

№	Question	Отговор
1.	<p>CQ relating to Termination Date Debt</p> <p>We believe that the drafting of the definition of Termination Date Debt remains ambiguous and uncertain and does not give Lenders comfort as to the compensation they will receive on a termination for Concessionaire Default and Grantor Default. This is off market for other airport projects in the region notably Belgrade and Zagreb and generally off market for Concession Projects globally. We would ask the Grantor to assist us in understanding the wording by clarifying the approach on a few questions below:</p> <p>1. If (for illustrative purposes only) the Concessionaire finances €100m of the €281m Upfront Concession Fee from Senior Debt does the definition of Termination Date Debt operate to repay the €100m</p> <p>2. Again for illustrative purposes only, what if the Concessionaire refinances the €100m debt facility after 5 years. Would the new lenders be covered?</p> <p>3. If the debt facility was refinanced to €200m from higher EBITDA in the future (but still below the amortised €281m, so below ‘Market Value’ cap, and at similar leverage multiples as initially), are you proposing that through the definition only €100m be covered by the compensation sum or would the Concessionaire be able to recover the whole €200m as it is ‘related to the upfront debt’</p> <p>4. Finally for illustrative purposes, what if the Concessionaire amortises the €100m to €50m through repayments over 5 years and then refinances up to €100m again in year 5, in year 5+ is €50m covered or the whole €100m?</p> <p>We would ask that the Grantor responds to these queries as soon as possible as they are central to our discussions with potential funders for this Project.</p>	<p>As indicated in previous answers (please refer to the answer to Question 2 of the Q&amp;As published on 27.07.2018, for example), the Termination Date Debt is intended to cover all obligations forming a Termination Date Debt under approved Funding Agreements, used for realization of the Project through the implementation of investments in the Object of the Concession, including those related to the payment of the Upfront Concession Fee. Again, as stated in the answer to Question 2, mentioned above, the term “used to implement investments in the Object of the Concession” follows the provision of Art. 150, paragraph 2, item 1 of the Concessions Act.</p> <p>In another answer, we stated that it is not unusual for projects to not include full payment of outstanding liabilities (partial reduction) as a way of avoiding moral risk and of introducing additional incentive for vigilant supervision by lenders.</p> <p>See for instance EPEC guidelines on debt compensation: <a href="http://www.eib.org/attachments/epec/epec_terminaison_and_force_majeure_en.pdf">http://www.eib.org/attachments/epec/epec_terminaison_and_force_majeure_en.pdf</a></p>
2.	<p>CQ relating to Concessionaire Default and the Calculation of the Sum</p> <p>The Compensation payable on termination for Concessionaire Default revolves around Termination Date Debt (which is subject</p>	<p>The termination compensation amounts have been drafted taking into account the Concessions Act.</p>

	<p>to our comments above) plus Termination Date Equity less Distributions. The Lenders amounts under Termination Date Debt should not be affected if for example the result of the Termination Date Equity less Distributions is a negative sum and therefore for the purposes of the calculation of the Concessionaire Default Compensation Sum the negative sum should be zero. Please confirm that this proposition is acceptable to the Grantor.</p>
<p>3. CQ regarding Article 18  We note that the drafting of Article 18.4.3, permits the Five Year Investment Plan to deviate from the Investment Programme, subject to approval from the Grantor in accordance with the process in Article 18.4.3. The deviation from the Investment Programme with the approval of the Grantor should mean that the Concessionaire cannot be found in breach of the Investment Programme although it is accepted that the overarching obligation to spend the sum set out in our Offer for the Concession Period should remain unchanged by the deviations. We would ask that the Grantor confirms that this is the position and to confirm that it would be willing to amend the drafting of the Concession Agreement to make it clear and in order to assist the Grantor to consider this proposal we would suggest that Article 18.4.4 is amended as follows:</p> <p>“Following each approval by the Grantor, each Five-year Investment Plan becomes an integral part of the Concession Agreement and the Concessionaire is obliged to perform the obligations deriving from them <u>and where the relevant Five-year Investment Plan is a deviation from the Investment Programme and is approved by the Grantor pursuant to Article 18.4.3 then the carrying out of any such obligations by the Concessionaire in accordance with the approved Five-year Investment Plan shall not constitute a breach of the Investment Programme provided that notwithstanding such approval, the Concessionaire shall be obliged to implement the investments in an amount equal to the amount of EUR [insert amount set out in the Capital Investment Forecast in the Offer and as set out in the definition of the Investment Programme ] over the Concession Period.”</u></p>	<p>We believe that in substance your proposal is already incorporated in the draft Concession Agreement.</p>

