



REPUBLIC OF ALBANIA
MINISTRY OF INFRASTRUCTURE AND ENERGY

CONCESSION COMMITTEE/PUBLIC-PRIVATE PARTNERSHIP

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 submitted by several economic operators requesting thereby clarifications in relation to concession procedure/public-private partnership documents, provides herein, pursuant to Law No. 125/2013 “On Concessions and Public-Private 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. The value of the fee to be paid by the economic operator in the event of a complaint to the Public Procurement Commission is 10% of the value of the Bid Security. We request

that you clarify the nature of this complaint. Is this a facility available to the concessionaire and if yes, what complaints can be raised under this?

ANSWER

We would like to clarify that this regards complaints related to the administrative review pursuant to Article 43 of Law No. 125/2013 “On Concessions and Public-Private Partnership” as amended. In reference to the Law “On Concessions and Public Private Partnership”, economic operators may deposit a complaint regarding Competitive Procedure Documents, (the deadline of which ended on 30.12.2019), as well as the final qualification/evaluation decision (the deadline of which is determined pursuant to Article 43 of the above-mentioned Law, following the Concession Commission’s evaluation). The complaint may be deposited in the Public Procurement Commission in accordance with the above and Decision No. 401, dated 13.05.2015, “On the Determination of the Fee and Payment Rules in a Complaint Procedure on Concession Procedures/Public Private Partnership, in the Public Procurement Commission”.

QUESTION

2. The value of the ATRAKO fee, pursuant to Article 12 of Law No. 125/2013 “On Concessions and Public Private Partnership” as amended, is the Amount to be paid by the Winning Concessionaire for the services of the Concession Treatment Agency (ATRAKO). We request a clarification as to what is the quantum of the ATRAKO fee to be payable by the winning Concessionaire.

ANSWER

We would like to clarify that, pursuant to the legislation in force, for Concession Projects with a value of over EUR 50,000,000, the amount payable by the Concessionaire for ATRAKO services is EUR 30,000. This amount will be paid as a lump sum.

QUESTION

3. In case of exceeding the projected revenues at the optimum case, then, the projected level shall be divided with the state in a ratio of 50:50.

Is it to be understood that if the concession revenue exceeds the minimum guaranteed revenue in the optimum case, the minimum guaranteed revenue will be split 50:50 between the authority and the concessionaire with the excess going to the concessionaire?

We would like to submit that this would result in lower return to the concessionaire in the event that it is able to maximize the revenues. Kindly clarify on the above.

ANSWER

Minimum level of guarantee is calculated using the base case (please note table 14 – Traffic Forecast on page 44 of the Feasibility Study) potential generated revenues (aviation plus non aviation calculated by us). If the revenues exceed (aviation plus non aviation) the optimum case then the portion that is above that threshold will be shared 50/50 with the Albanian Government.

We hereby state that this criterion is nonnegotiable.

As regards the second matter, 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 Public-Private Partnership” as amended.

QUESTION

4. Connecting the airport to the Fier- Vlora Highway We request you to provide us clarity on the expected completion timelines for the required access road.

ANSWER

Aside from the airport infrastructure, it is also very important for connecting roads among the city, the highway and the airport to be of good quality, in order to ensure the timely arrival of the travelers in the airport, as well as increasing the airport coverage area. Currently, the Fier-Vlora highway is located approximately 2 kilometers from the airport. This highway possesses available space to connect to the new airport’s road.

This is an investment that will be undertaken by the Government of the Republic of Albania and the road will be completed prior to the airport operation.

QUESTION

5. An economic operator shall submit only one bid. We understand that it is implied that a bidder / member of a bidder consortium would be allowed to submit only one bid. Request you to confirm the same.

ANSWER

No bidder may partake in the bid of someone else for the same procedure. Should a bidder partake in more than one bid, either by themselves or in partnership with another bidder, this will result in the rejection of all bids that the bidder is involved in.

QUESTION

6. Request you to clarify whether the bank issuing the Bid security is required to be an Albanian bank or would a guarantee from a bank from the home country of the bidder be accepted as well?

ANSWER

The Contracting Authority would like to clarify that the bid security shall be in the form of a deposit or guarantee, issued by a licensed bank or insurance company operating within the Albanian territory. The acceptable bid security will be that issued by banks operating in the territory of the Republic of Albania.

QUESTION

7. In case of winner's announcement, the Bidder shall refuse the payment of expenses under paragraph 1.4 of the Standard Documents of the Competition Procedure. We request you to please share the Standard Documents of the Competitive Procedure with a mention of which expense payment is being referred to here.

ANSWER

We would like to refer you to paragraph 1.5 of the Standard Documents of the Competition Procedure.

QUESTION

8. Contracting Experience – Construction. Refurbishment of ten (10) runways in the last ten (10) years.

Refurbishment of 10 runways is a very stringent requirement since the scope of this project only requires construction of a single runway.

We wish to submit that for a project of this size, experience of construction of a single runway with the requisite specifications should be considered as acceptable experience. Global airport projects in the recent past (such as those in South East Europe viz. Belgrade, Sofia, Montenegro) have also mentioned proportionate requirements based on the existing and planned capacity / infrastructure.

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 Public-Private Partnership” as amended.

