

**THE FIRST ROUND OF ANSWERS DATED 29 OCTOBER 2013**  
**CONCESSION FOR THE OPERATION AND MAINTENANCE OF THE CROATIAN MOTORWAYS**

NO.	QUESTION	ANSWER
1.	<p>The Candidate is a subsidiary of an investment fund. The investment fund has a management agreement with its Manager. The Manager of that investment fund (the parent company of the Candidate) can demonstrate it manages other similar investment funds which own sizeable shareholdings in Companies that meet the Technical and Financial Requirements set out in 10.7.1, 10.7.2 and 10.2.3. (10.8.1) (<b>The Requirements</b>). The Manager itself manages the shareholdings in these Companies on behalf of the investment funds.</p> <ul style="list-style-type: none"> <li>• Please confirm that the Manager's experience is recognised as valid proof of experience for the Candidate in order to meet The Requirements as long as the Manager executes Form 2.D.3 to the Candidate?</li> <li>• Please confirm that the Manager satisfies the Technical Requirement in 10.7.1 as long as the shareholding which the Manager manages in the reference project is at least 30% and that the Manager appoints at least 30% of the directors on the board?</li> </ul>	<p>The Candidates may rely on capacity of other Economic Operators, including Consortium members, subcontractors and third parties to prove their own capacity. Generally, the Candidate may rely on the capacity of investment fund Manager provided that the Candidate (i) proves that the investment fund Manager has the relevant experience stipulated in the Documentation for the prequalification and (ii) submits the Form 2.D.3. signed by the Manager in its RTP.</p> <p>The manner of satisfaction of technical requirements is set out in Section 10.7.3. of the first part of the Tender Documentation . The percentage level of the participation of the Manager in the reference project does not have a decisive relevance alone as long as the Manager can prove it possesses the relevant experience and qualifications. In this respect, the Technical Requirements are not fulfilled if the Manager was not the responsible leading member of the consortium in the reference project. The leadership in the reference project means that the project manager and the deputy project manager are accountable to the Manager.</p>
2.	<p>Please confirm that changes to the shareholding of the Candidate (or further up the ownership structure) is permitted both during the bid process and following the selection of the Winning Bidder and concession contract award?</p>	<p>Changes to the shareholding of the Candidate (and his shareholders or further up the ownership structure) are permitted until contract award provided always that the change in the shareholding is a mere internal reorganization (as opposed to the actual change in the legal identity of the Candidate). Furthermore, the</p>

		<p>Candidate will have to meet the capacity requirements set out in the first part of the documentation throughout the tender procedure. It is impermissible to transfer all shares in the Candidate to a third party. Therefore, the permissibility of the change in the shareholding of the Candidate shall be reviewed in each individual case. After contract award, the changes to the shareholding of the concessionaire can only be made with the approvals set out in the Concessions Act.</p>
3.	<p>Please confirm if an Affiliated companies of one Candidate (either participating in the tender as the single Economic Operator or is the member of a Consortium) is permitted to make contractual undertakings with other Candidates or become a shareholder (directly or indirectly) of such other Candidate (or its members of the Consortium, in case of Consortium), or its shareholders, both during the tender process and following the selection of the Winning Bidder? For example, is a pension fund affiliated with one Candidate (either participating in the tender as the single Economic Operator or the member of the Consortium) permitted to enter into contractual undertakings with a different Candidate, as described above, either during the tender process or following the selection of the Winning Bidder?</p>	<p>An Affiliated companies of a Candidate (either participating in the tender as the single Economic Operator or is the member of a Consortium) may generally make contractual undertakings with other Candidates or become a shareholder (directly or indirectly) of such other Candidate (or its members of the Consortium, in case of Consortium), or its shareholders, both during the tender process and following the selection of the Winning Bidder.</p> <p>Such behaviour, or any other similar behaviour (such as exclusivity arrangements) must not infringe the fundamental public procurement principles (e.g. principle of fair competition, principle of equal treatment and non-discrimination), and must not lead to the distortion of competition.</p> <p>If the Concession Grantor determines that any behaviour of any Candidates is against the rules of market competition (not only in the case described above), the Concession Grantor will exclude all the affected Candidates from further participation in the tender.</p>
4.	<p>The Candidate asked the question on the possibility of change or modify of any aspect of the Concession at the Government's sole discretion. The Candidate wants to know whether the matter clause is applicable solely to the tender procedure and that after</p>	<p>This clause only applies to the tender procedure and once the process has been completed with a signed Concession Contract, the government will not be able to change the contract at its sole discretion in any other way then in compliance with the applicable law.</p>

