

№	Question	Answer
1.	<p>Clause 15.1.2 Could the Grantor elaborate on the conceptual basis for requesting to share any Refinancing Gains considering that (a) the Grantor's distributions are not contingent on financing expenses and (b) this provision takes away the incentive of the Concessionaire to seek to reduce financing costs by leveraging any improvements or undertaking more innovative financing.</p> <p>Additionally, could the Grantor clarify what would constitute a Qualifying Refinancing if triggered by the Concessionaire? As it stands, we believe that any Refinancing the Concessionaire gives rise to would likely fall under the definition of Exempt Refinancing, point (a), unless the reference made in the latter is intended to be to the <u>Initial</u> Financial Model.</p>	<p>We understand your approach, but the present draft agreement is the conclusion reached from the various considerations.</p>
2.	<p>Clause 15.2 Clause 15.2 gives the Grantor wide discretion to impose to the Concessionaire Refinancing without requiring the Grantor to back its request with clear evidence that Refinancing is possible and feasible for the Airport.</p> <p>It is unclear what evidence either Party to the CA has to provide with respect to funding terms – we suggest a list of acceptable evidence is included outlining the same e.g. indicative term-sheet from an Acceptable Bank, including to the least certain parameters (ticket, tenor, funding cost, main covenants, etc.).</p> <p>Additionally, equal terms and conditions should be applicable to the Concessionaire and the Grantor. “Reasonable satisfaction“ and “in its absolute discretion” are onerous terms that put the Concessionaire at a disadvantage. A mechanism has to be set in place to govern the entire procedure of giving rise to a Refinancing, providing evidence and dispute resolution regarding the availability, as well as the terms of a potential Refinancing – similar to clause 15.1.6 and in accordance with clauses 55 and 56.</p>	<p>We understand your approach, but the present draft agreement is the conclusion reached from the various considerations.</p>
3.	<p>Clause 16.1.3/ 16.7.1 Thank you for providing the answer to Q10 on 23 October stating that the Works and Mandatory Capital Expenditures Performance Guarantee would be a CP to the CA and would have to be provided in</p>	<p>We will review and assess your request.</p>

	<p>any case 30 days prior to the commencement of an Works in the amount equal to 10% of the total planned Works over each 5-year Investment Plan.</p> <p>It remains unclear, however, how this explanation corresponds with respect to renewals that need to be made annually (clause 16.1.3) and releases upon obtaining relevant Use Permits (clause 16.7.1). Could the Grantor provide an example to the intended mechanism e.g. for planned Works amounting to EUR 500m over the first 5 years, EUR 100m of which are completed annually?</p>	
4.	<p>Clause 40.6</p> <p>Clause 40.6.1. opens up a possibility for recovering less than the outstanding portion of Senior Debt, which would certainly be a bankability concern for the Lenders (despite noting the answer provided by the Grantor on 16 August). We suggest that the Grantor considers modifying the language to ensure the full Termination Debt is recovered, as well as that the maximum penalty to the Concessionaire is capped at the Termination Date Equity</p> <p>Clause 40.6.2 (c) should recover the full opportunity cost to the Concessionaire rather than only 5 years of foregone cash flows after the Termination Date.</p>	The clauses you refer to are compliant with Art. 150 of the Concessions Act.
5.	<p>Clause 33.1</p> <p>Both of the “Initial Financial Model” and “Financial Model” are currently defined as the financial model submitted with the Offer/CA as Appendix 4. The way we understand it is that the Financial Model should comprise the Updates to the Initial Financial Model; otherwise one of the definitions becomes void. Could the Grantor please consider revising the definitions to provide further clarity.</p>	We will review and assess your request.
6.	<p>Clause 34.13</p> <p>According to the CA definitions, "Equity IRR" means the IRR calculated on the actual equity capital payments and Distributions and "Threshold Equity IRR" means the IRR produced with respect to equity within the Initial Financial Model". However, "Threshold Equity IRR" is used only twice in the CA - in Clause 40.6.2 and in the definition of "Refinancing Gains", while number of clauses of the CA refer to “Equity IRR in the Initial Financial Model”. Could the Grantor please clarify better the intended distinction between “Equity IRR in the <u>Initial Financial Model</u>” and “Threshold Equity IRR”. From our point of view, they seem the same.</p> <p>Additionally, clause 34.13 states the possibility for</p>	We will review and assess your request.

