

№	Question	Answer
1.	Clause 2.8.1 of the Draft Concession Agreement provides that Parties shall attach the list of Transferring Contracts as Part A of Appendix and Grantor shall update the list on Concession Commencement Date. The Concession Agreement does not mention a process for deciding the Transferring Contracts. Kindly let us know how the transferring contracts will be determined?	This will be determined as part of the Transition Period. The entire clause 2.5 deals with it.
2	As per Clause 6.4 of the Draft Concession Agreement, the Grantor shall grant the rights to use the Intellectual and Industrial Property Rights in consideration of a license fee payable for such use. Kindly provide the value for the license fee to be paid since the determination of such license fee post award will lead to uncertainty for bidders.	Please see the answer to Question No 2391 published on 26.10.2018 as listed in the Summary table of the questions and answers on the website of the Concession.
3	Currently the commercial arrangement between Grantor and Concessionaire is uncertain as certain payments are to be determined post the Concession Award such as the payment for purchasing or leasing Movable Assets as well as the License Fee for Intellectual and Industrial Property Rights. This leads to uncertainty in determining the value for the bidder. Kindly provide fixed value for the purchase of Movable assets and grant of Intellectual and Industrial Property Rights before the bid to remove uncertainty or include the same as part of the Upfront Concession Fee to be paid.	In case the market value of the Movable Assets and the License Fee for of the Intellectual and Industrial Property Rights is determined at present today, this value will not be valid at the Concession Commencement Date. In this respect it is not possible to set a fixed value for the purchase of Movable Assets and for the provision of Privacy Intellectual and Industrial Property Rights before the offers submission date.
4	The part (d) of the definition of Distribution includes payment to a Shareholder or an Affiliate of the Concessionaire of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms. Kindly clarify that amounts paid in respect of (i) goods sold or services performed by such Shareholder or Affiliate in accordance with a contract or lease complying with the Laws and good industrial practice, and (ii) the Construction Contract(s) and the Airport Operator Agreement	Although the question seems incomplete, we can confirm that payments based on an arm's length transactions against services or works actually rendered are not distributions within the meaning of paragraph (d) of this definition.

5	The definition for Refinancing includes "(d) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Agreements (other than any Shareholder Debt Documents) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than any Shareholder Debt Documents) or the contracts, revenues or assets of the Concessionaire whether by way of security or otherwise; or ". The definition is too broad and should be restricted to Financing Agreements and not include contracts, revenues or assets of the Concessionaire.	We see this differently; hence, no need to amend, in our view.
6	The Senior Debt to EBITDA Ratio is proposed to be calculate based on the EBITDA of the financial statements of previous Concession Year. The ratio should be calculated based on the EBITDA of the previous 12 months	The present draft agreement is the conclusion reached from the various considerations.
7	Kindly provide drafts for State Service Level Agreements with various Government Users	Please see the answers to Question 1172 and Question No 2193 published in the Summary table of the questions and answers on the website of the Concession.
8	As per Clause 2.7.2, the Current Operator may freely enter into any new third-party contracts during the Transition Period until the aggregate value reaches EUR 1,000,000. The current threshold of EUR 1,000,000 is high and should be reduced to EUR 500,000.	The present draft agreement is the conclusion reached from the various considerations.
9	As per clause 9.1.2 of the Concession Agreement, the concessionaire is obligated to employ each Employee on same employment terms as provided by the Current Operator whereas Clause 9.2.1 provides Concessionaire with the discretion as concerns appointment of Key Personnel. These two clauses are conflicting.	In our view, this is not conflicting; Clause 9.1.2 concerns statutory law obligations. However, within the ambit of the framework of Bulgarian law, the Concessionaire shall be of course free to appoint Key Personnel in its own discretion.
10	As regards the Key Personnel and executive members of the Current Operator, the Concessionaire should be allowed to offer positions which are suitable to such members based on their respective experience, skills and diploma.	We do not understand your clarification request. There is a lot of discretion already provided for with respect to Key Personnel.

