

## **QUESTIONI**

*Our company takes pride in having successfully completed several major construction works in Europe, including motorway construction and, further, has been awarded with the financing, design, construction, operation and maintenance of major motorways as well as several other PPP projects. In this context, our company is carefully examining its participation in the Concession / Private Public Partnership Procedure for the Design, Construction, Financing, Operation, Maintenance, Rehabilitation and Transfer of Road Segment: Milot – Thumane – Kashar – Luzi Vogel – Fier (hereinafter the “Tender”) and preparing for the submission of a relevant bid.*

*In this respect and in accordance with the tender provisions, we submit the present request for clarifications on below issues/questions that in our opinion are of outmost importance with regards to our participation in the Tender and the preparation of our bid:*

*1) On the basis of article 4.2 of the tender documents, we understand that, in case an Interested Party/Tenderer has been awarded the Contract, the Bid Security submitted by such Tenderer in the Tender Dossier may not be forfeited by the Tendering Authority, in case such Tenderer and the Tendering Authority subsequently fail for any reason whatsoever to reach an agreement during negotiations on the comprehensive terms and conditions of the Concession Agreement. Kindly confirm whether the aforementioned understanding is correct.*

*It should be noted that abovementioned understanding is in our opinion well substantiated given the fact that: (a) based on the design of the Tender Process, to a great extent, the exact terms and conditions of the Concession Agreement are expected to be negotiated between the Parties following contract award, whereas currently/at the time of submission of bids only a small and generic portion of such terms is known to the Interested Parties; and (b) as is customary for this type of transactions, the lenders, whether them being commercial banks or IFIs, only agree to finance relevant PPP projects in case the Concession Agreement includes terms and conditions that are acceptable to the financing institutions and therefore, insist that the Successful Bidder puts forward specific requests as far as the content of the Concession Agreement is concerned. Taking into account above mentioned facts, it should be in our view clarified that the Successful Bidder is not penalized in case the Parties fail to agree on the specific terms and conditions of the Concession Agreement.*

*In addition please confirm that the Bid Security shall not be forfeited in case of a failure to reach financial closing due to commercial banks / IFIs not being willing – for any reason – to extend financing to the Project.*

*2) Should our understanding as per our previous question is indeed correct, kindly clarify that a relevant term may be explicitly included in the Bid Security document to be submitted in the Tender*

*Dossier and that the inclusion of such term does not constitute an unacceptable deviation from the template Bid Security included in Appendix 3 of CPD.*

*3) Furthermore, kindly confirm that the Contract Security is delivered by the Successful Bidder to the Contracting Authority simultaneously with the final contract signing, as per clause 5.5.1 of the Tender Documents.*

*Given the Bid Submission Date being currently set for October 28<sup>th</sup>, 2020 we would very much appreciate your swift response on above mentioned crucial queries.*

*We remain at your disposal for any further information / clarification*

### **ANSWER1**

We refer again to the answers given previously. The cases when the Bid Security may be kept are mentioned in Article 4.2, paragraph 4.2.6 (page 17 English version of tender documents).

These cases occurred in combination with the following Articles of the Tender:

Article 6, paragraph 6.5.2: “ ***The Contracting Authority and the Winning Bidder shall negotiate in good faith the conditions and final deadlines of the Concession Contract** / Public-Private Partnership Contract, taking into consideration that the Winning Bidder shall be required to sign a Concessionary Contract.....*” (Page 21, English version), and

Article 6, paragraph 6.5.3: “*Before the contract signing it is made clear that, if the Winning Bidder **(for the Winning Bidder reasons)** shall not submit the Contract Security and/or shall not Sign the Special and General Conditions of the Contract, the Contracting Authority shall withhold to the Winning Bidder, the Bid Security and invite other Bidders,...*” (Page 22 English version).

According to the above, the issues in question will be examined /negotiated “in good faith”. During negotiations both Parties will identify the subjective reasons and external factors that affect the final signature of the Contract.

### **QUESTION2**

*According to the provision of article 4.2. of the tender documents an Interested Party/Tenderer is explicitly permitted to submit a Bid Security in the form of a deposit **or** guarantee issued by an insurance company licensed in accordance with the legislation in force in the country of origin.*

*However, according to the template Bid Security included in Appendix 3 of CPD the financial institution and/or the Insurance company that shall provide the Bid Security is obliged to state the following: “We hereby attest that [name of guaranteed bidder] has deposited with [name and address of bank / insurance company] an amount of [currency and amount, expressed in figures and words] as a condition to guarantee the bid, submitted by the above mentioned economic operator”.*

*In our view the relevant statement, required to be included in the Bid Security, is in contradiction with the provisions of article 4.2 foreseeing the right of the a Tenderer to submit a Bid Security issued by an insurance company and actually cancels the relevant option. That is because the issue of Bid Securities by insurance companies do not require/allow the deposit by the Tenderer of an amount equal to the guaranteed amount as cash collateral.*

*Furthermore, the inclusion of such a statement is not conform with standard market practice even with respect to the issue of Bid Securities by banks.*

*Based on the aforementioned and taking into account:*

*(a) the fact that irrespective of cash collateral being provided by the Tenderer to the issuer of the Bid Security the latter is obliged under the Bid Security to transfer the guaranteed amount to the accounts of the contracting authority within 15 (fifteen) days from the awarding authority’s first and written request, without seeking explanations and*

*(b) that the reference to a “deposited amount”, as currently included in the Bid Security Form, will objectively and without a doubt not allow the issue of a Bid Security by insurance companies and therefore, will prevent the participation of Interested Parties in the tender to the detriment of adequate competition,*

*we kindly ask you to consider removing the relevant statement from the Bid Security form included in Appendix 3 of the tender documents.*

## **ANSWER 2**

It is obligatory that the Bid Security should follow the proposed format on Appendix 3. Any terms/clauses added or removed by the Bidder will not be accepted by the Contracting Authority.