	<p>an increase to the Annual Concession Fee subject to an increase in IRR above a certain level. This is a highly onerous requirement making the concession a capped return contract, while there is no downside protection to the Concessionaire. We request the Grantor waives this requirement or that the Grantor also offers downside protection (e.g. in the case actual IRR decreases below the IRR stated in the Initial Financial Model by 20%)</p>	
<p>7.</p>	<p>Contradicting answers were given in the Q&A session with regard to the necessity of Power of attorney - Form B, in view thereof please confirm whether the following understandings are correct:</p> <ol style="list-style-type: none"> 1. The Power of attorney under Form B is provided only in case the Application, the Binding proposal and the Proposal are signed by a person, which is not the legal representative of the Lead Member of the Consortium (as specified in its incorporation documents). 2. All documents, which are signed by the Lead Member in its capacity of an individual member of the Consortium, are signed by the legal representative of the Lead member (as specified in its incorporation documents). In such regard, please confirm whether it is possible the person, authorised by virtue of the Power of attorney, to sign on behalf of the Lead Member, in its capacity of an individual member of the Consortium, all required forms (e.g. declaration E1, E2). 3. The Power of attorney is to be issued and signed by the legal representative of the Lead Member with a notary certification of the signatures/apostille (if applicable). 4. All other documents, which are signed by all the other members of the Consortium as individual members, can be signed by their legal representative, as well as by a person authorised by a power of attorney in regular written form. 5. Please confirm that Form B (Declaration of validity), Form C (Confidential information), Form D (Origin of funds) to the Proposal can also be signed by the authorised person, pursuant to the Power of attorney, as a representative (proxy) of the Lead Member. 6. The autorisation of the Lead Member by the other members of the Consortium would suffice to be made only in the Consortium agreement and no other authorizations (power of attorney) would need to be issued. 7. The authorised person by virtue of the Power of attorney can sign with his/hers electronic (qualified) signature the Application and the Proposal on behalf 	<p>Please find below our clarifications:</p> <ol style="list-style-type: none"> 1. Correct. 2. Correct: All documents, which are signed by the Lead Member in its capacity of an individual member of the Consortium, are signed by the legal representative of the Lead member (as specified in its incorporation documents). The Power of Attorney refers to the powers to represent and bind the Bidder/Consortium, so it cannot be used for the signature by the Lead Member, in its capacity of an individual member of the Consortium of the required forms to be signed by each member of the Consortium. 3. Correct, as indicated in Form B. 4. Correct. 5. Correct. 6. Correct. 7. Correct, with regard to the Application and the Proposal. The Binding Proposal has to be signed and submitted on paper; however, an electronic copy of the Binding Proposal (such copy to be verified by electronic signature of the Bidder's representative) has also to be included in the electronic device containing the Proposal (ref. clause 7.1 of the Tender Documents and Article 89 of the Concessions Act). 8. Correct. Please note that, provided that the documents are signed and sealed in envelopes as required, there is no specific requirements as to the person that will physically file them with the Ministry.