QUESTION

9. Contracting Experience– Construction. Refurbishment / expansion of ten (10) terminals in the last ten (10) years. Refurbishment of 10 terminals is a very stringent requirement since the scope of this project only requires construction of a single terminal. We wish to submit that for a project of this size, experience of construction of a single terminal or 2-3 terminals with the requisite area and specifications should be considered as acceptable experience. Global airport projects in the recent past (such as those in South East Europe viz. Belgrade, Sofia, Montenegro) have also mentioned proportionate requirements based on the existing and planned capacity / infrastructure.

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 Public-Private Partnership” as amended.

QUESTION

10. Experience on System or Network of Airports: Respondent shall provide evidence of their certified expertise in management of airport systems (with inherent traffic competences). We request you to clarify as to what constitutes a network of airports in this case. Also, what level of evidence do we need to submit to demonstrate the expertise in management of airport systems?

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, KE, EASA regulations.

QUESTION

11. “Affiliated Company”, denotes any company that has control of that company, any company that is under the control of that company, or any subordinated company that has control of that company. Please clarify as to how control is defined under this contract. For e.g. in terms of shareholding percentage (more than 50%), control of taking decisions etc.

ANSWER

In this contract, the term “control” bears the same meaning as in the “*Definitions of Terms*” article of the Concession Contract, where in it is provided that: “*Affiliated Company*” denotes any company that has Control of that company, any company that is under the Control of that company, or any subordinated company that has Control of that company. Any holding-type company (which owns Shares/Quotas of other companies) exercising control over that company, any company over which control is exercised, any company directly or indirectly controlled by the same holding, or any controlled company of a holding company exercising control over that trading company.

QUESTION

12. Draft contract has left the timelines blank under majority of the clauses. Defined timelines are needed for these clauses as they cover crucial aspects of contract performance. We request you to please provide the same.

ANSWER

The final Contract will be subject to negotiations between the Winning Bidder and the Contracting Authority. Blank timelines will be determined in accordance with the technical bid of the bidder and party negotiations.

QUESTION

13. Upon the signature of the Contract, a guarantee is issued by an insurance company in the amount of ...% of the value of the Construction Works. Please clarify guarantee of what amount needs to be submitted during the construction period of the airport. The clause refers an applicable guarantee to be the one issued by an insurance company. Will a guarantee issued by a bank be not acceptable under this clause?

ANSWER

The final Contract will be subject to negotiations between the Winning Bidder and the Contracting Authority.

The Contracting Authority explains that, in referral to Article 28, of Law No. 125/2013 “On Concessions and Public-Private Partnership” as amended, it stipulates that: *“Contracting Authority shall prior to signing or entry into force of the contract, collect from the most successful bidder, 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.

Whether the acceptable contract security will be issued by a bank or an insurance company shall be determined in the contract negotiation scope.

QUESTION

14. (Seven) Work Days prior to the Start Date of the Contract Implementation and until the completion of works, it is issued a guarantee by a second level bank/an insurance company.

The clause mentions a guarantee issued by a second level bank but doesn't define anywhere what does it mean by a second level bank. Please clarify what a second level bank means.

ANSWER

A second-level bank means any commercial bank that operates as a bank for individuals and/or legal entities pursuant to country legislation, that is different from the Central Bank (first-level bank), which plays a regulatory role.

QUESTION

15. If the project revenue exceeds the projected level of revenue in the baseline scenario, then this will be split between the Contracting Authority and the Concessionaire in the ratio 50:50 in accordance with Appendix 18 to this contract. It mentions here if the revenue exceeds the projected level in the baseline scenario, the 50:50 split will be applicable but the language in the RFP mentions the 50:50 split to be applicable if the revenue exceeds the optimistic scenario. Please clarify which scenario is applicable?

ANSWER

The final Contract will be subject to negotiations between the Winning Bidder and the Contracting Authority. Please refer solely to the Competitive Procedure Documents wherein it is stipulated that: "In case the revenue exceeds the projected amount in the optimistic scenario, the excess amount will be split in a 50:50 ratio with the state.

QUESTION

16. The Company shall pay in favor of the Contracting Authority a fee in the amount of of the profits distributed after theyear of operating for the entire duration of this Contract, each year. Is the Concession fee payable as a % age of annual profits or revenues, please clarify? What will be the revenue holiday applicable for the payment of concession fee as the same has been left blank here?

ANSWER

The final Contract will be subject to negotiations between the Winning Bidder and the Contracting Authority.

Appendix 11 “Evaluation Criteria” of the Competition Documents provides a clear explanation regarding the concession fee.

Concession fee is payable as percentage of total annual revenues. Revenue holiday issues will be subject to negotiation phase (if there is applicable).

17. QUESTION

The costs and expenses of handing over the Project Territory and granting Concessionaire Rights shall be borne by the Concessionaire. Which costs and expenses of handing over the Project Territory are referred to here? Since all expenses related to expropriations are mentioned as being a Cause of Mitigation and/or a Cause of Compensation which specific expenses are those applicable to the Concessionaire, please clarify.

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.

The final Contract will be subject to negotiations between the Winning Bidder and the Contracting Authority.

Other costs include all project implementation charges and legal fees (permits, licenses, authorizations, etc.).

All explanations herein are based on Law No. 125/2013 “On Concessions and Public Private Partnership”, as amended, its bylaws and the Competitive Procedure Documents.

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