

№	Questions	Answers
1.	Please confirm whether the certificate, confirming the content of Form F, Part 1, Schedule 3 from the Tender Documentation, shall be in a pre-approved template form.	No, there is no pre-approved form for the certificate to be issued by the relevant owner/grantor confirming the information included in Form F
2.	Please clarify, in connection with item 3, letter a) of Part 1: Application, Schedule 3 of the Tender Documents, whether there is a minimum required time period during which the member of the Consortium chosen for Airport Operator shall have been operating an airport.	As indicated in paragraph 3, letter (a) the criteria has to be met for the entire period from 1 January 2013 up to the Concession's Notice date.
3.	<p>Article 63, para. 3 of the Concessions Act stipulates that when third parties are used to prove financial capabilities required of a concessionaire, they shall be jointly and severally liable together with the concessionaire for the implementation of the concession agreement. At the same time under Schedule 11c of the draft Concession Agreement, as well as pursuant to Answer 8 of 27 July, you have stated that according to Article 5 of Schedule 11c as well as Article 63, para. 3 of the Concessions Act, third parties proving financial capability (both Total Net Worth and Experience Raising Financing) shall be jointly and severally liable together with the concessionaire without limitation.</p> <p>However, Answer 4 of 9 August (1) states that that there has been a change of the Ministry's interpretation of liability of third parties and refers to Guideline Ca-11, which provides that "the established joint liability shall be to the amount of the commitment made by the third party for the provision of the resource. Otherwise, there will be a breach of the principle of proportionality referred to in Article 4, para. 1, CA."</p> <p>Similarly, in Answer 5 of 27 July you have initially stated that shareholders of the concessionaire shall be jointly and severally liable together with the concessionaire for the fulfilment of the concession agreement without limitation. Again, this interpretation appears to have undergone a change, pursuant to Answer 1 of 9 August 2018, which also refers to Guideline 11-Ca.</p> <p>In light of the above observations, please confirm the following:</p> <p>(a) A third-party support provider used to prove Net Worth shall be jointly and severally liable up to the amount of the commitment made by that third</p>	<p>Numerous answers have been provided to questions (a), (b), (c) and (d) – please, consult the previous replies.</p> <p>In relation to (e) and (f), please note that there are planned amendments to the Tender Documents and the draft Concession Agreement, including to Appendices 11a, 11b, 11c, which will set the liability cap of the joint and several liability of the respective parties.</p>

	<p>party for the provision of the respective resource;</p> <p>(b) A third-party support provider used to prove Experience Raising Financing shall not be jointly and severally liable together with the concessionaire;</p> <p>(c) A member of a bidding consortium shall be jointly and severally liable together with the project company established by the bidding consortium, up to its respective share/ resources committed to the project company;</p> <p>(d) The shareholders of a member of a bidding consortium shall not be jointly and severally liable together with the project company established by the bidding consortium, which we derive from Answer 6 of 27 July.</p> <p>Please also advise:</p> <p>(e) How the cap of liability as per letter (a) above is to be calculated. Further, please provide the exact amount of the corporate guarantee, required from third parties under Schedule 11c of the draft Concession Agreement. In case you do not confirm our understanding as per letter (b) above, please advise how the cap of liability of third-party support providers used to prove Experience Raising Financing is to be calculated;</p> <p>(f) How the cap of liability as per letter (c) above is to be calculated with respect to the members in the bidding consortium/ shareholders in the project company under Schedule 11a of the draft Concession Agreement.</p>	
<p>4.</p>	<p>Please confirm that, as per Article 63, para. 3 of the Concessions Act and as discussed in Answer 1 of 26 July 2018, a third-party support provider used to prove Airport Operation Experience, shall not be jointly and severally liable with the concessionaire and shall only provide, pursuant to Schedule 11b of the draft Concession Agreement, a commitment for the provision of the respective resource and a corporate guarantee that shall be equal to the equity commitment required from the Third Party Airport Operator pursuant to Clause 13.2.4 and Clause 13.2.3 of the draft Concession Agreement. Please confirm that the amount of the corporate guarantee to be provided by the third-party support provider used to prove Airport Operation Experience shall be calculated as a product of the respective percentage of shareholding required from an Airport</p>	<p>The Third Party Airport Operator shall be jointly liable with the Concessionaire towards the Grantor for the fulfillment of the respective contractual obligations under the Concession Agreement supported by resources of the Third Party Airport Operator, up to the amount of the corporate guarantee to be provided by issuing the Third Party Undertaking in the form of Appendix 11b. With regard to the amount of this guarantee, please note that amendments to the Tender Documents and the draft Concession Agreement, including to Appendix 11b, are planned and will be announced in accordance with the Concessions Act.</p>