	<p>of the Lead Member of the Consortium and no signing on paper would be necessary.</p> <p>8. The authorised person by virtue of the Power of attorney can submit the documents at the Ministry personally.</p>	
8.	<p>We have kindly asked the to consider adding in Art. 1.3.2 of the draft Concession Agreement the knowledge of key employees of the Current Operator (on the basis that it is solely owned by the Bulgarian State, which is the Grantor) which has been responded as follows: "This proposal cannot be accepted. The key employees are employed by the Current Operator. The functions of a sole owner of the shares in Grantor's capital, do not suggest (either legally or in fact), any acceptance or inclusion of such a commitment." Please at least consider to add that the Grantor and/or its agents/representatives have made due inquiries with the the Current Operator, such as for example: The Grantor or the Concessionaire respectively shall not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the knowledge of those of the Grantor's agents or advisors (including the Grantor Representative) or the Concessionaire's agents or advisors (including the Concessionaire Representative) who have responsibilities in connection with the conduct of the Concession Operations or the Project <u>after having made due inquiries with the management of the Current Operator. The Concessionaire respectively shall not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the knowledge of those of the Concessionaire's agents or advisors (including the Concessionaire Representative) who have responsibilities in connection with the conduct of the Concession Operations or the Project."</u></p>	<p>We confirm the answer we have previously provided to this question.</p>
9.	<p>We have kindly asked to consider the deletion of Art. 4.1.17 and 4.6.2 as these confirmations by the Concessionaire could be an argument that the Concessionaire has no claims against the Grantor at all, as every information that might form a basis for a claim by the Concessionaire "is deemed to be disclosed" and as such, known to the Concessionaire, regardless of whether the disclosure has actually been made or not. Could you therefore at least please consider the deletion of Art. 4.6.2 (b) of the Concession Agreement and amend Art. 4.1.17 as follows: "The Concessionaire confirms that it has received all the information about the Concession that was prepared by the Grantor for the purposes of this Agreement to the extent that this information and</p>	<p>We deem this request unacceptable. During the Tender Procedure, all interested Economic Operators have been provided with all relevant information and wide opportunity to ask for clarifications and additional information.</p>

	<p>which was made available to the Concessionaire; namely the documents and information provided in the Tender Documents and those contained in the Appendices to this Agreement. The Concessionaire confirms that it has made its own preliminary assessment of the Concession and its assessment."</p>	
10.	<p>Similar to the preceding request please consider amending Art. 5.6.4 as follows as the Concessionaire cannot assess the completeness and correctness of the information provided by the Grantor: "thoroughly examined, reviewed and satisfied itself as to the adequacy, completeness, correctness and suitability of all data and information made available to the Concessionaire by or on behalf of the Grantor in relation to the Concession Site prior to execution of this Agreement and which the Concessionaire has adopted or made use of or which the Concessionaire intends to adopt or make use of;"</p>	<p>We understand your approach, but the present draft agreement is the conclusion reached from the various considerations.</p>
11.	<p>According to Art. 86(1), item 3, letter (b) of the Concessions Act and of item 15 of table 1 and item 7 of table 2 of Form A: Application of Part 1: Application of Appendix 3 "Content of the Applications and Offers" of the Tender Documents, the participants that intend to use subcontractors, must indicate "the shares of the concession and the types of the concession activities to be executed by subcontractors.</p> <p>Does "shares and types" relate to the same i.e. requiring a description of "the types of activities" for which the participant envisages to involve subcontractors as indicated in the brackets of related wordings in the aforementioned Form A?</p> <p>Or does "share" mean something different and requires a specification of (i) a percentage of the outsourced/subcontracted service in relation to (aa) the entire Concession (bb) a specific Airport Service (and if so, what shall be the reference value/amount for specifying such percentage?) or (ii) only a value (i.e. an "exact EUR amount" or a "EUR amount range") of a specific outsourced/subcontracted service?"</p>	<p>Articles 86(1)3 and 133(3) of the Concessions Act require the indication of both the types of activities and the share of the concession. The latter is to be calculated as estimated percentage to the entire Value of the Concession as resulting from the relevant Offer.</p>
12.	<p>In connection with the requirement of Art. 86(1), item 3, letter (b) of the Concessions Act, that the participants, when they intend to use subcontractors, must indicate "the shares of the concession and the types of the concession activities to be executed by subcontractors", please provide clarification what exactly is to be indicated in the Applications. For</p>	<p>Please refer to the previous question and answer.</p>

