

#		Question	Answer
1	EN	<p>Please confirm that a Bulgarian commercial company – an individual participant (i.e. not a Project Company constituted by a consortium) established in 2016, which did not operate until the submission of an offer in the concession procedure and which, at the date of submission of the application for participation, has a total net value of at least EUR 200,000,000 (two hundred million) euro in the form of a cash contribution to the capital (and without any liabilities), proven by a non-audited interim Financial Statement for 2018, and with certificate of the veracity of the Financial Statement, meets the condition of participation specified in Schedule 3 “Content of the applications and offers”, Part 1: “Application”, item 4 “Documents evidencing Financial Capabilities”, point (a) “Bidder’s Net Worth” of the Concession Documentation, although the company has not had the required total net value of at least EUR 200,000,000 from the moment of its constitution till the time of the offer submission. The firm was a dormant company until the time of the offer submission, but it has the required total net value at the moment of the offer submission.</p>	<p>As specified in Schedule 3, Part 1, Section 4, paragraph (a), sub-paragraph (i) of the Tender Documents, a single entity Bidder would need to have Total Net Worth equal at least to 200,000,000 Euro for each of the past three full financial years. A Bidder that did not have Total Net Worth at least to 200,000,000 Euro for each of the past three full financial years, would not meet the criteria.</p>
2	EN	<p>Under Art. 38(2) of Directive 2014/23/EU, the concession granting authority shall be entitled to require joint and several liability by a third party only where the capacity of that third party proves the financial and economic situation of the bidder, but not where the capabilities of that third party are used to prove other requirements set by the concession granting authority in the concession procedure. The provision of Article 38(2) of the Directive is imperative and does not allow the extension of the scope</p>	<p>As set out in Schedule 3, Part 1, Section 4, paragraphs (a) and (b) of the Tender Documents, the requirements to the financial capabilities of the Bidders include: (a) Total Net Worth and (b) Experience Raising Financing. The experience in raising financing is expressly set out as an ability to finance a project in the infrastructure sector, and as such constitutes a requirement to the economic and financial standing of the Economic Operators.</p>

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		<p>of joint and several liability. This principle is also reflected in Article 63, paragraph 3 of the Concessions Act. In view of the above imperative norms of European and Bulgarian legislation regarding concessions, please confirm that the condition of participation, set out in Schedule 3: “Content of the applications and offers”, Part 1: “Application”, item 4 “ Documents evidencing Financial Capabilities”, point (b) “Experience Raising Financing” of the Concession Documentation does not constitute a requirement for the financial and economic situation of the participants (which is a part only of point “a” – a total net value) and for this reason, if a participant proves experience in raising funds with the capabilities of a third party, this third party shall not be jointly liable with the Concessionaire for implementation of the Concession Agreement.</p>	<p>Article 38 paragraph 2 of Directive 2014/23/EU is transposed in Art. 63 of the Concessions Act. With regard to joint liability of a third party providing capacity in relation to financial standing requirements, the provision of Directive 2014/23/EU is not mandatory and only provides for a possibility for the contracting authority. Art. 63 paragraph 3 of the Concessions Act expressly requires that such third party is jointly liable with the Concessionaire for the performance of the Concession Agreement.</p>
3	EN	<p>The Concessions Act (in Article 20, paragraph 3; Art. 21, paragraph 5; Art. 22, paragraph 5; Art. 63, paragraph 3) and Directive 2014/23/EU (Art. 38, para. 2, Art. 42, para. 4 and 5) stipulate explicitly and exhaustively the cases where a third party may be liable together with the concessionaire for the implementation of the Concession Agreement. These provisions are imperative and prevent the extension of the scope of liability in cases where third parties may be held liable (split or joint, full or partial) together with the Concessionaire for the implementation of the Concession Agreement. In view of the above imperative norms of European and Bulgarian legislation regarding concessions, please confirm that if a participant proves experience in raising funds with the capabilities of a third party, this third party shall not have a full joint liability or a limited joint liability for the implementation of the Concession Agreement, including it shall not be</p>	<p>Please refer to the answer to Question 2 above.</p>

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		admissible for the third party to be held liable under a corporate guarantee under Annex 11c to the Concession Agreement.	
4	EN	We ascertain the existence of certain discrepancy between clause 6.2 of the Documentation and the content of Appendix 11b - Third Party Undertaking to the Concession Agreement. In that respect we would kindly ask you to: (1) Confirm the interpretation that the liability of a Third Party Airport Operator (that will be neither a member of a consortium, nor a shareholder in the project company) will be: a) related only to the performance of the functions of an Airport Operator; and b) limited only to the amount of the provided corporate guarantee in accordance with Appendix 11b; (2) Clarify if: a) a Third Party Airport Operator will be directly liable towards the Grantor; or b) the Concessionaire will be directly liable towards the Grantor whereas a Third Party Airport Operator will be liable towards the Concessionaire under the terms and conditions of the concluded agreement between them.	Please refer to Q&As published on 26.07.2018 (Questions 1 and 2) and on 27.07.2018 (Question 7). The Third Party Airport Operator shall be jointly and severally liable with the Concessionaire towards the Grantor for the fulfillment of the respective contractual obligations under the Concession Agreement in respect of Third Party Supported Functions. Such liability is capped up to the amount of the corporate guarantee to be provided to the Grantor by signing the Third Party Undertaking in the form of Appendix 11b.