4.	<p>Tender Document 6.5 (b); Schedule 4, Part 1 - Business Plan and Conceptual Development Plan - Translation</p> <p>- The above documents would contain strategic information disclosing our competitive advantage. We would not be comfortable in sharing such information to an external agency for translation purposes.</p> <p>We would hence request you to kindly waive the translation requirements of the technical proposal.</p>	<p>This requirement may not be waived (ref. Article 90(2), Concessions Act).</p>
5.	<p>Tender Document 6.5 (b); Schedule 4, Part 1 - Translation of Technical Proposal -</p> <p>- Translation of documents of the Application and offer would be voluminous in nature and would entail high amount of paperwork. Based on our interactions with translation agencies, it would be difficult to complete the translation of the documents within the existing submission timelines</p> <p>Hence, we request you to extend the bid submission deadline by 4 weeks.</p>	<p>At present, we do not foresee an extension of the deadline for submission of applications and offers.</p>
6.	<p>Schedule 3- Part 1-3(a)(iv) and Form F - Airport Operation Experience</p> <p>We request that the Airport Project Certificate signed by the statutory auditor / company secretary of the airport entity, may be accepted as a certificate confirming the content of Form F.</p>	<p>As already answered there is no form provided as to the Airport Project Certificate. Your suggested format is considered as acceptable.</p>
7.	<p>Please specify in case no Subcontractors or Third parties are going to be used, whether the respective tables under Form A: Application, Part 1, Schedule 3 of the Tender documentation are to be deleted or left unfilled.</p>	<p>Bidders may mark the relevant sections as N/A. Please refer also to answer to question n.12 published on 18 October 2018 (file QA_18.10.18_2).</p>
8.	<p>Please confirm whether, pursuant to point 14 of Form A: Application, Part 1, Schedule 3 of the Tender documentation, "main fields of activity of the Bidder" is to be understood as "scope of activity". If such is the case, please specify whether the scope of activity is to be specified in the exact same way as it is registered in the relevant commercial register or only the actual activities, performed by the Bidder, are to be specified.</p>	<p>The expression "main fields of activity" is intentionally indicated in to clarify that it is not the "scope of activity" resulting from the commercial register (as in certain countries under such register a company is incorporated to "carry out any activity"). Therefore please indicate the actual activities carried out by the Bidder.</p>

9.	In an answer from 28.09.2018 you have specified that Form A:Application, Part 1 and Form A: Proposal, Part 3, Schedule 3 of the Tender documentation are to be signed with an electronic signature. Whereas the forms provide for a manual signature field. Please specify whether Form A: Application, Part 1 and Form A: Proposal, Part 3 can be signed manually and verified with an electronic signature or they are to be signed only with an electronic signature.	The Application and the Proposal shall be signed with electronic signature only (ref. Article 89(2), Concessions Act).
10.	Please specify whether in Form E.2, wherever the answer is "no", the relevant fields from the table, providing for a "yes" are to be deleted. Furthermore, if the answer to all question is "no", what is to be specified under Part II: Acknowledgments and declaration, where the consent for information access is given - should all of the points above be listed inside the square brackets or is this provided for, only in case some of the answers is "yes".	Please just fill the form as required without changing it. The acknowledgment and declaration part must be signed in any event as required by Form E.2, while any reference to section/item/s of Part I would depend on the information provided therein.
11.	In case a Bulgarian company takes part in the procedure for appointing a concessionaire, are all documents, which said company would provide, to be translated in English language?	Please refer to clause 6.5(b) of the Tender Documents, which clearly states in which case translation is required.
12.	In relation to Form D: Participation guarantee, please specify: 1) what date is to be specified under the date of submitting the Offer field (the text creates some confusion, given that past tense is used and our understanding is that the Participation guarantee is to be issued before the submission of the Offer, therefore it must be phrased in future tense); 2) which bank account is to be specified, given that as of this moment there is no bank account information (please amend the Form in this regard); 3) how is "acceptable manner" to be interpreted and what would be considered "acetable manner". In addition to the above, our understanding is that the validity term of the Participation guarantee expires on 17 December 2019. Please confirm whether such an understanding is correct.	1) we will consider amending the Form for more clarity; 2) please see the answer to Question 8 of file QA_26.10.18_3; 3) alternative acceptable manner is at discretion of the Grantor and will be indicated, if the case may be, at the time of enforcement of the guarantee (e.g. a different bank account etc.). Please refer to the Tender Documents and the Form as to the validity term of the Participation Guarantee.
13.	Please confirm whether our understanding that the Application and the Offer are to be valid until 18.11.2019 is correct.	Please refer to the Tender Documents, which provides the criteria for calculating the validity of the Application and the Offer.

