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**REPUBLIC OF ALBANIA**  
**MINISTRY OF INFRASTRUCTURE AND ENERGY**

**CONCESSIONS AND PRIVATE PUBLIC PARTNERSHIP COMMITTEE**

Prot. No. \_\_\_\_\_

Tirana, dated \_\_\_\_\_.\_\_\_\_.2020

**CLARIFICATIONS ON COMPETITION DOCUMENTS**

The Contracting Authority, i.e the Ministry of Infrastructure and Energy, following the request with subject “Grant of Concession/PPP on Vlora Airport design, construction, operation, maintenance and transfer” with Reference No. REF-46571-12-19-2019, published on E-Procurement System submitted by several economic operators requesting thereby clarifications in relation to concession procedure/private public partnership documents, provides herein, pursuant to Law No.125/2013 “On Concessions and Private public Partnership” as amended, Law No. 9643 dated 20.11.2006 “On Public Procurement” as amended, the relevant clarifications to economic operators in relation to their requirements without identifying the source of request and forwards them to all other interested economic operators.

The Ministry of Infrastructure and Energy encourages all interested national and international economic operators to submit any request for clarification in relation to the technical aspects of the concession procedure falling under its scope of competency, including those not related to the overall legal framework and/or cases that are clearly and unequivocally mirrored in the concession documents.

**QUESTION**

1. Confirm that the awarded Bidder (Concessionaire) will be the owner of the properties and infrastructure built at Valona Airport, until the expiry of the Concession and that he can trigger guarantees (mortgages, real rights, financing) on the asset.

## **ANSWER**

The land ownership will remain with the state for the entire concession period in accordance with law no. 125/2013 “On Concessions and Private Public Partnership”, as amended, Article 37 et seq. and Land use rights have been set forth in the concession agreement for the concession period.

## **QUESTION**

2. Confirm that the areas dispossessed by the awarded bidder will remain the property of the same until the expiry of the Concession.

## **ANSWER**

The land is owned by the state, as approved by Decision of Council of Ministers No. 813, dated 16.12.2019 “On transferring the administration responsibility from the Ministry of Defense to the MoIE for property no.914, named “Aerodrom Fushor”, located in Vlora, and amending the DCM No. 515 dated 18.7.2003 “On approving the inventory of state immovable properties transferred under the administrative responsibility of the Ministry of Defense”. As such, no expropriation may apply.

## **QUESTION**

3. Clarify whether/Confirm that the right of use on Airport areas entitles the Concessionaire to assign such areas to third-party operators for the realization of buildings at Valona Airport.

## **ANSWER**

Sub-contracts are approved pursuant to article 34 under the law no. 125/2013 “On Concession and Private Public Partnership”, as amended, and the concession agreement entered into between the parties.

## **QUESTION**

4. Confirm that the awarded bidder will be indemnified in the event of third-party claims during the construction of the Airport infrastructures and that delays due to

third Parties actions are not calculated in the deadline indicated in the bud for the completion of the Works.

#### **ANSWER**

With regards to the delays caused by third parties, we would like to clarify that an explicit regulation has been foreseen in the Concession Draft Agreement.

#### **QUESTION**

5. Why is an airport management experience of ten million passengers required when Valona's traffic projections have volumes of 600,000 passengers for the first year? This requirement should be reduced up to a maximum of three million passenger management experience. Please Confirm that this requirement could be modified according to Valona traffic forecast; otherwise this requirement could be discriminatory, excluding many of the airport Operators; moreover it's not balanced in comparison with the characteristics of Valona Airport

#### **ANSWER**

The above claim is not related to the request for clarifications on competition documents, but rather to the complaint on qualification/evaluation criteria. We would like to clarify that the administrative review procedure is regulated by Article 43 under Law No. 125/2013 "On Concession and Private public Partnership", as amended.