	example, does this mean that if the participant intends to rent out all commercial sites – shops and restaurants at the Airport, the participant is to designate on the Application that the share of the subcontractors in the operation of the commercial sites – shops and restaurants, is going to be 100 %?	
13.	If the participant cannot specify the subcontractors by the Application and the Offer submission date (according to Article 86(1), item 2., letter (d) of the Concessions Act), but intends to reassign part of the concession activities to subcontractors, under which item of Form A: Application of Part 1: Application of Appendix 3 "Content of the Applications and Offers" to the Concession Documents the participant must indicate the share of the concession and the types of activities to be executed by subcontractors (according to the requirements of Article 86(1), item 3, letter (b) of the Concessions Act)? Said Form A: Application contains item 15 for subcontractors information, which are known, but does not contain item in which to indicate only “the share of the concession and the types of concession activities to be executed by subcontractors” when the subcontractors are not yet known.	Please refer to file Q&A_09.11.18, question 31, sub-question 1.
14.	Art. 3.10.2 states that: “The Concessionaire shall provide at all times access and appropriate space and Facilities to the BAF or such other country as authorised pursuant to the Laws or of such other country as the State so authorises for the purpose of performing their functions or activities, including exclusive use of office space and parking spaces, at no cost and expense for such Competent Authorities.“ It might be interpreted as imposing an obligation on the Concessionaire to provide at its own expenses equipment to the BAF (Bulgarian Air Forces). The English version of the draft CA refers to Facilities (as a defined term). The definition of Facilities in the English version of the draft CA actually refers to the Concession Site, which in turn is defined as land and buildings belonging to the airport. So on the basis of the English version it seems clearer that the Concessionaire does not need to pay for “equipment” of the BAF (which would also make no sense). However, the Bulgarian version of the draft CA (which is the binding one) refers in Clause 3.10.2 to “equipment” („съоръжения“). Please consider to amend the CA by deleting the word “Facilities” ("equipment"/“съоръжения“ in the Bulgarian version).	There is no discrepancy between the Bulgarian and the English version in this respect. Please note that the definition of Concession Site includes not only land and buildings but also “ <i>machinery, equipment and other moveables that are in the ownership of the Grantor/the State</i> ”. This is also seen from the description of the Concession Site in Schedule 2 of the Tender Documents, which will become Appendix 7 to the Concession Agreement.

15.	Pursuant to art. 30.4 if the Concessionaire disagrees with the amount of the Concession Fee calculations made by the Grantor, the Concessionaire is to first pay them and after that raise the dispute pursuant to the mechanism of art. 55 (Pre-arbitral Dispute Resolution). If the dispute is resolved in favour of the Concessionaire, the Grantor is to return the Concessionaire the respective difference in the amount paid by the Concessionaire in excess. Please consider if you would like to request an amendment to this in line with the market standard, which is that a dispute suspends the payment (on the risk of paying late interest if the dispute is ultimately resolved in favour of the Grantor). We kindly ask to amend this provision in line with the market standard, which is that a dispute suspends the payment (on the risk of paying late interest if the dispute is ultimately resolved in favour of the Grantor).	We understand your approach but the present draft agreement is the conclusion reached from the various considerations.
16.	Pursuant to Art. 34.13 "In case the actual equity IRR (per the updated Financial Models) decreases below the Equity IRR as per the Initial Financial Model, the Annual Concession Fee shall be reduced to the level preceding such increase." Please consider to balance and amend the preceding sentence as follows: "In case <u>after an increase of the Annual Concession Fee</u> the actual equity IRR (per the updated Financial Models) decreases below the Equity IRR as per the Initial Financial Model , the Annual Concession Fee shall be reduced <u>pro rata according to such decrease of the equity IRR</u> to the level preceding such increase. "	We understand your approach, but the present draft agreement is the conclusion reached from the various considerations.
17.	Pursuant to art. 53.4 the confidentiality obligations of the Concessionaire remain in force after expiry or termination of the CA and are in force until the Grantor notifies the Concessionaire or its Shareholders of the termination of such confidentiality obligations. Please consider to insert a fixed end date for the confidentiality obligations such as e.g. three years after expiry of the Concession Period.	Confidentiality obligations do not have an expiry date unless there is mutual agreement on the cancellation thereof.
18.	<u>Tender Documentation Form B Power of Attorney</u> According to the text of item 1 of Form B Power of Attorney, the representative of the Lead Member of the Consortium [appoints Mr./Ms. [name of representative] in his capacity as _____ [name of Bidder/ Lead Member](hereafter the "Attorney")]. In our opinion, in this text and especially in the English version thereof, there is uncertainty as to the scope of persons who may be authorized under this power of attorney.	Correct. For clarity purposes the Grantor reserves the right to amend the wording in item 1 of Form B.