	Operator pursuant to Clause 13.2.3 and the required equity of the project company pursuant to Clause 12.1.2 of the draft Concession Agreement.	
5.	<p>In Answer 6 of 27 July, you have confirmed that only direct shareholders in a concessionaire shall be jointly and severally liable together with the concessionaire under the Concession Agreement. It is our understanding therefore that:</p> <p>(a) If a single bidding entity decides to incorporate a Project Company, which shall become party to the Concession Agreement, the single bidding entity shall be jointly and severally liable with the Project Company, but not the shareholders in the single bidding entity. The liability of the bidding entity shall be determined according to the resources which the bidder committed to the project company pursuant to Guideline 3K-11;</p> <p>(b) Even if a single bidding entity does not incorporate a Project Company and instead the single bidding entity is allowed to and itself becomes party to the Concession Agreement, the shareholders of the single bidding entity shall not be jointly and severally liable together with the single bidding entity (which shall be the concessionaire in this scenario).</p> <p>Please confirm.</p>	Your understanding is correct.
6.	In relation to Question 3 above, please confirm that the interpretation on restricting the liability of third-party support providers and shareholders shall be reflected in the Tender Documentation and under Schedules 11a and 11c of the draft Concession Agreement.	Please note that amendments to the Tender Documents and the draft Concession Agreement, including to its Appendices (where necessary), are planned and will be announced in accordance with the Concessions Act.
7.	<p>In Answer 1 of 2 August you have stated a single bidding entity that does not have the required Total Net Worth of 200,000,000 EUR for the last 3 financial years will not comply with this financial capability requirement, without however addressing the possibility of third-party support.</p> <p>Answer 1 of 23 July 2018 specifically makes the point that, albeit in relation to a question regarding a bidding consortium, third-party support may indeed be used to prove the Total Net Worth required. Answer 2 of 2 August 2018 provides no distinction between the experience raising financing requirement and the Total Net Worth requirement for the purposes of answering a question relating to third-party support in proving the financial capabilities of a bidder.</p>	From the perspective of the Concessions Act, the understanding is correct – and we consider that this is clearly expressed in the Tender Documents.

	<p>Finally, Answer 6 of 22 August 2018 addresses a question on joint and several liability of a third party, that has provided the entire Total Net Worth, as well as experience raising financing to the bidder – the answer stipulates that the Grantor is considering limiting such liability, without however explicitly stating that third-party support is impermissible to provide the Total Net Worth requirement in its entirety.</p> <p>Considering the aforementioned, our understanding is that both single bidding entities and bidding consortiums may prove compliance with the Total Net Worth requirement via third-party support, including entirely. Please confirm.</p>	
8.	<p>Please advise whether Part 1.4 of page 2 (reiterated as Part 4.5 on page 5) of the English version of Appendix 11a, which stipulates that: "the Acceding Party shall appoint an accountable manager and nominate persons responsible to meet the requirements of the Certification Regulations" is intentionally left out of the Bulgarian version and if so, does that mean that it is no longer required under Appendix 11a?</p>	<p>The requirement to appoint an accountable manager within the meaning of the Certification Regulations (see Clauses 9.2.2 and 9.2.3 of the draft Concession Agreement) is not relevant to the Shareholders Undertaking and there is no need of such clause in Appendix 11a. The English version of this Appendix will be amended accordingly.</p>
9.	<p>Please confirm that incompliance with the "Applicable Maximum Senior Debt Ratio" is not considered a material breach or a Concessionaire event of default under Clause 40.1 and is therefore not a ground for the termination of the Concession Agreement by the Grantor.</p>	<p>Please note that amendments to the Tender Documents and the draft Concession Agreement, are planned and will be announced in accordance with the Concessions Act.</p>
10.	<p>Please confirm that whenever the "Applicable Maximum Senior Debt Ratio" has been breached by the Concessionaire, there are no contractual penalties, e.g. economic or other sanctions under the Concession Agreement.</p>	<p>Please note that amendments to the Tender Documents and the draft Concession Agreement, are planned and will be announced in accordance with the Concessions Act.</p>
11.	<p>Please confirm the mechanism under the draft Concession Agreement as well as Tender Documentation, pursuant to which the Grantor shall check if the "Applicable Maximum Senior Debt Ratio" has been complied with. Please also provide the intervals of such checks, i.e. whether compliance is sought on a yearly basis, based on a 5-year plan or otherwise. Please also advise how fluctuations to the Applicable Senior Debt and EBITDA would be addressed in the course of such checks.</p>	<p>Please note that amendments to the Tender Documents and the draft Concession Agreement, are planned and will be announced in accordance with the Concessions Act.</p>