However, the contracting authority would like to clarify that: VIA is foreseen to welcome a minimum of 3 million passengers per year. Taking into account the concession agreement term, the airport manager is required to have previous experience with medium-sized airports in order to foresee, plan and implement changes pro-actively. Data on passenger number in Albania indicate an increase of 16% per year, which supports this requirement, in line with Decision of Council of Ministers No. 811, dated 16.11.2016 "On approval of the 2016-2020 transport sectoral strategy and its relevant action plan", as published in the Official Gazette with No.230 in 2016.

## **QUESTION**

6. Confirm that a Temporary Grouping of Companies is adequate to participate the tender and the settlement of a New Company is not necessary.

## **ANSWER**

The Economic Operators Union is an applicable format during the bidding process. For further details on the economic operators establishment and union, please refer to Schedule 9 under the Concession Bidding Documents, while the SPV establishment is deemed necessary only after the successful candidate announcement, pursuant to Law No. 125/2013 “On Concessions and Private public Partnership”, as amended.

## **QUESTION**

7. Confirm whether the Temporary Grouping of Companies can be formed horizontally, vertically or mixed in which each of the companies performs specific activities and some companies have similar requirements.

## **ANSWER**

Please refer to competition documents, Law on Concessions and its applicable bylaws.

## **QUESTION**

8. Should the bidder be an Airport Operator or it can also be a company which controls an airport operator (e.g. Fund, Holding, etc.)?

## **ANSWER**

Please refer to competition documents, Law on Concessions and its applicable bylaws.

## **QUESTION**

9. Aircraft rescue and firefighting is not managed by Airport Operators in Italy as it's a State duty. Is it a justification for Italian bidders, not to be discriminated in the tender, as this requirement is not compliant with their national legislation? Confirm that requirements related to experience should be in accordance with bidder national

regulations (i.e. in a Country where firefighting services are provided by Public Entities, this requirement is not requested/evaluated)

### **ANSWER**

The above claim is not related to the request for clarifications on competition documents, but rather to the complaint on qualification/evaluation criteria. The administrative review procedure is regulated by Article 43 under Law No. 125/2013 “On Concessions and Private Public Partnership”, as amended, and the concession agreement.

However, the Contracting Authority would like to clarify that with reference to Law No. 152/2015 “On Fire Protection and Rescue”, the entities having under their ownership or being responsible for the administration of airport facilities are foreseen to adhere to the legislation in force, technical norms and international standards in the filed of FPR, and to supply all the stations with vehicles and special firefighting equipment. The firefighting service must be in line with the ICAO standards. In case a third party is selected to deliver such service, the bidder must collect all evidence indicating that the said a party is experienced in delivering such service in conformity with ICAO standards. Additionally, the national legislation demands the airport operator to have such premises in place, which will operate throughout the airport territory.

### **QUESTION**

10. The Airport Operator must provide evidence of contractual experience of development, design, procurement and construction, operation and maintenance, management and monitoring of commercial airport infrastructure construction projects over the past 5 years. Is this requirement to be demonstrated for the last 5 years continuously or is it enough to prove it over a period during the last 5 years?

### **ANSWER**

We would like to clarify that this is clearly provided in Schedule 9, Section 2.3 *Technical Capacity* in the competition documents. Please refer to qualification criteria and winning bid selection in the competition documents.

### **QUESTION**

11. The requested “Experience on System or Network of Airports: Bidder shall give evidence of their certified expertise in management of airports systems (with inherent traffic competences)”. It is necessary to clarify whether these are the Airports Systems and Networks provided for by the EU Airport Charges Directive 2009/12.

**ANSWER**

The Contracting Authority would like to clarify that the competition documents forward clear provisions on the level of required certification and the criterion fulfillment manner, which is not limited only to these regulations, but refers to all ICAO, EC, EASA regulations.

**QUESTION**

12. It's required to the Bidders the experience in obtaining financing: demonstration of the ability to finance the project with investments in venture capital (equity) and/or onerous (financing debts), including having financed at least 1 project of 100 million euros in the last 5 years: points 8 (“the ability to fund/finance the Project through equity investments and/or debt financing raised for the Projects, including having financed at least one (1) previous project in excess of EUR 100 million in the past five (5) years)

Please clarify: what does it mean the statement: at least 1 project of at least 100 M euro in the last 5 years?