	<p>the process has been completed with a signed Concession Contract the Government will not be entitled to change the contract at its own discretion.</p>	
5.	<p>The Candidate asked the question on the requirement to maintain a controlling interest in the SPV throughout the duration of the Concession Contract. If the Winning Bidder is defined as a consortium, part of the documentation implies that the consortium will not be allowed to make changes to that consortium, and that all members of the consortium must maintain at least 50% of their original stake throughout the 50 year contract. The Candidate wants to know whether the intent of this clause is to force all members of the Winning Bidder to remain in the project for the entire 50 years.</p>	<p>In principle, the Winning Bidder should maintain a controlling interest in the SPV throughout the duration of the Contract. Changes would be possible with the approval of the Concession Grantor, who will always consider all the relevant factual circumstances.</p>
6.	<p>The Candidate asked the question on restrictions to the Consortium regarding the change of makeup of its members post submittal of Request to participate. The Candidate wants to know about the possibility to supplement the Consortium, during the shortlisting phase of the project, by naming additional members with the Government's approval, should the need arise.</p>	<p>A consortium cannot change the makeup of its members post submittal of Request to participate. However, for indicated purposes, the Candidate may consider having a special purpose corporation join the Consortium and/or acquire shares in such special purpose corporation as a place holder for future equity investors. As long as no liabilities accrue to the Consortium, the accession of such shell company to the Consortium or the sale of shares in that special purpose corporation to equity investors will not be deemed to constitute an alteration of the composition of the Consortium, taking into consideration the assumptions stated in Answer 2.</p>

7.	<p>The Candidate asked the question regarding Concession Grantor's authority to request the relevant body for managing criminal records and exchange of such records with other countries to provide the issuance of statements of criminal records of any Economic Operator and persons authorized by statute to represent an Economic Operator. The Candidate wants to know whether this documentation will be requested in the submission of Request to participate or at a later date, exactly which persons or representatives of the Economic Operators exactly are relevant for managing and for which persons these statements of criminal records need to be submitted.</p>	<p>Statements of criminal records will not be requested in the submission of the Request to participate, but can be requested at a later date. The Candidate must meet the capacity requirements during the entire tender process. Also, the Candidate must not break the criteria that lead to mandatory exclusion during the entire tender process.</p> <p>The relevant body for managing criminal records and exchange of such records with other countries means in most cases the state criminal registers or institutions such as courts that can provide the issuance of statements of criminal records. In case a Concession Grantor cannot obtain such statements on criminal records, it may request the Candidate to submit an extract from the criminal record of the state in which the Economic Operator is established for the persons who are stated in the extract of the representative of the Economic Operator from the Commercial Register, e.g. in case of the limited liability company, for all the managing directors, or in case of the joint stock company, for all members of the Board of Directors.</p>
8.	<p>The Candidate asked the question regarding Section 10.6.b) &amp; c) regarding the provisions of countries in which the Candidate is established. The Candidate wants to know whether he needs to deliver to the Concession Grantor the requested documentation if such documentation is not required by provisions of countries in which the Candidate is established.</p>	<p>The Candidate does not have to provide the documents according to Section 10.6 b) and c) of the Documentation to the Concession Grantor if these documents are not required by the country in which the Candidate is established.</p>
9.	<p>The Candidate asked the question regarding Article 10.7.1., in</p>	<p>In the described case, such two projects should be considered as separate</p>