	<p>Please confirm that the text of item 1 of Form B Power of Attorney does not require that the persons who are authorized by the legal/ authorized representative of the Lead Member of the Consortium, have certain capacity as of the date of the authorization, which capacity is related to the Lead Member of the Consortium (in his capacity as _____ [name of Bidder/ Lead Member]).</p> <p>Please confirm our understanding that by using Form B Power of Attorney, the legal representative of the Lead Member of the Consortium may authorize one or more persons who are not appointed to a position in any of the members of the Consortium.</p>	
<p>19.</p>	<p>Please clarify if by the expression "public obligations" of Clause 9.1.4 of the Concession Agreement, last sentence, is meant public receivables under Art.162, para 2 of the Bulgarian Tax-Insurance Procedure Code.</p>	<p>Clause 9.1.4 <i>in fine</i> is intended to refer to penalty interest on any public liabilities (if applicable), namely, as listed in Article 162 of the Bulgarian Tax and Social Insurance Procedure Code, in link to Article 175 of the same Code.</p>
<p>20.</p>	<p>With the amendments to the draft Concession Agreement from 06 October 2018, a new Clause 45.2.9 was introduced in Part XIV HANDBACK PROCEDURE, reading that "The Concessionaire shall be responsible for any damages directly arising out of the transfer of Employees as of the Concession Termination Date and agrees to indemnify the Grantor and hold the Grantor harmless from and against any liability suffered or incurred by the Grantor as a direct result of the effects of any such transfer and shall indemnify the Grantor against all Losses incurred by the Grantor as a direct result of such transfer."</p> <p>Please consider that the above mentioned new Clause 45.2.9 refers to the Concession Termination Date and not the Expiry Date as should be the case, the latter used in part 9.4 Re-transfer of Employees of the draft Concession Agreement. Given that the consequences as regards the employment of the employees at the expiry of the term of the concession agreement are governed by the imperative provision of Art.123a, para 4 of the Labour Code, we would like to ask you to restore the text of Clause 45.2 to its previous version prior to the amendments from 06 October</p>	<p>We will review and assess your request.</p>

	<p>2018 and delete the newly introduced Clause 45.2.9. Alternatively, we would like to ask you to replace the text “Termination Date” with the text “Expiry Date” (both definitions are set forth in the draft Concession Agreement), so that Clause 45.2.9 reads as follows:</p> <p>“45.2.9 The Concessionaire shall be responsible for any damages directly arising out of the transfer of Employees as of the Concession Termination Date Expiry Date and agrees to indemnify the Grantor and hold the Grantor harmless from and against any liability suffered or incurred by the Grantor as a direct result of the effects of any such transfer and shall indemnify the Grantor against all Losses incurred by the Grantor as a direct result of such transfer.”</p>	
<p>21.</p>	<p>Art. 5.1.3. of the draft of the Concession agreement says: “The Grantor shall warrant a right of peaceful enjoyment of the Concession Site during the entire Concession period. The Concessionaire shall be also responsible for maintaining and/or renewing all necessary easement rights, namely rights of way over the land identified in Appendix 7 (Concession Site) for the purposes of the Concessionaire’s performance of this Agreement.” Please clarify whether the second sentence of the provision above specifies erroneously the Concessionaire (but not the Grantor) as being responsible for the maintenance and/or renewal of all necessary easement rights in the Concession Site. We consider that since the State shall retain its title to the Concession Site, the necessary easement rights (also included in the Concessions Site to be specified in Appendix 7) are to be responsibility of the Site’s owner, i.e. the State.</p>	<p>There is an error in the second sentence, where the Concessionaire has to be changed to Grantor.</p>
<p>22.</p>	<p>Please confirm our understanding that any work in progress (started but not completed, or completed but not invoiced/due/payable) not paid for until Concession Start Date as well as all unpaid obligations arising based on facts occurring prior to Concession Commencement Date (but which have become due and payable after that date) under all Transferring Contracts of Sofia Airport EAD will remain payable by Sofia Airport EAD based on Article 2.8.6 of the Concession Agreement. If this understanding is not correct, please confirm what portion of such work in progress or obligations which arise out of facts occurring prior to Concession Commencement Date but which become due and payable after Concession Commencement Date, will be payable by the Concessionaire, what are the expected amounts thus payable by the</p>	<p>We refer to our previous responses in this respect.</p>