Having realized the project with specific equity/debt operation?

**ANSWER**

A project amounting to EUR 100 million over the last 5 years, funded by the loan, net equity, or a mixed system of both funding methods is acceptable.

**QUESTION**

13. Confirm that the requirement of 100 million passengers should be reduced in line with estimated traffic forecasts; in any case confirm that this requirement is composed of the aggregation the requirements of multiple airport operators.

**ANSWER**

The above claim is not related to the request for clarifications on competition documents, but rather to the complaint on qualification/evaluation criteria. We would like to clarify that the administrative review procedure is regulated by Article 43 under Law No. 125/2013 “On Concessions and Private Public Partnership”, as amended, and the concession agreement.

#### **QUESTION**

14. Confirm that the requirement of 100 million Net Worth = Assets – Liabilities should be reduced in line with the estimated revenue forecasts; alternatively, confirm that it may be composed of the aggregated Net Worth of the participants at the temporary grouping of companies.

#### **ANSWER**

The above-mentioned claim is not related to the request for competition documents explanations, but to the complaint concerning the qualification/evaluation criteria. We hereby clarify that the administrative review procedure is regulated by Article 43 of Law No. 125/2013, “On Concessions and Private Public Partnership”, as amended, as well as the concession agreement.

#### **QUESTION**

15. Confirm that airports certified under EASA certificate of airports referred to the EU Reg 139/2014 as amended by EU Regulation (1138/2018 and program contract underwrites meet the requirements on technical capacity in case of holding the airport certificate and positive audits of the certification authority.

#### **ANSWER**

The operators should be certified by relevant authorities in compliance with relevant regulations of ICAO, EC and EASA, as well as certified based on **EUR 139/2014, 1139/2018** (relevant legal references).

#### **QUESTION**

16. Confirm whether subcontracting of inter-group auxiliary companies’ activities are eligible within the RTI.

#### **ANSWER**

Every communication with potential bidders will be made public to each interested party.

**QUESTION**

17. Confirm that the Concession Fee should be calculated on the traffic units, deducted the costs for investments and applied only after the Concessionaire has recovered the costs for investments.

**ANSWER**

We hereby explain that Schedule 11 “Evaluation Criteria” of competition documents indicates explicitly about the above-mentioned request.

**QUESTION**

18. Confirm that if the timing of the commissioning of the airport depends on approval of third parties (e.g. Approval project and acquisition opinions in charge, Environmental Impact Assessment) these times should be excluded from the count of the deadline for commissioning.

**ANSWER**

We hereby explain that the above-mentioned claim is regulated in the Draft Concession Agreement conditions. Please, refer to the draft concession agreement conditions.

**QUESTION**

19. The award will require a dealership company dedicated to the management of the concession contract; clarify whether this Company should be settled in Albania.

**ANSWER**

The Winning Bidder will establish the Special Purpose Vehicle (SPV), regulated by the legislation in force, as a company with its headquarters in the Republic of Albania, with an annotation before the name “Concessionary Company”, and with its object “Object of the Concession Agreement”, with which the Contracting Authority will sign the Concession Agreement, with the person authorized by the company in



question. A special regulation related to SPV, please, refer to Articles 3, 39 of Law No. 125/2013, “On Concessions and Private Public Partnership”.

### **QUESTION**

20. Confirm that the subcontracting of activities does not require the authorization of the Administration.

### **ANSWER**

With regards to subcontracting activities and relevant approvals, please refer to Article 34 of Law No. 125/2013, “On Concessions and Private Public Partnership”, as amended, as well as bidding documents, more specifically in the draft concession agreement.

### **QUESTION**

21. What responsibilities do individual participants in the Temporary Grouping of Companies face in the event of non-compliance or delay in the compliance of the obligations to the contracting authority? How are payments and skills distributed?