	<p>relation to separate contracts performed on similar networks (irrespective of location) having at least 500 km in length, that can be combined as one reference project for this specialist area. The Candidate wants to know whether, for example, two projects that connect to each other but have different concession grantors will be considered separate reference projects.</p>	<p>reference projects.</p>
10.	<p>The Candidate asked the question regarding Section 10.7.3. The Candidate wants to know whether proof of an attempt to request one from a non-Croatian government agency and a signed statement suffice for evidence of technical requirements.</p>	<p>The proof of an attempt to request the certificate from a private subject together with the signed statement by the Economic Operator will suffice for evidence of technical requirements. If the other party is contractor with respect to Public procurement law, the proof of a requested certificate will not be enough, and it will be necessary to submit a confirmation of performed services. Foreign contractors are not considered contractors with respect to Public procurement law, so the proof of requested certificate will be enough, where the Concession Grantor retains the right to check all the information delivered in the Request to participate.</p>
11.	<p>The candidate asked the question whether projects listed in section 11.1 can be different from projects listed in section 10.7.1 or listed in section 10.7.2.?</p>	<p>Stated projects can be the same, but do not have to be the same.</p>
12.	<p>In reference to the provision 10.3 of the Documentation, in case the Consortium designates one of its subcontractors as the Motorway Operator:</p> <ul style="list-style-type: none"> <li>• after the concession is granted can the obligation of the Motorway operator be transferred to the subsidiary of the subcontractor, under the condition that it meet the</li> </ul>	<ul style="list-style-type: none"> <li>• The obligation of the subcontracted Motorway Operator can be transferred to the subsidiary of the subcontractor under the conditions stated in the Documentation and with the approval of the Concession Grantor.</li> <li>• If the Consortium designates its subcontractor as the Motorway Operator, the designated Motorway Operator must meet the minimum criteria set forth in Sections 10.3, 10.4, 10.6 and 10.7.1 of the Documentation to qualify as a</li> </ul>

<p>minimum criteria set forth in Sections 10.4, 10.6 and 10.7.1?</p> <ul style="list-style-type: none"> <li>• Please confirm that the statement of such subcontractor given in the form 2.D.3 of the Documentation is sufficient to meet the qualification requirements?</li> <li>• Can the Motorway Operator be organised as a separate entity in the ownership of the Concession SPV (regardless if the bidder is Consortium or Single Economic Operator)</li> <li>• If the answer to the above question is yes, can the Motorway Operator be a third party or be managed by the third party (or leased to third party as the company)?</li> <li>• Is it still necessary that one of the Consortium Members fulfils the requirement set in 10.6.b) and c) if under the laws of the Motorway Operator jurisdiction there is no such requirement?</li> </ul>	<p>Motorway Operator, and sign the statement given in the form 2.D.3 of the Documentation.</p> <ul style="list-style-type: none"> <li>• The Motorway Operator can be organized as a separate entity in the ownership of the Concession SPV (regardless if the bidder is Consortium or Single Economic Operator).</li> <li>• A Candidate must designate one of its consortium members or subcontractors as a Motorway Operator. If any of such consortium members or subcontractors lack the required capacity, they may rely on capacity of third parties to prove capacity requirements. However, it is not allowed to indicate the third party as a Motorway Operator without any statutory or contractual relationship to such party (e.g. MO as integral part of the Candidate, affiliation by means of a subcontractor's contract or consortium agreement).</li> <li>• Each Consortium Member has to prove its own personal standing. In the specified case, the Motorway Operator does not have to submit the documents according to Section 10.6 b) and c) of the Documentation, if they are not required by the country in which the Motorway Operator is established. In such case, other Consortium Members do not have to prove authority to provide Motorway Operator services (e.g. public authority consent) for that segment of services, but have to provide evidence on authority to provide their own respective services (again, only if such proof is available). If each member of the Consortium will only perform specific elements of the activities contemplated by the Documentation, then such member of the Consortium must only comply with the requirements according to Section 10.6 b) and c) of the Documentation to the extent of such elements.</li> </ul>
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<p>13.</p>	<p>If the Candidate is the consortium of entities bidding through an incorporated company participating in the tender process, please confirm that such company is considered for purposes of this tender as a single Economic Operator.</p> <p>With reference to the requirement of the 9.5.7. of the Documentation, please confirm that the [Bidding Entity/Selected Candidate] can add further shareholders in the concession SPV, as long as, Selected Candidate (or Consortium) maintains controlling interest in the concession SPV. Please confirm that such additional shareholders of the concession SPV shall not be considered as members of the Consortium?</p>	<p>If the Candidate is the consortium of entities bidding through an incorporated company participating in the tender process, such company is considered for purposes of this tender as a single Economic Operator.</p> <p>If the consortium of entities bids through an incorporated company participating in the tender process, it can add further shareholders in the concession SPV with the approval of the Concession Grantor (however, please note that the Concession Grantor would not approve the exit of the shareholders in the incorporated company during the tender process). We confirm that such additional shareholders of the concession SPV shall not be considered as members of the Consortium.</p>
<p>14.</p>	<p>The parent company of a Candidate is managed by a Manager. The Manager can demonstrate its Motorway operation and maintenance experience from past investments made by Affiliated funds of the same Manager.</p> <ul style="list-style-type: none"> <li>• Please confirm that the relevant experience the Manager (which is the manager of the parent company of the Candidate) has gained from being the Manager of an affiliate funds, is recognised as a valid proof of experience?</li> <li>• Please confirm if the Candidate entity itself, needs to have the relevant Motorway operation and maintenance experience, or if it is sufficient if an affiliated company (for example the parent company of the Candidate or</li> </ul>	<p>The mere fact that the Manager has experience from past investments made by Affiliated funds managed by the same Manager does not automatically prove the Manager's capacity required under Section 10.7.1.</p> <p>As set out in Section 10.7.3., the Manager would have to obtain confirmations on executed contracts from its contractual counterparts, while simultaneously proving that the experience collected from such contracts can be attributed to it (either directly or through companies on which it relies on to prove capacity).</p> <p>The Candidate can rely on capacity of any consortium members, subcontractor or third party under the conditions set out in the first part of the Tender Documentation.</p>