14.	Please specify whether it is necessary a registration number to be specified under point 10 of Table I in Form a: Application, Part 1, Schedule 3 of the Tender documentation, in case the legal entity is not Bulgarian. In case it is necessary, please specify what is to be written under the said field. In case it is necessary to specify a registration number under point 10, please specify what is to be specified under point 11.	Point 10 of Table 1 in Form A: Application, in Part 1, Schedule 3 of the Tender Documents, is to be filled in by entities having Bulgarian identification codes or numbers. All other entities have to fill in an equivalent information in point 11 of the same Table 1.
15.	Please specify whether there is an envisaged form, under which the information under point 13 of Form A: Application, Part 1, Schedule 3 of the Tender documentation is to be given. Can said information be provided as a separate document?	No specific form is provided, please attach the relevant document to the Application and insert in point 13 the relevant reference to the attachment.
16.	The authorities competent to control the professional activity as airport operator of the Bidder are to be specified under Form A: Application, part II Acknowledgments, letter (e) (v). Our understanding is that in the case of a Consortium, where the member, appointed as an Airport Operator, is a foreign legal entity, the competent authorities, which are to be specified, are the ones in the country of registration of the Airport Operator. Please confirm whether such an understanding is correct.	Your understanding is correct.
17.	The text of Form E.1 Declaration states that: "The undersigned ___ in my capacity as legal representative...". Please specify whether said declaration can be signed by a person, authorised by Form B: Power of attorney, and not by the legal representative of the respective Bidder/ Consortium member.	Each Bidder, Consortium members, Third Party and Subcontractor, as the case may be, must sign Form E.1. The Form must be signed by a legal representative of each of the above entities. The Power of Attorney under Form B is aimed at identifying and granting powers to the representative of the Bidder in the context of this Tender (please refer also to Clause 7.1(b) of the Tender Documents for more details), not for granting powers for signing declarations or statements regarding the Bidder itself, Consortium members, Third Parties and Subcontractors. It might be that the representative under the Power of Attorney is also a legal representative of the entity signing Form E.1., in which case Form E.1 can be signed by such legal representative.

18.	Please confirm whether the current Form D: Origin of funds, Part 2, Schedule 3 is the final form of that declaration. In case it is not, please specify when a final form would be available.	As specified in the Tender Documents, a form of the declaration for the origin of funds under article 66, paragraph 2 of the Measures Against Money Laundering Act (MAMLA) is expected to be approved by the Regulation for Implementation of MAMLA. On 18 October 2018, a draft of such Regulation has been published for public discussion on the website: <a href="http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&amp;Id=3823">http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&amp;Id=3823</a> . The announced closing date for the public discussion is 16.11.2018, after which the Regulation is expected to be approved by the Council of Ministers.
19.	In relation to the Participation restrictions, specified under Clause 4.3 of the Tender documentation, our understanding is that there are no restrictions for two related entities to participate in one Consortium. Please confirm whether our understanding is correct.	Your understanding is correct.
20.	In relation to the list of key personnel, our understanding is that the level of education (e.g. master) is to be specified under the education section and that the professional qualification (e.g. engineer) is to be specified under the qualification section. Please confirm whether our understanding is correct.	Your understanding is correct.
21.	In answers No 4 and No 8 from 23.10.2018 you specify that The Application, the Binding proposal and the Proposal are to be signed by a representative of the Lead member (regardless whether a legal representative, pursuant to the articles of association, or an authorised representative (proxy), pursuant to an issued Power of attorney under Form B) Pursuant to clause 7 of the Tender documentation, the Application and the Proposal are to be signed with an electronic signature by a person, representing the Bidder. With a view to the above, our understanding is that: the Application and the Proposal can be signed with an electronic signature, issued in the name of the person, authorised by the Lead member (qualified or advanced electronic signature), and issued in their capacity of a representative (proxy of the Lead member), a natural person - holder of the electronic signature, pursuant to	Please refer to Clause 7.1(b) of the Tender Documents. Please also refer to the answer to Question [17] above. The Application and the Proposal can be signed with the electronic signature of the person authorized to represent the Bidder (the Consortium) by virtue of the Power of Attorney attached as Form B of schedule 3 ( <i>Content of the Applications and Offers</i> ), part 1 ( <i>Application</i> ). The same person may also sign the documents required to be signed by the Lead Member (on its own behalf and not as representative of the Consortium), provided that such person is either a statutory representative of the Lead Member, or is duly authorized by the Lead Member to sign the respective documents on its own behalf.

	<p>the provisions of Regulation (EC) No 910/2014 of the European parliament and the Council of 23 July 2014. Furthermore, the documents, signed by the Lead member in their capacity of a member of the Consortium (personally and not as a representative of the entire Consortium), can also be signed (including manually, on paper) by the same person, authorised by the Power of attorney under Form B. Please confirm whether our understanding is correct.</p>	
<p><b>22.</b></p>	<p>Pursuant to your answer, if only one member of the Consortium proves the total net value of the Consortium, the other members are not required to provide a filled Form G, audited financial reports and a declaration by the Chief Financial Officer. In case the member of the Consortium, proving the total net value of the Consortium, and the member, appointed as Airport operator, are different entities, we understand that the appointed Airport operator is to provide documents, proving financial stability, fulfilling point 3, Part 1: Application, Schedule 3 of the Tender documentation. Please confirm whether such an understanding is correct.</p>	<p>The documents proving financial stability in relation to Airport Operator License Requirements under Bulgarian Law (Schedule 3, Part 1: Application, Section 3(b) in link to Section 4) refer to the Bidder as a whole. In the case described in the question, the member Airport Operator will not be required to provide such documents, as far as the Financial Capabilities criteria are met by another Consortium member.</p>