriousness of the infractions committed.

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