### **ANSWER**

The concession agreement will be signed with SPV, and as such the SPV is responsible for any non-compliance and/or contracting obligations. For more information, please refer to Article 46 of Law No. 125/2013, “On Concessions and Private Public Partnership”, as amended.

### **QUESTION**

22. Third-party guarantees: Participants at in international tender must issue guaranteed of good execution (bid security). Is this a single guarantee that is solidly issued/against guaranteed by all partners?

## **ANSWER**

Regarding bid security, please refer to section 3.2 of bidding documents, regarding contract security, please refer to section Article 5.5 Regarding Responsibility of third parties and other security requirements please refer to Annex 8 of Draft Concession Agreement.

The contracting authority hereby explains that Article 28 of Law No. 125/2013, “On Concessions and Private Public Partnership”, stipulates that: *“Contracting Authority shall prior to signing or entry into force of the contract, collect from the most successful tenderer, the required contract performance guarantees and/or security instruments as compensation for damage that may be inflicted as a result of concessionaires/private partner’s failure to fulfill obligations assumed by the contract (promissory notes, bank guarantees, corporate guarantees, bills of exchange, etc.). The contract security will amount to 5% of the contract value and will be defined in tender documents.”*

The contract security will amount to 5% of the contract value, as the maximum of required legal guarantee.

## **QUESTION**

23. What counter-guaranteed must be exchanged between partners to ensure each of them is exonerate of a performance bond caused by the default of only one of the partners?

## **ANSWER**

The concession agreement is signed between the Contracting Authority and SPV. SPV is responsible for any non-compliance and/or obligations. For more information, please refer to Article 46 of Law No. 125/2013, “On Concessions and Private Public Partnership”, as amended.

## **QUESTION**

24. Responsibilities of individual participants for ay third-party claims: What responsibility is assumed by each of the participants for the project activities that they are called to perform?

## **ANSWER**

The concession agreement is signed between the Contracting Authority and SPV. SPV is responsible for any non-compliance and/or obligations. For more information, please refer to Article 46 of Law No. 125/2013, “On Concessions and Private Public Partnership”, as amended.

## **QUESTION**

25. How is dealt the case if the responsibility is not clearly attributable to one of the partners?

## **ANSWER**

The concession agreement is signed between the Contracting Authority and SPV. SPV is responsible for any non-compliance and/or obligations. For more information, please refer to Article 46 of Law No. 125/2013, “On Concessions and Private Public Partnership”, as amended.

## **QUESTION**

26. How is the transitional period between the award of the tender and the approval decree regulated? How is ownership of the rights to the bidder guaranteed?

## **ANSWER**

The legal procedure for agreement approval and its ratification is governed by principles of lawfulness and legal guarantee; as such it constitutes a guarantee for the process finalization in its entirety, and national strategic policies development.

## **QUESTION**

27. In the event of appeals by Third Parties (Bidders) against the award, how is the position of the bidder protected?

## **ANSWER**

The review procedure for administrative complaints on a decision of contracting authority related to the evaluation process is regulated by Article 43 of Law No. 125/2013, “On Concessions and PPP-s”.

### **QUESTION**

28. In the event of an early termination of the contract, how are assets valued? Please confirm that the concessionaire has right to be indemnified (to receive a compensation equal to investments carried on and loss of profits) not only in the case of early termination but also in case of not amortized investments at the expiry date of Concession (e.g. Estimate expertise for the enhancement of all assets).

### **ANSWER**

Please refer to Article 41 of Draft Concession Agreement, part of competition documents.

### **QUESTION**

29. In the event of a dispute against the Concessionaire, how is guaranteed against the fact that the disputes are justified?

### **ANSWER**

Please refer to Article 46 of Law No. 125/2013, “On Concessions and Private Public Partnership”, as amended.

### **QUESTION**

30. Confirm that continuity guarantee is assured the report being challenged, until the final settlement by the Judicial Authority.

### **ANSWER**

In that case, the law in force is the Albanian law, and other provisions and mechanisms for which will be agreed upon in the Concession Agreement constitute the appropriate legal guarantee.