	the Manager of the Candidate) has the relevant experience).	
15.	<p>In case that the Motorway Operator is organised as a separate entity not being part of the Consortium (being a subcontractor to Consortium), is the requirement to provide the information on subcontractors in its RTP still applicable?</p> <p>In reference to provision 8.4 of the Documentation:</p> <ul style="list-style-type: none"> <li>• Does the Candidate need to provide such information including the value, quantity, place and deadline of service in its RTP or in the phase 2 of the project when the Candidate has gained a deeper understanding of the existing operations it will assume as part of the transaction?</li> <li>• Will it be possible to change the scope of work of the subcontractors during the concession contract?</li> <li>• Is it possible that the scope of work subcontracted to subcontractors and not initially disclosed in the RTP exceeds 30% of the concession value?</li> <li>• Should the services provided by the Motorway Operator which is a separate entity not being member of the consortium be treated as subcontracted services in respect to the provision 8.4 of the Documentation?</li> </ul>	<p>The requirement to provide the information on subcontractors in the RTP is applicable in case that the Motorway Operator is organized as a separate entity not being part of the Consortium (being a subcontractor to the Consortium).</p> <ul style="list-style-type: none"> <li>• The Candidate needs to provide such information including, inter alia, the value, quantity, place and deadline of service in its RTP. The information provided in the RTP can be of general nature only. However, the Concession Grantor will request that the matter information are specified in much more detail in phase 2 (bid submission), when the Candidate will have a more precise indication of the Transaction.</li> <li>• It will be possible to change the scope of work of the subcontractors during the concession contract in compliance with the applicable law.</li> <li>• The exact scope of subcontractor's work should be indicated at bid submission. The changes to the scope of then indicated work would be allowed in accordance with applicable law.</li> <li>• The services provided by the Motorway Operator which is a separate entity not being member of the consortium should be treated as subcontracted services in respect to the provision 8.4 of the Documentation.</li> </ul>
16.	<p>In reference to 9.5.4. (last paragraph) please confirm that the Motorway Operator's SPV need to become a member of the consortium or can it act through the technical services agreement</p>	<p>If the Motorway Operator is a member of the consortium, the Motorway Operator's SPV needs to become a member of the consortium, and the Motorway Operator's SPV shall enter into a technical services agreement with the Motorway Operator and the Motorway Operator shall guarantee the proper performance of</p>