12	Under Schedule 4, Part 1, Section 2.B., it is explicitly stated that “it is accepted that the financing is not possible to be completely and unconditionally assured and committed at the Bid Submission Deadline”. Under Section 2.B.2(b) the Bidder shall provide, in relation to the Financing Plan, an “indication for timing and availability of funds and support of credit and financial institutions with outlined main parameters, for example interest rates, payment of principal, main commitments, requirements toward reserve, default clauses, guarantees, etc.”. It is our view that a Letter of Intent issued by a bank should be enough to satisfy this criterion – please confirm.	No letter of intent from banks is required. Bidders shall illustrate the content of the Financing Plan indicating the information required under paragraph B
13.	The draft Concession Agreement contains a mismatch between the time liability of an Airport Operator Third Party (AOTP) and a Shareholder Airport Operator (SAO). The mismatch is that while Art. 13.2.3 of the draft Concession Agreement allows a SAO to transfer its shares in the Concessionaire after the 10th year of the concession term or 2 years after T3 is opened with the consent of the Grantor, which can only be refused for reasons of national security or public order or if the transferee is essentially not eligible or of equal standing as the SAO, Art. 13.2.4 of the draft Concession Agreement does not equally permit the AOTP to terminate its corporate guarantee and undertaking on the same conditions, i.e. if replaced by another eligible AOTP of similar standing. Therefore, please consider adding to Art. 13.2.4 of the draft Concession Agreement two new sentences having the following wording: “Any change of the Airport Operator Third Party is subject to the Grantor's consent, which may only be withheld if such change affects public order or national interests or if the new Airport Operator Third Party cannot demonstrate that its level of airports technical and operational expertise are sufficient for the performance of this Agreement and at least compliant with the qualification and evaluation criteria defined in the Tender Documentation. The new Airport Operator Third Party shall provide a corporate guarantee in an amount equal to the outstanding amount of the corporate guarantee of the leaving Airport Operator Third Party and execute an undertaking as per Appendix 11b.”	The Grantor will review and consider the proposal.
14.	“Schedule 4, Part 1, Section 2, B (4) – Audit of Financial Model The financial model to be submitted along with the Offer would contain sensitive information which would be proprietary to the Bidder. Apart from the assumptions, the financial model would contain the approach towards how the Bidder wishes to structure the revenues, costs and investments. Further it would also indicate the various sources of financing which are being proposed by the Bidder. We would like to submit that we would not be comfortable in sharing this	The requirement for audited Financial model to be submitted as part of the Offer cannot be waived. Please consult the answer provided on 6 August for additional information on the audit, namely: ” The purpose of the audit of the financial model is mechanical: it is to ensure that the model contains no calculation errors.

	<p>with an external entity before the submission of the Bid and hence request that the requirement of audit by an external entity of the financial model to be submitted along with the Offer be waived. The requirement of audit should be restricted to the Financial Model to be submitted as part of Conditions Precedent, which can be done by an accredited and reputable entity.”</p>	<p>As long as the only difference between the final financial model (submitted) and the version of the financial model that was audited is in its inputs and assumptions, and that the calculation sheets are unchanged, this is acceptable. In accordance with clause 6.5.(b) of the tender documents, in case the financial model is in English, it shall also include a Bulgarian translation.“</p>
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