	Concessionaire, and will such amounts have any bearing on the amounts due by the Concessionaire to the Grantor.	
23.	Please provide an update of the excel file „Sofia Airport EBITDA 2016-2018 v2” with actual figures for Year-To-Date September 2018, Year-To-Date September 2017 and Year-To-Date August 2017 as well as the latest forecast figures for Year-To-Date December 2018.	The file will be updated.
24.	From the Effective Date, the Concessionaire has obligations in relation to the Transition Period and the satisfaction of the CPs, please confirm whether or not the Initial Shareholders are jointly and severally liable with the Concessionaire during the Transition Period. If they are so liable, please confirm that the Maximum Liability Amount and the provisions of Article 12.2 can apply from the Effective Date and that the reference to Article 12.2 can be added to Article 2.1.	We will review and assess your request.
25.	<p>Limitation of Liability for the Concessionaire</p> <p>We note the response of the Grantor to our previous request and the acknowledgement regarding the ambit of limited recourse financing and the concept of limiting the liability. We would respectfully request that the Grantor considers adding a sole remedies clause which is common in limited recourse financing projects whereby specified remedies are named as the sole and exclusive remedy for that party (a concept used by the Grantor in Article 2.13.1 (b)). We have proposed some wording below which is based upon Bulgarian Law standard and using wording accepted by the Bulgarian Courts. Please confirm that the proposition is accepted and that the drafting below is agreed.</p> <p>37.8 Sole and Exclusive Liquidated Damages</p> <p>37.8.1 The liquidated damages set out in Articles 18.2 and 26.10.2 and the Performance Penalties pursuant to Appendix 6 shall be the sole and final legal remedy in the form of exclusive liquidated damages in relation to the failure to fulfil the investments in the investment proposal, the delay to the relevant Works and the failure to perform the Concession Operations to the Performance Standards (respectively).</p> <p>37.8.2 The Parties agree that the liquidated damages</p>	This is a matter of contractual stipulation and we see such request unjustified.

	<p><u>and the Performance Penalties represent a genuine pre estimate of loss of the Grantor in relation to the circumstances which give rise to the application of such liquidated damages and/or Performance Standards.</u></p> <p><u>37.8.3 The Grantor agrees that it shall not be entitled to seek compensation of actual losses suffered instead of the defined liquidated damages or in addition to them.</u></p>	
26.	<p>Article 5.1</p> <p>We refer to your response to our clarification question regarding the granting of a lease over the site for a period in excess of 10 years and we note your response. We would ask the Grantor to consider a proposal that the Concessionaire shall be entitled from time to time during the Concession Period to bring a proposal to the Grantor for a long term lease in relation to a commercial opportunity and that the terms of the lease are to be approved by the Grantor. Please confirm that the Grantor is willing to consider such a proposition.</p>	<p>We refer to our previous responses to your questions.</p>
27.	<p>Article 34.1.7 Due to the nature of the site and the lack of site surveys before Bid submission, there is a risk that there are unforeseen ground conditions from which the Concessionaire should be relieved from the consequences of the occurrence of such conditions. Please confirm that this will be reinstated in both the English and Bulgarian versions.</p>	<p>We understand your approach, but the present draft agreement is the conclusion reached from the various considerations.</p>