	<p>with the SPV? (i) in case Motorway operator was member of the consortium, (ii) in case Motorway operator is not a member of the Consortium</p> <p>Please confirm that Motorway Operator special purpose vehicle in the Republic of Croatia will be allowed to become consortium member after the concession is awarded even if the Motorway Operator was not a member of the Consortium</p> <p>Will other consortium members be allowed to establish their special purpose vehicles in the Republic of Croatia and introduce them into the Consortium to which the Concession Contract is awarded to replace them as original consortium members?</p>	<p>the contract by the SPV.</p> <p>In case the Motorway Operator is not a member of the consortium (but subcontracted), please see our response to Q12.</p> <p>The changes to the consortium composition after contract award would generally be permitted under the conditions set out in the first part of the Tender Documentation and applicable law.</p> <p>Other consortium members may establish their special purpose vehicles in the Republic of Croatia and introduce them into the Consortium to which the Concession Contract is awarded, under general rules set out in the first part of the Tender Documentation and applicable law. However, such special purpose vehicles will generally not be allowed to replace their shareholders as original consortium members.</p>
17.	<p>Please confirm that we can prove requirements under 10.7.1 by way of Support Letter of the subcontractor (Form 2.D.3.), issued by the entity that fulfils the conditions stated in the articles 10.4, 10.6 and 10.7.1.</p> <p>Please confirm that such person/entity (that provides the support letter) will not be automatically designated as the Motorway operator</p> <p>Does HAC-ONC fulfil conditions prescribed by the Documentation for the Motorway operator? If not, in which part it does not comply, and which part of such services is subcontracted?</p> <p>If HAC-ONC does fulfil the conditions prescribed by the</p>	<p>We confirm that the Candidate can prove requirements under 10.7.1 by way of Support Letter of the subcontractor (Form 2.D.3.), issued by the entity that fulfils the conditions stated in Sections 10.4, 10.6 and 10.7.1., together with the evidence proving the fulfilment of the conditions stated in Sections 10.4, 10.6 and 10.7.1 of the Documentation.</p> <p>A Candidate is free to designate a Motorway Operator at its own discretion, under the conditions set out in the first part of the Tender Documentation. The entity who merely provides a support letter will not become designated as the Motorway Operator automatically.</p> <p>The fulfilment of the conditions prescribed by the Documentation for the Motorway Operator will be evaluated after the submissions of the RTPs for each Candidate.</p>

	<p>Documentation for the Motorway operator, please confirm that it is sufficient for the Candidate, or the parent company of the Candidate, or the Manager of the Candidate or the Manager of the Candidate's parent company, to have made other investments in a company which also meets the conditions prescribed by the Documentation for the Motorway operator, as long as the shareholding and board representation is at least 30%.</p>	
18.	<p>According to the Documentation the circumstances under Article 10.4.1 can be proven by the Statement of the Candidate "as attached to the Documentation as Annex 2". Also the requirement under 10.4.6 is proven by the Statement of the Candidate "as attached to the Documentation as Annex 2". Please confirm whether both requirements (circumstances) 10.4.1 and 10.4.6 are proven with one and the same Statement of the Candidate to be provided in the Form 2.D.1 of the Documentation?</p>	<p>We confirm that both requirements (circumstances) 10.4.1 and 10.4.6 are proven with one and the same Statement of the Candidate to be provided in the Form 2.D.1 of the Documentation.</p>
19.	<p>Should the Independence Statement (Form 2.D.2.) and Support Letter (Form 2.D.3.) be signed in particular form such as form of affidavit ( with apostil), or signed by authorised representative with the notarised signature accompanied with the company stamp (with apostil)?</p> <p>In case that such Motorway operation and maintenance experience is demonstrated through the foreign entities acting as the subcontractors to the Candidate, please confirm that the signature of the authorised representative of the Candidate or</p>	<p>The Independence Statement (Form 2.D.2.) and Support Letter (Form 2.D.3.) can be signed with the plain signature, i.e. no certification/notarization of the signature is required.</p> <p>According to the Form 2.D.3, the Support Letter shall be signed by both, the Candidate (or its Authorized representative) as well as the authorized representative of the sub-contractor.</p>