### **QUESTION**

31. Confirm that it is the responsibility of the Administration to give all necessary information regarding the legal and territorial situation of Valona airport

**ANSWER**

The Contracting Authority will secure all the necessary information about the legal and territorial situation of Vlora International Airport.

**QUESTION**

32. Confirm that all charges incurred are recovered with operating revenues and public funding under contract and losses of Concessionaire are covered (decrease or suspend the concession fee, public funds...)

**ANSWER**

Regarding the minimum income guarantee, please refer to Instructions for Bidders, part of Concession Bidding Documents.

**QUESTION**

33. Confirm that the Archaeological Asset Qualification is not a duty of the Concessionaire.

**ANSWER**

Please refer to Article 16 of the Draft Concession Agreement, as well as Law No. 27/2018, "On Cultural Heritage and Museums".

**QUESTION**

34. Confirm that the Concessionaire's liability for the removal of archaeological good due to the fact of third parties is excluded.

**ANSWER**

Please refer to the answer above, as well as Law No. 27/2018, "On Cultural Heritage and Museums".

## **QUESTION**

35. Confirm that Concessionaire's environmental liability for solid or water pollution, litter, hazardous waste is excluded in case of events prior to the delivery of areas or due to third-party activities.

## **ANSWER**

Based on the National Environmental Legislation, the base study on the situation will be conducted during the Environmental Impact Assessment process, wherein such findings will be addressed.

## **QUESTION**

36. Confirm that prior to delivery to the Concessionaire; it will be carried out appraisal on the status of the places at cost of the Administration, with specific guarantee to keep the Concessionaire harmless and to indemnify him against any responsibility.

## **ANSWER**

The Contracting Authority undertakes that, throughout the entire validity of the Contract, it will ensure the quiet enjoyment of the property and all of the other rights granted to the Concessionaire under this Contract.

## **QUESTION**

37. Confirming that if the minimum income is not reached, public funding is provided to cover the losses.

## **ANSWER**

Regarding the minimal income guarantee, please refer to the Bidder's Guidelines, which are part of the Concession Bidding Documents.

## **QUESTION**

38. Confirm that profits will be allocated only after all charges are recovered.

## **ANSWER**

As regards the profit calculation method, please refer to the national sectoral legislation on tax procedures in the Republic of Albania.

## **QUESTION**

39. Exclude the liability of the Concessionaire for collecting taxes and tributes; give guarantee of remuneration for related activities.

## **ANSWER**

The SPV will perform its activity pursuant to the legal framework in the Republic of Albania, as well as in accordance with the signed contract.

## **QUESTION**

40. Provide full and unconditional rights of use on all airport areas, in favor of the Concessionaire for the duration of the Concession

## **ANSWER**

The Contracting Authority undertakes that, throughout the validity of the Contract, it will ensure the quiet enjoyment of the rights granted to the Concessionaire under the Contract. We would like to emphasize that, in referral to the Contract Notice Form and the draft concession contract, the contract form consists of the Design, construction, operation, maintenance and transfer.

## **QUESTION**

41. Confirm that delays in obtaining permits that cause work delays should not be attributed to the Concessionaire

## **ANSWER**

Please refer to Article 18 of the Draft Concession Agreement, which is part of the competition documents.

## **QUESTION**

42. How does the Administration reconcile autonomy in the management of the Concessionaire with controls of the Independent Engineer?

## **ANSWER**

Please refer to Article 19 of the Draft Concession Agreement, which is part of the competition documents.

## **QUESTION**

43. How the independent engineer's skills are verified in different activities (infrastructure, commercial, operations)?

## **ANSWER**

The Independent Engineer is selected via a transparent public procurement procedure pursuant to the national legislation.

## **QUESTION**

44. Can the independent engineer controls be limited to non-certified infrastructure settlement?

## **ANSWER**

Please refer to Article 19 of the Draft Concession Agreement, which is part of the competition documents.

## **QUESTION**

45. Can Independent Engineer's Controls exclude commercial activities?

## **ANSWER**

Please refer to Article 19 of the Draft Concession Agreement, which is part of the competition documents.