11	Clause 28.2 of the Concession Agreement requires Concessionaire to propose a Variation in case "any Party believes that the replacement and/upgrade of any equipment or technology is likely to have a positive impact on the quality of operation...". Kindly modify the same to material positive impact to add clarity	We deem that we have provided for fair general principles and mechanisms and do not deem that a further change shall be necessary.
12	As per clause 40.2.2 of the Concession Agreement, "any curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, confiscation or nationalization by any Competent Authority, which affects the Concession Operations in such a way that the Aggregate Concession Revenue of the previous Concession Year is reduced by more than twenty percent (20%), relative to the previous Concession Year". Kindly clarify the clause as both values refer to previous Concession Year.	The provision is a comparison of two concession years. We will review and assess if any editing changes will be necessary for clarity.
13	Clause 45.2.8 of the Concession Agreement provides that Concessionaire shall be responsible for any damages directly arising out of Existing Contamination as of Concession Termination Date. This should be valid only if the Grantor provides a Claim for recovery of all costs, expenses, Losses, damages, penalties and fines incurred within thirty-six (36) months of the Concession Termination Date	We will review and assess whether necessary and appropriate to amend the clause.
14	Clause 55.3.3 of the Concession Agreement provides that the Technical Disputes Committee shall be constituted of 3 Experts. It is our understanding that each Party will appoint one Expert from its side and these two will choose the third Expert. Kindly confirm our understanding is correct.	Yes, but this is clearly set forth in the clauses after Clause 55.3.3.
15	It is our understanding that the Aggregate Concession Revenue will not include trade deposits/ Collaterals for commercial contracts. Kindly confirm our understanding is correct.	Trade deposits/collateral are in our view not revenues.
16	As per the MTR, the concessionaire is required to provide 300 car parks/ 1 million Passengers per annum. In our experience, 250 car parks per million passenger is enough to cater to the requirements of the airport. Further, given direct connection of Terminal 2 and the proposed Terminal 3 with the metro, we	We will assess whether a change is appropriate; however, for now we think that this requirement is justified and there is no need to change it.

	believe the requirement of 300 car parks / 1 million passenger is high. Kindly reduce the requirement to 250 car parks / 1 million passengers for efficient utilization of resources.	
17	Please confirm if our understanding is correct: <i>Schedule 3 -Part 1- Form A: Application</i> : Is it also necessary to submit a proof of Power of Attorney for the official representative of each member of a Consortium? If yes then is it required this document to have an Apostille certification as well?	<p>A proof of the powers of any person signing a document on behalf of a Consortium member has to be submitted. A power of attorney will have to be provided only if such person <u>is not</u> a statutory representative (i.e. his/her name <u>is not</u> specified in the identification document/s referred to in Schedule 3 -Part 1- Form A: Application, section III(a); please refer also to Clause 7.1(a) of the Tender Documents).</p> <p>The Tender Documents do not contain a requirement for notarization and legalization of the powers of attorney for the persons representing a Consortium member at the Applications and Offers submission phase – written form for such powers of attorney will suffice (unless there are more stringent requirements as per the corporate documents of the respective Consortium member). A notarized power of attorney (and legalized, where necessary) is required only for the documents to be signed by the Bidder or the Lead Member of a Consortium as provided in paragraph 1, Part 1 - Schedule 3, and Clause 7.1(b). Please also refer to previous Q&As, including but not limited to the following (as per the Summary Table of Q&As): 1858/28.09.2018, 2213/16.10.2018 and 2332/23.10.2018.</p>
18.	Could you please confirm to us the deadline (both date and time) for submitting clarification questions to the questions@concession-sof.bg? Would this be 8 November 2018 based on paragraph 5.2 of the tender document?	The timeline of the Tender Procedure is as specified in Schedule 1 (<i>Bid Data Sheet</i>) of the Tender Documents.