	Authorised Representative of the Consortium would suffice?	
20.	<p>Please confirm if this Form 2.E.1 should be signed.</p> <p>If yes, in what form: affidavit or only verified signature of authorised representative or signed by authorised representative without notarization?</p> <p>In case of Consortium, if the Form 2.E.1 should be signed, should it be signed by the Authorised Representative of the Candidate or by the appointed Motorway Operator?</p> <p>If the Candidate is a subsidiary, established for the purpose of this project, can the parent company or an affiliate company or the manager of the parent company sign the Form 2.E.1?</p>	<p>Form 2.E.1 does not have to be signed.</p> <p>The Candidate must not state false information in the RTP. The Candidate shall duly sign the RTP and be liable for the truthfulness and accuracy of all documents and information contained in the RTP.</p>
21.	<p>Please confirm if this Form 2.E.3 and 2.E.3. should be signed.</p> <p>If yes, in what form: affidavit or only verified signature of authorised representative or signed by authorised representative without notarization?</p> <p>If the Candidate is a subsidiary, established for the purpose of this project, can the parent company or an affiliate company or the manager of the parent company sign the Form 2.E.2 and 2.E.3?</p>	<p>Form 2.E.2 does not have to be signed.</p> <p>The Candidate must not state false information in the RTP. The Candidate shall duly sign the RTP and be liable for the truthfulness and accuracy of all documents and information contained in the RTP.</p> <p>If the Candidate is relying on parent or affiliate company references, the Form 2.D.3 has to be signed by both the company providing the reference and the Candidate</p>
22.	<p>Please confirm if the Form 2.F.1 should be signed.</p> <p>If yes, in what form: affidavit or only verified signature of authorised representative or signed by authorised representative without notarization?</p>	<p>Answer 21 shall apply accordingly.</p>

	<p>If the Candidate is a subsidiary, established for the purpose of this project, can the parent company or an affiliate company or the manager of the parent company sign the Form 2.F.1?</p>	
<p>23.</p>	<p>Under <b>9.3.</b> (ii) of the Documentation it is stated that: “The five (5) copies in each language shall be signed in the same way as the original and each placed in the separate envelopes marked “Copy”.”</p> <p>Does it mean that each of 5 copies of finalised and signed original RTP has to be additionally signed so that the signatures are actually original or does it mean that respective 5 copies have to be made from the finalised and signed original RTP and this will be considered as copies signed in the same way as the original?</p> <p>According to the <b>article 9.3.</b> of the Documentation the Candidate has to submit one original and 5 copies in each language (English and Croatian):</p> <ul style="list-style-type: none"> <li>• does it mean that both language versions (English and Croatian) have to be signed, or in case of English language document only such document and accompanied by the Croatian translation (verified by the court interpreter)?</li> <li>• Should CD copy be attached to each of the versions (one original and 5 copies) or just one CD copy including both English and Croatian RTP?</li> <li>• Should the RTP on CD be a scan of the bound original or</li> </ul>	<p>The respective 5 copies have to be made from the finalised and signed original RTP and this will be considered as copies signed in the same way as the original.</p> <ul style="list-style-type: none"> <li>• One English and one Croatian language version has to be signed (it is not enough to translate any of the signed versions).</li> <li>• The CD copy must be attached to each of the versions (to one original as well as to 5 copies).</li> <li>• The Candidate may scan the RTP on CD unbounded.</li> <li>• We confirm that if the Candidate does not use the corporate stamp for its business operations, the documents do not have to include the corporate stamp (including the stamp for verification of the bidder).</li> <li>• It is not necessary to attach the English versions in the Croatian RTP and other way around.</li> </ul>

	<p>just scanned original RTP (not bound)</p> <ul style="list-style-type: none"> <li>• In case the Candidate does not use the corporate stamp for its business operations, please confirm that the documents do not have to include the corporate stamp (including the stamp for verification of the binder)</li> <li>• Please explain whether (9.3. (ii) and (iv)) it is necessary to attach the English versions in the Croatian RTP and other way around.</li> </ul>	
24.	<p>With respect to <b>clause 8.4</b> (subcontractors), can the Candidate's subcontractor registered in phase 1 be replaced by a another subcontractor in phase 2 as long as the new subcontractor also meets the Technical and Financial Requirements set out in 10.7.1, 10.7.2 and 10.2.3. (10.8.1)?</p>	<p>The Candidate may replace any of its subcontractors in Phase 1 during Phase 2 as long as the replacement does not result in the removal of such a subcontractor whose capacity was used by the Candidate to prove the fulfilment of the capacity criteria in Phase 1, as long as the new sub-contractor fulfils the relevant capacity criteria and as long as the necessary documents are submitted (e.g. Support Letter). The Candidate must fulfil the capacity criteria during the entire tender procedure.</p>