## QUESTION

46. How are duplication checks avoided?

## ANSWER

All supervision and control obligations are set out and included in the Concession Agreement, which is part of the competition documents.

## QUESTION

47. Confirm that the activities required, such as handling, rescue and firefighting, first medical aid, security could be implemented by independent third Operators, according to agreements with the Concessionaire.

## ANSWER

The airport operators should comply with the BE **139/2014**, **1139/2018** regulations; in accordance with the bidding documents, the certifications will be from EASA / ICAO. Subcontracts are approved pursuant to Article 34 of Law No. 125/2013 “On Concessions and Private Public Partnership”, as amended, as well as the concession contract entered into by the parties.

## QUESTION

48. Will the bid security be accepted only as a bank guarantee or also in the form of insurance policies issued by insurance companies? What about the contract security? What is the required contract and bid security amount?

## ANSWER

The Contracting Authority clarifies that the contract and bid security is in the form of a deposit or guarantee, issued by a bank or insurance company licensed by the state to carry out this activity. The Contracting Authority explains that Article 28 of Law No. 125/2013, “On Concessions and Private Public Partnership”, stipulates that: *“Contracting Authority shall prior to signing or entry into force of the contract, collect from the most successful tenderer, the required contract performance guarantees and/or security instruments as compensation for damage that may be inflicted as a result of concessionaires/private partner’s failure to fulfill obligations assumed by the contract (promissory notes, bank guarantees, corporate guarantees, bills of exchange, etc.).*

The contract security will amount to 5% of the contract value, as the maximum of required legal guarantee. The bid security will amount to 2% of the Bidder-proposed Investment value.

### **QUESTION**

49. Is the SPV created during the competition phase or prior to concluding the agreement?

### **ANSWER**

The Contracting Authority explains that the winning bidder will establish the Special Purpose Vehicle (SPV), regulated pursuant to the legislation in force, as a company headquartered in the Republic of Albania with the “Concessionary company” annotation before its name and with object the “Object of the Concession Agreement”, with which the Contracting Authority will sign the Concession Agreement, with the person authorized by the company in question”, with which the Contracting Authority will enter into the Concession Contract through the authorized representative of the aforementioned company. Special regulation relating to SPV. Please refer to Articles 3 and 39 of Law No. 125/2013 “On Concessions and Private Public Partnership”, as amended.

### **QUESTION**

50. Regarding the assessment process of the necessary capability and capacity for construction projects and/or renovations carried out in the last 10 (ten) years for 4E Category airports, with a capacity of more than 10 (ten) million passengers; what is the minimal required number?

### **ANSWER**

The Contracting Authority explains that the minimal required number is in at least one.

### **QUESTION**

51. As regards the experience with at least 5 (five) million passengers, is this number requested in at least one or two airports?

## **ANSWER**

The Contracting Authority states that the Bidder, or, if the Bidder is a Grouping of Companies, that will Operate the Airport, will have to demonstrate by listing the airports concerned: a. Experience in: (a) development, design, engineering, procurement and construction, operation and maintenance and (b) management and monitoring of Commercial Airport Infrastructure construction projects during the past 5 (five) years in at least 1 (one) airport with a capacity of more than 10 (ten) million passengers and in 1 (one) airport with a capacity of up to 5 (five) million passengers.

## **QUESTION**

52. Does the bidder have to demonstrate that they hold the tools and equipment necessary for carrying out the construction and simultaneously complete Schedule 8 of the tender. If yes, please elaborate on the minimum equipment necessary?

## **ANSWER**

The Contracting Authority explains that, referring to the competition documents, it is not necessary to provide evidence regarding the availability of the tools and equipment necessary for executing (civil construction) the contract. This is for the economic operators to assess.

All explanations provided above are based on Law No. 125/203 “On Concessions and Private Public Partnership”, as amended, the bylaws in view of its implementation and the competition procedure documents.

## **CONCESSION GRANTING/ PRIVATE PUBLIC PARTNERSHIP COMISSION**